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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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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

Specifications and Drawings for Construction of Direct Buried Plant

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations on Telecommunications Policies on Specifications, Acceptable Materials, and Standard Contract Forms, by revising RUS Bulletin 1753F–150, Specifications and Drawings for Construction of Direct Buried Plant (Form 515a). The revised specifications will include new construction units for Fiber-to-the-Home, remove redundant or outdated requirements, and simplify the specifications format.

DATES: The effective date September 29, 2010.

Incorporation by Reference: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Norberto Esteves, Chair, Technical Standards Committee "A" (Telecommunications), Advanced Services Division, Telecommunications Program, USDA–Rural Utilities Service, STOP 1550, Washington, DC 20250–1550. *Telephone:* (202) 720–0699; *Fax:* (202) 205–2924; *e-mail: norberto.esteves@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is exempted from the Office of Management and Budget (OMB) review for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. USDA Rural Development has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to the rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

USDA Rural Development has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The standard USDA Rural Development telecommunications loan documents contain provisions on procurement of products and construction of telecommunications facilities purchased with loan funds. This ensures that the telecommunications systems financed with loan funds are adequate to serve the purposes for which they are to be constructed and that loan funds are adequately secured. USDA Rural Development borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct cost associated with complying with USDA Rural Development regulations and requirements.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this final rule are cleared under control numbers 0572–0059 and 0572–0132 pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this final rule does not have sufficient federalism implications requiring the preparation of a Federalism Assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Program under No. 10.851, Rural Telephone Loans and Loan Guarantees and No. 10.857, Rural Broadband Access Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. *Telephone:* (202) 512–1800.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034), advising that USDA Rural Development Utilities Programs loans and loan guarantees are excluded from the scope of Executive Order 12372.

Unfunded Mandates

This final rule contains no Federal Mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. Chapter 25)) for State, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

The Agency has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Background

RUS issues contracts, standards and specifications for construction of telecommunications facilities financed with RUS loan funds. RUS is revising the specifications for buried plant

construction contained in RUS Bulletin 1753F–150 (RUS Form 515a).

The current outside plant specifications are used by borrowers to secure the services of a contractor for the construction of telecommunications facilities. Current specifications have become outdated due to the advancements in Fiber-to-the-Home construction as well as installation methods and materials. In order for borrowers and contractors to take advantage of these improved construction installation methods and materials, the current specifications have been revised.

On Tuesday, June 8, 2010, RUS published a proposed rule in the **Federal Register** (Vol. 75, No 109, page 32313), proposing to amend its regulations on Telecommunications Policies on Specifications, Acceptable Materials, and Standard Contract Forms, by revising RUS Bulletin 1753F–150, Specifications and Drawings for Construction of Direct Buried Plant (Form 515a). Interested parties were invited to submit comments on or before August 9, 2010. No comments were received.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

■ For reasons set out in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS POLICIES ON SPECIFICATIONS, ACCEPTABLE MATERIALS, AND STANDARD CONTRACT FORMS

■ 1. The authority citation for part 1755 continues to read as follow:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

■ 2. In § 1755.97, the table is amended by revising the issue date of RUS Bulletin 1753F–150 to read as follows:

§ 1755.97 Incorporation by reference of telecommunications standards and specifications.

* * * * *

RUS Bulletin No.	Specification No.	Date last issued	Title of standard or specification
*	*	*	*
1753F–150	Form 515a	September 2010	Specifications and Drawings for Construction of Direct Buried Plant.
*	*	*	*

* * *

Dated: September 23, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–24420 Filed 9–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0911; Airspace Docket No. 10–ASO–32]

Amendment to Class E Airspace; Smithfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends Class E airspace at Johnston County Airport, Smithfield, NC, by correcting an omission of the geographic coordinates of the Area Navigation (RNAV) Global Positioning System (GPS) Special Standard Instrument Approach Procedure (SIAP) serving the Johnston Memorial Hospital to aid in the navigation of our National Airspace System.

DATES: Effective 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

The FAA received a request from the National Aeronautical Navigation Services to correct the omission of the geographic coordinates for the point in space serving Johnston Memorial Hospital in the amendment of the Class E airspace published in the **Federal Register** on July 27, 2010 (75 FR 43817). This action makes the adjustment.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace at Smithfield, NC, by making the addition of the geographic coordinates of the RNAV (GPS) approach point in space serving Johnston Memorial Hospital to coincide with the FAAs National Aeronautical Navigation Services depiction. 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 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 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 Smithfield, NC.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ASO NC E5 Smithfield, NC [Amended]

Johnston County Airport, NC
(Lat. 35°32′27″ N., long 78°23′25″ W.)
Johnston Memorial Hospital
Point In Space Coordinates
(Lat. 35°31′23″ N., long 78°20′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Johnston County Airport and within 2 miles each side of the 023° bearing from the airport extending from the 6.5-mile radius to 10.2 miles northeast of the Johnston County Airport and within a 6-mile radius of the point in space (lat.35°31′23″ N., long. 78°20′35″ W.) serving Johnston Memorial Hospital.

Issued in College Park, Georgia, on September 17, 2010.

Myron A. Jenkins,

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

[FR Doc. 2010–24113 Filed 9–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 320

[Docket No. FDA–2000–N–0108] (formerly Docket No. 00N–1484)

RIN 0910–AG13

Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing safety reporting requirements for human drug and biological products subject to an investigational new drug application (IND). The final rule codifies the agency's expectations for timely review, evaluation, and submission of relevant and useful safety information and implements internationally harmonized definitions and reporting standards. The revisions will improve the utility of IND safety reports, reduce the number of reports that do not contribute in a meaningful way to the developing safety profile of the drug, expedite FDA's review of critical safety information, better protect human subjects enrolled in clinical trials, subject bioavailability and bioequivalence studies to safety reporting requirements, promote a consistent approach to safety reporting internationally, and enable the agency to better protect and promote public health.

DATES: This rule is effective March 28, 2011.

FOR FURTHER INFORMATION CONTACT:

For information on IND safety reporting for human drug products: Janet Norden, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6324, Silver Spring, MD 20993–0002, 301–796–2500.

For information on IND safety reporting for human biological products: Laura Rich, Center for Biologics Evaluation and Research, Food and Drug Administration,1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

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I. Background

In the **Federal Register** of March 14, 2003 (68 FR 12406), FDA issued a proposed rule to revise its regulations governing pre- and postmarketing safety

reporting for human drug and biological products[1], which appear in parts 310, 312, 314, 320, 600, 601, and 606 (21 CFR parts 310, 312, 314, 320, 600, 601, and 606). The proposed revisions represented a major effort to clarify and integrate several safety reporting rules and guidance documents that had been issued by international organizations and by FDA dating back to the 1990s. The background for and description of these regulations and guidance documents are described in the preamble of the proposed rule (68 FR 12406 at 12407 to 12410, Figure 1). The proposal called for the submission of comments by July 14, 2003. At the request of industry, and to provide all interested persons additional time to comment, the comment period was extended until October 14, 2003 (68 FR 36527, June 18, 2003).

FDA received numerous comments in response to the proposed rule, many of which stated that the proposal would not meet its stated goals and requested that the agency reevaluate specific aspects of the proposal. FDA agreed with some of these comments and has reevaluated and revised aspects of the proposal. To make the rulemaking process more manageable, FDA has decided to issue revisions to the premarketing and postmarketing safety reporting regulations in two separate rulemakings. By separating these rules, the agency has been able to reevaluate and refine each requirement in the premarketing and postmarketing settings to better ensure that the rules will achieve their goals.

This rule finalizes revisions to the IND safety reporting regulations found in part 312 and the safety reporting requirements for bioavailability and bioequivalence studies found in part 320. The agency is working on revisions to the postmarketing safety reporting regulations found in parts 310, 314, 600, 601, and 606 separately, and will address these sections in a future rule. Therefore, revisions to and comments about postmarketing safety reporting requirements found in parts 310, 314, 600, 601, and 606 are not addressed in this rulemaking. This document discusses information relevant to and comments about the proposed revisions found in parts 312 and 320.

A. Rationale for Rulemaking

In the proposed rule (68 FR 12406 at 12412 to 12415), FDA described its goals for the proposed rulemaking. Many of the stated goals were primarily applicable to postmarketing safety reporting, but revising and clarifying the IND safety reporting requirements was also a critical component of FDA's stated efforts to: (1) Improve the overall quality of safety reporting, thereby strengthening the agency's ability to review critical safety information, (2) monitor the safety of human drug and biological products, and (3) harmonize safety reporting internationally. Each of these is discussed in turn in this document.

First, the revisions to the IND safety reporting requirements will improve the overall quality of safety reporting and the agency's ability to review critical safety information by ensuring that the information that FDA receives in an IND safety report is relevant and useful. Under former regulations, there may have been over-reporting of serious adverse events for which there was little reason to believe that the drug had caused the event, complicating or delaying FDA's ability to detect a safety signal. In this final rule, FDA clarifies definitions, provides examples of the types of evidence that suggest a causal relationship for purposes of reporting a suspected adverse reaction to the IND and participating investigators, and revises the requirements for expedited reporting of serious and unexpected suspected adverse reactions to the IND. The final rule also allows sponsors to arrange alternative formats and/or frequencies for reporting and provides that study endpoints must not be submitted as IND safety reports except in unusual cases. These revisions not only have an impact on which reports are sent to FDA and participating investigators, but also affect the reports that are sent by investigators to Institutional Review Boards (IRBs). These revisions and clarifications will minimize reports that do not contribute to FDA's understanding of the developing safety profile of the drug and decrease the number of uninterpretable reports (so-called "noise") in the system. In addition, the revisions and clarifications will help to make clear under what circumstances the study blind should be broken and when unblinding is unnecessary. Ultimately, these revisions and clarifications should contribute toward more useful adverse reaction information and more effective monitoring of clinical trials.

Second, by requiring expedited reports of certain safety information that was not reported expeditiously under former IND safety reporting requirements or bioavailability or bioequivalence requirements, the final rule will help FDA monitor the safety of human drug and biological products and better protect human subjects enrolled in clinical trials. Under the final rule, FDA will receive expedited reports of:

- Findings from clinical studies, epidemiological studies or pooled analyses of multiple studies that suggest a significant risk in humans exposed to the drug,
- Serious suspected adverse reactions that occur at an increased rate than listed in the protocol or investigator brochure, and
- Serious adverse events from bioavailability and bioequivalence studies.

By receiving these reports expeditiously, FDA will be better able to monitor and evaluate the drug's safety.

Finally, FDA had proposed certain revisions to its IND safety reporting requirements to harmonize the regulations with recommendations by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and by the World Health Organization's Council for International Organizations of Medical Sciences (CIOMS), and which have been adopted by the European Union (EU) (Ref. 1). In the preamble to the proposed rule (68 FR 12406 at 12415, table 4), FDA detailed the specific proposed revisions to the definitions and reporting standards based on international recommendations in the ICH guidance "E2A Clinical Safety Data Management: Definitions and Standards for Expedited Reporting" (60 FR 11284, March 1, 1995) (ICH E2A guidance). FDA received numerous comments, described in more detail in section III of this document, stating that certain of FDA's proposed revisions were inconsistent with how the provisions are interpreted and implemented in other member ICH nations. After reviewing the comments and after discussions with our ICH partners, FDA has revised the definitions and reporting standards to be as consistent as possible with international definitions and standards, recognizing that there may be inconsistencies within ICH documents and among the other member ICH nations' interpretations of these definitions and standards.

B. The Proposed Rule

The following describes the proposed revisions to the requirements in parts 312 and 320. FDA proposed the following revisions to § 312.32 on IND safety reports:

- Replace the defined phrase "associated with the use of the drug"

[1] For the purposes of this document, unless otherwise specified, all references to "drugs" or "drug products" include human drug products and biological products that are also drugs.

with the term "suspected adverse drug reaction (SADR),"

- Require submission of expedited reports of "information sufficient to consider product administration changes,"
- Make it clear that safety reports of overall findings or data in the aggregate must be submitted in a narrative format,
- Permit the determination that an SADR is life-threatening to be based on the opinion of either the investigator or sponsor (as opposed to only the investigator),
- Require that the sponsor notify FDA and all participating investigators of each SADR that is both serious and unexpected, based on the opinion of either the investigator or sponsor (as opposed to only the sponsor),
- Require a ""minimum data set" for each report of an SADR submitted to FDA, and
- Clarify the sources of information that sponsors must review for safety surveillance and reporting purposes.

FDA proposed the following revision to § 312.64(b):

- Make it clear that the investigator must report to the sponsor any serious SADR immediately and any other SADR promptly, unless otherwise specified in the protocol or investigator's brochure.

FDA proposed the following revision to § 320.31(d):

- Make bioavailability and bioequivalence studies subject to IND safety reporting requirements.

II. Overview of the Final Rule

This final rule amends parts 312 and 320 of FDA regulations by revising the requirements for IND safety reporting and for bioavailability and bioequivalence studies. This final rule reflects revisions the agency made in response to comments on the March 2003 proposal (addressed in detail in section III of this document) and other revisions, including editorial changes to clarify provisions and support the agency's plain language initiative (addressed in this section).

A. Definitions

The definitions section for the IND safety reporting regulations (§ 312.32(a)) now includes the following five terms:

- Adverse event,
- Life-threatening adverse event or life-threatening suspected adverse reaction,
- Serious adverse event or serious suspected adverse reaction,
- Suspected adverse reaction, and
- Unexpected adverse event or unexpected suspected adverse reaction.

FDA has revised and clarified terms and definitions that were in the proposed rule. First, as discussed in detail in section III of this document, the two terms "adverse event" and "suspected adverse reaction" replace the proposed definition of "suspected adverse drug reaction (SADR)." The definitions "adverse event" and "suspected adverse reaction" also replace the phrase "associated with the use of the drug" defined in former § 312.32(a). The definitions of the terms "adverse event" and "suspected adverse reaction" make clear a distinction in the degree of evidence of a causal relationship between the drug and the adverse event within these terms.

Second, the final rule requires that the determination for reporting purposes about whether an adverse event or suspected adverse reaction is "life-threatening" or "serious" be based on the opinion of either the investigator or sponsor. FDA had proposed this revision for the definition of "life-threatening SADRs," and the agency decided that the determination about whether an adverse event or suspected adverse reaction is "serious" is comparable to the determination of whether it is life-threatening. Therefore, FDA revised the definition "serious adverse event or serious suspected adverse reaction" to specify that the determination of seriousness be based on the opinion of either the investigator or sponsor. In addition, FDA eliminated the definition of "disability" as a separate term and includes the meaning of the term in the definition of "serious adverse event or serious suspected adverse reaction."

Third, the final rule makes clear what adverse events or suspected adverse reactions are considered unexpected. The proposed definition of "unexpected SADR" included the following sentence from the then-current definition for "unexpected adverse drug experience" (with minor clarification): "'Unexpected' as used in this definition, refers to an SADR that has not been previously observed (e.g., in the investigator brochure); it does not refer to an SADR that might be anticipated from the pharmacological properties of the drug product." To this clarification, FDA proposed to add the following new sentence: "SADRs that are mentioned in the investigator's brochure as occurring with a class of drugs but not specifically mentioned as occurring with the particular drug are considered unexpected." In this final rule, FDA combined these proposed sentences to read as follows: "'Unexpected,' as used in this definition, also refers to adverse events or suspected adverse reactions that are mentioned in the investigator brochure as occurring with a class of drugs or as anticipated from the pharmacological properties of the drug, but are not specifically mentioned as occurring with the particular drug under investigation." This revision makes clear that adverse events that have not been previously observed with the drug under investigation, but are predicted to occur based on the class of the drug or pharmacological properties of the drug are considered "unexpected" for reporting purposes.

B. Review of Safety Information

The final rule clarifies what safety information must be reviewed under § 312.32(b). The proposal would have required sponsors to review "reports from foreign regulatory authorities that have not been previously reported to FDA by the sponsor." FDA has deleted the phrase "that have not been previously reported to FDA by the sponsor," because it confuses the review with the reporting requirements. FDA expects sponsors to review all information, but to avoid duplicate reporting to the agency. In addition, the final rule clarifies the agency's expectations for analysis of previous, similar reports (§ 312.32(c)(1)).

C. Reporting Requirements

In § 312.32(c), the final rule clarifies how and when to submit IND safety reports to FDA and participating investigators, including the requirement in § 312.32(c)(1)(v) that certain reports be submitted in a narrative format (proposed § 312.32(c)(1)(iii)). It provides examples of the kinds of evidence that suggest a causal relationship between the drug and the adverse event when determining whether a serious and unexpected adverse event qualifies for expedited reporting (§ 312.32(c)(1)(i)). The final rule also requires that sponsors submit expedited reports of findings from clinical studies, epidemiological studies, or pooled analyses of multiple studies that suggest a significant risk in humans (§ 312.32(c)(1)(ii)); findings from animal or in vitro testing that suggests a significant risk in humans (§ 312.32(c)(1)(iii)); and reports of an increased rate of occurrence of serious suspected adverse reactions over that listed in the protocol or investigator brochure (§ 312.32(c)(1))(iv)). The final rule also provides for alternative reporting arrangements (§ 312.32(c)(3)) and provides that study endpoints not be reported except in unusual cases (§ 312.32(c)(5)).

Furthermore, FDA has made it clear in § 312.32(c)(1)(v) that the period of time for submitting additional data requested by the agency is 15 calendar

days (i.e., the same period of time that is allowed for submitting followup information under § 312.32(d)(3)). In addition, the agency revised several provisions to allow for electronic submission of reports. First, in § 312.32(c)(1)(v) "Submission of IND safety reports," FDA renamed and revised proposed § 312.32(c)(1)(iii) "Submission of written reports." Second, FDA revised proposed § 312.32(c)(2) "Telephone and facsimile transmission safety reports" to eliminate the specificity that unexpected fatal or life-threatening reports be submitted only by telephone or facsimile transmission so that other means of rapid communication (e.g., e-mail) may be accepted in the future. FDA also renamed the provision to "Unexpected fatal or life-threatening suspected adverse reaction reports." Last, in § 320.31(d)(3), FDA revised the proposed requirement for submission of IND safety reports and unexpected fatal or life-threatening reports from bioavailability and bioequivalence studies to mirror these revisions.

The final rule allows for alternative reporting arrangements, as provided in former § 312.32(c)(3). However, the agency revised the statement, "FDA may request a sponsor to submit IND safety reports in a format or at a frequency different than that required under this paragraph" by replacing the word "request" with "require" to reflect the existing process. In addition, the final rule clarifies the reporting requirements for clinical investigations of drug products that are marketed in the United States (§ 312.32(c)(4)).

The final rule makes minor editorial changes to § 312.32(d)(2) to clarify the followup reporting requirements. In addition, the agency eliminated the redundant submission requirements for information amendments and annual reports under § 312.32(d)(4) because they are already contained in §§ 312.31 and 312.33.

The final rule clarifies the requirements for investigators to submit reports of serious adverse events to the sponsor and clarifies the requirement for reporting study endpoints that are serious adverse events (§ 312.64(b)).

Finally, the final rule requires that applicants submit to FDA reports of serious adverse events from bioavailability and bioequivalence studies. Proposed § 320.31(d) would have required that these studies be subject to the proposed IND safety reporting requirements, thereby requiring all reports under proposed § 312.32 (e.g., reports of serious and unexpected SADRs, reports of information sufficient to consider product administration changes). FDA has tailored the rule to require only those reports that FDA believes would be most informative (i.e., reports of all serious adverse events). FDA also revised this provision to make it consistent with the final revisions for submission of IND safety reports and reports of any fatal or life-threatening adverse event. The final rule requires that reports must be submitted to the Office of Generic Drugs.

Table 1 of this document identifies the changes from the proposed rule in the IND safety reporting requirements that the agency made in this final rule.

TABLE 1—CHANGES MADE BY THE FINAL RULE FROM THE PROPOSED RULE

21 CFR Section in Final Rule	Description of Change See comment or section of this document (identified in parentheses) for more detailed information regarding the change.
312.32(a) Adverse event	• Added definition for "adverse event" (1)
312.32(a) Life-threatening adverse event or life-threatening suspected adverse reaction	• Made minor editorial revisions for clarity, including language changes to accommodate deletion of "SADR" definition and use of alternative terminology (2)
312.32(a) Serious adverse event or serious suspected adverse reaction	• Changed language to accommodate deletion of "SADR" definition and use of alternative terminology (6) • Incorporated the definition from former § 312.32(a) of "disability" within the definition of "serious" (III.A.2) • Revised so that the seriousness determination is based on the opinion of either the sponsor or investigator (6)
312.32(a) Suspected adverse reaction	• Replaced the term "SADR" with the term "suspected adverse reaction," clarifying the meaning of "reasonable possibility" within the definition (1)
312.32(a) Unexpected adverse event or unexpected suspected adverse reaction	• Revised to make clear that "unexpected" adverse events or suspected adverse reactions include those that may be anticipated from the pharmacological properties of the drug, or that occur with members of the drug class, but that have not previously been observed with the drug under investigation (8)
312.32(b) Review of safety information	• Made minor editorial changes for clarity and deleted the phrase "that have not been previously reported to FDA by the sponsor" (II)
312.32(c)(1) IND safety reports	• Withdrew the proposed requirement for each report of an SADR to contain a minimum data set and to maintain records of efforts to obtain a minimum data set (5, 13, and 14)
312.32(c)(1)(i) Serious and unexpected suspected adverse reactions	• Clarified agency's expectation for analysis of previous, similar reports or any other relevant information (16) • Withdrew the requirement that the causality assessment be based on the opinion of the investigator or the sponsor (15) • Provided examples of the types of evidence that suggest a causal relationship between the drug and the adverse event (18 to 21)
312.32(c)(1)(ii) Findings from other studies	• Revised proposed reports of "Information sufficient to consider product administration changes" to clarify agency expectations of reports from clinical studies, epidemiological studies or pooled analyses of multiple studies that suggest a significant risk in humans (23 to 25)

TABLE 1—CHANGES MADE BY THE FINAL RULE FROM THE PROPOSED RULE—Continued

21 CFR Section in Final Rule	Description of Change See comment or section of this document (identified in parentheses) for more detailed information regarding the change.
312.32(c)(1)(iii) Findings from animal or in vitro testing	• Revised proposed reports of "Information sufficient to consider product administration changes" to clarify agency expectations of reports from animal or in vitro testing that suggests a significant risk in humans (26 to 29)
312.32(c)(1)(iv) Increased rate of occurrence of serious suspected adverse reactions	• Added the requirement for reports of any clinically important increase in the rate of a serious suspected adverse reaction over that listed in the protocol or investigator brochure (32)
312.32(c)(1)(v) Submission of IND safety reports	• Revised to allow for electronic submission of IND safety reports and clarified time period for reporting additional data or information requested by FDA (II)
312.32(c)(2) Unexpected fatal or life-threatening suspected adverse reaction reports	• Revised to eliminate the specificity that unexpected fatal or life-threatening suspected adverse reaction reports be submitted only by telephone or facsimile transmission and renamed the requirement (II)
312.32(c)(3) Reporting format or frequency	• Replaced "request" with "require" (20)
312.32(c)(4) Investigations of marketed drugs	• Clarified requirements for investigations of marketed drugs (31)
312.32(c)(5) Reporting study endpoints	• Added requirement that study endpoints (e.g., mortality or major morbidity) must be reported according to the protocol instead of as IND safety reports except when there is evidence suggesting a causal relationship between the drug and the event (19 and 21)
312.32(d) Followup	• Deleted provision that required safety information to be submitted in an information amendment or annual report and made minor editorial changes for clarity (III.K)
312.64(b) Investigator reports	• Clarified requirements for investigator reports (35 and 36)
320.31(d) Applicability of requirements regarding an "Investigational New Drug Application"	• Revised to require that persons conducting bioavailability and bioequivalence studies report all serious adverse events (II) • Revised to make consistent with requirements for submission of IND safety reports and reports of any fatal or life-threatening adverse event (II)

III. Comments on the Proposed Rule

The agency received 110 comments in the docket for the March 14, 2003, proposed rule on premarket and postmarket safety reporting revisions. Comments were received from prescription and nonprescription drug manufacturers and related companies; trade organizations representing drug manufacturers and other interested parties; blood banks and transfusion facilities; international organizations and non-U.S. agencies; professional associations and organizations; consultants; contract research organizations; academic institutions; health care and consumer advocacy organizations, individual physicians, pharmacists, and consumers; and others.

To make it easier to identify comments and our responses, the word "Comment," in parentheses, appears before the comment's description, and the word "Response," in parentheses, appears before our response. We have numbered each comment to help distinguish between different comments. Similar comments are grouped together under the same number. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance or the order in which it was received. Comments addressing the proposed requirements for IND safety reporting and bioavailability and bioequivalence studies and the agency's responses follow:

A. Definitions—Proposed § 312.32(a)

1. Suspected Adverse Drug Reaction (SADR)

FDA proposed to add the term "suspected adverse drug reaction (SADR)" and define the term as follows: "A noxious and unintended response to any dose of a drug product for which there is a reasonable possibility that the product caused the response. In this definition, the phrase 'a reasonable possibility' means that the relationship cannot be ruled out."

(Comment 1) Nearly all of the comments overwhelmingly opposed the agency adopting the proposed definition of SADR and strongly encouraged the agency to abandon the proposed definition for many reasons, including the following:

• Many comments did not agree that "reasonable possibility" should be defined as "the relationship cannot be ruled out." Most comments stated that this interpretation makes the definition overly broad and will lead to reporting almost every serious, unexpected adverse event because no event could ever be completely ruled out.

• Many comments stated that although the proposed definition was similar to the definition contained in the ICH E2A guidance, the agency's interpretation was inconsistent with the guidance. The ICH E2A guidance makes clear that a causality assessment is required for clinical investigations and that a "reasonable causal relationship" is meant to convey in general that there are facts (evidence) or arguments to suggest a causal relationship. The comments expressed concern that the agency's interpretation of "reasonable possibility" would lead to inconsistencies in globally conducted studies and reports.

• Many comments asserted that the significantly increased numbers of expedited reports that could result from the proposed definition might dilute real safety signals, making them harder to detect. The lengthy in depth investigations needed to rule out the increased number of false positive associations would take away resources from other safety surveillance efforts and potentially lead to a delay in identification of real signals.

• Several comments expressed concern that the proposed definition would have a negative impact on the conduct of clinical trials. In addition to sharply increasing the number of reports of cases from clinical trials that would need to be sent to FDA in an expedited manner, sponsors and investigators would have to break the blind for nearly all subjects with serious, unexpected SADRs because the relationship between drug and the event could not definitively be ruled out. Increased unblinding would compromise the integrity of well-regulated clinical investigations, lead to fewer patients completing a trial, necessitate larger patient enrollment, and lengthen the timeline for new product development, possibly leading to higher costs for marketed drugs. One comment expressed concern that, to minimize unblinding, studies would be designed to exclude patients with serious medical conditions who are likely to experience serious adverse events during the study period, thereby limiting the applicability of study results.

Many comments also stated that the proposed definition would result in significant increases in meaningless individual expedited reports being sent to already overburdened IRBs and investigators. The comments pointed out that an unintended effect of the increase in volume of reports may be to reduce an investigator's and IRB's vigilance in detecting adverse events.

• Several comments expressed concern that the proposed definition would dilute the utility of drug product labeling because many more events would be regarded as "drug related" even though the likelihood of a true causal relationship is minimal.

• Several comments stated that the "S" abbreviation for "suspected" in SADR could be confused with the "S" abbreviation for "serious" in SAE (serious adverse event).

The majority of the comments recommended that reporting adverse events from clinical trials should be based on a scientific or medical judgment that there is a possible causal relationship between the drug and the event, rather than simply being unable to unequivocally exclude a drug's role. The comments suggested several alternatives to the agency's proposed definition, including the following:

• Several comments recommended that the definition of an adverse reaction encompass all of the concepts presented within the ICH E2A guidance, which are supported by CIOMS and presented in the European Union Clinical Trial Directive. Comments recommended that the definition of reasonable possibility be technically consistent with the ICH E2A guidance definition and clearly delineate the concept of "reasonable causal relationship" as conveying in general that there are facts (evidence) or arguments to suggest a causal relationship.

• Some comments supported retaining FDA's former definition of "associated with the use of the drug" as "there is a reasonable possibility that the experience may have been caused by the drug."

Three comments supported adopting the proposed definition because they considered it an inclusive, conservative approach to adverse event reporting.

(Response) Based on the comments, and on review of definitions and terminology used in the ICH E2A guidance and in former § 312.32, the agency has decided not to adopt the proposed definition for "suspected adverse drug reaction (SADR)." The agency agrees with the comments stating that there should be a causality assessment applied and that the threshold for reporting should be that there is a "reasonable possibility" that the drug caused the adverse event. The agency also believes that it is important to use definitions that are clear and consistent, and in harmony with those used internationally.

The agency believes that the comments raised legitimate concerns that the proposed definition was too broad and could have a negative impact on clinical trials, IRBs, investigators, signal detection, and drug labeling. Instead of adopting the proposed definition, the agency has adopted the terms for "adverse event" and "suspected adverse reaction" in the definition section of this final rule, which addresses these concerns. The definitions of these terms should contribute to harmonization of safety reporting to regulatory authorities worldwide because they are consistent with the concepts and definitions adopted by the ICH E2A guidance and CIOMS. The terms are defined as follows:

• "Adverse event" means any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related. (For the purposes of this definition, "untoward" means unfavorable, negative, or harmful).

"Suspected adverse reaction" means any adverse event for which there is a reasonable possibility that the drug caused the adverse event. For the purposes of IND safety reporting, "reasonable possibility" means there is evidence to suggest a causal relationship between the drug and the adverse event. Suspected adverse reaction implies a lesser degree of certainty about causality than adverse reaction, which means any adverse event caused by a drug.

These definitions reflect the varying degrees of certainty that are part of a causality assessment. For example:

• An adverse event (also referred to as an "adverse experience") is any event observed or reported that is associated with the use of the drug, without regard to causality.

• A suspected adverse reaction is a subset of all adverse events in which there is a reasonable possibility that the drug caused the event.

• An adverse reaction, described within the definition, is a subset of all suspected adverse reactions for which there is reason to conclude that the drug caused the event.

With this change from the proposed definition, the basis that the agency has established for assessing the degree of certainty about causality between a drug and an adverse event for the purposes of expedited IND safety reporting has not changed from former § 312.32(c). The sponsor must continue to evaluate the evidence and use its judgment to determine whether an adverse event meets the definition of suspected adverse reaction and qualifies for expedited reporting under § 312.32(c). The agency has also clarified the requirements for reporting a serious and unexpected suspected adverse reaction under § 312.32(c)(1)(i) to assist sponsors with making this determination (see Comment 18 of this document).

Finally, the agency has concluded that abbreviations are potentially confusing (e.g., the "S" abbreviation for "suspected" in SADR could be mistaken for an abbreviation of the term "serious"). Although the agency has retained the term "suspected" in "suspected adverse reaction," our preferred approach is to avoid use of any abbreviation (e.g., "SAR" for "suspected adverse reaction"). The agency believes that sponsors are familiar with the term "suspected" and its use by the European Commission and CIOMS (e.g., the acronym "SUSAR" means "suspected, unexpected, serious adverse reaction" in guidance documents and working group reports (for example, see Ref. 1)).

Because the agency is not adopting the proposed definition of "suspected adverse drug reaction (SADR)," other proposed definitions (e.g., "serious SADR," "life-threatening SADR") and requirements that used this terminology have been revised in this final rule to use the terms "adverse event" or "suspected adverse reaction" as appropriate.

2. Disability

The proposed rule included a definition of the term "disability" to mean a substantial disruption of a person's ability to conduct normal life functions. Because the term "disability" appeared only within the definition of "serious SADR" in the proposed rule, the agency eliminated the definition of "disability" as a separate term in this final rule. Instead, the agency revised the definition of "serious adverse event or serious suspected adverse reaction" in this final rule to incorporate the definition of "disability" by replacing the phrase "a persistent or significant disability/incapacity" with "a persistent or significant incapacity or substantial disruption of the ability to conduct normal life functions." Thus, in the final rule, the term disability is replaced by the proposed definition in the one place where it appeared, and the definition itself has been deleted.

3. Life-Threatening Suspected Adverse Drug Reaction (SADR)

FDA proposed the term "life-threatening suspected adverse drug reaction (SADR)" to mean any SADR that, in the view of the investigator or sponsor, places the patient or subject at immediate risk of death from the SADR as it occurred. It does not include an SADR that, had it occurred in a more severe form, might have caused death.

(Comment 2) Several comments agreed with FDA's proposal to add the term "or sponsor" to the definition of life-threatening SADR. SADRs would be reported as life-threatening if either the investigator or sponsor considered them to be life-threatening. However, several comments expressed concern with FDA's proposal. The comments stated that a trained investigator is most qualified to make the sometimes subjective assessment of whether an event is life-threatening and that this determination often is best made by the health-care professional or the reporter who is in direct contact with the patient. These comments also stated that sponsors may exercise medical and scientific judgment in deciding whether expedited reporting is appropriate. One comment stated that allowing a sponsor to determine severity would change the nature of the assessment and result in increased reporting of events assessed by those with often incomplete information. One comment pointed out that FDA's rationale for expanding the role of the sponsor is not supported by the quote from the ICH E2A guidance in the preamble to the proposed rule (68 FR 12406 at 12419) because the ICH E2A guidance quote refers to causality assessment, not assessment of seriousness.

(Response) The agency agrees with the comments that support expanding this definition to include reporting of an adverse event as life-threatening if either the investigator or the sponsor considers it to be life-threatening. The agency believes that, in some cases, the sponsor may not agree with the investigator's assessment that an adverse event does not qualify as life-threatening. In such cases, because these events are critically important for the identification of significant safety problems, the agency believes that broadening the definition to allow sponsors to also make this assessment is prudent and appropriate. While the agency agrees with the comment that pointed out that the preamble to the proposed rule misinterpreted the quote from the ICH E2A guidance, we nonetheless believe that the revision to the definition is consistent with the overall intent of the ICH E2A guidance.

(Comment 3) Several comments disagreed with the agency's position articulated in the preamble to the proposed rule that reasons for any differences of opinion between the investigator and sponsor regarding a determination that an SADR is life-threatening would be included in the IND safety report (68 FR 12406 at 12419). The comments argued that this adds no value and is not appropriate or necessary in all cases. In addition, comments stated that obtaining the investigator's view when he or she deems the event non-life-threatening would be difficult.

(Response) The agency agrees that reasons for differences of opinion between the sponsor and investigator are not always important and, therefore, not necessary to include in the IND safety report in all cases. Therefore, in this final rule, the agency does not require including the reasons for differences of opinion in the IND safety report. However, it is important that any adverse event or suspected adverse reaction considered life-threatening by either the sponsor or the investigator be reported as such.

(Comment 4) Some comments suggested that FDA clarify the definition of life-threatening to take into account the role of other study staff making safety observations. The comments suggested that the definition be clarified to state that investigators or sponsors must evaluate information communicated to them or recorded by their qualified staff or agents and transmit reportable information to the sponsor or FDA. One comment recommended that the definition be modified to include contractors as well as sponsors.

(Response) The agency does not agree that the recommended revisions to the definition are necessary because taking the observations of staff into account is inherent in the obligations of the investigator. Any qualified study staff could make pertinent safety observations, and it is the investigator's responsibility in supervising the conduct of the clinical investigation (see §§ 312.53 and 312.60) to report adverse experiences to the sponsor in accordance with § 312.64. Further information on the supervisory responsibilities of investigators can be obtained in the agency's guidance for industry entitled "Investigator Responsibilities: Protecting the Rights, Safety, and Welfare of Study Subjects" (74 FR 55052, October 26, 2009).[2] The agency does not believe that it is necessary to change the definition to include contractors because, under § 312.52, a contract research organization that assumes any obligation of a sponsor must comply with the applicable regulation.

4. Minimum Data Set

Under § 312.32(a), FDA proposed the term "minimum data set" to mean that "the report includes an identifiable patient, an identifiable reporter, a suspect drug product, and an SADR."

(Comment 5) Two comments requested further clarification regarding the meaning of "identifiable" with respect to the kind and amount of information needed to meet the criteria for an "identifiable patient" and "identifiable reporter." One comment questioned whether patient characteristics, such as age or gender, would be adequate, or if the ability to contact the patient is necessary.

(Response) As discussed in comments 13 and 14 of this document, because the four elements of the minimum data set are generally readily available in the clinical trial setting, the agency has determined that the definition and the requirement are unnecessary and has decided not to require a minimum data set for IND safety reports as proposed in § 312.32(c). Because the agency is not adopting this definition in the IND safety reporting requirements, the comments requesting clarification about

[2] Draft and final guidances for the Center for Drug Evaluation and Research (CDER)-related information are posted on the Internet at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*. The Center for Biologics Evaluation and Research (CBER)-related information is posted at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* (21 U.S.C. 371(h), 21 CFR 10.115).

the elements of the definition are no longer relevant.

5. Serious SADR

FDA proposed to define "serious SADR" in the same way as the then-current definition of "serious adverse drug experience" under § 312.32(a) as follows: "Serious SADR means any SADR that results in any of the following outcomes: Death, a life-threatening SADR, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered a serious SADR when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition. Examples of such medical events include allergic bronchospasm requiring intensive treatment in an emergency room or at home, blood dyscrasias or convulsions that do not result in hospitalization, or the development of drug dependency or drug abuse."

(Comment 6) One comment suggested that the definition of "serious SADR" be revised to expressly allow the sponsor to determine if an adverse event is serious, in the absence of a reporter's assessment of seriousness.

(Response) For reasons similar to those stated in Comment 2 of this document (definition of life-threatening), the agency agrees that the definition of "serious adverse event or serious suspected adverse reaction" should be revised to allow the determination that an adverse event or suspected adverse reaction is "serious" if either the investigator or sponsor considers it serious. Therefore, the agency has revised this definition to add the phrase "in the view of either the investigator or sponsor."

6. Unexpected SADR

FDA proposed that the definition of "unexpected SADR" be the same as the then-current definition for "unexpected adverse drug experience" under § 312.32(a), except that the following sentence was added to make clear which SADRs are considered unexpected: "SADRs that are mentioned in the investigator's brochure as occurring with a class of drugs but not specifically mentioned as occurring with the particular drug are considered unexpected."

(Comment 7) One comment stated that in the proposed definition, the "severity" standard is vague, leaving the determination of "expectedness" to the investigator's judgment.

(Response) Unless a sponsor-investigator is responsible for the clinical trial, the sponsor, rather than the investigator, generally determines if a suspected adverse reaction is unexpected for reporting purposes. However, the agency acknowledges that judgment is needed to decide if the severity of a suspected adverse reaction is greater than described in the investigator brochure. The definition of "unexpected adverse event or unexpected suspected adverse reaction" in the final rule includes an example of a suspected adverse reaction that would be considered unexpected by virtue of its greater severity than other suspected adverse reactions mentioned in the investigator brochure (i.e., hepatic necrosis would be considered unexpected where the investigator brochure includes elevated hepatic enzymes or hepatitis).

(Comment 8) Another comment recommended that FDA provide guidance on what should be considered "expected" for regulatory reporting purposes, in particular, what safety information to include in the investigator brochure and what subset of such information would be considered "expected" (i.e., only those for which a causal relationship is suspected, reasonably established, or inferred based on evidence). Some comments stated that if the basis for evaluating expectedness is that an event is listed in the investigator's brochure, sponsors may add long lists of adverse events, thereby delaying important safety reports from being submitted to FDA. One comment recommended that FDA require that, until the applicable reference safety information document is officially updated (e.g., reprinted and distributed) to include a new serious, suspected adverse reaction (thereby making it expected), all subsequent reports of similar serious adverse drug reactions be submitted expeditiously as an IND safety report. Another comment suggested adopting use of the Developmental Core Safety Information (DCSI) document, proposed by a CIOMS Working Group, as the reference for "expectedness" instead of the investigator brochure because the DCSI document contains only those adverse events that, after careful analysis are believed by the company to be likely related to the drug (Refs. 2 and 3).

(Response) The purpose of the investigator brochure is to provide the investigator with information (clinical and nonclinical) about the investigational drug that is relevant to study of the drug in human subjects. The investigator brochure should include the information that is important for the investigator, who is administering the drug to human subjects, to know and understand. The investigator brochure is required to include information about the drug substance and formulation, pharmacological and toxicological effects of the drug in animals (and in humans, if known), pharmacokinetics and biological disposition of the drug in animals (and in humans, if known), information relating to safety and effectiveness in humans obtained from prior clinical studies, and information about possible risks and side effects to be anticipated on the basis of prior experience with the drug under investigation or with related drugs, and precautions or special monitoring to be done as part of the investigational use of the drug (see § 312.23(a)(5)).

In general, the investigator brochure lists those adverse events that have been observed with the investigational drug and for which a causal relationship with the drug is suspected or confirmed. It is not appropriate for sponsors to add long lists of adverse events that are unlikely to have been caused by the drug to the investigator brochure because such lists could dilute the importance of clinically meaningful risk information and as a result, may put subjects at risk. The sponsor needs to exercise judgment when deciding if the threshold has been reached for adding a newly observed adverse event to the investigator brochure. This decision usually depends on the strength of the evidence from individual or multiple cases and previous knowledge about the drug or drug class. In some cases, the threshold for including an adverse event may be lower if it could result in a significant adverse outcome for trial participants.

The investigator brochure describes adverse events that may be predicted to occur based on the pharmacological properties of the drug. For reporting purposes, if an adverse event occurs that has not previously been observed with the drug under investigation, the event is considered "unexpected." To make clear that such predicted adverse events are considered "unexpected," the final rule revises the proposed definition of "unexpected" to state explicitly that the term also refers to adverse events or suspected adverse reactions that are mentioned in the investigator brochure as occurring with a class of drugs or as anticipated from the pharmacological properties of the drug, but are not specifically mentioned as occurring with the particular drug under investigation.

The agency expects the sponsor to update the investigator brochure on an ongoing basis with new important safety information. However, the agency agrees with the comment that, until the investigator brochure and other applicable reference safety information are updated to include a new serious, suspected adverse reaction, subsequent reports of similar serious, suspected adverse reactions must be submitted expeditiously in IND safety reports.

Finally, sponsors submit and the agency accepts a variety of formats for the investigator brochure. For this reason, we are not formally adopting use of the DCSI document in this final rule. However, we agree that a sponsor could incorporate a document such as the DCSI into the investigator brochure for use as the reference for "expectedness" for reporting purposes if the DCSI contains the required safety information about the investigational drug.

B. Review of Safety Information—Proposed § 312.32(b)

IND safety reporting regulations in former § 312.32(b) required that sponsors promptly review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from any source, foreign or domestic. Examples of potential sources of information in the former regulation included information derived from any clinical or epidemiological investigations, animal investigations, commercial marketing experience, reports in the scientific literature, as well as unpublished scientific papers, and reports from foreign regulatory authorities that had not been previously reported to FDA by the sponsor. Proposed § 312.32(b) would have amended this requirement to include in vitro studies as another example of a potential source of information and to clarify that "reports from commercial marketing experience" is intended to apply only to reports from foreign commercial marketing experience for drugs that are not marketed in the United States. As proposed, reports from IND studies of drugs that are marketed in the United States would be required to be reported as described under § 312.32(c)(4), if applicable.

(Comment 9) One comment stated that reportable information can come from a wider variety of media or sources than those listed in the proposed rule. The comment maintained that investigators or sponsors participating in public or private meetings or conferences can learn of reportable events from colleagues or other professionals. The comment recommended that the list of potential sources of reportable information include such alternative sources.

(Response) The sponsor is required to "promptly review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from foreign or domestic sources, including information derived from any clinical or epidemiological investigations, animal or in vitro studies * * *" (emphasis added). The sources listed in the requirement are not all inclusive, but represent examples of the variety of sources that may yield safety information. Therefore, the agency agrees that reportable information can come from sources other than those listed in § 312.32(b) and that one such source could be from public or private meetings. However, the agency does not believe that it is necessary to amend the requirement to provide additional examples.

(Comment 10) One comment agreed with the clarification that reporting from commercial marketing experience applies only to foreign commercial marketing experience for drugs that are not marketed in the United States. The comment requested that FDA further make it clear that expedited reporting under § 312.32 is not required for reports from foreign commercial marketing experience for a different formulation of the same active moiety as a drug product that is lawfully marketed in the United States and that those reports should be submitted to the most appropriate new drug application (NDA) for the active moiety.

(Response) As described further in Comment 31 of this document, IND safety reports are required under § 312.32(c)(4) for suspected adverse reactions observed in clinical studies that are being conducted under an IND for a drug marketed or approved in the United States. In general, an expedited report from domestic or foreign commercial marketing experience for a drug lawfully marketed in the United States would not be submitted to the IND, but instead, must be submitted in accordance with the relevant postmarketing reporting requirements (e.g., §§ 310.305, 314.80, and 600.80). Similarly, a report of a suspected adverse reaction from foreign marketing experience for a different formulation of the drug product (same active moiety) that is lawfully marketed in the United States must be submitted in accordance with the relevant postmarketing reporting requirements.

(Comment 11) One comment agreed with the proposal to add in vitro studies to the list of information that should be reviewed by the sponsor in its ongoing assessment of the safety of an investigational drug. Some comments stated that it would be helpful if FDA could provide examples, in addition to carcinogenicity, mutagenicity and teratogenicity, of when safety data from in vitro studies would yield relevant, important information that should be reviewed for IND reporting purposes.

(Response) Data from in vitro microsusceptibility, drug interaction, or genotoxicity studies are examples of other data from in vitro studies that may yield important safety information.

(Comment 12) One comment expressed concern that once a sponsor provides FDA with the animal and in vitro studies, emails, and reports from foreign regulatory authorities and any other information it reviewed in determining whether to report safety information, FDA may have to make the information publicly available under the Freedom of Information Act (FOIA). The comment stated that, before implementing the requirement, FDA should explain why these additional data are needed and how they will be handled for FOIA purposes. The comment requested that the requirement be withdrawn.

(Response) The agency uses the safety information submitted by the sponsor, from any source, to continually monitor and evaluate the safety of the drug. Data and information in an IND are disclosed consistent with applicable statutes and regulations. The requirements under § 312.130 describe the availability for public disclosure of data and information in an IND. The minor clarifications made to these requirements do not change these protections against public disclosure. Therefore, the agency declines to withdraw the requirement as requested by the comment.

C. IND Safety Reports (Requirement for Minimum Data Set)—Proposed § 312.32(c)

FDA proposed to amend § 312.32(c) to require that sponsors must not submit an individual case safety report for an SADR if the report does not contain a minimum data set, but instead must maintain records of any information received or otherwise obtained for the SADR along with a record of its efforts to obtain a minimum data set. In the preamble to the proposed rule, the agency stated that sponsors should include in any written IND safety reports subsequently filed with FDA a chronological history of their efforts to acquire the minimum data set if there is a delay in obtaining the information, but that it was not necessary to include the chronological history in IND safety reports sent to investigators (68 FR

12406 at 12424). In addition, FDA proposed in § 312.32(c)(1)(i) that a sponsor must submit an IND safety report within 15 calendar days after receipt by the sponsor of the minimum data set for the SADR.

As noted in Comment 5 of this document, the agency has reconsidered the proposed requirement under § 312.32(c) that would have required sponsors to only submit an individual case safety report for an SADR if the report contained a minimum data set. Most IND safety reports are derived from observations from clinical trials. In the setting of a clinical trial, information is collected in a controlled environment where the four elements in the definition of minimum data set, as well as other information needed to evaluate the suspected adverse reaction (e.g., information that would be contained in a narrative report or on FDA Form 3500A), are generally readily available. Accordingly, the agency has revised § 312.32(c)(1) to eliminate the minimum data set language and to require instead that the sponsor submit an IND safety report after it determines that the information qualifies for reporting under § 312.32(c)(1)(i), (c)(1)(ii), (c)(1)(iii), or (c)(1)(iv).

(Comment 13) One comment stated that waiting for collection of all the elements of the minimum data set, especially for determination of causality, could result in a significant delay in reporting to FDA. The comment requested clarification on when the reporting timeclock would start. Another comment requested clarification on whether the date of receipt of the minimum data set for the SADR represents day zero or day one.

(Response) The reporting timeclock starts (i.e., day zero) as soon as the sponsor determines that the information qualifies for reporting under § 312.32(c)(1)(i), (c)(1)(ii), (c)(1)(iii), or (c)(1)(iv). For a serious and unexpected suspected adverse reaction from a clinical trial, this would be the day the sponsor receives information from the clinical investigator. If any information necessary to evaluate and report the suspected adverse reaction is missing or unknown, the sponsor should actively seek such information.

(Comment 14) Several comments stated that including in an IND safety report a chronological history of their efforts to acquire the minimum data set is inconsistent with standards for non-U.S. regulators and the ICH E2A guidance, adds no value, may lead to potential legal risk in the event of litigation, may impede electronic transmission of individual case safety reports, and will become an administrative burden. Some comments suggested that records of efforts to obtain the minimum data set should be maintained within the case record in the sponsor's files, available upon request or during agency inspections. One comment suggested FDA require manufacturers to have procedures in place to acquire a minimum data set. One comment stated that the agency needs to define the minimum requirements for conducting due diligence to avoid variation from sponsor to sponsor. Another comment recommended reinforcing the need for sponsors to conduct followup activities and for FDA to audit industry for compliance. One comment requested clarification on the sponsor's timeframe for maintaining records of its efforts to obtain the minimum data set. One comment pointed out that although FDA stated in the preamble that the chronological history included in the IND safety report would not need to be sent to investigators, this statement creates conflict because sponsors must tell investigators the same information that is reported to FDA.

(Response) The agency agrees with comments that including a chronological history in an IND safety report of efforts to acquire information is not necessary and could be an administrative burden without added value. Accordingly, the proposed requirement for a chronological history has been deleted from § 312.32(c). Under § 312.32(d)(1), sponsors are required to promptly investigate all safety information received, so it is inherent in that requirement that sponsors promptly and diligently attempt to obtain the information necessary for evaluating a suspected adverse reaction. If critical information is missing or unknown, the sponsor should actively seek the information. The regulations do not include specific procedures for conducting or documenting due diligence activities because the agency recognizes that there is more than one approach that would be appropriate, depending on the situation.

Similarly, because the minimum data set requirement is no longer included, the agency is not adopting the proposed requirement in § 312.32(c) to maintain records of any information received or otherwise obtained for the SADR when the sponsor does not have a reportable minimum data set. The agency notes that sponsors are required under § 312.57(c) to retain records and reports required under part 312 (including safety information received by the sponsor) for 2 years after a marketing application is approved for the drug or, if an application is not approved for the drug, until 2 years after shipment and delivery of the drug for an investigational use is discontinued and FDA has been so notified. The agency may audit these records as part of its inspection process.

D. Serious and Unexpected SADR—Proposed § 312.32(c)(1)(i)

In proposed § 312.32(c)(1)(i), FDA proposed that the sponsor must notify FDA and all participating investigators in a written IND safety report of any SADR that, based on the opinion of the investigator or sponsor, is both serious and unexpected, as soon as possible, but in no case later than 15 calendar days after receipt by the sponsor of the minimum data set for the serious, unexpected SADR. In addition, FDA proposed that the sponsor must identify all safety reports previously filed with the IND concerning a similar SADR, and must analyze the significance of the SADR in light of the previous, similar reports.

(Comment 15) One comment agreed with the proposal that the assessment of whether the event is serious or unexpected be based on the opinion of the "investigator or sponsor," while other comments expressed concern. Several comments indicated that investigators should not be required to assess "expectedness." One comment stated that "expectednessx" is a regulatory definition that would be difficult for an investigator to apply in a consistent manner. Another comment suggested replacing the proposed language with "any SADR that is serious based on the opinion of the investigator or sponsor and unexpected."

(Response) The agency agrees that, in contrast to the assessments of whether an adverse event or suspected adverse reaction is "serious" and "life-threatening," which require medical judgment by the investigator or sponsor, the assessment of whether an adverse event or suspected adverse reaction is "unexpected" in this context refers to a regulatory definition (i.e., not listed in the investigator brochure) that is more appropriately applied by the sponsor. The sponsor is usually in a better position to assess the adverse event information and determine whether the adverse event is "unexpected" for reporting purposes because the sponsor has access to more information (e.g., from all the investigative sites in a multi-center study). Therefore, the agency has revised this proposed requirement by deleting the phrase "based on the opinion of the investigator or sponsor," which leaves this determination to the sponsor.

(Comment 16) Several comments asked for clarification on various aspects of the requirement to identify all safety reports previously filed with the IND concerning a similar SADR and to analyze the significance of the SADR in the context of the previous, similar reports. One comment requested clarification on the meaning of "previously filed with the IND" and whether this should include an analysis of previous similar reports across multiple open INDs or only a single IND. The comment noted that there could be company-sponsored IND studies and investigator-sponsored IND studies ongoing simultaneously, with safety data stored in different places. One comment requested clarification on what constitutes a "similar" SADR and on the meaning of "analyze the significance." This comment noted that companies should already have processes and procedures in place to periodically review and analyze safety data to detect "signals," and asked whether FDA expects an "analysis" for postmarketing study reports filed to the IND or all reports for the product, including postmarketing spontaneous reports. The comment suggested that FDA remove this requirement for both IND and postmarketing studies, since for IND studies, companies should already be performing these analyses and updating their investigator brochures with significant new safety information, and for postmarketing studies, analyses of all adverse events are being performed in the periodic safety update report (PSUR).

(Response) The agency expects the analysis of the significance of the suspected adverse reaction in the context of similar reports to include all INDs held by the sponsor and any other relevant information of which the sponsor is aware. To make this clear, the agency revised the provision in final § 312.32(c)(1) to require that in each IND safety report, the sponsor must identify all IND safety reports previously submitted to FDA concerning a similar suspected adverse reaction, and must analyze the significance of the suspected adverse reaction in light of previous, similar reports or any other relevant information.

The agency declines to withdraw the requirement as suggested by the comment because we consider this information to be critical for the ongoing evaluation of the investigational drug's safety. Because this is not a new requirement (see former § 312.32(c)(1)(ii)), the agency agrees that companies should have processes in place to periodically review and analyze their safety data and update their investigator brochures with significant new safety information. This analysis should include an evaluation of the suspected adverse reaction in the context of other related reports or adverse events, including those that may have occurred in postmarketing studies.

(Comment 17) One comment asked whether the IND safety report should be sent only to investigators participating in company-sponsored studies or to studies conducted under all open INDs for the product. One comment requested that FDA clarify its expectations for cross-reporting to investigators participating in different trials under the same IND or different INDs with the same active moiety. One comment asked if followup IND safety reports containing only minor refinements are to be sent to FDA and all investigators who received the initial safety report or only to FDA.

(Response) The sponsor must report to any participating investigators under all open INDs, including those held by the sponsor and those to which the sponsor provides the investigational drug (investigator-sponsored). To make this clear, the agency revised the provision in § 312.32(c)(1) to require that a sponsor notify FDA and all participating investigators (i.e., all investigators to whom the sponsor is providing drug under its INDs or under any investigator's IND) in an IND safety report of potential serious risks, from clinical trials or any other source, as soon as possible, but in no case later than 15 calendar days after the sponsor determines that the information qualifies for reporting under § 312.32(c)(1)(i), (c)(1)(ii), (c)(1)(iii), or (c)(1)(iv).

Followup reports should be sent to investigators to inform and update them about an important suspected adverse reaction if it significantly affects the care of the subjects or conduct of the study. Minor refinements that do not significantly affect care of subjects or conduct of the study need to be sent to FDA but need not be sent to investigators. Such information may be communicated to investigators in a routine update of the investigator brochure.

(Comment 18) As stated in Comment 1 of this document, there were many comments opposed to FDA's proposed SADR definition, some of which recommended against adopting the proposed SADR definition, and instead, urged FDA to clarify the types of evidence that suggest there is a reasonable possibility that a drug product caused the adverse event.

(Response) Before submitting an IND safety report under § 312.32(c)(1)(i), the sponsor must determine that the event: (1) Is serious, (2) is unexpected, and (3) meets the definition of "suspected adverse reaction" in § 312.32(a) (i.e., that there is a "reasonable possibility" that the drug caused the event). These criteria have not changed from former § 312.32(c)(1)(i)(A). Making this determination will always require judgment based on the best available information.

Currently, sponsors often report in an expedited manner serious adverse events that may be due to the underlying disease or that occur commonly in the study population, even when there is little reason to believe that the drug caused the event. Such reports are generally uninformative and, therefore, do not meaningfully contribute to the developing safety profile of the drug. The agency believes that clarifying what evidence suggests a causal relationship will increase the likelihood that information reported to FDA will meaningfully contribute to the developing safety profile of the product and improve the overall quality of safety reporting.

Therefore, to assist sponsors with determining whether an adverse event meets the definition of suspected adverse reaction, the agency revised the proposed requirement under § 312.32(c)(1)(i) to make it clear that sponsors are to report to FDA and all participating investigators only if there is evidence to suggest a causal relationship between the drug and the adverse event. Final § 312.32(c)(1)(i) also provides the following examples:

- A single occurrence of an event that is uncommon and known to be strongly associated with drug exposure (e.g., angioedema, hepatic injury, Stevens-Johnson Syndrome).
- One or more occurrences of an event that is not commonly associated with drug exposure, but is otherwise uncommon in the population exposed to the drug (e.g., tendon rupture).
- An aggregate analysis of specific events observed in a clinical trial (such as known consequences of the underlying disease or condition under investigation or other events that commonly occur in the study population independent of drug therapy) that indicates those events occur more frequently in the drug treatment group than in a concurrent or historical control group.

E. Alternative Reporting Arrangements

In the preamble to the proposed rule, FDA acknowledged that the proposed

definition of SADR (which defined "reasonable possibility" to mean that the causal relationship between a product and a response to the product cannot be ruled out) may result in submission of numerous safety reports to the agency for which the reported SADR is not informative as a single report because it is very likely to have been a consequence of the patient's disease. FDA invited comment on use of alternative reporting methods that would minimize overreporting of uninformative events and assure submission of meaningful reports of unexpected events. For example, one such alternative would be to include in study protocols or other documentation a list of known consequences of the disease that would not be submitted to FDA in an expedited manner as individual case safety reports (e.g., events that are endpoints of the study) (68 FR 12406 at 12418).

(Comment 19) Some comments agreed with the agency's suggestion that protocols could be written to exclude specific disease-related events from expedited reporting if these events are study endpoints. Other comments expressed concern that alternative reporting methods would not have the intended effect of reducing overreporting and could exacerbate problems with the proposed SADR definition of reasonable possibility in which the causal relationship "cannot be ruled out." They argued that effectively eliminating clinical judgment in reporting coupled with an ad hoc exemption mechanism would lead to different standards across clinical programs, between different sponsors of studies, and across FDA review divisions. These comments further pointed out that negotiating and managing exemptions to expedited reporting would place a significant burden on FDA and companies and would necessitate the creation of an FDA structure and process to ensure consistency across products. While many of these comments recommended against finalizing the proposed definition, others suggested alternatives (e.g., waiver provisions) to alleviate overreporting caused by the proposed definition. One comment recommended that approaches to minimize overreporting only be considered for late stage development (i.e., Phase 3 and 4 studies). One comment recommended that FDA mandate expanded reporting for clinical trials only for those companies that have had documented poor performance in the past or for clinical trials once a study or design has been identified as posing a potential or unforeseen risk to participants.

(Response) As previously described in the response to Comment 1 of this document, the agency is not adopting the proposed SADR definition and, instead, is adopting a definition of "suspected adverse reaction" that relies on clinical judgment to determine if there is a reasonable possibility that the drug caused the event. While FDA believes this definition addresses many of the concerns about overreporting, the agency agrees with the comments that stated that protocols could be written to exclude from expedited reporting specific disease-related events that are study endpoints. The agency does not believe that it is appropriate to report study endpoints as IND safety reports for trials that are designed to evaluate the effect of the drug on disease-related mortality or morbidity. Therefore, the agency added the requirement at § 312.32(c)(5) that study endpoints (e.g., mortality or major morbidity) must be reported to FDA by the sponsor as described in the protocol and ordinarily would not be reported under § 312.32(c). However, if a serious and unexpected adverse event occurs for which there is evidence suggesting a causal relationship between the drug and the event (e.g., death from anaphylaxis), the event must be reported under § 312.32(c)(1)(i) as a serious and unexpected suspected adverse reaction even if it is a component of the study endpoint (e.g., all-cause mortality). FDA does not believe that this requirement will pose an additional burden on sponsors or the agency because sponsors of large outcome trials are accustomed to describing in the protocol how mortality or major morbidity endpoints will be measured and analyzed, and FDA review divisions are accustomed to reviewing such protocols.

The agency does not agree that the safety reporting requirements should be revised, as suggested by the comment, to address specific study or design risks or company compliance. The agency is authorized to require additional reporting or inspection, or to take action, on a case-by-case basis if, for example, such problems expose human subjects to unreasonable and significant risk of illness or injury, or if the sponsor does not comply with the requirements under § 312.32 (see e.g., § 312.42 clinical holds and requests for modifications, § 312.44 termination).

(Comment 20) Several comments supported the use of alternative reporting arrangements for serious adverse events that are not the study endpoints (e.g., known consequences of the underlying disease or condition). These comments recommended that these events not be reported to FDA in an expedited manner as individual case safety reports, but be identified in the study protocol with clear instructions for handling, be monitored by the sponsor, and be reported to the agency if, in aggregate, it appears that the product may be causing an increase in these adverse events. One comment endorsed this type of arrangement because it offers the potential for improvements in protocol design by providing expanded opportunity for sponsors to discuss the "ground rules" for SADR reporting for specific studies with the agency during the protocol design phase. Two comments recommended that FDA make clear to investigators, sponsors, manufacturers, and IRBs that such arrangements are acceptable. One comment stated that allowing this type of alternative reporting arrangement will provide a loophole for industry to underreport adverse events.

(Response) Under former § 312.32(c)(3), sponsors were permitted to propose alternative reporting formats or frequencies for submitting IND safety reports; this requirement has not changed in this final rule. The agency agrees with the comments recommending that at the time of protocol development the sponsor identify the serious adverse events (i.e., known consequences of the disease or those otherwise common in the study population) that it plans not to report individually in an expedited manner but that it will monitor during the course of the trial. FDA encourages use of this process. Should an aggregate analysis indicate that those events occur more frequently in the drug treatment group, the sponsor must then report that information in an IND safety report under § 312.32(c)(1)(i). However, the agency recognizes that it is not possible, nor desirable, to list in the protocol every adverse event that may be anticipated to occur in the study population; the protocol should therefore limit such a list to those events that are common, even in the absence of drug exposure. For example, in a long-term osteoporosis trial in an elderly population, it would be reasonable to list myocardial infarction, but unreasonable to list acute narrow angle glaucoma—an event that can occur in this elderly population, but is relatively rare. In addition, the agency believes that there may be other situations for which alternative reporting arrangements are appropriate based on the clinical circumstances. For example,

the agency may require a sponsor to continue to report expeditiously a medically significant suspected adverse reaction that is listed in the investigator brochure as observed with the drug (i.e., expected) so that its rate can be carefully monitored. The agency may also require an alternative reporting format or frequency for clinical trials once a study or design has been identified as posing a potential or unforeseen risk to participants. In other instances, a sponsor may request that a certain adverse event be submitted in a different format or at a different frequency than required. Section 312.32(c)(3) permits such arrangements. The agency does not agree that allowing alternative reporting formats or frequencies creates loopholes for sponsors to underreport, but believes that such arrangements will lead to greater vigilance since particular adverse events of interest have been identified in advance. The agency is clarifying the language in former § 312.32(c)(3) that stated "FDA may request a sponsor to submit IND safety reports in a format or at a frequency different than that required under this paragraph" by replacing the word "request" with "require" to better reflect the existing process.

F. Unblinding

In the preamble to the proposed rule, FDA noted that reports from blinded clinical studies should have the blind broken to identify the drug product, but that alternative arrangements could be made with FDA for exceptions to breaking the blind for a clinical study in which mortality or serious morbidities are the clinical endpoint of the study. FDA invited comment on whether the blind should also be broken for other serious SADRs that are not the clinical endpoint of the study, but occur at a rate high enough that the overall study blind would be threatened if each such case were individually unblinded (68 FR 12406 at 12420).

(Comment 21) Several comments expressed concern that breaking the blind to identify the suspect drug could potentially bias both the sponsor and investigator, and suggested alternatives to unblinding so that sponsors and investigators could remain blinded. In addition, several comments responded to FDA's request for comment on whether the blind should be broken for serious SADRs that are not the clinical endpoint of the study. One comment stated that for other serious SADRs (e.g., expected), if a safety signal is observed, sponsors are obligated to unblind studies for individual subject cases, but other comments stated that medical management of the subject who experiences the serious SADR does not always require unblinding. One comment stated that the sponsor and FDA should define in advance the nature of such serious SADRs that would not be subject to routine expedited reporting and unblinding. One comment stated that for studies in which alternative arrangements have been made to maintain the blind, FDA should receive interim analyses, disaggregated by group, which might suggest increased overall dangers to those getting the drug.

(Response) The agency believes that the concerns expressed about breaking the blind have been addressed by clarifying the reporting requirements for serious and unexpected suspected adverse reactions (§ 312.32(c)(1)(i)) and for study endpoints (§ 312.32(c)(5)), and the provision permitting alternative reporting arrangements (§ 312.32(c)(3)). In particular, because there should generally be no need to report study endpoints in an IND safety report, unblinding due to such endpoints should typically not occur. In other cases, however, where the serious, unexpected, suspected adverse reaction must be reported expeditiously, the agency expects the blind to be broken. Knowledge of the treatment received may be essential for the medical management of the subject and may provide critical safety information about the drug that could have implications for the ongoing conduct of the trial (e.g., monitoring, informed consent). The agency does not believe that unblinding single or small numbers of informative cases will compromise the integrity of the study. However, if patient safety can be assured without breaking the blind, the agency encourages the sponsor to discuss alternative reporting arrangements with the appropriate FDA review division. Any anticipated alternative arrangements to maintain the blind would need to be described in the protocol, including identification of the serious adverse events that will not be reported on an individual basis and the plan for monitoring and reporting results to FDA.

(Comment 22) Several comments made recommendations on the need for, and role of independent data safety monitoring boards (DSMBs), called Data Monitoring Committees (DMCs) in FDA's guidance for industry entitled "Guidance for Clinical Trial Sponsors: Establishment and Operation of Clinical Trial Data Monitoring Committees" (71 FR 15421, March 28, 2006) (DMC guidance). One comment stated that an obligation to have an independent DSMB would prevent routine unblinding. Other comments recommended the use of DSMBs that have processes for vetting and reporting adverse reactions to the agency, including monitoring for increases in disease-related complications. One comment recommended that the agency concurrently amend the IRB regulations and guidelines to incorporate a mandate of more frequent review of overall safety data, including a requirement for an independent safety monitoring committee, under predefined circumstances. Another comment urged the agency to require a DSMB for all Phase 3 studies and to also require that sponsors provide DSMB reports to IRBs. One comment said that clarity on the role of the DSMB for Phase 3 and 4 studies when reviewing SADRs could help reduce redundancy of SADR reporting evaluations by IRBs, and allow IRBs to more efficiently focus their attention on local SADRs.

(Response) The agency agrees that DMCs can be useful for monitoring adverse events and preventing routine unblinding in certain trials. A DMC is not required and is not necessary for most studies, particularly those evaluating symptomatic treatments. DMCs are generally associated with a large, randomized multisite trial that is designed to evaluate treatments intended to improve survival or reduce the risk of major morbidity. In that case, the independent DMC would be expected to monitor serious events that are study endpoints and also may assess the rate of other known consequences of the underlying disease or other events that are common in the study population. FDA's DMC guidance also notes another potential use for a DMC. Some sponsors have used a DMC to monitor the overall event rates as the safety database accumulates in ongoing studies (DMC guidance at p. 23). A DMC could periodically analyze and evaluate the aggregated, unblinded events in the entire IND safety database to determine if the drug is the suspected cause. During these analyses, investigators and study participants would remain blinded. FDA's DMC guidance also provides more information on determining the need for and the role of a DMC. In addition, the agency's guidance for industry entitled "Guidance for Clinical Investigators, Sponsors, and IRBs: Adverse Event Reporting—Improving Human Subject Protection" provides recommendations on efficient approaches to meeting the requirements for reporting unanticipated problems to IRBs (74 FR 2599, January 15, 2009).

G. Information Sufficient to Consider Product Administration Changes—Proposed § 312.32(c)(1)(ii)

In addition to requiring sponsors to provide written IND safety reports to FDA and investigators for any serious and unexpected adverse experience, former § 312.32(c)(1)(i) required a written IND safety report for "[a]ny finding from tests in laboratory animals that suggests a significant risk for human subjects including reports of mutagenicity, teratogenicity, or carcinogenicity." FDA proposed to revise this requirement to require sponsors to submit a written IND safety report if the sponsor receives information sufficient to consider product administration changes. The proposed rule described information sufficient to consider product administration changes as "information that, based on appropriate medical judgment, might materially influence the benefit-risk assessment of an investigational drug or that would be sufficient to consider changes in either product administration or in the overall conduct of a clinical investigation" (68 FR 12406 at 12476). Examples of the types of information that might give rise to such a report were described as "any significant unanticipated safety finding or data in the aggregate from an in vitro, animal, epidemiological, or clinical study, whether or not conducted under an IND, that suggests a significant human risk, such as reports of mutagenicity, teratogenicity, or carcinogenicity or reports of a lack of efficacy with a drug product used in treating a life-threatening or serious disease" (68 FR 12406 at 12476).

(Comment 23) Several comments maintained that the threshold for submission of this category of IND safety report—information sufficient to consider product administration changes—needs clarification. Some comments stated the "information sufficient to consider product administration changes" is too vague a criterion on which to base a reporting requirement and that "product administration" may have different interpretations in the context of safety. Some comments pointed out that there is ongoing "consideration" of the implications, for product administration, of information that emerges during the conduct of a trial and often, upon consideration, it will be concluded that no changes are needed. Some comments recommended that there be an IND safety report only in the event of a product administration change or other change in the conduct of the investigation. One comment recommended that FDA consider the implications (e.g., potential confusion) of informing investigators about information sufficient to consider product administration changes before a decision has been made about whether to make a change. That comment recommended that only FDA receive the information sufficient to consider product administration changes and that the investigator be notified only in the event of an actual product administration change. Some comments pointed out that the proposed language does not differentiate among the range of possible product administration changes and thus would seem to require an expedited report for minor changes that do not warrant expedited reporting. The comments suggested that there be expedited reporting only in the event of significant product administration changes. One comment stated that information sufficient to consider product administration changes is a reasonable category for an IND safety report. The comment asked that FDA clarify that significant risk to humans is intended to include instances of significant impairment or dysfunction.

(Response) The agency concurs that, as proposed, the requirement may be confusing. In response to comments, the agency has revised the proposed requirement for reporting data or findings from clinical or epidemiological studies to address the concerns about vagueness of terms and criteria that could lead to differences in interpretation. The revised requirement eliminates the association with "product administration changes" and makes clear the types of findings that would trigger the requirement to report under this provision. In addition, the revised requirement also makes clear that the findings from clinical studies that are subject to this requirement are other than those reported under § 312.32(c)(1)(i) (e.g., findings from a drug interaction study). The agency has revised § 312.32(c)(1)(ii) to require the sponsor to report any findings from epidemiological studies, pooled analysis of multiple studies, or clinical studies (other than those reported under § 312.32(c)(1)(i)),whether or not conducted under an IND and whether or not conducted by the sponsor, that suggest a significant risk in humans exposed to the drug. The provision goes on to state that, ordinarily, such a finding would result in a safety-related change in the protocol, informed consent, investigator brochure (excluding routine updates of these documents), or other aspects of the overall conduct of the clinical investigation.

These changes to the proposed requirement also address the comments concerned about potentially prematurely notifying all investigators prior to conclusively determining whether a finding might change the product administration or conduct of the investigation because the sponsor would report to FDA and notify all participating investigators, as required by § 312.32(c)(1), after that determination has been made by the sponsor.

In addition, FDA agrees with the comment that "significant risk in humans" would include instances of significant impairment or dysfunction.

(Comment 24) One comment asked that FDA clarify what is meant by "might materially influence the benefit-risk assessment" (68 FR 12406 at 12476). The comment pointed out that a literal interpretation would require an IND safety report for a finding that is favorable to the benefit-risk assessment as well as a finding that is unfavorable to the benefit-risk assessment, but would have no effect on the clinical use of the drug. Another comment maintained that the term benefit-risk has no clear meaning in the premarket context because efficacy has not been proven, i.e., there is no established benefit for the product being studied.

(Response) The agency agrees that the proposed requirement may be confusing. Therefore, the agency has not included the phrase "might materially influence the benefit-risk assessment" in § 312.32(c)(1)(ii).

(Comment 25) Some comments questioned FDA's intent and otherwise expressed concern about requiring IND safety reports of lack of efficacy for a drug intended to treat a life-threatening or serious disease. One comment pointed out that "lack of efficacy" is rarely used in the clinical trial setting to refer to cases of disease progression or nonresponders. The comment maintained that because of the difficulty in judging lack of efficacy, such reports should be limited to cases in which the investigator has specifically determined that there was lack of efficacy. One comment maintained that the term is incongruous in the clinical trial setting because efficacy of the drug has not been demonstrated. One comment pointed out that the term "lack of efficacy" is not used consistently throughout the proposed rule (i.e., premarket compared to postmarket setting).

(Response) The agency agrees with the comment stating that the term "lack of efficacy" is incongruous in the

clinical trial setting because the effectiveness of the drug has generally not been established. Therefore, the final rule does not include this proposed provision.

(Comment 26) One comment stated that in vitro and animal findings should not be lumped together with clinical findings for purposes of the information sufficient to consider product administration changes IND safety reports because in vitro and animal findings typically are assessed differently than clinical findings. The comment also argued that there is significant variation in the interpretation of the current reporting requirements for nonclinical findings and recommended establishing distinct, well-defined criteria for reporting of nonclinical findings. The comment recommended a separate safety report for animal and in vitro findings with the following criteria: (1) A drug-related finding, (2) an unanticipated finding, and (3) a finding that suggests a serious risk to humans. The comment further maintained that the company's core safety information about the drug should be the basis for determining whether the finding is unanticipated and the term "serious" should be defined, in this context, as suggesting a significant human risk, including, but not limited to, reports of carcinogenicity, mutagenicity, or teratogenicity.

(Response) The agency agrees that the way in which in vitro and animal findings are assessed differs from clinical findings. To make this distinction clear, the agency has revised the proposed requirement to separate reports of findings from nonclinical and clinical studies. Under § 312.32(c)(1)(iii), the sponsor must report any findings from any animal or in vitro testing, whether or not conducted by the sponsor, that suggest a significant risk in humans exposed to the drug, such as reports of mutagenicity, teratogenicity, carcinogenicity, or reports of significant organ toxicity at or near the expected human exposure. The provision states that, ordinarily, any such findings would result in a safety-related change in the protocol, informed consent, investigator brochure (excluding routine updates of these documents), or other aspects of the overall conduct of the clinical investigation.

The revised requirement also eliminates the terms "unanticipated" and "serious." The agency agrees with the comment that an unanticipated, drug-related finding that suggests a significant risk to humans would meet the requirement for reporting.

(Comment 27) Two comments asked FDA to clarify the scope of what is meant by "an animal finding suggestive of significant human safety risk." One comment asked whether there are any animal findings other than carcinogenicity, mutagenicity, or teratogenicity that would be considered a significant human safety risk and whether a finding needs to originate from a reproducible validated controlled model. One comment stated that the final rule should state explicitly that only those findings of carcinogenicity, mutagenicity, or teratogenicity that the sponsor considers suggestive of significant risk to humans should be reported. The comment pointed out that some carcinogenicity, mutagenicity, and teratogenicity findings are known to be species-specific or for other reasons known not to suggest significant potential human risk and thus should not be subject to expedited reporting. Another comment suggested a distinction be made between a nonclinical finding that requires "changes in either product administration or in the overall conduct of a clinical investigation" as opposed to a nonclinical finding that requires information only (e.g., action is limited to a nonurgent update of the investigator brochure and informed consent).

(Response) The requirement has been revised to make it clear that, ordinarily, a finding would be considered suggestive of a significant risk in humans if it results in a safety-related change in the protocol, informed consent, investigator brochure, or other aspects of the overall conduct of the clinical investigation. Nonurgent, routine updates to the investigator brochure and informed consent would not meet the criteria for reporting under this provision and should not be reported in an expedited IND safety report.

The sponsor must determine whether a finding suggests a significant risk in humans in order for the finding to be reportable. Animal findings such as carcinogenicity, mutagenicity or teratogenicity are meant to be examples of the types of findings that could suggest a significant human risk, but there are others that could meet the criteria for reporting. For clarity, the agency added another example in § 312.32(c)(1)(iii) (i.e., reports of significant organ toxicity at or near the expected human exposure). Findings from animal studies do not necessarily need to be replicated to meet the criteria for expedited reporting to FDA. For example, the agency would not expect a long-term carcinogenicity study to be replicated if findings from the original study suggested a significant risk to humans. The validity of the model would be a factor taken into account in evaluating the strength of the evidence of significant risk.

(Comment 28) Many comments expressed concern about in vitro testing alone as a basis for an IND safety report. One comment pointed out that certain types of in vitro findings that are known to be associated with an increased risk of carcinogenicity or mutagenicity are always reported, but other findings are not obviously worthy of reporting. Some comments argued that expanding the scope of expedited reporting to include in vitro testing is not warranted or useful. Some comments maintained that in vitro testing is often exploratory and not validated and thus lends itself to unanticipated findings, but the clinical implications of in vitro testing are often not understood until later when the data can be assessed in light of animal or clinical findings. Given this delay in the interpretability of in vitro findings, the comments asked FDA to clarify when an in vitro finding becomes reportable for purposes of an IND safety report. Some comments argued that the increased reporting burden for in vitro findings would result in large numbers of uninformative reports that would burden FDA and dilute the impact of truly informative safety reports. Some comments also maintained that expanded reporting requirements may deter sponsors from conducting the kinds of in vitro testing that could reduce the number of animal studies needed.

(Response) In response to comments and as stated in Comments 26 and 27, the agency has revised the proposed requirement § 312.32(c)(1)(iii) to make it clear that an in vitro or animal finding is reportable for the purposes of an IND safety report if it suggests a significant risk in humans exposed to the drug. The sponsor would not report an in vitro finding in an expedited report unless it determined that the finding suggests a significant risk in humans.

(Comment 29) Some comments asked FDA to clarify the timeframe for reporting under this requirement, including when in vitro and animal studies become reportable sources of safety information by explaining how "the determination by the sponsor that the information qualifies for reporting under this paragraph" applies to nonclinical findings. One comment suggested that the reporting clock for in vitro and animal findings start on the date the final study report is completed. One comment asked that FDA clarify that the day that the 15-day period begins is day zero and not day one.

(Response) The agency believes that the revisions to this requirement have sufficiently detailed how information qualifies for reporting by providing examples of the outcome of such a finding (i.e., the finding would ordinarily result in a safety-related change in the protocol, informed consent, investigator brochure, or in other aspects of the overall conduct of the clinical investigation). The 15–day reporting clock begins (i.e., day zero) on the day that the sponsor determines that a finding suggests a significant risk in humans. In general, it is not necessary for a final study report to be completed before a sponsor is able to make this determination.

H. Submission of Written Reports—Proposed § 312.32(c)(1)(iii)

Under proposed § 312.32(c)(1)(iii), FDA proposed that each written report may be submitted on an FDA Form 3500A or in a narrative format. Foreign SADRs may be submitted on an FDA Form 3500A or on a CIOMS I form. FDA also proposed that reports of overall findings or data in the aggregate from published and unpublished in vitro, animal, epidemiological, or clinical studies must be submitted in a narrative format. In addition, FDA proposed to require that each written notice bear prominent identification of its contents and be transmitted to the FDA review division that has responsibility for the review of the IND. FDA also proposed to require that if the agency determines that additional data are needed, FDA may require further data to be submitted.

The agency has also revised the requirement (final § 312.32(c)(1)(v)) to allow for electronic submission of these reports because the agency anticipates that these reports will be submitted by means other than paper in the future. In addition, the agency has revised the requirement to make clear that the period of time for submitting additional data requested by the agency is 15 calendar days, the same as required under § 312.32(d) for submitting followup information. The time for submission of this additional information was not specified in the proposed rule.

(Comment 30) Two comments asked if the agency would accept the CIOMS I form for reporting domestic SADRs. One comment strongly recommended that the CIOMS I form be acceptable for reporting domestic SADRs because it would decrease workload burden, enhance timeliness compliance with reporting timeframes, and integrate globally accepted formats.

(Response) FDA will continue, as proposed, the current practice of permitting submission of IND safety reports on FDA Form 3500A or in a narrative format for reports of domestic suspected adverse reactions and on FDA Form 3500A, in a narrative format or on a CIOMS I form for reports of foreign suspected adverse reactions. FDA declines to permit submission of domestic suspected adverse reactions on the CIOMS I form because the CIOMS I form has fewer data elements than FDA Form 3500A (see 60 FR 11284 at 11287, March 1, 1995; 62 FR 52237 at 52246, October 7, 1997) and FDA believes the additional data elements are useful for evaluating the report. FDA is continuing to accept the CIOMS I form for foreign reports because we believe that harmonization facilitates compliance with the reporting requirements, thereby expediting FDA's receipt of foreign suspected adverse reaction reports. In the future, the agency anticipates that electronic reporting of suspected adverse reactions will replace the use of paper forms.

I. Telephone and Facsimile Transmission Safety Reports—Proposed § 312.32(c)(2)

FDA proposed to require that the sponsor notify FDA by telephone or by facsimile transmission of any unexpected fatal or life-threatening SADR based on the opinion of the investigator or sponsor as soon as possible but in no case later than 7 calendar days after receipt by the sponsor of the minimum data set.

Because the agency anticipates that these reports will be submitted by means other than telephone or facsimile in the future (e.g., electronically), the agency has revised the requirement to eliminate the specificity that these reports be submitted only by telephone or facsimile. The agency also changed the paragraph heading to "Unexpected fatal or life-threatening suspected adverse reaction reports." For consistency with the agency's decision that assessment of whether the event is serious and unexpected should be based on the opinion of the sponsor (not the investigator), the agency eliminated the phrase "based on the opinion of the investigator or sponsor" (see comment 15 of this document and § 312.32(c)(1)(i)). For consistency with the agency's decision to eliminate the definition of "minimum data set," the agency replaced the phrase "after receipt by the sponsor of the minimum data set" in the proposed codified with "after the sponsor's initial receipt of the information" (see section III.C of this document).

J. Investigations of Marketed Drugs—Proposed § 312.32(c)(4)

FDA proposed that "a sponsor of a clinical study under an IND for a drug marketed in the United States is only required to submit IND safety reports to FDA (review division that has responsibility for the IND) for SADRs from the clinical study itself, whether from domestic or foreign study sites of the IND." As proposed, the sponsor would also be required to submit to FDA safety information from these clinical studies as prescribed by the postmarketing safety reporting requirements under §§ 310.305, 314.80, and 600.80.

(Comment 31) One comment supported the clarification of this requirement. Other comments requested further clarification. One comment asked what should be submitted to the IND from foreign studies not conducted under an IND (e.g., Phase 1–3 studies, Phase 4 postmarketing studies), both before and after a U.S. NDA is approved. One comment recommended that FDA finalize a provision to require that serious, unexpected SADRs that occur in studies not being conducted under an IND be submitted as expedited reports to an IND, if one exists. This comment also requested that FDA clarify whether serious, unexpected SADRs observed in IND-exempt studies of marketed drugs are required to be submitted to both an IND if one exists and the NDA. The comment recommended submitting these cases only to the NDA. One comment stated that although the requirement references the postmarketing safety reporting requirements, the postmarketing requirements do not mention foreign studies. This comment requested that FDA clarify the postmarketing requirements. Another comment stated that for products marketed and being studied globally, it is confusing to decide on the appropriate route of reporting given the different licensed status of products in different countries and different indications being investigated. This comment recommended that FDA provide a centralized reporting location so that FDA could route and file the report to the appropriate application.

(Response) The only reports that must be submitted to an IND for a drug marketed or approved in the United States are those arising from a study conducted under the IND (at domestic or foreign sites). All other reports (e.g., marketing experience, studies not under an IND), must be reported in accordance with the relevant postmarketing safety reporting requirements. In response to

the comments, the agency clarified § 312.32(c)(4) to state that a sponsor of a clinical study of a drug marketed or approved in the United States that is conducted under an IND is required to submit IND safety reports for suspected adverse reactions that are observed in the clinical study at domestic or foreign study sites. The sponsor must also submit safety information from the clinical study as prescribed by the postmarketing safety reporting requirements (e.g., §§ 310.305, 314.80, and 600.80).

Table 2 of this document summarizes the reporting requirements for the various scenarios identified in the comments about submitting safety reports from a clinical study.

TABLE 2.—SAFETY REPORTING REQUIREMENTS FROM CLINICAL STUDIES[1]

Drug marketed or approved[2] in the United States?	Under U.S. IND?	Trial site	Must report to IND?	Must report per post-marketing requirements?
Yes	Yes	U.S. or Foreign	Yes	Yes
Yes	No	U.S. or Foreign	No	Yes
No	Yes	U.S.or Foreign	Yes	
No	No	Foreign		

[1] Areas in the table are left blank when an IND or marketing application would not exist.
[2] If a drug is approved in the United States, but is not currently being marketed in the United States, the postmarketing requirements would still apply.

The agency does not agree with the comment that stated that the postmarketing requirements do not mention foreign studies. The postmarketing reporting requirements do apply to postmarketing studies conducted at foreign sites if the drug is marketed in the United States. For example, §§ 314.80(b) and 600.80(b) require applicants to review all adverse drug experience information from any source, "foreign or domestic," and §§ 314.80(e) and 600.80(b) require expedited reporting from a postmarketing study, whether or not conducted under an IND, if there is a reasonable possibility that the drug caused the adverse experience.

In addition, the agency revised the proposed language listing the postmarketing safety reporting requirements by including the parenthetical "(e.g., §§ 310.305, 314.80, and 600.80)," thereby clarifying that the listed postmarketing regulations are examples and other postmarketing safety reporting requirements may apply (e.g., reports related to certain over-the-counter (OTC) products under the Dietary Supplement and Nonprescription Drug Consumer Protection Act (Public Law 109–462); records regarding blood or blood products under § 606.170).

With respect to submitting reports to FDA to one central location, currently, postmarketing safety reports are entered into the Adverse Event Reporting System (AERS) database, whereas IND safety reports are sent directly to the review division that has responsibility for the review of the IND. Current capabilities do not permit direct electronic submission through a Web-based system. However, FDA is committed to adapting its business practices to evolving technology, including using the significant advancements in Web-based, electronic systems. We anticipate that, in future rulemakings, Web-based filing of most submissions will eventually be required. We anticipate that when such a change to an electronic submission system is implemented, future guidance will address any technical questions related to such submissions. Until such time that FDA develops a system to route and manage IND safety reports within the AERS database, or another database, the sponsor must submit them in the manner described in the regulations and to the appropriate FDA location identified in the regulations.

K. Followup—Proposed § 312.32(d)

Section 312.32(d) provides the requirements for investigating and submitting followup information to an IND safety report, making minor revisions in § 312.32(d)(2) to clarify how relevant followup information submitted under this paragraph must be identified (i.e., "Followup IND Safety Report"). The agency proposed revising the terminology in § 312.32(d)(3) to be consistent with the proposed use of the term SADR. The terminology in § 312.32(d)(3) is consistent with terms used in the final rule. Former § 312.32(d)(4) required that results of a sponsor's investigation of other safety information must be submitted, as appropriate, in an information amendment or annual report. The agency has eliminated this requirement because it is redundant—§§ 312.31 and 312.33 contain the submission requirements for information amendments and annual reports.

L. Disclaimer—Proposed § 312.32(e)

The agency proposed revising the terminology in § 312.32(e) to be consistent with the proposed use of the term SADR. The terminology in § 312.32(e) is consistent with terms used in the final rule.

M. Annual Reports

Although the agency did not propose any changes to the IND annual reporting requirements, FDA stated in the preamble to the proposed rule that it would not require reports of an increase in the rate of occurrence of expected, serious SADRs to be submitted to the agency in an expedited manner. The agency stated that instead, sponsors should report this information to FDA in their IND annual reports under § 312.33(b)(1) (68 FR at 12406 at 12425).

(Comment 32) One comment disagreed with FDA's proposal to deviate from the ICH E2A guidance, which recommends rapid communication to regulatory authorities for an increase in the rate of occurrence of an "expected," serious ADR that is judged to be clinically important (60 FR 11284 at 11286), because expedited reporting of this information may alert FDA to situations of more widespread and serious risks than were previously known or of use in populations that had not been previously identified as at risk. One comment agreed with the agency's departure from the ICH E2A guidance recommendation for expedited reporting of increased frequency of serious, expected SADRs. However, it questioned the utility of including this information in the IND annual report, as proposed by FDA. The comment stated that including this information may be difficult, given the timing of various

clinical trials relative to the IND annual reporting cycle. The comment suggested that rather than requiring increased frequency analysis of serious SADRs in IND annual reports, sponsors should routinely review incidence rates of all serious and nonserious adverse events within their clinical program, and report any significant changes in the IND annual report, when detected. Another comment recommended that the agency provide guidance on what would be deemed a "clinically important" increased rate of reports. The comment asked that FDA explain what the value added of such reporting is, given the agency's statements that such reports have limited reliability and have proven to be of little value in identifying increased incidences of serious, labeled events in the postmarketing setting (see 62 FR 34166, June 25, 1997).

(Response) To be consistent with the recommendations in the ICH E2A guidance and in response to comments about reporting serious)"expected" SADRs, the agency is adding a requirement under § 312.32(c)(1)(iv) that the sponsor expeditiously report any clinically important increase in the rate of a serious suspected adverse reaction over that listed in the protocol or investigator brochure. The agency acknowledges that baseline incidence rates from clinical trial data as a basis for comparison may not be available in all cases, and as explained in the preamble to the proposed rule (68 FR 12406 at 12425), for this reason, FDA did not explicitly propose to require these reports in the proposed rule. However, the agency believes that when rates are available, a clinically important increase provides important safety information and warrants expedited, rather than annual, reporting. Deciding if an increase in the rate of a serious suspected adverse reaction over that listed in the protocol or investigator brochure is) "clinically important" is a matter of judgment based on a variety of factors including the study population, the nature and seriousness of the reaction, and the magnitude of the observed increase in rate.

The agency also agrees with the comment that sponsors should routinely review incidence rates of all serious and nonserious adverse events within their clinical program and expects that this is current practice within the industry. If a clinically important increase in a serious suspected adverse reaction is identified when compared to the rate described in the protocol or investigator brochure, the sponsor must report it to FDA expeditiously. Changes in incidence rates for the most frequent nonserious adverse events would be reported in the IND annual report.

In response to the comment that requested clarification on the utility of these reports in the premarket setting when they have proven to be of little value in the postmarketing setting, the agency believes that there are differences between the premarket setting (where these reports would usually be based on incidence rates from clinical trials) and the postmarketing setting (where estimation of incidence rates from spontaneous reports is more difficult because, for example, the size of the exposed population is unknown). The agency believes that these reports contribute information important for understanding and updating the safety profile of the investigational drug product.

(Comment 33) Another comment noted that although FDA's proposed rule did not address the U.S. IND annual reporting requirements, it recommended that they be modified to be consistent with the ICH and EU annual reports in light of the finalization of the EU Clinical Trial Directive 2001/20/EC and the publication of their final detailed guidance.

(Response) The agency has been participating in the development of the ICH draft guidance, entitled "E2F Developmental Safety Update Report" (DSUR draft guidance), that describes the format, content, and timing for periodic reporting for an investigational drug. As stated in the notice announcing the availability of the DSUR draft guidance, the DSUR would serve as an internationally harmonized, annual clinical trial safety report that could be submitted in the United States in place of an annual report for an IND (73 FR 45462, August 5, 2008). After the DSUR draft guidance is finalized, the agency will evaluate the need to revise our IND annual reporting requirements to take into account international standards and recommendations.

(Comment 34) One comment requested clarification of IND annual reporting after an NDA has been approved and clinical studies continue under the IND, particularly in light of adoption of the PSUR, which includes clinical study data. The comment asked if safety sections in the IND annual report would be required after the NDA has been approved and the PSUR format is then being followed. The comment also requested clarification on whether the data cutoff date would be the IND effective date, the NDA approval date, or the international birth date.

(Response) Clinical development of a drug frequently continues even after it has been approved for marketing (e.g., for new indications, new dosage strengths, different populations). Therefore, the IND annual report continues to be important for evaluating and monitoring the safety of the drug. In addition, the DSUR draft guidance discusses the relationship between the DSUR and PSUR when clinical studies continue after a drug is approved for marketing, and when to initiate a DSUR for a marketed product. The guidance recommends that once a drug has received marketing approval in any country or region, and clinical trials continue or are initiated, both a PSUR and a DSUR should be prepared in accordance with directions from local authorities (DSUR draft guidance at p. 7). After the DSUR draft guidance is finalized, the agency will consider whether to revise our IND annual reporting requirements to take into account its current thinking on the issue, including adopting an international birthdate. Until that time, the data cutoff date for the IND annual report is the IND effective date because the annual report must be submitted to FDA within 60 days of the anniversary of the date that the IND went into effect (see § 312.33).

N. Investigator Reports—Proposed § 312.64(b)

FDA proposed to require that an investigator report to the sponsor any serious SADR immediately and any other SADR promptly unless the protocol or investigator's brochure specifies a different timetable for reporting the SADR.

(Comment 35) One comment suggested that FDA require investigators to report all protocol-defined treatment-emergent adverse events (TEAEs) expeditiously regardless of their causal attribution, but record their causality assessment when reporting such events. The comment defined a TEAE as an event that emerges during treatment having been absent pretreatment, or worsens relative to the pretreatment state. The comment stated that if the agency's SADR definition is implemented as proposed, it is conceivable that investigators will not report certain TEAEs if they feel a causal relationship can be ruled out. Because there are no standard guidelines for ruling out a possible causal relationship, there could be inconsistent causality assessments and adverse event reporting across study sites. Another comment stated that applying the SADR definition to investigator reporting could result in

underreporting of serious adverse events. The comment maintained that the investigator should report all serious adverse events to the sponsor, without making a causality assessment. The comment further stated that the proposed approach would not be in harmony with ICH standards and European regulatory requirements, which require that all serious adverse events be immediately reported to the sponsor. One comment stated that investigators provide an important and informed medical review of causality, especially in the presence of complex disease states where many adverse events occur as a result of the underlying disease process. The comment suggested that FDA provide clear guidance on reportable causality.

(Response) As noted in Comment 1 of this document, the agency has decided not to adopt the proposed SADR definition. FDA believes that there is more uncertainty when assessment of causality is based on an individual event rather than on aggregate data. The agency also believes that the sponsor is better positioned than the individual investigator to assess the overall safety of the investigational drug because the sponsor has access to serious adverse event reports from multiple study sites and is able to aggregate and analyze these reports. Therefore, the agency has determined that the sponsors should immediately receive reports from investigators of any serious adverse events, without regard to causality.

However, the agency agrees that, because the investigator is knowledgeable about the human subject (e.g., medical history, concomitant medications), administers the investigational drug, and monitors the subject's response to the drug, the investigator's view on the causal relationship between an adverse event and the investigational drug is important, especially in the presence of complex disease states where many adverse events occur as a result of the underlying disease process. Because the insight from the investigator is important for the sponsor to consider in assessing the safety of the drug and determining whether to report expeditiously to FDA, the agency has revised the requirement to require that the investigator include an assessment of causality in the report to the sponsor. Revised § 312.64(b) requires investigators to immediately report to the sponsor any serious adverse event, whether or not considered drug related, including those listed in the protocol or investigator brochure and the report must include an assessment of whether there is a reasonable possibility that the drug caused the event. Study endpoints that are serious adverse events (e.g., all-cause mortality) must be reported in accordance with the protocol unless there is evidence suggesting a causal relationship between the drug and the event (e.g., death from anaphylaxis). In that case, the investigator must immediately report the event to the sponsor.

(Comment 36) Several comments requested clarification of the terms "immediately" and "promptly" in the proposed requirement. The comments disagreed with the requirement to report other SADRs (i.e., nonserious) promptly to the sponsor, as the term "promptly" implies "quickly." The comments stated that nonserious SADRs are traditionally recorded on case report forms during the study, then verified and collected by the sponsor during scheduled monitoring visits. One comment recommended that the requirement be revised to require investigators to record, rather than report, other SADRs promptly.

(Response) The agency expects that, for serious adverse events, the investigator would notify the sponsor immediately. The agency recognizes that it may take a day to collect adequate information to confirm the occurrence of the adverse event but expects that as soon as the investigator has confirmed that the event occurred, the investigator will report it to the sponsor without delay.

The agency agrees with the comments that the term "promptly" does not appropriately describe the best process for documenting and notifying the sponsor about nonserious adverse events. Therefore, the agency has revised § 312.64(b) to state that the investigator must record nonserious adverse events and report them to the sponsor according to the timetable for reporting specified in the protocol. The sponsor would need to determine the appropriate interval for collecting and analyzing nonserious adverse event information based on the drug under investigation and other study considerations, and delineate the timetable in the protocol.

O. Bioavailability and Bioequivalence Requirements—Proposed § 320.31(d)

FDA proposed to require that persons conducting human bioavailability or bioequivalence studies that are not subject to an IND submit expedited safety reports to FDA in accordance with § 312.32. In the preamble to the proposed rule (68 FR 12406 at 12415), the agency stated that, in general, bioavailability and bioequivalence studies that are not being conducted under an IND are safe. However, the agency is occasionally made aware of safety-related information associated with these types of studies, which could reflect either a problem with the drug product being evaluated or with the study design being used. Timely review of this safety information is critical to ensuring the safety of study subjects. FDA proposed to require that these safety reports be transmitted to all participating investigators and to the appropriate FDA division in CDER (i.e., safety reports for the reference listed drug would be sent to the new drug review division that has responsibility for that drug, safety reports for the investigational drug product would be sent to the Director, Division of Bioequivalence, Office of Generic Drugs) and each report bear prominent identification of its contents. For reporting purposes under § 320.31(d)(3), an unexpected SADR would be any SADR the specificity or severity of which is not consistent with the U.S. labeling for the reference listed drug.

In general, the occurrence of a serious adverse event is very unusual in a bioavailability or bioequivalence study because the number of subjects enrolled in the study is small, the subjects are usually healthy volunteers, and drug exposure is typically brief. For these reasons, the occurrence of any serious adverse event is of interest. The agency reviewed the numbers and types of serious adverse events that we have received from these trials (i.e., in study reports submitted in abbreviated new drug applications (ANDAs)), and determined that they are typically listed in the labeling of the reference listed drug and, therefore, would not be subject to reporting under § 312.32(c)(1)(i) as serious and unexpected suspected adverse reactions because they would not meet the regulatory definition of "unexpected." In addition, because serious adverse events are so unusual in these studies, FDA believes that the causality assessment is unnecessary under these circumstances and that it is important to review all serious "adverse events." Thus, the proposed requirement to report serious and unexpected SADRs would not have served its intended purpose of alerting the agency to serious adverse events occurring in these trials, so the agency has revised the requirement. The agency continues to believe that receiving reports from these trials is important for human subject protection and, therefore, has revised § 320.31(d)(3) to require that any serious adverse event must be reported, instead of any serious and unexpected SADR. The person

conducting the study, including any contract research organization, must notify FDA and all participating investigators of any serious adverse event, as defined in § 312.32(a), from the study as soon as possible but in no case later than 15 calendar days after becoming aware of its occurrence. Each report must be submitted on FDA Form 3500A or in an electronic format that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation, and organization of files). As proposed, each report must bear prominent identification of its contents, i.e., "bioavailability/bioequivalence safety report." The person conducting the study, including any contract research organization, must also notify FDA of any fatal or life-threatening adverse event from the study as soon as possible but in no case later than 7 calendar days after becoming aware of its occurrence. Each notification under § 320.31(d)(3) must be submitted to the Director, Office of Generic Drugs in CDER. Relevant followup information to a bioavailability/bioequivalence safety report must be submitted as soon as the information is available and must be identified as such, i.e., "Followup bioavailability/bioequivalence safety report." Upon request from FDA, the person conducting the study, including any contract research organization, must submit to FDA any additional data or information that the agency deems necessary, as soon as possible, but in no case later than 15 days after receiving the request.

(Comment 37) Some comments requested clarification about the requirement to submit expedited safety reports for qualifying SADRs that arise in human bioavailability and bioequivalence studies that do not require an IND. The comments requested that the agency clarify whether this includes studies conducted outside of the United States and how these reports should be submitted in the absence of an IND.

(Response) Under § 320.31(d)(3), sponsors of human bioequivalence or bioavailability studies that are exempt from the IND requirements under part 312, but are conducted in the United States, must report any serious adverse events from the study to FDA (to the Office of Generic Drugs in CDER) and to all participating investigators. These requirements do not apply to human bioavailability and bioequivalence studies that are exempt from the IND requirements under part 312 and are conducted outside of the United States. However, as part of the information required to establish that the proposed drug product can be expected to have the same therapeutic effect as the reference listed product, adverse event reports that occurred in foreign clinical studies must be included in the ANDA submission (see § 314.94(a)(7)).

P. Reports to Investigators and IRBs

In proposed § 312.32(c)(1)(i) and (c)(1)(ii), FDA proposed to require that sponsors notify FDA and all participating investigators in a written IND safety report of any serious and unexpected SADR or information sufficient to consider product administration changes. Although both of these requirements have been revised (see response to Comments 15 to 17 and 23 to 29 of this document), the requirement that FDA and all participating investigators receive IND safety reports for potential serious risks that emerge during the conduct of a clinical investigation has not changed in this final rule (see final § 312.32(c)(1)).

In addition, under current § 312.66, the investigator must, among other things, assure that he or she will promptly report to the IRB all changes in the research activity and all unanticipated problems involving risk to human subjects or others, and that he or she will not make any changes in the research without IRB approval, except where necessary to eliminate apparent immediate hazards to human subjects. The agency did not propose any changes to this requirement.

(Comment 38) Some comments pointed out that the proposed rule did not change the frequency or format for providing clinical investigators with information on serious, unexpected adverse events associated with the use of a drug. One comment agreed that it is imperative that investigators responsible for the conduct of studies be informed by the sponsor of findings that could adversely affect the safety of study participants. However, the comment noted that this process can be confusing and overwhelming, particularly for investigators of IND studies conducted outside the United States. Several comments proposed alternative reporting approaches that would provide investigators with reports that are more useful and efficient and less confusing. One comment recommended that the requirements for notifying all participating investigators be changed to allow a periodic summary and analysis of qualifying SADRs rather than individual reports that are difficult to track, aggregate, analyze, and interpret at the investigational site. Several comments encouraged FDA to further harmonize with CIOMS VI and the EU Clinical Trial Directive approach for investigator notification because: (1) Periodic (quarterly) aggregate line listings of suspected unexpected serious adverse reactions (SUSARs) accompanied by a summary of the evolving safety profile would provide useful information to investigators and IRBs, especially for Phase l–3 studies; (2) presenting all serious, unexpected, associated events in line listings regardless of medication administered (e.g., active drug, comparator, or placebo) would maintain the blind to the investigator; and (3) significant safety issues would be communicated as soon as possible to the investigators. These comments stated that investigators would recognize that these expedited communications represent significant safety information that is to be immediately reviewed and provided to their IRBs. The comments noted that expedited reporting to FDA and processes for updating the investigator brochure would remain unchanged.

In addition, one comment requested that FDA not require investigator notification letters for investigations of marketed products, even if conducted under an IND, unless the investigation is for a patient population or indication that is different from that approved. The comment stated that any significant new safety information will be evaluated by the sponsors as part of their signal detection process and, if necessary, will be incorporated in the product label. The comment recommended that FDA allow periodic line-listings to be sent to investigators in lieu of individual reports.

(Response) The agency is aware that for large, multi-center trials, investigators have expressed concern about receiving large numbers of individual adverse event reports that may not be useful. The agency believes that these final requirements will significantly diminish the numbers of individual reports that, in isolation, do not provide useful information to the investigator. For example, the requirement under § 312.32(c)(1)(i), described in the response to Comment 18 of the document, makes it clear that specific events (such as known consequences of the underlying disease or condition under investigation or other events that commonly occur in the study population independent of drug therapy) are to be reported to FDA and all participating investigators only if there is evidence, based on an aggregate analysis, to suggest a causal relationship between the drug product and the adverse event. The rule also makes it

clear that study endpoints would ordinarily not be reported as serious, unexpected suspected adverse reactions (response to Comment 19 of this document). These clarifications are expected to reduce the number of reports that do not contribute in a meaningful way to the developing profile of the drug.

FDA does not agree with the comment that suggested that investigators not be notified of serious, unexpected suspected adverse reactions from investigations of marketed products unless the investigation is for a patient population or indication different from that approved. Regardless of the patient population or indication, information about a serious, unexpected suspected adverse reaction may influence the investigator's management of a clinical trial participant and, is therefore, critical information for the investigator to receive.

(Comment 39) Some comments stated that although the IRB's charge is to have written procedures for reporting "any unanticipated problems involving risks to human subjects or others," the proposed rule is silent about sending any information to IRBs. These comments recommended that the agency provide guidance to sponsors, manufacturers, investigators, and IRBs that clearly delineates the responsibilities of reporting SADRs to the IRB. One comment requested that FDA require that the IRB receive from the sponsor the same expedited reports that the sponsor sends to FDA and all participating investigators (under proposed § 312.32(c)(1)). Other comments pointed out that IRBs are currently overwhelmed with IND safety reports and recommended that sponsors provide IRBs with routine timely aggregated reports of listings of adverse events instead of individual reports. Another comment suggested that investigators be permitted to provide these line-listings to their IRBs in lieu of individual reports. One comment urged FDA to adopt the CIOMS VI recommendations for IRB notification.

(Response) The agency concurs with the overall sentiments expressed by the comments and has provided recommendations for reporting adverse event information to IRBs in our "Guidance for Clinical Investigators, Sponsors, and IRBs: Adverse Event Reporting—Improving Human Subject Protection." We also expect that the more useful individual reports submitted by sponsors to FDA and investigators will translate into more useful information being provided by investigators to their IRBs. In addition, the agency may consider revisions to investigator reporting requirements to IRBs in a separate rulemaking initiative.

Q. Miscellaneous Comments

FDA stated in the preamble to the proposed rule that the term "sponsors" would be used to describe persons subject to the premarketing safety reporting regulations (68 FR 12406 at 12412).

(Comment 40) Two comments asked FDA to clarify how the safety reporting requirements apply to investigator-initiated studies, since such studies are not mentioned in the agency's definition of "sponsors."

(Response) The agency considers investigator-initiated studies to be synonymous with studies conducted by a sponsor-investigator. A sponsor-investigator, as defined in § 312.3, is "an individual who both initiates and conducts an investigation, and under whose immediate direction the investigational drug is administered or dispensed. The term does not include any person other than an individual. The requirements applicable to a sponsor-investigator under this part [312] include both those applicable to an investigator and a sponsor." Therefore, the safety reporting requirements under § 312.32 would apply to an investigator-initiated study.

(Comment 41) One comment suggested that FDA request that the National Institutes of Health (NIH) and other Federal agencies that have agreed to the Federal Policy for the Protection of Human Subjects (Common Rule) also adopt the proposed regulations. The comment stated that all participants in the research enterprise must be fully committed to the protection of research participants, and fostering better and more complete safety reporting will support that commitment.

(Response) This final rule would apply to FDA-regulated research conducted by NIH and other Federal agencies. The agency agrees that improved safety reporting should enhance the protection of human subjects participating in clinical trials.

(Comment 42) FDA proposed that the final rule would become effective 180 days after its date of publication in the **Federal Register**, except for any final rule regarding the proposal to require that postmarketing SADRs in the individual case safety reports be coded using the Medical Dictionary for Regulatory Activities (MedDRA), which would become effective 1 year after its date of publication in the **Federal Register**.

Many comments expressed concern that the proposed timeline for implementing the new requirements is too aggressive, given its impact on systems and processes (e.g., to develop, test, and validate a new system). Some comments did not believe 180 days was sufficient implementation time unless the final rule was significantly modified. One comment requested that FDA allow for a transition period for ongoing clinical trials if FDA continues with its interpretation of "related," as used in the proposed SADR definition. One comment agreed with the adoption of MedDRA for premarketing safety reporting for clinical trials, but did not believe that the 1-year proposed timeline was realistic. Comments requested other implementation schedules, ranging from 12 to 18 months for all the requirements.

(Response) The agency does not agree that an effective date of 180 days after the date of publication in the **Federal Register** is too aggressive. The agency believes that the revisions to the requirements in this final rule will streamline adverse event reporting and are crucial to ensuring that timely and accurate safety information about clinical trials is received, analyzed, and disseminated. Therefore, as proposed, the agency has retained the effective date for the final rule to be 180 days after the date of publication in the **Federal Register**. The concerns raised by the comments about the agency's interpretation of "related" are no longer an issue because the agency did not adopt the SADR definition. In addition, the agency did not propose, and is not requiring in this final rule, the use of MedDRA for IND safety reporting.

R. Initial Analysis of Impacts and Paperwork Burden Estimates

For the initial analysis of impacts, FDA estimated the costs of adding the new premarketing safety reporting requirements (68 FR 12406 at 12456 and 12457, table 14) (see section VI of this document for discussion). For the initial paperwork burden estimates, FDA estimated the total annual reporting burden associated with the premarketing safety reporting requirements, accounting for not only the additional burdens associated with the proposed new requirements, but also for burdens already approved by the Office of Management and Budget (OMB) for requirements under then-current §§ 312.32 and 312.64 (68 FR 12406 at 12470, table 21) (see section VII of this document for further discussion).

For narrative reports based on information sufficient to consider a change in product administration (discussed in section III.G of this document), for the initial analysis of

impacts, FDA estimated that sponsors would spend an additional 4 hours per report for up to 600 IND safety reports. For the paperwork burden, however, for the same 600 IND safety reports, FDA estimated that sponsors would spend a total of 8 hours per report. The 4-hour per report estimate in the initial analysis of impacts accounted only for the incremental burden of the proposed reports from in vitro studies, epidemiological studies, and clinical studies and did not account for required reports of "any finding from tests in laboratory animals that suggests a significant risk in human subjects" under then-current § 312.32(c)(1)(i)(B). However, the 8-hour per report paperwork burden estimate accounted not only for the burden of complying with the new proposed requirements, but also the then-current requirement to submit reports from animal tests.

(Comment 43) Comments from industry stated that FDA underestimated the number of IND safety reports and that the proposed SADR definition could increase the volume of IND safety reports from 2-fold to 10-fold. Furthermore, comments claimed that any additional reports would be uninformative. An increase in the number of uninformative safety reports would create an additional burden on investigators and IRBs without a corresponding benefit. Comments noted that FDA's analysis failed to account for the potential impact of these additional reports on IRBs and investigators. Moreover, in some cases, additional uninformative reports could force sponsors to unnecessarily break the blind of a clinical trial, potentially reducing the power of double-blind clinical trials to detect safety issues and imposing additional burdens to industry.

(Response) As discussed in response to Comment 1 of this document, the agency has decided not to adopt the proposed SADR definition, and instead adopted definitions for the terms "adverse event" and "suspected adverse reaction." In addition, FDA clarified the circumstances under which IND safety reports need to be submitted. With these changes, we expect fewer reports. Therefore, the comments stating that FDA underestimated the number of IND safety reports have been addressed.

(Comment 44) Some industry comments stated that FDA underestimated the number of hours required to prepare a narrative report based on information sufficient to consider changes in product administration or risk profile. These comments stated that preparing a narrative report requires more than 8 hours.

(Response) Although comments stated that preparing a narrative report requires more than 8 hours, none of these comments provided estimates for a specific number of hours. Without other information, we are unable to respond directly to these comments. Nevertheless, we recognize that there may be some situations and types of findings that would require sponsors to spend more time preparing a narrative report. Therefore, to capture the uncertainty of this estimate, FDA has decided to use a range of hours (from 4 to 12 hours) to estimate the incremental burden of this requirement instead of the 4-hour estimate used in our initial analysis of impacts (section VI of this document) or the total 8-hour estimate used in the initial paperwork burden analysis (section VII of this document).

IV. Legal Authority

The premarket approval provisions of the act authorize FDA to require that drug labeling provide the practitioner with adequate information to permit safe and effective use of the drug product. Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) requires us to weigh evidence of effectiveness and safety to determine whether the evidence supports drug approval, whether data are adequate to permit a clinical investigation to proceed under the IND regulations, and/or whether a product is appropriately labeled. Section 351(a)(2)(C)(i)(1)) of the Public Health Service Act (the PHS Act) (42 U.S.C. 262(a)(2)(C)(i)(I)) authorizes the agency to approve a biologics license application (BLA) only if the applicant demonstrates that the product is safe, pure, and potent. Section 351(a)(2)(A) of the PHS Act authorizes the agency to establish, by regulation, requirements for the approval, suspension, and revocation of biologics licenses. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act. These statutory provisions authorize us to issue regulations requiring sponsors to submit safety information to the agency to support an IND, NDA, ANDA, or BLA.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the new reporting requirements are likely to impose a minimal burden on small entities (less than 0.2 percent of the average value of shipments of entities with less than 10 employees), the agency believes that the final rule will probably not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

In accordance with Executive Order 12866, FDA has previously analyzed the potential economic effects of the proposed rule. Although FDA determined that the proposed rule was an economically significant rule as described in the Executive order, the final rule covers a smaller subset of the proposed regulatory actions and is only related to premarket safety reporting and safety reporting for certain bioavailability and bioequivalence studies. Consequently, the annual estimated costs of this final rule are projected to equal less than $0.7 million. We are unable to quantify the benefits of the final rule, but expect that

the potential benefits of harmonized and improved safety reporting will justify the minimal costs of this rule.

A. Need for the Regulation

Ambiguous regulatory requirements may cause sponsors to unnecessarily submit certain IND safety reports to FDA and investigators. As described in section I of this document, lack of clarity about definitions and regulatory reporting requirements may create uncertainty about when to submit an IND safety report and may lead to over- or underreporting to FDA and investigators. Uncertainty about safety reporting requirements can result in reports being submitted for adverse events when there is little evidence of a causal relationship between the drug and the adverse event. Such reports can produce so-called "noise" in the system and hinder the development of the premarket safety profile of an investigational drug. Conversely, exempting certain bioavailability and bioequivalence studies from safety reporting requirements may lead to underreporting of some serious adverse events.

The rule will finalize definitions and IND safety reporting standards that are as consistent as possible with ICH documents, require expedited reporting of study findings suggesting a significant risk to humans, and establish reporting requirements for certain bioavailability and bioequivalence studies. Moreover, the final rule clarifies when certain safety information, such as study endpoints, should be reported, potentially reducing the number of uninformative reports sent to FDA, participating investigators, and IRBs.

B. Costs of the Regulation (to Prepare and Submit Safety Reports)

1. Number of Reports

For the initial analysis of impacts, we estimated that sponsors would submit up to 200 reports per year to comply with the new requirement for safety reporting of bioavailability and bioequivalence studies under proposed § 320.31(d). No comments were received on this estimate. Consequently, in the final analysis of impacts, we retain our original estimate of 200 reports per year.

In the initial analysis of impacts, we estimated that sponsors would submit up to 600 written IND safety reports annually based on information sufficient to consider a change in product administration (proposed § 312.32(c)(1)(ii))[3]. Consistent with ICH recommendations for IND safety reporting, the proposed rule would have clarified that sponsors should submit written IND safety reports when they receive information suggesting significant human risk sufficient to consider changes in the conduct of a clinical trial or product administration. Information suggesting a significant human risk could come from animal studies, in vitro studies, epidemiological studies, or clinical studies. We received no comments on this estimate.

In contrast to the ICH recommendation that sponsors rapidly report an increase in the rate of occurrence of an expected, serious SADR, the preamble of the proposed rule noted that sponsors should submit this type of information in IND annual reports under § 312.33(b)(1) (68 FR at 12406 at 12425). Because no changes to the IND annual reports were proposed, FDA did not estimate the incremental impact of these reports. For the final rule, however, increases in the occurrence rates of serious suspected adverse reactions over that listed in the protocol or investigator brochure must be reported as expedited IND safety reports. We have insufficient information to determine the potential impact of reporting increases in occurrence rates of serious suspected adverse reactions over that listed in the protocol or investigator brochure as expedited reports as opposed to including this information in annual reports. As part of good clinical practice, sponsors routinely review and analyze the incidence rates of serious and nonserious adverse events of their investigational drugs. Therefore, we expect that the incremental burden of this requirement will be minimal and estimate that sponsors will submit up to 10 additional reports per year.

Furthermore, the final rule clarifies the definition of a suspected adverse reaction for reporting purposes (§ 312.32(a)) and adds a requirement that sponsors only submit reports of study endpoints in unusual circumstances not described in the protocol (§ 312.32(c)(5)). We anticipate that by clarifying what is a suspected adverse reaction for reporting purposes and the circumstances under which study endpoints should be submitted as expedited reports, the number of uninformative expedited reports will be reduced, thus reducing the burden on sponsors, investigators, IRBs, and FDA. However, we have no information to estimate the magnitude of this reduced burden.

Last, the final rule clarifies safety reporting requirements for investigators to report to sponsors (§ 312.64(b)). Instead of requiring that investigators promptly report any adverse event reasonably caused or probably caused by the drug, the final rule requires that investigators immediately report any serious adverse event to the sponsor and include an assessment of whether there is a reasonable possibility that the drug caused the event. Because it is common practice for sponsors to outline similar reporting responsibilities in their clinical trial protocols, we assume that this final requirement will impose no additional burden.

2. Costs to Prepare and Submit Safety Reports

As shown in table 3 of this document, we estimate that it takes an average of 14 hours to prepare a safety report for a bioavailability and bioequivalence study. Based on 2007 hourly median wages for the pharmaceutical manufacturing industry, each of these reports will cost sponsors about $950.

As discussed in Comment 44 of this document, the additional time needed to prepare a report of findings suggesting a significant risk in humans may vary. We estimate that sponsors could spend from 4 to 12 hours additional time to prepare a narrative IND safety report. The average incremental cost of a narrative IND safety report ranges from $250 to $750 (table 3 of this document).

[3] The proposed premarketing reporting requirement revised the existing requirements and expanded the types of findings that sponsors should report as expedited narrative IND safety reports. As discussed in sections III.R and VII of this document, the estimated average incremental burden of the regulatory action in the initial analysis of impacts (i.e., 4 hours) accounted for then-current compliance (i.e., reports based on findings from animal tests) under then-current § 312.32(c)(1)(i)(B)).

TABLE 3.—ESTIMATED INCREMENTAL BURDEN AND UNIT COSTS FOR IND SAFETY REPORTS

Type of Report	Burden (hours) and Type of Expertise Required			Total Burden (hours)	Total Cost ($)[4]
	Clerical[1]	Epidemiology and Clinical Medicine[2]	Regulatory Affairs[3]		
Bioavailability and Bioequivalence Safety Reports	2	1	11	14	950
IND Safety Reports—lower estimate[5]	1	1	2	4	250
IND Safety Reports—upper estimate[5]	3	3	6	12	750

Numbers are rounded.
Source: U.S. Department of Labor, Bureau of Labor Statistics, May 2007 (Ref. 4).
[1] Based on median hourly wages for Office and Administrative Support Occupations (43–0000) and 40 percent benefits ($24.43 = $17.44 x 1.4).
[2] Based on median hourly wages for Medical and Health Services Managers (11–9111) and 40 percent benefits ($75.03 = $53.59 x 1.4).
[2] Based on median hourly wages for Medical and Health Services Managers (11–9111) and 40 percent benefits ($75.03 = $53.59 x 1.4).
[3] Based on median hourly wages for Management Occupations (11–0000) and 40 percent benefits ($74.96 = $53.54 x 1.4).
[4] Unit costs are rounded.
[5] Includes reports based on findings suggesting a significant risk in humans from epidemiological studies, pooled analysis of multiple studies, other clinical studies, or in vitro testing. Reports from animal testing are not included (see footnote 3 of this document).

Table 4 of this document summarizes the estimated total costs of the final rule. Annually, sponsors will submit up to 200 safety reports for bioavailability and bioequivalence studies and up to 610 IND safety reports. We estimate that the total costs of the final rule will equal less than $0.7 million annually.

TABLE 4.—ESTIMATED TOTAL COSTS OF THE FINAL RULE

Type of Report	Unit Costs ($)	Annual No. of Reports	Total Annual Costs ($)
Bioavailability and Bioequivalence Safety Reports[1]	950	200	190,000
IND Safety Reports[2]	250 to 750	610	150,000 to 460,000
Total Costs			340,000 to 650,000

Numbers are rounded; total costs are rounded to the nearest ten thousand dollar increment.
[1] We received no comments that provided sufficient information to revise our initial estimate. Because these events occur sporadically and the number of reports will vary from year to year, these numbers represent reasonable estimates of the annual average number of reports.
[2] The annual number of IND safety reports includes the proposed 600 reports of information suggesting a significant human risk (from epidemiological studies, pooled analysis of multiple studies, other clinical studies, or in vitro testing, but not from animal testing (see footnote 3 of this document)) and an additional 10 reports of increases in the occurrence rates of serious suspected adverse reactions over that listed in the protocol or investigator brochure.

C. Benefits of the Regulation

Benefits for the initial analysis of impacts were based on potential improvements in public health from better postmarket safety reporting and surveillance. The definitions and other requirements of the final rule provide a standardized framework against which adverse events and adverse reactions can be evaluated, reducing ambiguity and uncertainty about when and how to submit IND safety reports.

The final rule adds a requirement to submit safety reports for certain bioavailability and bioequivalence studies that have been exempt from safety reporting. These studies have been exempted from safety reporting requirements because serious adverse events in these types of studies are rare. As described elsewhere in this document, most serious adverse events would be listed in the labeling of the reference listed drug and thus would not meet the threshold for expedited IND safety reporting. However, reporting such unusual events would alert FDA to serious adverse events occurring in these trials. For this reason, it is prudent that FDA review such safety information. However, we lack sufficient information to estimate the magnitude of these potential benefits.

The revised IND safety reporting requirements will clarify when a sponsor should send a narrative IND safety report to FDA and participating investigators. Regardless of who conducts a study or whether a study is conducted under an IND, any finding that suggests a significant risk to humans must be reported as an expedited report. A risk is considered significant if it will ordinarily result in a safety-related change in the protocol, informed consent, investigator brochure, or conduct of the clinical investigation. Findings of a significant risk to humans can come from many sources, including epidemiological studies, pooled analysis of multiple studies, clinical studies, animal testing, or in vitro testing. Expedited reports of important safety information will enable FDA to more quickly review and monitor the safety profile of investigational drugs. However, because we lack estimates of the impact of expedited reporting on drug safety, we are not able to estimate the potential benefits of this reporting requirement.

The final rule includes a new requirement to report clinically important increases in the occurrence rates of serious suspected adverse reactions over that listed in the protocol or investigator brochure as expedited IND safety reports. Because these reports are usually based on incidence rates from clinical trials (i.e., known exposure rates), such reports can alert FDA to previously undetected human safety risks. Although these reports can occur sporadically, such reports can provide important information that

could affect drug safety profiles. However, we lack sufficient information to estimate the magnitude of these potential benefits.

Uncertainty about reporting requirements can lead sponsors to overreport or underreport safety events. Overreporting can introduce so-called "noise" that can delay the detection of possible safety problems. Underreporting potential safety problems can also delay identification of an important new risk. We expect that the final rule will remove some of the uncertainty that may lead sponsors to over- and underreport adverse events. In addition, we expect that FDA will receive expedited reports of safety information that suggest a significant risk in humans. Such reports can promote timely review of important drug safety information. Although we are unable to make a quantitative estimate of the benefits of the final rule, we believe that the potential benefits realized through more informative, accurate, and timely safety reports will justify the minimal costs of the final rule.

D. Final Regulatory Flexibility Analysis

This final rule will harmonize certain FDA safety reporting requirements with international initiatives and improve the quality of safety reporting for IND products and certain marketed products. According to the Table of Small Business Size Standards, the U.S. Small Business Administration (SBA) considers pharmaceutical preparation manufacturing entities (NAICS 325412) with 750 or fewer employees and biological product manufacturing entities (NAICS 325414) with 500 or fewer employees to be small. Statistics on the classification of firms by employment size from the U.S. Bureau of the Census show that in 2005, at least 85 percent of pharmaceutical manufacturing and biological product manufacturing entities had fewer than 500 employees and would have been considered small by SBA.

Entities have sufficient expertise to comply with the new safety reporting requirements. As shown in table 5 of this document, the unit costs of a safety report total less than 0.2 percent of the average value of shipments for the smallest entities. As further explained previously, the agency does not believe that this final rule will have a significant economic impact on a substantial number of small entities, but the impact is uncertain. Although some final requirements extend to investigators, we anticipate no additional burden on investigators who would meet the SBA definition of small entity.

TABLE 5.—UNIT COSTS OF SAFETY REPORTS AS A PERCENTAGE OF THE AVERAGE VALUE OF SHIPMENTS FOR VERY SMALL ESTABLISHMENTS

	Pharmaceutical Preparation Manufacturing (NAICS 325412)[1]		Biological Product Manufacturing (NAICS 325414)[2]	
No. of employees	<5	<10	<5	<10
Total value of shipments ($1,000)	187,933	561,636	32,011	115,307
No. of establishments	228	339	67	109
Average value of shipments ($)	824,268	1,656,743	477,776	1,057,862
Unit costs of an IND safety report as a percentage of the average value of shipments[3]	0.0% to 0.1%	0.0% to 0.0%	0.1% to 0.2%	0.0% to 0.1%
Unit costs of a bioavailability or bioequivalence report as a percentage of the average value of shipments[4]	0.1%	0.1%	0.2%	0.1%

Numbers are rounded.
[1] Source: U.S. Department of Commerce, Bureau of the Census, 2002 (Ref. 5).
[2] Source: U.S. Department of Commerce, Bureau of the Census, 2002 (Ref. 6).
[3] Based on a unit cost ranging from $250 to $750.
[4] Based on a unit cost = $950.

VII. Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting burden. Our estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information, not accounted for under then-current § 312.32 or § 312.64, already approved by OMB (OMB control number 0910–0014).

Title: Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans

Description: The final rule clarifies the agency's expectations for timely review, evaluation, and submission of relevant and useful safety information and implements internationally harmonized definitions and reporting standards for IND safety reports. The final rule also subjects bioavailability and bioequivalence studies to safety reporting requirements. The final rule is intended to improve the utility of IND safety reports, expedite FDA's review of critical safety information, better protect human subjects enrolled in clinical trials, and harmonize safety reporting requirements internationally.

The Final Rule and Estimates of Reporting Burden

The rule finalizes revisions to the IND safety reporting requirements found in part 312 and the safety reporting requirements for bioavailability and bioequivalence studies found in part 320. For the initial PRA analysis for the proposed rule, FDA estimated for the annual reporting burdens for collections of information for the entire proposal (i.e., pre- and postmarketing safety reporting requirements). For this PRA analysis, FDA has estimated only for the annual reporting burdens for collections of information included in this final rule (i.e., requirements found in

§§ 312.32, 312.64, and 320.31). In addition, in the initial PRA analysis for the proposed rule, FDA estimated for the total reporting burden associated with the proposed reporting requirements in §§ 312.32, 312.64, and 320.31 (as opposed to only the increased burdens associated with the proposed rule). Because OMB has approved paperwork burdens for many of the reporting requirements found in §§ 312.32 and 312.64, for purposes of this final rule and this PRA analysis, FDA is providing estimates for only the additional burdens not already approved by OMB for §§ 312.32, 312.64, and 320.31 (OMB control number 0910–0014). The following provisions of the final rule contain collections of information and the following burden estimates are based on those discussed in the Analysis of Impacts (section VI.B of this document).

Section 312.32(c)(1)(i) specifies the requirements for reporting to FDA in an IND safety report potential serious risks from clinical trials within 15 calendar days for reports of serious and unexpected suspected adverse reactions and provides examples of what evidence supports a suggestion that there is a causal relationship between the drug and the adverse event. For purposes of this final rule, there is no new information collection because the reporting burden is unchanged from former § 312.32 and the information collection is already approved by OMB (OMB control number 0910–0014).

Section 312.32(c)(1)(ii) requires reporting to FDA in an IND safety report potential serious risks from clinical trials within 15 calendar days for findings from epidemiological studies, pooled analyses of multiple studies, or other clinical studies that suggest a significant risk in humans exposed to the drug. This reporting requirement was not included in former § 312.32. Section 312.32(c)(1)(iii) specifies the requirements for reporting to FDA in an IND safety report potential serious risks from clinical trials within 15 calendar days for findings from animal or in vitro testing that suggest a significant risk to humans. While reports from in vitro testing that suggest a significant risk to humans were not required to be reported under former § 312.32, reports from any finding from tests in laboratory animals were required to be reported (former § 312.32(c)(1)(i)(B)). For purposes of this final rule, for the provisions that are unchanged from former § 312.32, the information collection is already approved by OMB (OMB control number 0910–0014). For the additional reporting requirements (i.e., the proposed narrative reports excluding animal testing) in the initial PRA analysis, FDA estimated that sponsors would spend a total of 8 hours per report to prepare and submit these narrative reports. In response to comments, FDA has revised the estimate from an incremental 4 hours to a range from 4 hours to 12 hours per report. Given this range, the upper estimate of additional paperwork burden associated with this requirement for each applicant could be an additional 12 hours to prepare each narrative report. Therefore, for an additional 600 reports, FDA estimates the total annual reporting burden of this final rule could be as high as 7,200 hours.

Section 312.32(c)(1)(iv) requires reporting to FDA in an IND safety report within 15 calendar days any clinically important increase in the rate of occurrence of serious suspected adverse reactions over that listed in the protocol or investigator brochure (§ 312.32(c)(1)(iv)). These reports were not required to be submitted within 15 days under former § 312.32. FDA estimates that the minimal incremental burden for this requirement to be approximately 10 reports per year. Using the same upper estimate for the burden as discussed previously (i.e., 12 hours to prepare each report), FDA estimates the additional burden associated with this requirement could be as high as 120 hours. We request industry to comment on whether the requirement will impose an increased burden and if so, provide an estimate of the reporting burden.

Section 312.32(c)(2) requires reporting within 7 days any unexpected fatal or life-threatening suspected adverse reaction. For purposes of this final rule, there is no new information collection because the reporting burden is unchanged from former § 312.32 and the information collection is already approved by OMB (OMB control number 0910–0014).

Section 312.32(c)(4) requires a sponsor of a clinical study of a drug marketed or approved in the United States that is conducted under an IND to submit safety reports for suspected adverse reactions that are observed in the clinical study. For purposes of this final rule, there is no new information collection because the reporting burden is unchanged from former § 312.32 and the information collection is already approved by OMB (OMB control number 0910–0014).

Section 312.32(c)(5) clarifies the circumstances under which study endpoints should be submitted to FDA. FDA believes that these clarifications to former § 312.32 are likely to result in a reduction in the number of expedited reports that currently are accounted for by OMB. However, FDA has insufficient information to provide an estimate and was unable to ascertain from industry an estimate for such a reduction. Therefore, FDA requests that industry comment on the impact of this provision on reporting burdens. Any reduction in reports will be reflected the next time the information collection for § 312.32 (OMB control number 0910–0014) is extended.

Section 312.32(d)(1)-(3) requires followup reporting requirements. For purposes of this final rule, there is no new information collection because the reporting burden is unchanged from former § 312.32 and the information collection is already approved by OMB (OMB control number 0910–0014).

Section 312.64(b) requires investigators to report immediately to the sponsor any serious adverse event and include an assessment of whether there is a reasonable possibility that the drug caused the event. FDA revised former § 312.64(b) for clarity and to reflect current practices for investigator reporting to sponsors. For purposes of this final rule, there is no new information collection because we believe that the reporting burden is unchanged from former § 312.64 and the information collection is already approved by OMB (OMB control number 0910–0014).

Finally, § 320.31(d)(3) subjects bioavailability and bioequivalence studies to safety reporting requirements. This reporting requirement was not included in former § 320.31. Therefore, all of these reports would be new. For purposes of the initial PRA analysis and this PRA analysis, FDA estimated up to 200 new safety reports required under § 320.31(d) from bioavailability and bioequivalence studies. For these 200 reports, FDA estimates that it could take applicants an additional 14 hours to prepare and submit each report. The burden for bioavailability and bioequivalence safety reporting requirements would total 2,800 hours per year as a result of this final rule.

Description of Respondents: Business or other for-profit organizations.

Table 6 of this document presents the estimated annualized reporting burden of the final rule, providing estimates for those safety reports not already approved under OMB control number 0910–0014.

TABLE 6.—ESTIMATED ANNUAL REPORTING BURDEN OF THE FINAL RULE[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
320.31(d) Bioavailability and Bioequivalence Safety Reports	10	20	200	14	2,800
312.32(c)(1)(ii) and (c)(1)(iii) IND Safety Reports[2]	100	6	600	12	7,200
312.32(c)(1)(iv) IND Safety Reports[3]	10	1	10	12	120

[1] There are no capital costs or operating and maintenance costs associated with this collection. The estimates are for the additional burdens beyond those already approved for then-current §§ 312.32 and 312.64.

[2] Includes reports based on findings suggesting a significant risk in humans from epidemiological studies, pooled analysis of multiple studies, other clinical studies, or in vitro testing. Reports from animal testing are not included (see footnote 3 of this document).

[3] Includes reports of clinically important increases in the rate of occurrence of serious suspected adverse reactions over that listed in the protocol or investigator brochure.

The information collection provisions of this final rule have been submitted to OMB for review. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VIII. Executive Order 13132: Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Enterprise Directorate-General, European Commission, "Detailed Guidance on the Collection, Verification and Presentation of Adverse Reaction Reports Arising From Clinical Trials on Medicinal Products for Human Use," revision 2, Brussels, ENTR/CT 3, April 2006 (*http://ec.europa.eu/enterprise/index_en.htm*).

2. Council for International Organizations of Medical Sciences, "Guidelines for Preparing Core Clinical-Safety Information on Drugs. Second Edition, Including New Proposals for Investigator's Brochures," Report of CIOMS Working Groups III and V, Geneva, 1999.

3. Council for International Organizations of Medical Sciences, "Management of Safety Information From Clinical Trials," Report of CIOMS Working Group VI, Geneva, 2005.

4. U.S. Department of Labor, Bureau of Labor Statistics, National Industry-Specific Occupational Employment and Wage Estimates. NAICS 325400 - Pharmaceutical and Medicine Manufacturing, May 2007, extracted September 3, 2008, *http://www.bls.gov/oes/current/naics4_325400.htm*.

5. U.S. Department of Commerce, Bureau of the Census, Economic Census, Manufacturing Industry Series, Pharmaceutical Preparation Manufacturing, Table 4, EC02–311–325412 (RV), 2002.

6. U.S. Department of Commerce, Bureau of the Census, Economic Census, Manufacturing Industry Series, Biological Product Manufacturing, Table 4, EC02–311–325414 (RV), 2002.

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 312 and 320 are amended as follows:

PART 312— INVESTIGATIONAL NEW DRUG APPLICATION

■ 1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360bbb, 371; 42 U.S.C. 262.

■ 2. Section 312.32 is revised to read as follows:

§ 312.32 IND safety reporting.

(a) *Definitions.* The following definitions of terms apply to this section:

Adverse event means any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related.

Life-threatening adverse event or *life-threatening suspected adverse reaction.* An adverse event or suspected adverse reaction is considered "life-threatening" if, in the view of either the investigator or sponsor, its occurrence places the patient or subject at immediate risk of death. It does not include an adverse event or suspected adverse reaction that, had it occurred in a more severe form, might have caused death.

Serious adverse event or *serious suspected adverse reaction.* An adverse event or suspected adverse reaction is considered "serious" if, in the view of either the investigator or sponsor, it results in any of the following outcomes: Death, a life-threatening adverse event, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant incapacity or substantial disruption of the ability to conduct normal life functions, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered serious when, based upon appropriate medical judgment, they may jeopardize the patient or subject and may require

medical or surgical intervention to prevent one of the outcomes listed in this definition. Examples of such medical events include allergic bronchospasm requiring intensive treatment in an emergency room or at home, blood dyscrasias or convulsions that do not result in inpatient hospitalization, or the development of drug dependency or drug abuse.

Suspected adverse reaction means any adverse event for which there is a reasonable possibility that the drug caused the adverse event. For the purposes of IND safety reporting, "reasonable possibility" means there is evidence to suggest a causal relationship between the drug and the adverse event. Suspected adverse reaction implies a lesser degree of certainty about causality than adverse reaction, which means any adverse event caused by a drug.

Unexpected adverse event or *unexpected suspected adverse reaction*. An adverse event or suspected adverse reaction is considered "unexpected" if it is not listed in the investigator brochure or is not listed at the specificity or severity that has been observed; or, if an investigator brochure is not required or available, is not consistent with the risk information described in the general investigational plan or elsewhere in the current application, as amended. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the investigator brochure referred only to elevated hepatic enzymes or hepatitis. Similarly, cerebral thromboembolism and cerebral vasculitis would be unexpected (by virtue of greater specificity) if the investigator brochure listed only cerebral vascular accidents. "Unexpected," as used in this definition, also refers to adverse events or suspected adverse reactions that are mentioned in the investigator brochure as occurring with a class of drugs or as anticipated from the pharmacological properties of the drug, but are not specifically mentioned as occurring with the particular drug under investigation.

(b) *Review of safety information*. The sponsor must promptly review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from foreign or domestic sources, including information derived from any clinical or epidemiological investigations, animal or in vitro studies, reports in the scientific literature, and unpublished scientific papers, as well as reports from foreign regulatory authorities and reports of foreign commercial marketing experience for drugs that are not marketed in the United States.

(c)(1) *IND safety reports*. The sponsor must notify FDA and all participating investigators (i.e., all investigators to whom the sponsor is providing drug under its INDs or under any investigator's IND) in an IND safety report of potential serious risks, from clinical trials or any other source, as soon as possible, but in no case later than 15 calendar days after the sponsor determines that the information qualifies for reporting under paragraph (c)(1)(i), (c)(1)(ii), (c)(1)(iii), or (c)(1)(iv) of this section. In each IND safety report, the sponsor must identify all IND safety reports previously submitted to FDA concerning a similar suspected adverse reaction, and must analyze the significance of the suspected adverse reaction in light of previous, similar reports or any other relevant information.

(i) *Serious and unexpected suspected adverse reaction*. The sponsor must report any suspected adverse reaction that is both serious and unexpected. The sponsor must report an adverse event as a suspected adverse reaction only if there is evidence to suggest a causal relationship between the drug and the adverse event, such as:

(A) A single occurrence of an event that is uncommon and known to be strongly associated with drug exposure (e.g., angioedema, hepatic injury, Stevens-Johnson Syndrome);

(B) One or more occurrences of an event that is not commonly associated with drug exposure, but is otherwise uncommon in the population exposed to the drug (e.g., tendon rupture);

(C) An aggregate analysis of specific events observed in a clinical trial (such as known consequences of the underlying disease or condition under investigation or other events that commonly occur in the study population independent of drug therapy) that indicates those events occur more frequently in the drug treatment group than in a concurrent or historical control group.

(ii) *Findings from other studies*. The sponsor must report any findings from epidemiological studies, pooled analysis of multiple studies, or clinical studies (other than those reported under paragraph (c)(1)(i) of this section), whether or not conducted under an IND, and whether or not conducted by the sponsor, that suggest a significant risk in humans exposed to the drug. Ordinarily, such a finding would result in a safety-related change in the protocol, informed consent, investigator brochure (excluding routine updates of these documents), or other aspects of the overall conduct of the clinical investigation.

(iii) *Findings from animal or in vitro testing*. The sponsor must report any findings from animal or in vitro testing, whether or not conducted by the sponsor, that suggest a significant risk in humans exposed to the drug, such as reports of mutagenicity, teratogenicity, or carcinogenicity, or reports of significant organ toxicity at or near the expected human exposure. Ordinarily, any such findings would result in a safety-related change in the protocol, informed consent, investigator brochure (excluding routine updates of these documents), or other aspects of the overall conduct of the clinical investigation.

(iv) *Increased rate of occurrence of serious suspected adverse reactions*. The sponsor must report any clinically important increase in the rate of a serious suspected adverse reaction over that listed in the protocol or investigator brochure.

(v) *Submission of IND safety reports*. The sponsor must submit each IND safety report in a narrative format or on FDA Form 3500A or in an electronic format that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files). The sponsor may submit foreign suspected adverse reactions on a Council for International Organizations of Medical Sciences (CIOMS) I Form instead of a FDA Form 3500A. Reports of overall findings or pooled analyses from published and unpublished in vitro, animal, epidemiological, or clinical studies must be submitted in a narrative format. Each notification to FDA must bear prominent identification of its contents, i.e., "IND Safety Report," and must be transmitted to the review division in the Center for Drug Evaluation and Research or in the Center for Biologics Evaluation and Research that has responsibility for review of the IND. Upon request from FDA, the sponsor must submit to FDA any additional data or information that the agency deems necessary, as soon as possible, but in no case later than 15 calendar days after receiving the request.

(2) *Unexpected fatal or life-threatening suspected adverse reaction reports*. The sponsor must also notify FDA of any unexpected fatal or life-threatening suspected adverse reaction as soon as possible but in no case later than 7 calendar days after the sponsor's initial receipt of the information.

(3) *Reporting format or frequency*. FDA may require a sponsor to submit IND safety reports in a format or at a

frequency different than that required under this paragraph. The sponsor may also propose and adopt a different reporting format or frequency if the change is agreed to in advance by the director of the FDA review division that has responsibility for review of the IND.

(4) *Investigations of marketed drugs.* A sponsor of a clinical study of a drug marketed or approved in the United States that is conducted under an IND is required to submit IND safety reports for suspected adverse reactions that are observed in the clinical study, at domestic or foreign study sites. The sponsor must also submit safety information from the clinical study as prescribed by the postmarketing safety reporting requirements (e.g., §§ 310.305, 314.80, and 600.80 of this chapter).

(5) *Reporting study endpoints.* Study endpoints (e.g., mortality or major morbidity) must be reported to FDA by the sponsor as described in the protocol and ordinarily would not be reported under paragraph (c) of this section. However, if a serious and unexpected adverse event occurs for which there is evidence suggesting a causal relationship between the drug and the event (e.g., death from anaphylaxis), the event must be reported under § 312.32(c)(1)(i) as a serious and unexpected suspected adverse reaction even if it is a component of the study endpoint (e.g., all-cause mortality).

(d) *Followup.* (1) The sponsor must promptly investigate all safety information it receives.

(2) Relevant followup information to an IND safety report must be submitted as soon as the information is available and must be identified as such, i.e., "Followup IND Safety Report."

(3) If the results of a sponsor's investigation show that an adverse event not initially determined to be reportable under paragraph (c) of this section is so reportable, the sponsor must report such suspected adverse reaction in an IND safety report as soon as possible, but in no case later than 15 calendar days after the determination is made.

(e) *Disclaimer.* A safety report or other information submitted by a sponsor under this part (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the sponsor or FDA that the report or information constitutes an admission that the drug caused or contributed to an adverse event. A sponsor need not admit, and may deny, that the report or information submitted by the sponsor constitutes an admission that the drug caused or contributed to an adverse event.

■ 3. Section 312.64 is amended by revising paragraph (b) to read as follows:

§ 312.64 Investigator reports.

* * * * *

(b) *Safety reports.* An investigator must immediately report to the sponsor any serious adverse event, whether or not considered drug related, including those listed in the protocol or investigator brochure and must include an assessment of whether there is a reasonable possibility that the drug caused the event. Study endpoints that are serious adverse events (e.g., all-cause mortality) must be reported in accordance with the protocol unless there is evidence suggesting a causal relationship between the drug and the event (e.g., death from anaphylaxis). In that case, the investigator must immediately report the event to the sponsor. The investigator must record nonserious adverse events and report them to the sponsor according to the timetable for reporting specified in the protocol.

* * * * *

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

■ 4. The authority citation for 21 CFR part 320 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 371.

■ 5. Section 320.31 is amended in paragraphs (d)(1) and (d)(2) by removing the word "shall" and by adding in its place the word "must," and by removing "and" at the end of paragraph (d)(1) and replacing "this chapter." at the end of paragraph (d)(2) with "this chapter; and", and by adding paragraph (d)(3) to read as follows:

§ 320.31 Applicability of requirements regarding an "Investigational New Drug Application."

* * * * *

(d) * * *

(3) The person conducting the study, including any contract research organization, must notify FDA and all participating investigators of any serious adverse event, as defined in § 312.32(a), observed during the conduct of the study as soon as possible but in no case later than 15 calendar days after becoming aware of its occurrence. Each report must be submitted on FDA Form 3500A or in an electronic format that FDA can process, review, and archive. FDA will periodically issue guidance on how to provide the electronic submission (e.g., method of transmission, media, file formats, preparation and organization of files). Each report must bear prominent identification of its contents, i.e., "bioavailability/bioequivalence safety report." The person conducting the study, including any contract research organization, must also notify FDA of any fatal or life-threatening adverse event from the study as soon as possible but in no case later than 7 calendar days after becoming aware of its occurrence. Each notification under this paragraph must be submitted to the Director, Office of Generic Drugs in the Center for Drug Evaluation and Research at FDA. Relevant followup information to a bioavailability/bioequivalence safety report must be submitted as soon as the information is available and must be identified as such, i.e., "Followup bioavailability/bioequivalence safety report." Upon request from FDA, the person conducting the study, including any contract research organization, must submit to FDA any additional data or information that the agency deems necessary, as soon as possible, but in no case later than 15 calendar days after receiving the request.

Dated: September 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24296 Filed 9–28–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0620]

RIN 1625–AA00

Safety Zone: Monte Foundation Firework Display, Monterey, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Monterey Bay off the fishing pier of Seacliff State Beach, Santa Cruz, CA in support of the Monte Foundation Firework Display. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons and vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission from the Captain of the Port or her designated representative.

DATES: This rule is effective from 7 a.m. through 9:30 p.m. on October 8, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0620 and are available online by going

to *http://www.regulations.gov,* inserting USCG–2010–0620 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Ensign Liz Ellerson, U.S. Coast Guard Sector San Francisco; telephone 415–399–7436, e-mail *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that it would be impracticable to publish a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Basis and Purpose

The Monte Foundation Firework Display is scheduled to take place on October 8, 2010, on the navigable waters of Seacliff State Beach, in Monterey Bay, off of Santa Cruz, CA. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks launch site during loading of the pyrotechnics, and during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barges. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

During the set up of the fireworks and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet. From 8:45 p.m. until 9:05 p.m., the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 1,000 feet.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site while the fireworks are set up, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

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 and 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 rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

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 may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas off San Francisco, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions 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)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–359 to read as follows:

§ 165.T11–359 Safety zone; Monte Foundation Firework Display, Santa Cruz, CA

(a) *Location.* This temporary safety zone is established for the waters of Seacliff State Beach, in Monterey Bay, off of Santa Cruz, CA. The fireworks launch site will be located in position 36°58′11.20″ N, 121°54′36.79″ W (NAD 83). From 7 a.m. through 8:44 p.m., and from 9:06 p.m. until 9:30 p.m. on October 8, 2010, the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet. From 8:45 p.m. until 9:05 p.m. the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 1,000 feet.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23 of this title, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at telephone 415–399–3547.

(d) *Effective period.* This section is effective from 7 a.m. through 9:30 p.m. on October 8, 2010.

Dated: September 15, 2010.

C.L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–24364 Filed 9–28–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0138]

RIN 1625–AA00

Safety Zone; New York Air Show at Jones Beach State Park, Wantagh, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent safety zone for the annual New York Air Show at Jones Beach State Park in Wantagh, New York. This safety zone is necessary to provide for the safety of navigation and protection of the maritime public from the hazards inherent with an air show which consists of aircraft performing aerobatic maneuvers over the Atlantic Ocean off of Jones Beach State Park.

DATES: This rule is effective October 29, 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–2010–0138 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0138 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 rule, call or e-mail: Petty Officer Joseph Graun, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *e-mail: Joseph.L.Graun@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 April 21, 2010, we published a notice of proposed rulemaking (NPRM) entitled: Safety Zone; New York Air Show at Jones Beach State Park, Atlantic Ocean off of Jones Beach, Wantagh, NY, in the **Federal Register** (75 FR 20802). We received no comments or requests for a public meeting on the proposed rule.

Basis and Purpose

The Air Show consists of aircraft performing aerobatics in close proximity to other aircraft over a specified area of the Atlantic Ocean off of Jones Beach State Park. The safety zone will provide for the safety of the maritime community and spectators viewing the Air Show from the water should an accident, such as a collision of aircraft, occur during the Show.

Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound or by Designated On-scene Patrol Personnel. Any violation of the safety zone described herein is punishable by, among other things, civil and criminal penalties, *in rem* liability against the offending vessel, and the initiation of suspension or revocation proceedings against Coast Guard-issued merchant mariner credentials.

Background

The New York State Office of Parks, Recreation and Historic Preservation sponsors an annual air show at Jones Beach State Park during the week before Memorial Day. In the past the Coast Guard established temporary regulations for this event every year and was not previously published in the CFR. The Notice of Proposed Rulemaking process provided the opportunity for public comments to be voiced and eliminated the unnecessary burden of establishing temporary rules every year.

Discussion of Comments and Changes

During the Notice of Proposed Rulemaking process, the sponsor of the event informed the Coast Guard that the dates of the enforcement period needed to be changed. The original proposed dates for the safety zone were from May 24, 2010 until May 30, 2010 allowing enforcement of the safety zone during the air show practice sessions. There will no longer be a practice session; therefore, the safety zone will only be needed during the main event on the Thursday through Sunday before Memorial Day in May.

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.

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 may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of the Atlantic Ocean off of Jones Beach State Park, Jones Beach, New York covered by the safety zone.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: The zone would only be enforced for a temporary period each day over a four day period; and vessels may transit in all areas around the zone at all times.

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 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)(g), of the Instruction. This rule involves establishing safety zones and therefore falls within the categorical exclusion noted above. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.159 to read as follows:

§ 165.159 Safety Zone: New York Air Show at Jones Beach State Park, Wantagh, NY.

(a) *Location.* The following waters of the Atlantic Ocean off of Jones Beach State Park, Wantagh, NY are designated a safety zone: Beginning at a point on land located in Jones Beach State Park at approximate position 40°35′06″ N, 073°32′37″ W, then running east along the shoreline of Jones Beach State Park to approximate position 40°35′49″ N, 073°28′47″ W; then running south to a position in the Atlantic Ocean off of Jones Beach at approximate position 40°35′05″ N, 073°28′34″ W; then running west to approximate position 40°34′23″ N, 073°32′23″ W; then running north to the point of origin. All coordinates are North American Datum 1983.

(b) *Definitions.* The following definition applies to this section: *Designated On-scene Patrol Personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels who have been authorized to act on the behalf of the Captain of the Port Long Island Sound.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Long Island Sound or designated on-scene patrol personnel.

(2) All persons and vessels must comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel. On-scene Coast Guard patrol personnel include commissioned,

warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels.

(3) Upon being hailed by siren, radio, flashing light or other means from a U.S. Coast Guard vessel or other vessel with on-scene patrol personnel aboard, the operator of the vessel shall proceed as directed.

(4) Persons and vessels desiring to enter the regulated area may request permission to enter from the designated on scene patrol personnel by contacting them on VHF–16 or by a request to the Captain of the Port Long Island Sound via phone at (203) 468–4401.

(d) *Enforcement Period.* This rule will be enforced annually on the Thursday through Sunday before Memorial Day in May. Notification of the enforcement of the safety zone will be made via marine broadcasts and local notice to mariners.

Dated: May 24, 2010.

Daniel A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 2010–24236 Filed 9–28–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN24

Presumptions of Service Connection for Persian Gulf Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its adjudication regulations concerning presumptive service connection for certain diseases. This amendment implements a decision of the Secretary of Veterans Affairs that there is a positive association between service in Southwest Asia during certain periods and the subsequent development of certain infectious diseases in response to an October 16, 2006, report of the National Academy of Sciences (NAS), titled "Gulf War and Health Volume 5: Infectious Diseases." The intended effect of this amendment is to establish presumptive service connection for these diseases and to provide guidance regarding long-term health effects associated with these diseases.

DATES: *Effective Date:* This amendment is effective September 29, 2010.

Applicability Date: The provisions of this regulatory amendment apply to all applications for benefits pending before VA on or received by VA on or after September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas J. Hernandez, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9428. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 18, 2010, VA published a proposal in the **Federal Register** (75 FR 13051) to implement a decision of the Secretary of Veterans Affairs that there is a positive association between service in Southwest Asia during certain periods and the subsequent development of certain infectious diseases. We proposed to revise the title of the regulation to better reflect the content of the regulation and better reflect the authorizing statute (38 U.S.C. 1117); to establish presumptions of service connection for nine infectious diseases becoming manifest within a specified time after service in the Southwest Asia theater of operations or Afghanistan during certain time periods; and to reorganize the regulation to make clear the criteria applicable to each of the presumptions in the regulation.

VA provided a 60-day comment period that expired on May 17, 2010. VA received 18 comments in response to the proposed rule. Of these, five comments expressed general agreement with and support for this amendment. We also received a number of comments from veterans regarding their individual claims for veterans benefits. We do not respond to these comments in this notice as they are beyond the scope of this rulemaking. For the reasons explained in this notice, this final rule contains no changes from the proposed rule.

One commenter suggested that presumptive service-connection be granted for service in Turkey during the Persian Gulf War. The areas considered in the NAS review on which this rule is based were those areas of south-central and southwest Asia generally corresponding to the theaters of operations for the 1991 Gulf war, Operation Enduring Freedom (OEF), and Operation Iraqi Freedom (OIF) as designated by Executive Order. Executive Order 12744 (Jan. 12, 1991); 60 FR 6665 (Feb. 3, 1995); Executive Order 13239 (Dec. 12, 2001). Turkey was not included in that review. We therefore make no change based on this comment. Although the NAS report did not include Turkey in the list of geographic areas where the nine infectious diseases are endemic, we note that no veteran is prevented from attempting to establish service connection on a direct basis by presenting evidence linking the veteran's post-service disability to an infection contracted during service or any other circumstance in service.

One commenter suggested that VA recognize myalgic encephalomyelitis, neurasthenia, multiple chemical sensitivities, and chronic mononucleosis as "medically unexplained chronic multisymptom illnesses" under 38 CFR 3.317(a)(2)(i)(B). The purpose of this rulemaking is to add presumptions for infectious diseases based on findings by NAS in "Gulf War and Health Volume 5: Infectious Diseases." That report did not address the issue of "medically unexplained chronic multisymptom illnesses." The comment, therefore, is outside of the scope of this rulemaking.

One commenter recommended that the rule authorize specific treatment for certain diseases. The purpose of this rule is to amend adjudication regulations. Treatment protocols for diseases and disabilities are outside the scope of this regulation, and, outside the scope of 38 CFR part 3. For this reason, we make no change based on this comment.

This same commenter suggested that infections with *Mycoplasma* species be added to the list of presumptive infectious diseases. The NAS did not include *Mycoplasma* species among the nine infectious diseases they selected. The recent NAS report specifically focused on scientific and medical literature addressing the incidence of long-term health effects in individuals who had been diagnosed with the primary infectious disease and stated findings with respect to only the strength of the evidence for associations between the primary infectious diseases and the secondary health effects. The NAS evaluated the published, peer-reviewed scientific and medical literature on long-term health effects associated with infectious diseases pertinent to service in Southwest Asia and those known to have been of special concern to veterans deployed to that area. The NAS identified over 20,000 potentially relevant scientific reports, and focused on 1,200 that had the necessary scientific quality.

The NAS initially identified approximately 100 diseases that are known to be endemic to Southwest Asia. Because those diseases would in most instances become manifest within a relatively short time after infection, NAS eliminated from consideration any disease that had never been reported in any U.S. troops within a reasonable

period following Persian Gulf deployments. The NAS also eliminated from consideration any diseases not known to produce long-term health effects. On that basis, the NAS limited the list of diseases to the nine that:

(1) Are prevalent in Southwest Asia,

(2) Have been diagnosed among U.S. troops serving there, and

(3) Are known to cause long-term adverse health effects.

NAS did not include mycoplasma infection among the conditions meeting these criteria. NAS addressed mycoplasma infections as an issue of special concern to Gulf War Veterans because some studies have suggested that such infections may be linked to Gulf War Veterans' health problems. However, after reviewing the evidence, NAS concluded that mycoplasma infections are not related to the symptoms reported by Gulf War Veterans. For these reasons, we make no change based on this comment.

One commenter suggested that the time period allowed for presumptive service-connection be enlarged due to possible delays in seeking treatment. The diseases with 1-year presumptive periods are consistent with the general 1-year presumptive period for tropical diseases currently in 38 U.S.C. 1112(a)(2). The diseases with 1-year presumptive periods are also consistent with medical principles, reflected in the NAS report, that those diseases ordinarily would be manifest within a short period following infection. We believe the 1-year presumptive period would be sufficient to encompass infectious diseases that are likely to have resulted from infection during service in the Southwest Asia theater of operations or Afghanistan, and we, therefore, make no change based on this comment.

One commenter was concerned that the proposed rule does not address effective dates for claims previously denied service-connection for a condition that is now presumptively service-connected. The commenter also averred that the effective dates under the proposed rule should be governed by 38 CFR 3.816. The effective date for the addition of presumptive diseases is mandated by statute; it is not at the discretion of the Secretary of Veterans Affairs. Section 1118, title 38, United States Code, provides detailed instructions as to promulgation of regulations relating to presumptions of service connection for illnesses associated with service in the Persian Gulf during the Persian Gulf War. The statute prescribes that when the Secretary determines that such a presumption is warranted, "the Secretary shall * * * issue proposed regulations setting forth the * * * determination." 38 U.S.C. 1118(c)(2). The Secretary must then "issue final regulations" which "shall be effective on the date of issuance." 38 U.S.C. 1118(c)(4). Under 38 U.S.C. 5110(g), the effective date of an award based on a new presumption in a VA regulation may not be earlier than the effective date of the new presumption.

Section 3.816 applies only to class members of the United States District Court class-action case *Nehmer* v. *United States Department of Veterans Affairs,* No. CV–86–6160 TEH (N.D. Cal.). *See* 38 C.F.R. 3.816(a)(1) (defining *Nehmer* class members). Section 3.816 is the result of a stipulation and order in the *Nehmer* case, and it operates outside the statutory bounds that govern other claims for service connection. Section 3.816 will not apply to any claims under 38 CFR 3.317, and we make no change to the rule based on this comment.

One commenter suggested that examples of possible neurological symptoms for West Nile virus be included in the regulation. Identifying the symptoms or findings that may support a diagnosis of any of the infectious diseases is a factual issue to be addressed based on medical evidence in individual cases and is beyond the scope of this rule. As no examples of symptoms are provided for any other disease, and the commenter did not explain what distinguishes West Nile virus from other infectious diseases such that its symptoms should be listed, we make no change based upon this comment.

One commenter suggested that the term "affirmative evidence" should be replaced with the term "clear and convincing evidence" describing evidence required to rebut the presumption. The general evidentiary standard governing VA factual determinations on issues material to the resolution of claims is set out in 38 U.S.C. 5107. Although § 5107 does not explicitly state an evidentiary standard, VA interprets it to provide a "preponderance of the evidence" standard. "The 'clear and convincing' standard is 'reserved to protect particularly important interests in a limited number of civil cases.'" *Thomas* v. *Nicholson,* 423 F.3d 1279, 1283 (Fed. Cir. 2005) *quoting California ex rel Cooper* v. *Mitchell Bros.' Santa Ana Theater,* 454 U.S. 90, 93 (1981). In veterans' cases, Congress has established specific, heightened evidentiary standards for certain determinations, *e.g.,* 38 U.S.C. 1111 and 1154(b), but notably Congress did not do so for determinations under 38 U.S.C. 1117 or 1118. Therefore, VA makes no changes based upon this comment.

The same commenter suggested that a medical opinion should not be requested by VA when existing medical evidence is sufficient for rating purposes. Section 5125 provides that,"[f]or purposes of establishing any claim for benefits under chapter 11 or 15 of [title 38], a report of a medical examination administered by a private physician that is provided by a claimant in support of a claim for benefits * * * may be accepted without a requirement for confirmation by an examination by a physician employed by the Veterans Health Administration [(VHA)] if the report is sufficiently complete to be adequate for the purpose of adjudicating such claim." *See also* 38 CFR 3.326. Because this matter is addressed by those authorities and is beyond the scope of this rule, VA makes no change based upon this comment.

One commenter suggested that presumptive service-connection should be extended to complications of anthrax immunization. The charge to NAS that resulted in "Gulf War and Health Volume 5: Infectious Diseases" was to evaluate the published, peer-reviewed scientific and medical literature on long-term health effects associated with infectious diseases pertinent to service in Southwest Asia. We make no change based on this comment because it is outside of the scope of this rulemaking.

Moreover, NAS previously issued a report titled, Gulf War and Health, Volume 1: "Depleted Uranium, Sarin, Pyridostigmine Bromide, Vaccines," on January 1, 2000. In that report, NAS limited its analysis to the health effects of depleted uranium, the chemical warfare agent sarin, vaccinations against botulism toxin and anthrax, and pyridostigmine bromide. On July 6, 2001, VA published a notice in the **Federal Register** announcing the Secretary's determination that the available evidence did not warrant a presumption of service connection for any disease discussed in that report. *See* 66 FR 35702 (2001).

One commenter suggested that the presumptive period in 38 CFR 3.317(a)(1)(i), in which certain disabilities due to undiagnosed illnesses manifest to a degree of 10 percent or more are attributable to service in the Southwest Asia theater of operations, be extended indefinitely. Public Law 103–446 directed the Secretary to prescribe by regulation the period of time (presumptive period) following service in the Southwest Asia theater of operations determined to be appropriate

for the manifestation of an illness warranting payment of compensation. It further directed that the Secretary's determination of a presumptive period be made only following a review of any credible medical or scientific evidence and the historical treatment afforded disabilities for which manifestation periods have been established and taking into account other pertinent circumstances regarding the experiences of veterans of the Persian Gulf War. Because the purpose of this rulemaking was to add presumptions for infectious diseases, any issue regarding undiagnosed illnesses was neither raised nor addressed in the proposed rulemaking and is, therefore, outside of the scope of this rulemaking. In the **Federal Register** of December 5, 2007 (72 FR 68507), VA extended the presumption period for undiagnosed illnesses to December 31, 2011, and stated that VA may consider further extensions in the future.

For clarity, we have made several changes to the proposed rule. Regarding section 3.317(c)(1), we have added the introductory words "Except as provided by paragraph (c)(4) of the section," in order to notify claimants that the presumptions can be rebutted. We also changed the phrase "becomes manifest in a Persian Gulf veteran, as defined in paragraph (e)(1) of this section or a veteran who served on active military, naval, or air service in Afghanistan on or after September 19, 2001," to the phrase "becomes manifest in a veteran with a qualifying period of service." This change mirrors the language in paragraph (c)(3)(ii) and avoids restating a definition already provided in the regulation. Regarding paragraph (e), we are moving the phrase "during the Persian Gulf War" from paragraph (e)(1) to (e)(2), as it read in the previous rule. In the proposed rule, we explained that we intended to redesignate current paragraph (d) as paragraph (e), but in doing so we inadvertently moved the phrase "during the Persian Gulf War" from (1) to (2). The changes that we have made to the final rule are nonsubstantive.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that will raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.009, Veterans Medical Care Benefits; 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the **Federal Register** for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on July 7, 2010, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: September 23, 2010.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

■ For the reasons set out in the preamble, VA is amending 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.317 to read as follows:

§ 3.317 Compensation for certain disabilities occurring in Persian Gulf veterans.

(a) *Compensation for disability due to undiagnosed illness and medically unexplained chronic multisymptom illnesses.* (1) Except as provided in paragraph (a)(7) of this section, VA will pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who

exhibits objective indications of a qualifying chronic disability, provided that such disability:

(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations, or to a degree of 10 percent or more not later than December 31, 2011; and

(ii) By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.

(2)(i) For purposes of this section, a *qualifying chronic disability* means a chronic disability resulting from any of the following (or any combination of the following):

(A) An undiagnosed illness;

(B) The following medically unexplained chronic multisymptom illnesses that are defined by a cluster of signs or symptoms:

(1) Chronic fatigue syndrome;

(2) Fibromyalgia;

(3) Irritable bowel syndrome; or

(4) Any other illness that the Secretary determines meets the criteria in paragraph (a)(2)(ii) of this section for a medically unexplained chronic multisymptom illness.

(ii) For purposes of this section, the term *medically unexplained chronic multisymptom illness* means a diagnosed illness without conclusive pathophysiology or etiology that is characterized by overlapping symptoms and signs and has features such as fatigue, pain, disability out of proportion to physical findings, and inconsistent demonstration of laboratory abnormalities. Chronic multisymptom illnesses of partially understood etiology and pathophysiology will not be considered medically unexplained.

(3) For purposes of this section, "objective indications of chronic disability" include both "signs," in the medical sense of objective evidence perceptible to an examining physician, and other, non-medical indicators that are capable of independent verification.

(4) For purposes of this section, disabilities that have existed for 6 months or more and disabilities that exhibit intermittent episodes of improvement and worsening over a 6-month period will be considered chronic. The 6-month period of chronicity will be measured from the earliest date on which the pertinent evidence establishes that the signs or symptoms of the disability first became manifest.

(5) A qualifying chronic disability referred to in this section shall be rated using evaluation criteria from part 4 of this chapter for a disease or injury in which the functions affected, anatomical localization, or symptomatology are similar.

(6) A qualifying chronic disability referred to in this section shall be considered service connected for purposes of all laws of the United States.

(7) Compensation shall not be paid under this section for a chronic disability:

(i) If there is affirmative evidence that the disability was not incurred during active military, naval, or air service in the Southwest Asia theater of operations; or

(ii) If there is affirmative evidence that the disability was caused by a supervening condition or event that occurred between the veteran's most recent departure from active duty in the Southwest Asia theater of operations and the onset of the disability; or

(iii) If there is affirmative evidence that the disability is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(b) *Signs or symptoms of undiagnosed illness and medically unexplained chronic multisymptom illnesses.* For the purposes of paragraph (a)(1) of this section, signs or symptoms which may be manifestations of undiagnosed illness or medically unexplained chronic multisymptom illness include, but are not limited to:

(1) Fatigue.

(2) Signs or symptoms involving skin.

(3) Headache.

(4) Muscle pain.

(5) Joint pain.

(6) Neurological signs or symptoms.

(7) Neuropsychological signs or symptoms.

(8) Signs or symptoms involving the respiratory system (upper or lower).

(9) Sleep disturbances.

(10) Gastrointestinal signs or symptoms.

(11) Cardiovascular signs or symptoms.

(12) Abnormal weight loss.

(13) Menstrual disorders.

(c) *Presumptive service connection for infectious diseases.* (1) Except as provided in paragraph (c)(4) of this section, a disease listed in paragraph (c)(2) of this section will be service connected if it becomes manifest in a veteran with a qualifying period of service, provided the provisions of paragraph (c)(3) of this section are also satisfied.

(2) The diseases referred to in paragraph (c)(1) of this section are the following:

(i) Brucellosis.

(ii) Campylobacter jejuni.

(iii) Coxiella burnetii (Q fever).

(iv) Malaria.

(v) Mycobacterium tuberculosis.

(vi) Nontyphoid Salmonella.

(vii) Shigella.

(viii) Visceral leishmaniasis.

(ix) West Nile virus.

(3) The diseases listed in paragraph (c)(2) of this section will be considered to have been incurred in or aggravated by service under the circumstances outlined in paragraphs (c)(3)(i) and (ii) of this section even though there is no evidence of such disease during the period of service.

(i) With three exceptions, the disease must have become manifest to a degree of 10 percent or more within 1 year from the date of separation from a qualifying period of service as specified in paragraph (c)(3)(ii) of this section. Malaria must have become manifest to a degree of 10 percent or more within 1 year from the date of separation from a qualifying period of service or at a time when standard or accepted treatises indicate that the incubation period commenced during a qualifying period of service. There is no time limit for visceral leishmaniasis or tuberculosis to have become manifest to a degree of 10 percent or more.

(ii) For purposes of this paragraph (c), the term *qualifying period of service* means a period of service meeting the requirements of paragraph (e) of this section or a period of active military, naval, or air service on or after September 19, 2001, in Afghanistan.

(4) A disease listed in paragraph (c)(2) of this section shall not be presumed service connected:

(i) If there is affirmative evidence that the disease was not incurred during a qualifying period of service; or

(ii) If there is affirmative evidence that the disease was caused by a supervening condition or event that occurred between the veteran's most recent departure from a qualifying period of service and the onset of the disease; or

(iii) If there is affirmative evidence that the disease is the result of the veteran's own willful misconduct or the abuse of alcohol or drugs.

(d) *Long-term health effects potentially associated with infectious diseases.* (1) A report of the Institute of Medicine of the National Academy of Sciences has identified the following long-term health effects that potentially are associated with the infectious diseases listed in paragraph (c)(2) of this section. These health effects and diseases are listed alphabetically and are not categorized by the level of association stated in the National Academy of Sciences report (*see* Table to § 3.317). If a veteran who has or had an infectious disease identified in column A also has a condition

identified in column B as potentially related to that infectious disease, VA must determine, based on the evidence in each case, whether the column B condition was caused by the infectious disease for purposes of paying disability compensation. This does not preclude a finding that other manifestations of disability or secondary conditions were caused by an infectious disease.

(2) If a veteran presumed service connected for one of the diseases listed in paragraph (c)(2) of this section is diagnosed with one of the diseases listed in column "B" in the table within the time period specified for the disease in the same table, if a time period is specified or, otherwise, at any time, VA will request a medical opinion as to whether it is at least as likely as not that the condition was caused by the veteran having had the associated disease in column "A" in that same table.

TABLE TO § 3.317—LONG-TERM HEALTH EFFECTS POTENTIALLY ASSOCIATED WITH INFECTIOUS DISEASES

A	B
	Disease
Brucellosis	• Arthritis. • Cardiovascular, nervous, and respiratory system infections. • Chronic meningitis and meningoencephalitis. • Deafness. • Demyelinating meningovascular syndromes. • Episcleritis. • Fatigue, inattention, amnesia, and depression. • Guillain-Barré syndrome. • Hepatic abnormalities, including granulomatous hepatitis. • Multifocal choroiditis. • Myelitis-radiculoneuritis. • Nummular keratitis. • Papilledema. • Optic neuritis. • Orchioepididymitis and infections of the genitourinary system. • Sensorineural hearing loss. • Spondylitis. • Uveitis.
Campylobacter jejuni	• Guillain-Barré syndrome *if manifest within 2 months of the infection.* • Reactive Arthritis *if manifest within 3 months of the infection.* • Uveitis *if manifest within 1 month of the infection.*
Coxiella burnetii (Q fever)	• Chronic hepatitis. • Endocarditis. • Osteomyelitis. • Post-Q-fever chronic fatigue syndrome. • Vascular infection.
Malaria	• Demyelinating polyneuropathy. • Guillain-Barré syndrome. • Hematologic manifestations (particularly anemia after falciparum malaria and splenic rupture after vivax malaria). • Immune-complex glomerulonephritis. • Neurologic disease, neuropsychiatric disease, or both. • Ophthalmologic manifestations, particularly retinal hemorrhage and scarring. • *Plasmodium falciparum.* • *Plasmodium malariae.* • *Plasmodium ovale.* • *Plasmodium vivax.* • Renal disease, especially nephrotic syndrome.
Mycobacterium tuberculosis	• Active tuberculosis. • Long-term adverse health outcomes due to irreversible tissue damage from severe forms of pulmonary and extrapulmonary tuberculosis and active tuberculosis.
Nontyphoid Salmonella	• Reactive Arthritis *if manifest within 3 months of the infection.*
Shigella	• Hemolytic-uremic syndrome *if manifest within 1 month of the infection.* • Reactive Arthritis *if manifest within 3 months of the infection.*
Visceral leishmaniasis	• Delayed presentation of the acute clinical syndrome. • Post-kala-azar dermal leishmaniasis *if manifest within 2 years of the infection.* • Reactivation of visceral leishmaniasis in the context of future immunosuppression.
West Nile virus	• Variable physical, functional, or cognitive disability.

(e) *Service.* For purposes of this section:

(1) The term *Persian Gulf veteran* means a veteran who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War.

(2) The *Southwest Asia theater of operations* refers to Iraq, Kuwait, Saudi Arabia, the neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, the United Arab Emirates, Oman, the Gulf of Aden, the Gulf of Oman, the Persian Gulf, the Arabian Sea, the Red Sea, and the airspace above these locations.

(**Authority:** 38 U.S.C. 1117, 1118).

[FR Doc. 2010–24360 Filed 9–28–10; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0594; FRL–9208–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions From Industrial Solvent Cleaning Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE). This SIP revision consists of an addition to Maryland's Volatile Organic Compounds from Specific Processes Regulation. MDE has adopted standards for industrial solvent cleaning operations that satisfy the reasonably available control technology (RACT) requirements for sources of volatile organic compounds (VOCs) covered by control techniques guidelines (CTG). This amendment reduces VOC emissions from industrial solvent cleaning operations which will help Maryland attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on November 29, 2010 without further notice, unless EPA receives adverse written comment by October 29, 2010. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0594, by one of the following methods:

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

B. *E-mail: pino.maria@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0594, Maria Pino, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2010–0594. 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 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lewis, (215) 814–2037, or by e-mail at *lewis.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Clean Air Act (CAA) section 172(c)(1) provides that SIPs for nonattainment areas must include "reasonably available control measures" (RACM), including "reasonably available control technology," for sources of emissions. Section 182(b)(2)(A) provides that for certain nonattainment areas, States must revise their SIPs to include RACT for sources of VOC emissions covered by a CTG document issued after November 15, 1990 and prior to the area's date of attainment.

CAA section 183(e) directs EPA to list for regulation those categories of products that account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer and commercial products in areas that violate the NAAQS for ozone. The CTG is intended to provide state and local air pollution control authorities information that should assist them in determining RACT for VOC from industrial cleaning solvents operations.

In September 2006, EPA published a CTG for industrial solvent cleaning operations. This CTG lists the cleaning operations associated with industrial cleaning solvents, identifies the sources of VOC emissions from those cleaning operations, and describes the emissions threshold that applies to this CTG and available control options for addressing VOC emissions.

In February 1994, EPA published and Alternative Control Techniques (ACT) document for industrial cleaning solvents. This report describes alternative techniques that will reduce VOC emissions from those industrial cleaning solvents used to remove contaminants. The ACT document also provides a quantitative overview of cleaning solvents used and a model for accounting and tracking solvent usage. This document is also an appendix to the CTG document listed above.

II. Summary of SIP Revision

On April 22, 2010, the State of Maryland submitted a SIP revision (#10–03) to address sources of VOC emissions covered by EPA's CTG: Industrial Cleaning Solvents (*see* EPA 453/R–06–001, September 2006). This SIP revision adds a new regulation .09–1 under COMAR 26.11.19 (Volatile Organic Compounds from Specific Processes).

COMAR 26.11.19.09–1—Control of VOC Emissions from Industrial Solvent Cleaning Operations Other Than Cold and Vapor Degreasing—affects facilities that emit 15 pounds or more per day of VOCs (before consideration of controls) from the use of industrial solvent

cleaning operations other then cold and vapor degreasing. Exclusions include:

- Cleaning operations at sources subject to any other VOC regulation in COMAR 26.11.19:
- Cleaning of electrical and electric components;
- Cleaning of high precision optics;
- Stripping;
- Janitorial cleaning; cleaning of resin, coating, ink, and adhesive mixing, molding and application equipment;
- Cleaning operations in research and development laboratories;
- Cleaning operations in medical device or pharmaceutical manufacturing; and
- Cleaning operations related to performance or quality assurance testing of coatings, inks, or adhesives.

COMAR 26.11.19.09–1 requires the vapor pressure of the cleaning solution to be less than or equal to 8 millimeters of mercury (mm Hg) at 20° C before it may be used. This regulation also requires the maintenance of monthly records of the total solvent material used. These records must be made available to MDE upon request. Facilities affected by this regulation must also observe the work practice requirements, compliance procedures and test methods found in COMAR 26.11.19.02 (Applicability, Determining Compliance, Reporting, and General Requirements).

During the State's public comment period, a comment was received opposing the implementation of the 50 grams VOC per liter limit to digital printing operations. The commenter stated that the provisions contained in COMAR 26.11.19.18F include the use of cleaning solvents by digital printing operations; therefore digital operations should be exempt from this proposed regulation. In response Maryland concluded that digital printing sources are subject to the regulations under COMAR 26.11.19.18F, and are therefore exempt from the requirements of COMAR 26.11.19.09–1. EPA agrees with Maryland's response; since Maryland's definition of Industrial Solvent Cleaning Operations includes many exemptions, one of which excludes all sources subject to the requirements of any other VOC regulation in COMAR 26.11.19 (Volatile Organic Compounds from Specific Processes). COMAR 26.11.19.09–1A(6)(b)(ii), reads as follows: Industrial Solvent Cleaning Operations does not include cleaning operations at sources subject to any other VOC regulations in this subtitle.

III. Final Action

EPA is approving Maryland's SIP revision because it meets the requirement for establishing RACT for sources of VOC emissions covered by EPA's Industrial Cleaning Solvents CTG. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 29, 2010 without further notice unless EPA receives adverse comment by October 29, 2010. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 29, 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 pertaining to Maryland's adoption of RACT requirements for VOC emissions from industrial cleaning solvents may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: September 14, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

■ 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 V—Maryland

■ 2. In § 52.1070, the table in paragraph (c) is amended by adding an entry for COMAR 26.11.19.09–1 to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE MARYLAND SIP

Code of Maryland administrative regulations (COMAR) citation	Title/subject	State effective date	EPA approval date	Additional explanation/citation at 40 CFR 52.1100
*	*	*	*	*
	26.11.19 Volatile Organic Compounds from Specific Processes			
*	*	*	*	*
26.11.19.09–1	Control of VOC Emissions from Industrial Solvent Cleaning Operations Other Than Cold and Vapor Degreasing.	4/19/10	9/29/10 [Insert page number where the document begins].	New Regulation.
*	*	*	*	*

* * * * *

[FR Doc. 2010–24421 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2009–0067, EPA–HQ–SFUND–2010–0068, EPA–HQ–SFUND–2010–0069, EPA–HQ–SFUND–2010–0070, EPA–HQ–SFUND–2010–0074, EPA–HQ–SFUND–2010–0076; FRL–9207–3]

RIN 2050–AD75

National Priorities List, Final Rule No. 50

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds six sites to the NPL, all to the General Superfund Section.

DATES: *Effective Date:* The effective date for this amendment to the NCP is October 29, 2010.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, *see* section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, e-mail: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System ("HRS") score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (*see* 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites

to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.,* the "Jones Co. plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (*e.g.,* it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.,* where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation ("RI") "is a process undertaken * * * to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study ("FS") (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.,* institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, *see*

EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through *http://www.regulations.gov* (*see* table below for Docket Identification numbers). Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

Site name	City/county, state	Docket ID No.
General Dynamics Longwood	Longwood, FL	EPA–HQ–SFUND–2009–0067
Sanford Dry Cleaners	Sanford, FL	EPA–HQ–SFUND–2010–0068
Ten-Mile Drain	St. Clair Shores, MI	EPA–HQ–SFUND–2010–0069
Vienna Wells	Vienna, MO	EPA–HQ–SFUND–2010–0070
Black River PCBs	Jefferson County, NY	EPA–HQ–SFUND–2010–0074
Smokey Mountain Smelters	Knox County, TN	EPA–HQ–SFUND–2010–0076

B. What documents are available for review at the Headquarters Docket?

The Headquarters Docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. For sites that received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

C. What documents are available for review at the Regional Dockets?

The Regional Dockets contain all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional Dockets. For sites that received comments during the comment period, the Regional Docket also contains a Support Document that includes EPA's responses to comments.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional Dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the Regional Dockets is as follows:

Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1417.

Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4344.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., Mailcode 9T25, Atlanta, GA 30303; 404/562–8862.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Superfund Division SMR–7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/353–5821.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Suite 1200, Mailcode 6SFTS, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551–7335.

Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR–B, Denver, CO 80202–1129; 303/312–6484.

Karen Jurist, Region 9 (AZ, CA, HI, NV, AS, GU, MP), U.S. EPA, 75 Hawthorne Street, Mailcode SFD–9–1, San Francisco, CA 94105; 415/972–3219.

Ken Marcy, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mailcode ECL–112, Seattle, WA 98101; 206/463–1349.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/sites/npl/status.htm* or by contacting the Superfund Docket (*see* contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds the following six sites to the NPL, all to the General Superfund Section. The sites are presented in the table below:

State	Site name	City/county
FL	General Dynamics Longwood	Longwood.
FL	Sanford Dry Cleaners	Sanford.
MI	Ten-Mile Drain	St. Clair Shores.
MO	Vienna Wells	Vienna.
NY	Black River PCBs	Jefferson County.
TN	Smokey Mountain Smelters	Knox County.

B. Site Name Change

The Ten-Mile Drain site in St. Clair Shores, Michigan, was proposed to the NPL under a different name. The former name was St. Clair Shores Drain (*see* Proposed Rule at 75 FR 9843, March 4, 2010). EPA believes the new name, Ten-Mile Drain, more accurately identifies the site.

C. What did EPA do with the public comments it received?

EPA reviewed all comments received on the sites in this rule and responded to all relevant comments. This rule adds six sites to the NPL.

Four sites received no comments: Black River PCBs in Jefferson County, NY; Sanford Dry Cleaners in Sanford, FL; Smokey Mountain Smelters in Knox County, TN; and Vienna Wells in Vienna, MO.

One site being added to the NPL, General Dynamics Longwood in Longwood, FL, received extensive comments related to its HRS score. Responses to comments received on this site are contained in a publicly available support document published concurrently with this final rule.

One other site, Ten-Mile Drain (previously known as St. Clair Shores Drain), located in St. Clair Shores, MI, is being added to the NPL in this rule. Three comments were received but none related to the HRS score. One comment, submitted on behalf of dozens of homeowners, supported placing the Ten-Mile Drain site on the NPL and urged EPA to conduct a complete and timely remediation. The Superfund remedial process is designed to do just that. A second comment stated that the site should not be listed because the city of St. Clair Shores is under a court order to maintain the drain and should live up to its responsibility. In response, liability is an issue separate from listing and will be addressed later in the Superfund process. In the meantime, listing and subsequent investigation to determine risk needs to take place independent of any liability concerns.

The third comment raised several points. It urged EPA to change the name of the site from St. Clair Shores Drain to Ten-Mile Drain, which is the legally established drain under the Michigan Drain Code. EPA agrees with the commenter and has changed the name. Secondly, the comment urged EPA to add the Lake Crest, Bayview, and Rio Vista Street canals to the PCB-impacted areas in the HRS record. EPA did not include these canals as sources because the data were unclear whether the contamination found was the same or a separate release from contamination found in the Ten-Mile Drain and surrounding soils. EPA will consider this issue as the site investigation proceeds. The third point raised in this comment was that it seems likely that the PCBs were dumped on soil and migrated into the Ten-Mile Drain system rather than the other way around, and that the HRS package language should be changed to reflect this. In response, there is insufficient information available to determine if the contamination went from the drain into the surrounding soil or from the soils into the drainage system. Regardless, this has no impact on the HRS score for the site, which is based on contamination of both the drainage system and soil without regard to which came first.

All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at *http://www.regulations.gov.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is this final rule subject to Executive Order 12866 review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act apply to this final rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology

and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to 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 prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has EPA complied with the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this final rule?

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA 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." "Policies that have federalism implications" is defined in the Executive Order 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."

2. Does Executive Order 13132 apply to this final rule?

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to States or other levels of government. Thus, the requirements of the Executive Order do not apply to this final rule.

EPA believes, however, that this final rule may be of significant interest to State governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA therefore consulted with State officials and/or representatives of State governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. All sites included in this final rule were referred to EPA by States for listing. For all sites in this rule, EPA received letters of support either from the Governor or a State official who was delegated the authority by the Governor to speak on

their behalf regarding NPL listing decisions.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

2. Does Executive Order 13175 apply to this final rule?

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 apply to this final rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

1. What is 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 a "Statement of Energy Effects" when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a "significant energy action" on energy supply, distribution and use, reasonable alternatives to the action, and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this final rule?

This action is not a "significant energy action" as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this final rule is not likely to have any adverse energy impacts because adding a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this final rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. What is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

2. Does Executive Order 12898 apply to this rule?

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, tribal or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has EPA submitted this rule to Congress and the Government Accountability Office?

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, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

2. Could the effective date of this final rule change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What could cause a change in the effective date of this rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 22, 2010.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
FL	General Dynamics Longwood	Longwood.	
*	*	*	*
FL	Sanford Dry Cleaners	Sanford.	
*	*	*	*
MI	Ten-Mile Drain	St. Clair Shores.	
*	*	*	*
MO	Vienna Wells	Vienna.	
*	*	*	*
NY	Black River PCBs	Jefferson County.	
*	*	*	*
TN	Smokey Mountain Smelters	Knox County.	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be ≤28.50).
C = Sites on Construction Completion list.
S = State top priority (HRS score need not be ≤28.50)
P = Sites with partial deletion(s).

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2009–0588; FRL–9207–2]

RIN 2050–AD75

National Priorities List, Final Rule—Newtown Creek

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds the Newtown Creek site, located in Brooklyn/Queens, New York, to the General Superfund section of the NPL.

DATES: *Effective Date:* The effective date for this amendment to the NCP is October 29, 2010.

ADDRESSES: For addresses for the Headquarters and Region 2 dockets, as well as further details on what these dockets contain, *see* section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Terry Jeng, phone: (703) 603–8852, e-mail: *jeng.terry@epa.gov,* Site Assessment and Remedy Decisions Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204P); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal"

actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases of hazardous substances, pollutants or contaminants (42 U.S.C. 9601(23)).

C. What is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances, pollutants or contaminants. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing a Hazard Ranking System ("HRS") score and determining whether the facility is placed on the NPL.

D. How are sites listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL. (2) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658) and generally has updated it at least annually.

E. What happens to sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2), placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. Does the NPL define the boundaries of sites?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location where that contamination has come to be located, or from where that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site, properly understood, is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to, nor confined by, the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination, and is not meant to constitute any determination of liability at a site. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the Remedial Investigation ("RI") "is a process undertaken * * * to determine the nature and extent of the problem presented by the release" as more

information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study ("FS") (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, it can submit supporting information to the Agency at any time after it receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How are sites removed from the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

H. May EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, EPA initiated a policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and made available for productive use.

I. What is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL. For the most up-to-date information on the CCL, *see* EPA's Internet site at *http://www.epa.gov/superfund/cleanup/ccl.htm.*

J. What is the Sitewide Ready for Anticipated Use Measure?

The Sitewide Ready for Anticipated Use Measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0–36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to *http://www.epa.gov/superfund/programs/recycle/tools/index.html.*

II. Availability of Information to the Public

A. May I review the documents relevant to this final rule?

Yes, documents relating to the evaluation and scoring of the site in this final rule are contained in dockets located both at EPA Headquarters and in the EPA Region 2 office.

An electronic version of the public docket is available through *http://www.regulations.gov.* Use docket identification number EPA–HQ–SFUND–2009–0588. Although not all Docket materials may be available electronically, you may still access any of the publicly available Docket materials through the Docket facilities identified below in section II D.

B. What documents are available for review at the Headquarters Docket?

The Headquarters Docket for this rule contains the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. Since this site received comments during the comment period, the Headquarters Docket also contains a Support Document that includes EPA's responses to comments.

C. What documents are available for review at the Region 2 Docket?

The Region 2 Docket contains all the information in the Headquarters Docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score. These reference documents are available only in the Regional Dockets. Since this site received comments during the comment period, the Region 2 Docket also contains a Support Document that includes EPA's responses to comments.

D. How do I access the documents?

You may view the documents, by appointment only, after the publication of this rule. The hours of operation for the Headquarters Docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Please contact the Region 2 Docket for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW.; EPA West, Room 3334, Washington, DC 20004, 202/566–0276.

The contact information for the Region 2 Docket is as follows: Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

E. How may I obtain a current list of NPL sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/sites/npl/status.htm* or by contacting the

Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds the Newtown Creek site, located in Brooklyn/Queens, NY, to the General Superfund Section of the NPL.

B. What did EPA do with the public comments it received?

EPA received comments on the proposal to list the Newtown Creek site. EPA's responses to the comments, and the impacts, if any, on the HRS score, are presented in a support document that has been placed in the Headquarters and Region 2 dockets concurrently with the publication of this rule.

All comments that were received by EPA are contained in the Headquarters Docket and are also listed in EPA's electronic public Docket and comment system at *http://www.regulations.gov.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. What is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

2. Is this final rule subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

1. What is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

2. Does the Paperwork Reduction Act apply to this final rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

1. What is the Regulatory Flexibility Act?

Pursuant to 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 prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

2. How has EPA complied with the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

1. What is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and

adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Does UMRA apply to this final rule?

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of placing a site on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site listing does not impose any costs and would not require any action of a small government.

E. Executive Order 13132: Federalism

1. What is Executive Order 13132?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA 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." "Policies that have federalism implications" is defined in the Executive Order 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."

2. Does Executive Order 13132 apply to this final rule?

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to States or other levels of government. Thus, the requirements of the Executive Order do not apply to this final rule.

EPA believes, however, that this final rule may be of significant interest to the State government. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA therefore consulted with State officials early in the process of developing the rule to permit them to have meaningful and timely input into its development. The site in this final rule was referred to EPA by the State for listing. EPA received a letter of support from the Commissioner of the New York Department of Environmental Conservation who was delegated authority regarding NPL listing decisions by the Governor.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

1. What is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

2. Does Executive Order 13175 apply to this final rule?

This final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Listing a site on the NPL does not impose any costs on a tribe or require a tribe to take remedial action. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

1. What is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

2. Does Executive Order 13045 apply to this final rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage

1. What is 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 a "Statement of Energy Effects" when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a "significant energy action" on energy supply, distribution and use, reasonable alternatives to the action, and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this final rule?

This action is not a "significant energy action" as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this final rule is not likely to have any adverse energy impacts because adding a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

I. National Technology Transfer and Advancement Act

1. What is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

2. Does the National Technology Transfer and Advancement Act apply to this final rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

1. What is Executive Order 12898?

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

2. Does Executive Order 12898 apply to this rule?

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, tribal or local governments, this rule will neither increase nor decrease environmental protection.

K. Congressional Review Act

1. Has EPA submitted this rule to Congress and the Government Accountability Office?

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, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

2. Could the effective date of this final rule change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect, the Federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on State and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

3. What could cause a change in the effective date of this rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983), and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214, 1222 (DC Cir. 1996), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register.**

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 22, 2010.

Lisa Feldt,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by adding the following site in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
NY	Newtown Creek	Brooklyn/Queens.	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (HRS score need not be ≤ 28.50).
C = Sites on Construction Completion list.
S = State top priority (HRS score need not be ≤ 28.50)
P = Sites with partial deletion(s).

[FR Doc. 2010–24313 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Angelina County, Texas, and Incorporated Areas Docket No.: FEMA–B–1050			
Biloxi Creek North Tributary	Approximately 0.6 mile downstream of State Loop 287	+306	City of Lufkin.
	Just upstream of Loop 287	+329	
Cedar Creek	Just downstream of Lotus Lane	+278	City of Lufkin.
	Just upstream of State Highway 339	+299	
Cedar Creek North Tributary	Just upstream of Lotus Lane	+280	City of Lufkin.
	Approximately 1,070 feet upstream of Texas Southeastern Railroad.	+286	
Cedar Creek South Tributary	At the confluence with Cedar Creek	+253	City of Lufkin.
	Approximately 1,300 feet upstream of Berry Road	+287	
Cedar Creek Tributary 3	At the confluence with Cedar Creek	+239	City of Lufkin.
	Just upstream of Live Oak Lane	+266	
East Fork of West Branch Mill Creek.	At the confluence with Tributary to Mill Creek Tributary	+279	City of Lufkin.
	Just downstream of U.S. Route 69	+300	
Hurricane Creek	Approximately 0.7 mile downstream of College Drive	+232	City of Lufkin.
	Just downstream of the intersection of Conn Avenue and Chestnut Street.	+280	
Hurricane Creek East Tributary (E).	Approximately 0.6 mile upstream of Brentwood Drive	+269	City of Lufkin.
	At the confluence with Hurricane Creek	+273	
Hurricane Creek East Tributary (E) Tributary.	At the confluence with Hurricane Creek East Tributary (E)	+250	City of Lufkin.
	Approximately 0.5 mile upstream of Brentwood Drive	+267	
Hurricane Creek East Tributary (North).	Just downstream of Jones Street	+289	City of Lufkin.
	Just upstream of Whipporwill Street	+305	
Hurricane Creek East Tributary (South).	At the confluence with Unnamed Tributary 4 to Hurricane Creek.	+237	City of Lufkin.
	Just upstream of Pine Valley Drive	+265	
Hurricane Creek West Branch	At the confluence with Hurricane Creek	+250	City of Lufkin.
	Just upstream of Park Lane	+276	
Mill Creek Tributary	Approximately 1,486 feet downstream of Bonita Street	+290	City of Lufkin.
	Approximately 230 feet upstream of Martin Luther King Drive.	+304	
One Eyed Creek	Just downstream of Westwood Place	+289	City of Lufkin.
	Just downstream of Fuller Springs Drive	+309	
Shirley Creek	Just upstream of Loop 287	+262	City of Lufkin.
	Just upstream of Trenton Road	+297	
Shirley Creek Tributary 2	Just downstream of Loop 287	+294	City of Lufkin.
	Just downstream of Shady Pine Road	+310	
Shirley Creek Tributary 2 East Branch.	At the confluence with Shirley Creek Tributary 2	+277	City of Lufkin.
	Approximately 600 feet upstream of Freeman Street	+296	
Tributary to Mill Creek Tributary	Just downstream of the City Lake Dam	+272	City of Lufkin.
	Just downstream of U.S. Route 69	+305	
Tributary to Paper Mill Creek Tributary.	Just downstream of State Highway 103	+272	City of Lufkin.
	Approximately 675 feet upstream of Freeman Street	+290	
Unnamed Tributary 1 to Hurricane Creek.	At the confluence with Hurricane Creek	+259	City of Lufkin.
	Just upstream of FM 58	+293	
Unnamed Tributary 2 to Hurricane Creek.	At the confluence with Hurricane Creek	+247	City of Lufkin.
	Approximately 0.4 mile upstream of Tulane Road	+273	
Unnamed Tributary 3 to Hurricane Creek.	At the confluence with Hurricane Creek	+236	City of Lufkin.
	Just upstream of Loop 287	+264	
Unnamed Tributary 4 to Hurricane Creek.	At the confluence with Hurricane Creek East Tributary (South).	+237	City of Lufkin.
	Approximately 773 feet upstream of Crown Colony Drive	+272	
Unnamed Tributary to Papermill Creek.	At the limit of detailed study nearest to Kit McConnico Park.	+244	City of Lufkin.
	At the lower limit of detailed study (no physical reference available).	+252	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
	Approximately 0.6 mile downstream of Moffett Road	+252	
	Approximately 0.5 mile downstream of Moffett Road	+252	
	Approximately 1,800 feet downstream of Old Moffett Road	+254	
	Just upstream of Loop 287	+261	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Lufkin
Maps are available for inspection at 300 East Shepherd Avenue, Lufkin, TX 75901.

Bexar County, Texas, and Incorporated Areas
Docket No.: FEMA–B–7770

Ackerman Creek	At the confluence with Rosillo Creek	+651	City of San Antonio.
	Approximately 1,600 feet upstream of Candlemeadow Drive.	+698	
Balcones Creek	At the confluence with Cibolo Creek	+1,277	City of Fair Oaks Ranch, City of San Antonio, Unincorporated Areas of Bexar County.
	At the confluence with Tributary A	+1,580	
Beital Creek Tributary A	Approximately 600 feet upstream of the confluence with Beital Creek.	+723	City of San Antonio, City of Windcrest.
	Approximately 1,500 feet upstream of Jim Seal Drive	+792	
Bertal Creek	Just upstream of the confluence with Salado Creek	+697	City of San Antonio.
	Just upstream of Nacogdoches Road	+828	
Caracol Creek	Approximately 600 feet upstream of the confluence with Medio Creek.	+770	City of San Antonio.
	Approximately 3,700 feet upstream of West Military Drive	+854	
Catalpa Pershing Channel	Just upstream of U.S. Route 281	+661	City of San Antonio.
	Approximately 1,000 feet upstream of Mulberry Avenue	+672	
Chimenea Creek	At the confluence with Helotes Creek	+1,086	City of San Antonio.
	Approximately 5 miles upstream of Private Road	+1,398	
Comanche Creek	Approximately 4,500 feet downstream of Mauemann Road	+525	City of San Antonio.
	Approximately 700 feet upstream of Applewhite Road	+572	
Concepcion Creek	Approximately 400 feet downstream of Probandt Street	+592	City of San Antonio.
	Approximately 400 feet upstream of U.S. Route 90 West Access Road.	+683	
Culebra Creek	Approximately 1,800 feet upstream of the confluence with Leon Creek.	+779	City of San Antonio.
	Approximately 9,000 feet upstream of Galm Road	+1,003	
Culebra Creek Tributary A	Just downstream of Grissom Road	+792	City of San Antonio.
	Approximately 1,500 feet upstream of Dover Ridge	+899	
Culebra Creek Tributary B	Approximately 200 feet downstream of Culebra Road	+864	City of San Antonio.
	Approximately 600 feet upstream of Culebra Road	+868	
Culebra Creek Tributary C	Approximately 4,000 feet downstream of FM 1560 North	+895	City of Helotes, City of San Antonio.
	Approximately 500 feet upstream of Beverly Hills Road	+996	
Culebra Creek Tributary C–1	Approximately 800 feet upstream of the confluence with Culebra Creek Tributary C, at FM 1560 North.	+909	City of San Antonio.
	Approximately 1,800 feet upstream of Shaenfield Road	+923	
Culebra Creek Tributary D	Approximately 2,400 feet downstream of FM 1560 North	+892	City of San Antonio.
	Approximately 3,200 feet upstream of Gass Road	+960	
Culebra Creek Tributary E	Approximately 110 feet upstream of Galm Road	+953	City of San Antonio.
	Approximately 2,700 feet upstream of Remuda Ranch	+998	
Culebra Creek Tributary F	Approximately 1,500 feet upstream of Kallison Lane	+980	City of San Antonio.
	Approximately 6,200 feet upstream of Kallison Lane	+1,007	
Elm Creek	At the confluence with Mud Creek	+790	City of San Antonio.
	Approximately 900 feet upstream of Loop 1604 Access Road.	+834	
Elm Waterhole Creek	Approximately 4,300 feet downstream of Redland Road	+796	City of San Antonio.
	Approximately 2,700 feet downstream of Judson Road	+847	
Escondido Creek	Approximately 700 feet downstream of Private Road, near the confluence with Martinez Creek B.	+575	City of New Berlin, City of San Antonio.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
	Approximately 1,200 feet upstream of Binz-Engleman Road.	+695	
Fort Sam Houston Tributary	Just upstream of Road S–33 E	+645	City of San Antonio, City of Terrell Hills, Unincorporated Areas of Bexar County.
	Approximately 300 feet upstream of Rittiman Road	+746	
French Creek	Approximately 1,250 feet downstream of Private Road, at 7581 Bandera Road.	+826	City of San Antonio.
	Approximately 150 feet upstream of FM 1560, at French Creek.	+995	
French Creek Tributary A	Just upstream of Hausman Road South	+923	City of San Antonio.
	Just upstream of Loop 1604 West Access Road	+936	
French Creek Tributary B	Approximately 600 feet downstream of Loop 1604 West Access Road.	+929	City of San Antonio.
	Just upstream of Loop 1604 West Access Road	+937	
French Creek Tributary No. 2	Approximately 1,180 feet downstream of Braun Hollow	+848	City of San Antonio.
	Approximately 980 feet downstream of Braun Hollow	+849	
French Creek Tributary No. 4	Approximately 1,370 feet upstream of Guilbeau Road along French Creek.	+852	City of San Antonio.
	Approximately 970 feet upstream of Tezel Road	+908	
Government Canyon Tributary E.	Approximately 500 feet upstream of the confluence with Government Canyon.	+1,198	City of San Antonio.
	Approximately 900 feet upstream of the confluence with Government Canyon.	+1,216	
Government Canyon Creek	Approximately 950 feet upstream of the confluence with Culebra Creek.	+926	City of San Antonio.
	Approximately 1,300 feet upstream of Helotes Springs	+1,327	
Government Canyon Creek Tributary B.	Approximately 2,900 feet upstream of Galm Road, along Government Canyon Creek.	+968	City of San Antonio.
	Approximately 1.2 mile above Galm Road, along Government Canyon Creek.	+1,000	
Government Canyon Creek Tributary C.	Approximately 170 feet upstream of the confluence with Government Canyon.	+1,028	City of San Antonio.
	Approximately 1,600 feet upstream of the confluence with Government Canyon.	+1,055	
Government Canyon Creek Tributary A.	Approximately 1,050 feet upstream of Galm Road	+958	City of San Antonio.
	Approximately 3.5 miles upstream of Galm Road	+1,132	
Government Canyon Greek Tributary D.	Approximately 650 feet upstream of the confluence with Government Canyon Creek.	+1,176	City of San Antonio.
	Approximately 4,100 feet upstream of the confluence with Government Canyon Creek.	+1,216	
Helotes Creek	Approximately 2,000 feet upstream of the confluence with Culebra Creek.	+852	City of Grey Forest, City of Helotes, City of San Antonio.
	Approximately 3,000 feet upstream of Four Rogers Road	+1,240	
Helotes Creek Tributary A	Approximately 2,800 feet downstream of FM 1560 North	+970	City of Helotes, City of San Antonio.
	Approximately 700 feet upstream of Parrigin Road	+1,039	
Huebner Creek	Approximately 400 feet upstream of Ingram Road	+768	City of Leon Valley, City of San Antonio.
	Approximately 2,500 feet downstream of De Zavala Road	+956	
Huebner Creek Tributary A	Approximately 1,300 feet downstream of Eckhert Road	+843	City of San Antonio.
	Approximately 260 feet downstream of Southwell Road	+918	
Huesta Creek	Approximately 2,400 feet downstream of Old Babcock Road.	+922	City of San Antonio.
	Approximately 5,000 feet upstream of Arroyo Hondo	+1,102	
Huesta Creek Tributary A	Just upstream of Hausman Road	+957	City of San Antonio.
	Approximately 1,300 feet upstream of Old Cedar Boulevard.	+989	
Indian Creek	Approximately 4,000 feet downstream of Ripps Ranch Road.	+572	City of San Antonio.
	Approximately 600 feet upstream of Medina Base Road	+716	
Lee Creek	Just downstream of Hilltop Drive	+1,106	City of Grey Forest, City of San Antonio.
	Approximately 1,600 feet downstream of Babcock Road	+1,240	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Leon Creek	Approximately 2,500 feet upstream of Missouri Pacific Railroad along the Medina River.	+519	City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 4,900 feet upstream of Miranda Ridge	+1,400	
Leon Creek Overflow	Just upstream of Prue Road at the confluence with Leon Creek.	+889	City of San Antonio.
	Approximately 1,230 feet downstream of Hausman Road	+948	
Leon Creek Tributary B	Approximately 500 feet upstream of the confluence with Leon Creek.	+598	City of San Antonio.
	Approximately 130 feet downstream of Somerset Road	+624	
Leon Creek Tributary C	Approximately 750 feet upstream of the confluence with Leon Creek.	+635	City of San Antonio.
	Approximately 2,200 feet upstream of Southwest Military Drive.	+653	
Leon Creek Tributary D	Approximately 120 feet downstream of Kelly Drive	+667	Unincorporated Areas of Bexar County.
	Approximately 1,600 feet downstream of Growndon Road	+675	
Leon Creek Tributary E	At the confluence with Leon Creek	+672	Unincorporated Areas of Bexar County.
	Approximately 140 feet downstream of Unnamed Street on Lackland AFB.	+719	
Leon Creek Tributary E1	Approximately 210 feet upstream of the confluence with Leon Creek Tributary E.	+672	Unincorporated Areas of Bexar County.
	Approximately 100 feet upstream of Kenly Avenue	+738	
Leon Creek Tributary F	At the confluence with Leon Creek	+713	City of San Antonio.
	Just upstream of South Callaghan Road	+715	
Leon Creek Tributary J	Approximately 300 feet downstream of I–10 West	+1,107	City of San Antonio.
	Approximately 200 feet downstream of Cielo Vista Road	+1,174	
Leon Creek Tributary L	Approximately 150 feet upstream of Boerne Stage Road	+1,149	City of San Antonio.
	Approximately 1,900 feet upstream of Boerne Stage Road	+1,157	
Leon Creek Tributary M	Approximately 1,300 feet downstream of Boerne Stage Road.	+1,202	City of San Antonio.
	Approximately 2.18 miles upstream of Boerne Stage Road	+1,348	
Leon Creek Tributary N	Approximately 350 feet upstream of the confluence with Leon Creek at Unnamed Road.	+1,277	City of San Antonio.
	Approximately 3,700 feet upstream of Unnamed Road	+1,323	
Live Oak Slough	Approximately 1,700 feet downstream of Rife Lane	+559	City of San Antonio.
	Approximately 1,200 feet upstream of Old Pearsall Road at Loop 1604.	+617	
Lorence Creek	Approximately 100 feet downstream of Entrance Avenue	+736	City of San Antonio, Town of Hollywood Park.
	Just upstream of Sonterra Boulevard	+967	
Los Reyes Creek	Approximately 2,000 feet downstream of Antonio Drive	+1,026	City of Helotes, City of San Antonio.
	Approximately 4,200 feet upstream of State Highway 16 North.	+1,299	
Los Reyes Creek Tributary A	Approximately 300 feet upstream of the confluence with Los Reyes Creek.	+1,175	City of San Antonio.
	Approximately 250 feet upstream of Private Road at 18524 State Highway 16.	+1,210	
Lower French Creek	Approximately 170 feet downstream of Heliport Drive	+802	City of San Antonio.
	Approximately 100 feet downstream of Low Bid Lane	+825	
Lower Mud Creek	Just downstream of Wurzbach Parkway	+732	City of San Antonio.
	Approximately 6,000 feet upstream of westbound Loop 1604.	+893	
Macaway Creek	Approximately 4,000 feet downstream of U.S. Route 87	+509	City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 1,450 feet downstream of LaVernia Road	+614	
Martinez Creek B	At the confluence with Cibolo Creek	+527	City of New Berlin, City of San Antonio, City of St. Hedwig.
	Approximately 1,400 feet upstream of Crestway Drive	+822	
Maverick Creek	Approximately 400 feet upstream of Old Babcock Road	+926	City of San Antonio.
	Approximately 1,400 feet upstream of Kyle Seale Parkway	+1,174	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Medina River	Approximately 2,000 feet upstream of I–37 South, along the San Antonio River.	+478	City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 5,000 feet upstream of Gross Lane	+690	
Medio Creek	Approximately 100 feet downstream of Campground Road	+556	City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 8,700 feet upstream of Talley Road	+875	
Meusebach Creek	Approximately 1,370 feet downstream of private road at 188 Specht Road.	+1,111	City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 1,360 feet upstream of Blanco Road	+1,140	
New Braunfels Avenue, Austin Highway and Broadway Drain.	At the confluence with the San Antonio River	+684	City of Alamo Heights, City of San Antonio, City of Terrell Hills.
	Just upstream of Ridgehaven Place	+794	
Nichols Creek	Just downstream of Aue Road	+1,131	City of San Antonio.
	Approximately 1,700 feet upstream of Old Fredericksburg Access Road.	+1,241	
Nichols Creek Tributary 1	Just downstream of I–10 West Access Road	+1,158	City of San Antonio.
	Approximately 900 feet downstream of Lost Creek Way	+1,166	
Olmos Creek (Lower and Upper Reaches).	At the confluence with the San Antonio River	+722	City of Alamo Heights, City of Castle Hills, City of San Antonio, City of Shavano Park.
	Approximately 3,000 feet upstream of Lou Mell Road	+1,047	
Panther Spring Creek	Just upstream of North Loop Road	+796	City of San Antonio, Town of Hollywood Park.
	Approximately 3,000 feet upstream of Loop 1604	+963	
Pecan Creek	Approximately 550 feet upstream of the confluence with Leon Creek.	+1,237	City of San Antonio.
	Just downstream of Private Road at 26690 Toutant Beauregard Road.	+1,366	
Polecat Creek	Approximately 2,900 feet downstream of Cagnon Road	+618	City of San Antonio.
	Just upstream of South Keller Road	+703	
Quail Creek	Just downstream of I–410	+709	City of San Antonio.
	Approximately 1,300 feet upstream of Oakhaven Road	+754	
Ranch Creek	Approximately 650 feet upstream of the confluence with Los Reyes Creek.	+1,092	City of San Antonio.
	Approximately 4,000 feet upstream of the confluence with Los Reyes Creek.	+1,123	
Rittman Creek	Just downstream of Summer Fest Drive	+689	City of Kirby, City of San Antonio.
	Approximately 3,000 feet upstream of Rittman Road	+719	
Rock Creek	At the confluence with Olmos Creek	+763	City of San Antonio.
	Approximately 600 feet downstream of Datapoint Road	+894	
Rosillo Creek	Approximately 400 feet upstream of Old Corpus Christi Road.	+532	City of Kirby, City of San Antonio.
	Approximately 550 feet upstream of Walzem Road	+756	
Rundale Creek	Approximately 250 feet downstream of Private Road, at Upper Balcones Road.	+1,457	Unincorporated Areas of Bexar County.
	Approximately 4,050 feet upstream of Upper Balcones Road.	+1,639	
Salado Creek	At the confluence with the San Antonio River	+599	City of San Antonio, City of Shavano Park, Unincorporated Areas of Bexar County.
	Approximately 100 feet downstream of Loop West Access Road.	+948	
San Antonio River	Approximately 4.5 miles downstream of Loop 1604	+435	City of Alamo Heights, City of San Antonio.
	Just downstream of Almos Dam	+685	
Selma Creek	At the confluence with Cibolo Creek	+743	City of San Antonio, City of Selma.
	Approximately 1,900 feet upstream of Loop 1604	+850	
Slick Ranch Creek	Approximately 1,000 feet downstream of Pinn Road	+711	City of San Antonio.
	Approximately 1,100 feet upstream of Rogers Road	+874	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Slick Ranch Creek Tributary B	Approximately 650 feet upstream of Richland Hills Road ..	+761	City of San Antonio.
	Approximately 1,400 feet upstream of Potranco Road	+778	
Tributary A to Panther Spring Creek.	Approximately 1,200 feet downstream of Blanco Road at the confluence with Panther Spring Creek.	+844	City of San Antonio.
	Approximately 200 feet downstream of Loop 1604 West Access Road.	+942	
Tributary A to Salado Creek	Just downstream of Unnamed Park Road at Pecan Valley	+573	City of San Antonio.
	Approximately 200 feet upstream of Gateway	+602	
Tributary A–1 to Panther Spring Creek.	Approximately 50 feet downstream of Private Road	+921	City of San Antonio.
	Just downstream of Loop 1604 West Access Road	+962	
Tributary B To Salado Creek	At the confluence with Salado Creek	+598	City of San Antonio.
	Approximately 400 feet upstream of Amanda Street	+622	
Tributary C to Salado Creek	At the confluence with Salado Creek	+621	City of San Antonio.
	Just upstream of Seguin Street	+691	
Tributary C to Selma Creek	Approximately 1,600 feet downstream of North Loop 1604	+799	City of Live Oak, City of San Antonio, City of Selma.
	Approximately 2,700 feet upstream of North Loop 1604	+846	
Tributary D to Salado Creek	Just upstream of Ira Lee Road	+708	City of San Antonio.
	Approximately 900 feet upstream of the Tesoro River	+753	
Tributary D to Selma Creek	Approximately 250 feet downstream of North Loop 1604 Access Road.	+813	City of San Antonio.
	Approximately 1,700 feet upstream of North Loop 1604 Access Road.	+853	
Tributary E To Salado Creek	Approximately 550 feet downstream of Nacogdoches Road.	+727	City of San Antonio.
	Approximately 600 feet upstream of Perrin Beitel Road	+787	
Tributary E to Martinez Creek B	Approximately 400 feet downstream of NRCS Dam No. 2	+638	City of San Antonio.
	Approximately 1,500 feet downstream of Lucky Fields	+688	
Tributary E to Salado Creek	Approximately 1,200 feet upstream of Nacogdoches Road	+724	City of San Antonio.
	Approximately 900 feet upstream of O'Connor Road	+868	
Tributary F to Martinez Creek B	Approximately 3,000 feet downstream of Walzem Road ...	+678	City of San Antonio.
	Approximately 1,800 feet upstream of Elm Trail Drive	+733	
Tributary G to Martinez Creek B	Approximately 750 feet upstream of the confluence with Balcones Creek at Boerne Stage Road.	+1,370	City of San Antonio.
	Approximately 2,700 feet upstream of the confluence with Balcones Creek at Boerne Stage Road.	+1,391	
Tuttle Road Ditch	Approximately 300 feet downstream of Harry Wurzbach Road.	+684	City of San Antonio, City of Terrell Hills, Unincorporated Areas of Bexar County.
	Approximately 500 feet upstream of Harry Wurzbach Road.	+697	
US 281 Tributary Salado Creek	Just downstream of Country Parkway	+784	City of Hill Country Village, City of San Antonio.
	Just upstream of Blackhawk Trail	+881	
UTSA Tributary to Leon Creek	Approximately 1,300 feet upstream of UTSA Boulevard	+956	City of San Antonio.
	Approximately 700 feet upstream of UTSA Boulevard	+972	
Unnamed Tributary 1 to Beitel Creek.	At the confluence with Beitel Creek	+707	City of San Antonio.
	Just upstream of I–35	+752	
Unnamed Tributary 1 to Elm Waterhole Creek.	Just upstream of Loop 1604 East Access Road at the confluence with Elm Waterhole Creek.	+833	City of San Antonio.
	Approximately 1,000 feet downstream of Roseheart	+892	
Unnamed Tributary 2 in Olmos Creek Watershed.	Just downstream of Rock Creek Run	+836	City of San Antonio.
	Approximately 800 feet upstream of Rock Creek Run	+847	
Unnamed Tributary 2 to Beitel Creek.	Just downstream of Old O'Connor Road	+789	City of San Antonio.
	Just upstream of Judson Road	+848	
Unnamed Tributary 3 in Olmos Creek Watershed.	Just downstream of Greely Street	+722	City of Alamo Heights.
	Approximately 250 feet downstream of Townsend Avenue	+746	
Unnamed Tributary 3 to Beitel Creek.	Approximately 100 feet downstream of O'Connor Road	+812	City of San Antonio.
	Approximately 1,500 feet upstream of Dreamwood Drive ..	+850	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Unnamed Tributary 5 in Olmos Creek Watershed.	At the confluence with Olmos Creek	+960	City of San Antonio, City of Shavano Park.
	Approximately 5,000 feet upstream of Northwest Loop 1604.	+1,041	
Unnamed Tributary 5 to Caracol.	Approximately 900 feet downstream of West Loop 1604 North.	+828	City of San Antonio.
	Approximately 300 feet upstream of Copperfield	+866	
Unnamed Tributary 6 in Olmos Creek Watershed.	At the confluence with West Fork Olmos Creek	+932	City of San Antonio.
	Approximately 600 feet upstream of De Zavala Road	+942	
Unnamed Tributary to Rundale Creek.	At the confluence with Rundale Creek	+1,480	Unincorporated Areas of Bexar County.
	Approximately 70 feet upstream of Grow Ranch	+1,548	
Walzem Creek	Just upstream of Judivan Drive	+678	City of San Antonio, City of Windcrest.
	Approximately 200 feet downstream of Crestway Drive	+841	
West Fork Olmos Creek Upper	Approximately 1,300 feet upstream of the confluence with Olmos Creek.	+831	City of San Antonio.
	Approximately 4,000 feet upstream of Red Maple Wood	+970	
West Salitrillo Creek	Approximately 100 feet downstream of FM 1516	+646	City of Converse, City of Live Oak, City of San Antonio, Unincorporated Areas of Bexar County.
	Approximately 200 feet upstream of Avery Road	+886	
West Tributary to Rosillo Creek	Approximately 550 feet upstream of the confluence with Rosillo Creek.	+673	City of Kirby.
	Approximately 500 feet upstream of Old Seguin Road	+694	
Westwood Village Creek	Approximately 100 feet upstream of Old U.S. Route 90	+700	City of San Antonio.
	Approximately 1,000 feet upstream of Pinn Road	+724	
Wildcat Canyon	At the confluence with Government Canyon Creek	+1,058	City of San Antonio.
	Approximately 300 feet upstream of the confluence with Government Canyon Creek.	+1,058	
Woman Hollering Creek	Approximately 850 feet downstream of New Berlin Road	+539	City of New Berlin, City of Schertz, City of St. Hedwig, Unincorporated Areas of Bexar County.
	Approximately 1,100 feet upstream of Golf Road	+719	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Alamo Heights
Maps are available for inspection at 6116 Broadway Street, San Antonio, TX 78209.

City of Castle Hills
Maps are available for inspection at 6915 West Avenue, Castle Hills, TX 78213.

City of Converse
Maps are available for inspection at 403 South Seguin, Converse, TX 78109.

City of Fair Oaks Ranch
Maps are available for inspection at 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.

City of Grey Forest
Maps are available for inspection at 18502 Scenic Loop Road, Grey Forest, TX 78023.

City of Helotes
Maps are available for inspection at 12951 Bandera Road, Helotes, TX 78023.

City of Hill Country Village
Maps are available for inspection at 116 Aspen Lane, San Antonio, TX 78232.

City of Kirby
Maps are available for inspection at 5631 Binz-Engleman Road, Kirby, TX 78219.

City of Leon Valley
Maps are available for inspection at 6400 El Verde Road, Leon Valley, TX 78238.

City of Live Oak
Maps are available for inspection at 8001 Shin Oak Drive, Live Oak, TX 78233.

City of New Berlin

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Maps are available for inspection at the Maintenance Building, 415 East Donnegan Street, Seguin, TX 78155.			
City of San Antonio			
Maps are available for inspection at 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.			
City of Schertz			
Maps are available for inspection at 1400 Schertz Parkway, Schertz, TX 78154.			
City of Selma			
Maps are available for inspection at 9375 Corporate Drive, Selma, TX 78154.			
City of St. Hedwig			
Maps are available for inspection at 13065 FM 1346, St. Hedwig, TX 78152.			
City of Shavano Park			
Maps are available for inspection at 99 Saddletree Court, Shavano Park, TX 78231.			
City of Terrell Hills			
Maps are available for inspection at 5100 North New Braunfels Avenue, San Antonio, TX 78209.			
City of Windcrest			
Maps are available for inspection at 8601 Midcrown Drive, Windcrest, TX 78239.			
Town of Hollywood Park			
Maps are available for inspection at 407 Rhapsody Lane, Hollywood Park, TX 78216.			
Unincorporated Areas of Bexar County			
Maps are available for inspection at 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.			

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–24402 Filed 9–28–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 2, 7, 9, 10, 11, 25, 27, 28, 31, 54, 70, 76, 112, 114, 121, 129, 131, 150, 154, 160, 177, 184, and 401.

[Docket No. USCG–2010–0759]

RIN 1625–ZA27

Shipping; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This final rule makes non-substantive changes throughout Title 46 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard regulations. This rule will have no substantive effect on the regulated public. These changes are provided to coincide with the annual recodification of Title 46 on October 1, 2010.

DATES: This final rule is effective September 29, 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–2010–0759 and are 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0759 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Diane LaCumsky, Coast Guard; telephone 202–372–1025, e-mail *Diane.M.LaCumsky@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(A) and (b)(B), we find that this rule is exempt from notice and comment rulemaking requirements because these changes involve rules of agency organization, procedure, or practice. In addition, good cause exists for not publishing an NPRM for all revisions in the rule because the revisions are all non-substantive changes. This rule consists only of corrections and editorial, organizational, and conforming amendments. These changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective upon publication in the **Federal Register**.

II. Background

Each year the printed edition of Title 46 of the Code of Federal Regulations is recodified on October 1. This rule, which becomes effective September 29,

2010, makes technical and editorial corrections throughout Title 46. This rule does not create any substantive requirements.

III. Discussion of Rule

This rule revises 46 Part 1 by deleting all references to "Assessment, Integration and Risk Management Directorate (CG–51)," as this directorate no longer exists.

This rule revises 46 Part 1 by deleting all references to "Office of Waterways Management (CG–541)," as this office no longer exists.

This rule revises 46 Part 1 by adding a reference to the "Office of International and Domestic Port Security (CG–541)." This new office was created under the existing Prevention Policy Directorate (CG–54).

This rule revises 46 Part 1 by adding a reference to "Marine Transportation Systems Management Directorate (CG–55)." This new directorate was created to manage the Coast Guard's portfolio of waterways management programs and assets and will coordinate Coast Guard activities to promote development of national and international consensus on waterways, management policies, goals, objectives, and strategies.

In addition, this rule revises 46 Part 1 by adding references to "Office of Bridge Programs (CG–551)," "Office of Marine Transportation Systems (CG–552)," and "Office of Navigation Systems (CG–553)." These new offices were created under the Marine Transportation Systems Management Directorate (CG–55).

This rule revises 46 CFR Part 2 by eliminating the requirement that an inspector must complete and submit "Form CG–858, Certificate of Inspections Amendment," to amend a vessel's Certificate of Inspection. The paragraph will clarify that the original Certificate of Inspection may be amended and re-issued with the original renewal date pending approval of the Officer in Charge, Marine Inspection.

This rule revises 46 CFR Part 2 by removing references to a Letter of Compliance and to a Tank Vessel Examination Letter and replacing them with a reference to a Certificate of Compliance. Letters of Compliance and Tank Vessel Examination Letters are no longer issued, and were combined to form Certificates of Compliance in the mid-1990s. It also clarifies the office and the appropriate chain of command for actions regarding vessel fees.

This rule revises 46 CFR Part 2 by clarifying the chain-of-command procedure in various instances without making changes to the chain of command.

This rule revises 46 CFR Part 2 to add that a credit card or wire transfer is an acceptable form of payment for all fees required by subpart 2.10.

This rule revises 46 CFR Part 2 to update the address for mailing a payment made by check for vessel inspection and to add a new address for mailing a payment using a credit card.

This rule revises 46 CFR Part 2 to remove "midperiod" and add, in its place, "annual and periodic" to more accurately describe the period between inspections.

This rule revises 46 CFR Part 7 by correcting grammatical errors.

This rule revises 46 CFR Part 9 to remove "steamship," as this is an outdated term which is no longer used to describe vessels.

This rule revises 46 CFR Part 10 to correct a table titled "Table 10.215(a)—Medical and Physical Requirements for Mariner Endorsement," in which four pieces of data are located in the wrong columns.

This rule revises 46 CFR Part 28 to update the delegation of authority from the Secretary of Transportation to the Secretary of Homeland Security in an instance where it had not already been changed.

This rule revises 46 CFR Parts 31 and 70 to capitalize the word "office" in "Office of the Commandant."

This rule revises 46 CFR Part 54 to remove a redundant paragraph and replace it with the paragraph originally intended. The 2009 CFR included similar paragraphs describing the pressure measurement restrictions for condensers and heat exchangers eligible for exemption from shop inspection. This rule removes the less specific, earlier version of the paragraph at § 54.01–15(a)(5) and leaves the more recently updated version of the paragraph, redesignating it as § 54.01–15(a)(5) from § 54.01–15(a)(4). This rule returns the original paragraph at § 54.01–15(a)(4) regarding Class I, II, and III pressure vessels, to its intended place. The original paragraph was present in the 2008 CFR but erroneously omitted from the 2009 publication.

This rule revises 46 CFR Part 129 to replace the word "part" with the word "subchapter" where "subchapter" is intended.

This rule revises 46 CFR Part 150 to correct a table with mislabeled footnotes.

This rule revises 46 CFR Part 154 to remove a redundant section at § 154.30.

This rule corrects 46 CFR Part 177 to make the metric value of 15 feet accurate. The section currently lists the metric value of 15 feet at 3.8 meters. This rule changes the metric value to 4.572 meters in every instance, ensuring consistency between the values when expressed in both metric and imperial units.

This rule updates various addresses for Coast Guard offices throughout Title 46 so that they conform to new mailing addresses and mailing address formats that came into use on June 15, 2009. This rule also updates internal Coast Guard office designators, as well as certain organizational titles, throughout Title 46. Changes in organizational titles included in this rule are only technical revisions reflecting changes in agency procedure and organization, and do not indicate new authorities.

Throughout Title 46, this rule removes all references to Loran towers and coordinates, which are no longer in use, and changes all references to Search and Rescue Transponders (SARTs) to Search and Rescue Transmitters (SARTs), as transponders are no longer in use.

This rule updates various citations to the CFR that were overlooked in past revisions of Title 46.

IV. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 12 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. The Office of Management and Budget has not reviewed it under that Order. Because this rule involves non-substantive changes and addresses internal agency practices and procedures, it will not impose additional costs on the public.

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.

We estimate that this rule will not impose additional costs and should have little or no impact on small entities because the provisions of this rule are technical and non-substantive. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule

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

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 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.

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 (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.

F. 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.

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 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 that 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 section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. This rule involves regulations that are editorial and procedural, such as those updating addresses or establishing application procedures. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 7

Law enforcement, Vessels.

46 CFR Part 9

Government employees, Vessels, Wages.

46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 11

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 25

Fire prevention, Penalties, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 27

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 28

Alaska, Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 31

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 54

Reporting and recordkeeping requirements, Vessels.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 76

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 112

Vessels.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 121

Communications equipment, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 129

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 131

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 154

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 160

Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 177

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 184

Communications equipment, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 1, 2, 7, 9, 10, 11, 25, 27, 28, 31, 54, 70, 76, 112, 114, 121, 129, 131, 150, 154, 160, 177, 184, and 401.

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

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

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

§ 1.01–10 [Amended]

■ 2. Amend § 1.01–10 as follows:

■ a. Revise paragraph (b)(1) introductory text to read as set out below.

■ b. Remove paragraph (b)(1)(iii) and redesignate paragraph (b)(1)(iv) as paragraph (b)(1)(iii).

§ 1.01–10 Organization.

* * * * *

(b) * * *

(1) The Assistant Commandant for Marine Safety, Security, and Stewardship (CG–5), under the general direction of the Commandant, directs, supervises, and coordinates the activities of: The Commercial Regulations and Standards Directorate (CG–52), consisting of the Office of Design and Engineering Standards (CG–521), the Office of Operating and Environmental Standards (CG–522), and the Office of Standards Evaluation and Development (CG–523); the Response Policy Directorate (CG–53), consisting of the Office of Law Enforcement (CG–531), the Office of Counterterrorism and Defense Operations (CG–532), the Office of Incident Management and Preparedness (CG–533), the Office of Search and Rescue (CG–534), and the Office of Contingency Exercises (CG–535); the Prevention Policy Directorate (CG–54), consisting of the Office of International and Domestic Port Security (CG–541), the Office of Auxiliary and Boating Safety (CG–542), the Office of Vessel Activities (CG–543), the Office of Port and Facility Activities (CG–544), the Office of Investigations and Casualty Analysis (CG–545); and the Marine Transportation and Systems Management Directorate (CG–55), consisting of the Office of Bridge Programs (CG–551), the Office of Marine Transportation Systems (CG–552), and the Office of Navigation Systems (CG–553). The Deputy Commandant for Operations (CG–DCO), under the general direction of the Commandant, directs, supervises, and coordinates the activities of the Operations Resource Management Directorate (CG–DCO–R), consisting of the Office of Workforce Management (CG–DCO–R–1), the Office of Budget Development (CG–DCO–R–2), the Office of Budget Execution (CG–DCO–R–3), and the Office of Information Resources (CG–DCO–R–6). The Port Safety and Security programs administered by the Chief, Office of Vessel Activities (CG–543), and the Marine Environmental Response programs administered by the Chief, Office of Incident Management and Preparedness (CG–533), are guided by regulations contained in 33 CFR chapter I. The Assistant Commandant for Marine Safety, Security, and Stewardship (CG–5) exercises technical control over the Commanding Officer, National Maritime Center (NMC), and, through the District Commander, supervises the administration of the Marine Safety Division of District Offices and Officers in Charge, Marine Inspection.

* * * * *

PART 2—VESSEL INSPECTIONS

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

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 2110, 3103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1. Subpart 2.45 also issued under the Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (*see* 46 U.S.C. App. Note prec. 1).

■ 4. Revise § 2.01–5(c) to read as follows:

§ 2.01–5 Certificate of inspection.

* * * * *

(c) *Amending certificates.* When, because of a change in the character of the vessel or vessel's route, equipment, *etc.,* the vessel does not comply with the requirements of the Certificate of Inspection previously issued, an amended certificate may be issued at the discretion of the Officer in Charge, Marine Inspection, to whom a request is made.

■ 5. Revise § 2.01–6 to read as follows:

§ 2.01–6 Certificates issued to foreign vessels.

(a) *Issuance of a Certificate of Compliance (COC).* Foreign vessels of countries which are signatory to the International Convention for the Safety of Life at Sea, 1974, are issued a Certificate of Compliance (CG–3585) upon satisfactory completion of a compliance examination by the Officer in Charge, Marine Inspection:

(1) A foreign passenger vessel that is registered in a country which is signatory to the International Convention for the Safety of Life at Sea, 1974, visits U.S. ports with U.S. citizens as passengers or embarks passengers in U.S. ports, and holds a valid Passenger Ship Safety Certificate;

(2) A foreign vessel that is suitable for carriage of hazardous cargoes in bulk as defined in 46 CFR subchapter 0 and is in compliance with Tankship Cargo Venting and Handling Systems and Minimum Pollution Prevention Regulations and Transfer Procedures (33

CFR parts 155, 156, 157, and 159), and Navigation Safety Inspection Regulations (33 CFR part 164);

(3) A foreign Mobile Offshore Drilling Unit that complies with standards listed in 33 CFR 143.207 and is engaged in U.S. Outer Continental Shelf activities;

(4) A foreign vessel that is suitable for carriage of cargoes as defined in 46 CFR subchapter D and is in compliance with Tankship Cargo Venting and Handling Systems and Minimum Safety Standards (SOLAS 74—46 CFR part 35), Pollution Prevention Regulations and Transfer Procedures (33 CFR parts 155, 156, 157, and 159), and Navigation Safety Regulations (33 CFR part 164).

(b) Foreign vessels of countries which are non-signatory to the International Convention for the Safety of Life at Sea, 1974, are issued a Temporary Certificate of Inspection (CG–854) and a Certificate of Inspection (CG–841), respectively, as described in § 2.01–5. Any amendments to these certificates shall be accomplished in accordance with § 2.01–5(c).

(c) *Description of COC.* CG–3585 describes the vessel's particulars, type of vessel examined, type of certificate(s) required by the International Convention for Safety of Life at Sea, 1974, the period of validity, subsequent exams required to maintain the certificates validity, the Officer in Charge, Marine Inspection zone where the exam was completed in and if there are any deficiencies as to applicable regulations at the time the vessel was examined. If there are deficiencies issued, they are listed in the examination record section of the COC.

§ 2.10–1 [Amended]

■ 6. In § 2.10–1(a), after the words "foreign vessels required to have", remove the words "either a Letter of Compliance or a Tank Vessel Examination Letter" and add, in their place, the words "a Certificate of Compliance".

■ 7. In § 2.10–5, add a third sentence to paragraph (d) to read as follows:

§ 2.10–5 Exemptions.

* * * * *

(d) * * * The Officer in Charge, Marine Inspection will endorse and forward the request to Commandant (CG–DCO–83) for decision.

§ 2.10–10 [Amended]

■ 8. Amend § 2.10–10 as follows:

■ a. Remove the text "CG–DCO–R–3" and add, in its place, the text "CG–DCO–83"; and

■ b. Remove the text "G–MRP" and add, in its place, the text "CG–DCO–83".

■ 9. Amend § 2.10–20 as follows:

■ a. In paragraph (b), add a second sentence;

■ b. Revise paragraph (d);

■ c. In paragraph (e), remove the text "CG–DCO–R–3" and add, in its place, the text "CG–DCO–83";

■ d. In paragraph (e), remove the text "G–MRP" and add, in its place, the text "CG–DCO–83"; and

■ e. In paragraph (f), remove the words "Marine Safety or Marine Inspection Office" and add, in their place, the words "Coast Guard Sector, Officer in Charge, Marine Inspection, or Marine Safety Detachment".

The addition and revision read as follows:

§ 2.10–20 General Requirements.

* * * * *

(b) * * * Payment may also be made by credit card or wire transfer.

* * * * *

(d) Unless otherwise specified, fees required by this subpart must be mailed to the following addresses: For payment by credit card, U.S. Coast Guard Finance Center (OGR), 1430A Kristina Way, Chesapeake, VA 23326; For payment by check, made payable to U.S. Treasury, with delivery by postal service, USCG Inspection Fees, P.O. Box 70952, Charlotte, NC 28272–0952; or by overnight courier, Wachovia QLP Lockbox–D1113–022, Lockbox 70952, 1525 West WT Harris Blvd., Charlotte, NC 28262.

* * * * *

§ 2.10–101 [Amended]

■ 10. Amend § 2.10–101(c) by removing the word "midperiod" and adding, in its place, the words "annual and periodic".

■ 11. Amend § 2.10–105 as follows:

■ a. In paragraph (b), remove the text "CG–DCO–R–3" and add, in its place, the text "CG–DCO–83"; and

■ b. In paragraph (e), add a fourth sentence to read as follows:

§ 2.10–105 Prepayment of annual vessel inspection fees.

* * * * *

(e) * * * The Officer in Charge, Marine Inspection will endorse and forward the request to Commandant (CG–DCO–83) for decision.

§ 2.10–115 [Amended]

■ 12. Amend § 2.10–115(b) by removing the text "CG–DCO–R–3" and adding, in its place, the text "CG–DCO–83".

§ 2.10–125 [Amended]

■ 13. Amend § 2.10–125 as follows:

■ a. In paragraph (a), remove the word "Letter" wherever it appears and add, in its place, the word "Certificate"; and

■ b. In paragraph (b), remove the words "Tank Vessel Examination Letter" and add, in their place, the words "Certificate of Compliance".

§ 2.10–130 [Amended]

■ 14. Amend § 2.10–130 as follows:

■ a. In paragraph (a), remove the word "Letter" and add, in its place, the word "Certificate"; and

■ b. In paragraph (b), remove the word "Letter" and add, in its place, the word "Certificate".

§ 2.75–1 [Amended]

■ 15. Amend § 2.75–1(c) by removing the words "Environmental Protection" wherever they appear and adding, in their place, the word "Stewardship".

PART 7—BOUNDARY LINES

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

Authority: 14 U.S.C. 633; 33 U.S.C. 151, 1222; Department of Homeland Security Delegation No. 0170.1.

■ 17. Revise § 7.65 to read as follows:

§ 7.65 Charleston Harbor, SC.

A line drawn from Charleston Light on Sullivans Island to latitude 32°40.7′ N. longitude 79°42.9′ W. (Charleston Lighted Whistle Buoy "2C"); thence to a point on Folly Island at latitude 32°41.0′ N. longitude 79°53.2′ W.

PART 9—EXTRA COMPENSATION FOR OVERTIME SERVICES

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

Authority: 46 U.S.C. 2103; Department of Homeland Security Delegation No. 0170.1.

§ 9.14 [Amended]

■ 19. In § 9.14, after the words "fees against", remove the word "steamship".

PART 10—MERCHANT MARINER CREDENTIAL

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

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 72; 46 U.S.C. chapter 75; 46 U.S.C. 7701, 8906 and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1.

■ 21. Amend § 10.215(a) by revising Table 10.215(a) to read as follows:

TABLE 10.215(A)—MEDICAL AND PHYSICAL REQUIREMENTS FOR MARINER ENDORSEMENTS

Credential	Vision test	Hearing test	General medical exam	Demonstration of physical ability
(i) Deck officer, including pilot	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(ii) Engineering officer	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(iv) Radio officer	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(v) Offshore installation manager, barge supervisor, or ballast control operator.	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(vi) Able seaman	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(vii) QMED	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(viii) RFPNW	§ 10.215(b)(1)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(ix) RFPEW	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(x) Tankerman	§ 10.215(b)(2)	§ 10.215(c)	§ 10.215(d)(1)	§ 10.215(e)(1)
(xi) Food handler serving on vessels to which STCW does not apply.			§ 10.215(d)(2)	
(xii) Food handler serving on vessels to which STCW applies.			§ 10.215(d)(2)	§ 10.215(e)(1)
(xiii) Ratings, including entry level, serving on vessels to which STCW applies, other than those listed above.				§ 10.215(e)(2)

* * * * *

PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

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

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, 8906, and 70105; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

§ 11.302 [Amended]

■ 23. Amend § 11.302(g) by removing the text "§ 1.03–45" and adding, in its place, the text "§ 1.03–40".

PART 25—REQUIREMENTS

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

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4102, 4302; Department of Homeland Security Delegation No. 0170.1.

§ 25.01–3 [Amended]

■ 25–26. Amend § 25.01–3(a), third sentence, by removing the words "Office of Compliance" and adding, in their place, the words "Office of Vessel Activities", and in paragraph (b) by removing the words "3069 Solomons Island Road, Edgewater, MD 21037" and adding, in their place, the words "613 Third Street, Suite 10, Annapolis, MD 21403".

PART 27—TOWING VESSELS

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

Authority: 46 U.S.C. 3306, 4102 (as amended by Pub. L. 104–324, 110 Stat. 3901); Department of Homeland Security Delegation No. 0170.1.

§ 27.102 [Amended]

■ 28. Amend § 27.102(b), in the table heading, by removing the words "3069 Solomons Island Road, Edgewater, MD 21037" and adding, in their place, the words "613 Third Street, Suite 10, Annapolis, MD 21403".

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 29. The authority citation for part 28 continues to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.1.

§ 28.10 [Amended]

■ 30. Amend § 28.10 as follows:

■ a. After the words "pursuant to a delegation of authority by the", remove the words "Secretary of Transportation" and add, in their place, the words "Secretary of Homeland Security"; and

■ b. After the words "set forth in", remove the words "49 CFR 1.46(b)" and add, in their place, the words "Department of Homeland Security Delegation No. 0170.1".

§ 28.40 [Amended]

■ 31. Amend § 28.40(b), in the table heading, by removing the words "3069 Solomons Island Road, Edgewater, MD 21037" and adding, in their place, the words "613 Third Street, Suite 10, Annapolis, MD 21403".

§ 28.50 [Amended]

■ 32. In § 28.50, in the definition of *Coast Guard Representative,* remove the words "Fishing Vessels Safety Division" and add, in their place, the words "Fishing Vessels Division".

§ 28.265 [Amended]

■ 33. Amend § 28.265(d)(4)(vii) by removing the words "LORAN coordinate,".

§ 28.820 [Amended]

■ 34. In 28.820(a)(2), second sentence, after the words "bilge system requirements of", remove the text "§ 28.760(c)" and add, in its place, the text "§ 28.255(d)".

PART 31—INSPECTION AND CERTIFICATION

■ 35. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3205, 3306, 3307, 3703; 46 U.S.C. Chapter 701; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 31.10–21 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

§ 31.10–1 [Amended]

■ 36. In § 31.10–1(b), third sentence, after the words "examined at the", remove the words "office of the Commandant" and add, in their place, the words "Office of the Commandant".

PART 54—PRESSURE VESSELS

■ 37. The authority citation for part 54 continues to read as follows:

Authority: 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

■ 38. In § 54.01–15, revise paragraphs (a)(4) and (a)(5) to read as follows:

§ 54.01–15 Exemptions from shop inspection and plan approval (modifies U–1(c)(2)).

* * * * *

(a) * * *

(4) Class I, II, and III pressure vessels that meet the requirements of § 54.01–5(c)(3) and (c)(4).

(5) Condensers and heat exchangers, regardless of size, when the design is such that the liquid phase is not greater than 689 kPa (100 psig) and 200 °F (93 °C) and the vapor phase is not greater than 103 kPa (15 psig) provided that the Officer in Charge, Marine Inspection is satisfied that system overpressure conditions are addressed by the owner or operator.

* * * * *

PART 70—GENERAL PROVISIONS

■ 39. The authority citation for part 70 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

§ 70.35–5 [Amended]

■ 40. In § 70.35–5(a), second sentence, after the words "examined at the", remove the words "office of the Commandant" and add, in their place, the words "Office of the Commandant".

PART 76—FIRE PROTECTION EQUIPMENT

■ 41. The authority citation for part 76 continues to read as follows:

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 76.15–5 [Amended]

■ 42. Amend § 76.15–5(e)(3) by removing the words "paragraph (e)" and adding, in their place, the words "paragraph (d)".

PART 112—EMERGENCY LIGHTING AND POWER SYSTEMS

■ 43. The authority citation for part 112 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

§ 112.15–5 [Amended]

■ 44. Amend § 112.15–5(j) by removing the word "loran,".

PART 114—GENERAL PROVISIONS

■ 45. The authority citation for part 114 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security No. 0170.1; § 114.900 also issued under 44 U.S.C. 3507.

§ 114.600 [Amended]

■ 46. Amend § 114.600(b) by removing the words "3069 Solomons Island Road, Edgewater, MD 21037" and adding, in their place, the words "613 Third Street, Suite 10, Annapolis, MD 21403".

PART 121—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

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

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 121.510 [Amended]

■ 48. Amend § 121.510(a)(7) by removing the words "LORAN coordinates,".

PART 129—ELECTRICAL INSTALLATIONS

■ 49. The authority citation for part 129 continues to read as follows:

Authority: 46 U.S.C. 3306; Department of Homeland Security Delegation No. 0170.1.

§ 129.110 [Amended]

■ 50. Amend § 129.110 by removing the word "part" and adding, in its place, the word "subchapter".

PART 131—OPERATIONS

■ 51. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101, 10104; E.O. 12234, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 131.890 [Amended]

■ 52. Amend § 131.890 by removing the word "Transponder" and adding, in its place, the word "Transmitter".

PART 150—COMPATIBILITY OF CARGOES

■ 53. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1. Section 150.105 issued under 44 U.S.C. 3507; Department of Homeland Security Delegation No. 0170.1.

Table 1 to Part 150 [Amended]

■ 54. In Table 1 to Part 150, in the "Footnote" column, remove the numeral "2" for each row that includes the following in the "Chemical name" column:

■ a. Alkyl acrylate-Vinyl pyridine copolymer in Toluene
■ b. Alkyl(C3-C4)benzenes
■ c. Alkyl(C5-C8)benzenes
■ d. Alkyl(C9+)benzenes
■ e. Alkylbenzene, Alkylindane, Alkylindene mixture (each C12-C17)
■ f. Benzene hydrocarbon mixtures (having 10% Benzene or more)
■ g. Butylbenzene, *see* Alky(C3-C4)benzenes
■ h. Butyl phenol, Formaldehyde resin in Xylene
■ i. Butyl toluene
■ j. Cymene
■ k. Decylbenzene, *see* Alkyl(C9+) benzenes
■ l. Dialkyl(C10-C14) benzenes, *see* Alkyl(C9+) benzenes
■ m. Dichloromethane
■ n. Diethylbenzene
■ o. Diisopropylbenzene
■ p. Diisopropyl naphthalene
■ q. Diphenyl
■ r. Dodecanol
■ s. Dodecylamine, Tetradecylamine mixture
■ t. Dodecyl hydroxypropyl sulfide
■ u. Ethylbenzene
■ v. Ethyl toluene
■ w. 1-Hexadecylnaphthalene, 1,4-bis(Hexadecyl)naphthalene mixture
■ x. Methyl naphthalene
■ y. Naphthalene
■ z. 1-Phenyl-1-xylyl ethane
■ aa. Poly(2+)cyclic aromatics
■ bb. Polyolefinamine in alkyl(C2-C4)benzenes
■ cc. Sulfuric acid, spent
■ dd. Tetradecylbenzene, *see* Alkyl(C9+) benzenes
■ ee. Tetrahydronaphthalene
■ ff. Tetramethylbenzene
■ gg. Titanium tetrachloride
■ hh. Toluene
■ ii. Xylene
■ jj. Xylenes, Ethylbenzene mixture

PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES

■ 55. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703, 9101; Department of Homeland Security Delegation No. 0170.1.

§ 154.30 [Removed and Reserved]

■ 56. Remove and reserve § 154.30.

PART 160—LIFESAVING EQUIPMENT

■ 57. The authority citation for part 160 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703 and 4302; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

§ 160.151–57 [Amended]

■ 58. Amend § 160.151–57(b)(8) by removing the word "Transponder" and adding, in its place, the word "Transmitter".

PART 177—CONSTRUCTION AND ARRANGEMENT

■ 59. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 177.820 [Amended]

■ 60. Amend § 177.820 in paragraphs (d)(1) and (2) by removing the words "3.8 meters" and adding, in their places, the words "4.572 meters".

PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

■ 61. The authority citation for part 184 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

§ 184.510 [Amended]

■ 62. Amend § 184.510(a)(7) by removing the words "LORAN coordinates,".

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 63. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

§ 401.110 [Amended]

■ 64. Amend § 401.110(a)(9) by removing the text "CG–54122" and adding, in its place, the text "CG–5522".

Dated: September 17, 2010.

Sandra Selman,

Acting Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. 2010–23766 Filed 9–28–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. OST–2010–0046]

Relocation of Standard Time Zone Boundary in the State of North Dakota: Mercer County

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

ACTION: Final rule.

SUMMARY: DOT is moving all of Mercer County, North Dakota to the central time zone. Prior to this action, all of Mercer County was located in the mountain time zone. This action is taken in response to a petition filed by the Board of County Commissioners for Mercer County and is based on comments made at a public hearing and filed in the docket.

DATES: *Effective Date:* This final rule will be effective November 7, 2010.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room W94–302, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9310, *bob.ashby@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

For more than a century, time zone boundaries in North Dakota have had an interesting and varied history. Beginning in 1883, mountain time was observed in the southwest portion of the State and a few locations in the northwest, with central time being used elsewhere. In 1929, the Interstate Commerce Commission (ICC), which then had jurisdiction over time zone boundaries, extended central time to cover all but a cluster of counties in the southwest corner of the State. Congress transferred the ICC's time zone boundary powers to the Department of Transportation (DOT) in 1967. DOT exercises these powers under the provisions of the Uniform Time Act of 1966 (15 U.S.C. 260–64).

The Department has exercised its authority under this statute in several proceedings affecting North Dakota. In 1968, in response to a petition from the Governor of North Dakota, the Department placed 14 counties lying south and west of the Missouri River into mountain time. The change was made to accommodate the historical pattern of time observance in the State. In 1992, in response to a petition from the Board of Commissioners of Oliver County (which is adjacent to Mercer County), the Department moved that county into the central time zone. The Department took similar action with respect to Morton County and a portion of Sioux County in 2003.

In 2000–2003, the Department considered a petition from the Mercer County Commission to move the county to the central time zone. The proposal was controversial in the county. A 2000 referendum favored changing to central time by a vote of 1,180 to 1,038. However, a majority of written comments to the Department's docket, and much of the sentiment of persons attending a public hearing, favored keeping the county in the mountain time zone. After considering the comments, and while acknowledging the reasons supporting a change, the Department decided to deny the petition (68 FR 53082; September 9, 2003). The Department's decision noted that the Commission was free to file a new petition on the subject in the future. In a petition dated October 9, 2009, Mr. Lyle L. Latimer, Chairman of Mercer County Board of County Commissioners, asked the Department to move the county from the mountain time zone to the central time zone.

Under the Uniform Time Act, the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce." The principal standard for deciding whether to change a time zone is defined very broadly to include consideration of all the impacts upon a community of a change in its standard of time. DOT has developed a series of questions to assist communities and us in determining the impact of a time zone change on the "convenience of commerce." The Department considers information bearing on these questions in making its decision on a proposed time zone change.

1. From where do businesses in the community get their supplies, and to where do they ship their goods or products?

2. From where does the community receive television and radio broadcasts?

3. Where are the newspapers published that serve the community?

4. From where does the community get its bus and passenger rail services; if there is no scheduled bus or passenger rail service in the community, to where

must residents go to obtain these services?

5. Where is the nearest airport; if it is a local service airport, to what major airport does it carry passengers?

6. What percentage of residents of the community work outside the community; where do these residents work?

7. What are the major elements of the community's economy; is the community's economy improving or declining; what Federal, State or local plans, if any, are there for economic development in the community?

8. If residents leave the community for schooling, recreation, health care, or religious worship, what standard of time is observed in the places where they go for these purposes?

The Petition for Rulemaking

In October 2009, the Board of Commissioners for Mercer County, North Dakota, petitioned the Secretary of Transportation to move Mercer County from the mountain time zone to the central time zone. The Mercer County petition stated several reasons for the request, outlining the Commission's view of why the change would meet the "convenience of commerce" standard. The following is a summary of the reasons asserted in support of the request, which address several of the Department's questions.

- Almost all supplies for businesses in Mercer County, including the coal and agriculture industries, are shipped from the Bismarck/Mandan area and from other points in the central time zone.
- Communications media (newspapers, radio and television stations) serving Mercer County are based in the Bismarck/Mandan area.
- There is no regular passenger transportation serving Mercer County. Residents go to the Bismarck/Mandan area to catch planes, trains, and buses.
- The main offices for several Mercer County energy industry facilities are located in Bismarck.
- Many residents regularly travel to the Bismarck/Mandan area for recreation, health care, and other purposes.
- Geographically, Mercer County is adjacent to the central time zone on the east, north, and south sides of the county, and is therefore well located for inclusion in the central time zone. The Fort Berthold Indian Reservation, located in Mercer County, is currently in the central time zone.

Public Comments

On March 3, 2010, the Department published a notice of proposed rulemaking (75 FR 9568) announcing the proposed change and inviting public comment. A DOT representative conducted a public hearing in Hazen, North Dakota on May 14, 2010. At the meeting, 14 persons spoke in favor of switching to central time and five spoke in favor of remaining in mountain time.

Over 400 written comments were submitted to the docket. These submissions included many detailed letters, a number of anonymous comments, and some brief statements simply expressing a preference for either mountain or central time. The submissions came from individuals, businesses, medical service providers, local Chambers of Commerce, and school districts. We appreciate the time and effort of the people who expressed their opinion at the public meeting and through written comments, providing the Department with the factual basis upon which to make a decision.

Comments in Support of Central Time

Approximately 250 comments, including written submissions and those comments made at the hearing, favored a switch to central time. Our decision, however, is not based on the number of comments supporting a particular time zone. As discussed above, the decision is based on the statutory "convenience of commerce" standard and the comments help us to make the decision by providing factual information regarding the impact of a time zone change on a community. The comments supporting a move to central time addressed five impacted areas that would be improved by a change of time zones: (1) Transportation, (2) business, (3) schools and other public agencies, (4) health care, and (5) family life.

In the area of transportation, many submissions noted that the closest transportation hub is Bismarck, which is on central time. Numerous individuals explained that catching a morning flight out of Bismarck is inconvenient, because they either have to get up very early in the morning to account for the one hour time difference, or pay to spend the night before their flight in a hotel.

The docket included abundant comments focusing on the impact of a time zone switch on businesses in Mercer County. Most of the power plants and mines, which are major employers in Mercer County, already run on central time. The manager of Coyote electric generating plant expressed how confusing it is to be located in mountain time, but operating on central time.

From the comments submitted, it appears that the majority of the county's businesses have their suppliers and customers in central time and believe that moving Mercer County to central time would serve the convenience of commerce. Many people explained that because their businesses primarily conduct transactions with entities located in central time, they lose valuable work time every day—at least an hour in the morning, an hour at lunch time, and an hour at the end of the day. The manager of the Beulah Motor Vehicle Branch Office wrote that all their office support comes from the State office in Bismarck, and they therefore lose three hours a day of contact with key support functions. The President of Dakota Helicopters, Inc. explained that they are in a "constant battle" to complete their daily activities with their vendors in a shortened time span, because the vendors are all on central time. Other comments focused on the ongoing struggle businesses face to schedule meetings, teleconferences, and seminars with businesses located in central time.

Being on mountain time also adversely affects the quality of services that businesses in Mercer County provide, commenters asserted. A submission from the secretary and treasurer of Knife River Indian Heritage Foundation portrayed how frequently tourists get confused about the time and arrive too early or too late for events at the Foundation. The owner of Beulah Drug Company explained that all of their suppliers and technical support are located on central or eastern time; on many occasions they have needed a service or product, but have had to wait an extra day because the supplier was already closed. The Beulah Public Library is one of only two libraries in a 25-member consortium that is on mountain time, which creates scheduling issues. The Library also believes that switching to central time would allow them to better serve their patrons, because their hours would coincide with the area power plants and mines. Moreover, several business owners suggested that they would have an easier time recruiting employees who live in central time if Mercer County switched to central time.

The Mercer County time zone also has a major impact on the schools. The Center-Stanton Public School Board, the Beulah Board of Education, and the Hazen Public School Board all submitted comments favoring a switch to central time. The Center-Stanton school district is currently divided, with half of the district on central time and half on mountain time. The Superintendent explained how this makes scheduling meetings difficult,

and it also requires the students residing in Stanton to wake up very early in the morning to be ready for the bus.

The Beulah School Board said that in the 2008–2009 school year school athletic teams participated in 180 varsity-level extracurricular contests, with 119 of those in central time. The comment explained that the students leaving school early for these events lose an hour of instruction more than they would if Mercer County were on central time. The Hazen School Board, as well as many parents of children in Mercer County schools, also expressed concern over the lost educational time. An added difficulty relates to the present trend of schools in North Dakota to move to distance education; the different time zones make the coordination of distance education cumbersome.

A recurrent theme in the comments was that mountain time negatively impacts health care for Mercer County residents. A number of health care providers submitted comments to the docket addressing the operational issues that arise from the time zone difference. Some of the issues mentioned were that communications with health care facilities in Bismarck are more difficult to schedule, that patients often miss appointments because of the time difference, and that it is confusing for physicians in Bismarck to review charts of patients seen in Mercer County because they have to readjust the timeframe to determine when events occurred. The Medical Center noted that it is difficult for their providers to schedule follow-up appointments for patients who are seen in the middle to late afternoon at their clinics in Hazen, because the clinics in Bismarck and Minot are already closed.

A large number of individuals described the inconvenience of making and attending medical appointments in central time. Many medical procedures are only offered in the larger medical facilities in Bismarck. These appointments are usually scheduled first thing in the morning. Thus, the Mercer County residents have to leave very early in the morning to get to appointments in central time. The Administrator of the Knife River Care Center, a long-term care facility in Beulah, wrote that they frequently transport residents to medical appointments in Bismarck. Having to leave so early in the morning makes it harder for the resident, the van driver, and the staff. The belief that medical care would be much more convenient if Mercer County switched to central time was mentioned numerous times in both the public hearing comments and the written comments.

Many people also described the strain on family life that results from constantly coping with two time zones. They depicted households with two sets of clocks set to different time zones to accommodate the fact that the parents work in central time while the children attend school in mountain time. One commenter illustrated how confusing it is to make arrangements to see a high school basketball game and have dinner beforehand, when some of the family works on central time and some on mountain time. People wrote in to say that they feel like they live in a "peninsula" or "pocket" of mountain time and that their lives would be simpler if they lived in the same time zone as surrounding counties, the counties on three sides of Mercer County being on central time.

Comments in Favor of Mountain Time

About 100 comments from individuals and businesses in Mercer County expressed support for mountain time. Comments voiced at the public hearing and also mentioned in the written submissions conveyed concern about children going to school in the dark. A high school teacher explained that she does not want to walk to school in the dark.

Several individuals said they found living and working in different time zones to be very convenient. Some said that they enjoy finishing work in central time and still having time to shop in Mercer County where the businesses are still open. They can go to the drug store, the post office, and the banks after work. Other comments stated that a switch to central time would harm local businesses, because they would no longer offer the convenience of being open after the workers on central time, particularly those who work at the power plants, finish the workday. Additional commenters said that working on central time and having their children go to school on mountain time allows them to be home when their children get out of school and to attend school events without missing work. Several people enjoy that the evening TV news comes on earlier in mountain time than in central time. Some of the comments noted that Mercer County had been on mountain time throughout its history, and that the inconveniences of living on a time zone border (*e.g.,* having two sets of clocks in the house) were things people were used to and could easily live with.

Many comments asserted that mountain time is much preferred by the farmers and ranchers. Farmers were said to enjoy the extra daylight in the morning hours provided by mountain time, because they can finish their chores in time to attend evening events or to order parts from suppliers.

Other Issues

Close to 50 written comments, most of them anonymous, requested that the matter be put to a vote, such as an advisory referendum on the November 2010 ballot. As a Federal agency, DOT has no authority to tell a county whether or not to hold a referendum, and it would be very inappropriate for us to do so. In addition, even if Mercer County were to hold a referendum on the time zone issue, the outcome of the vote would not necessarily be determinative. Rather, the Department is required to apply the statutory criteria set forth in the Uniform Time Act.

Finally, several comments called for an end to daylight saving time observance in North Dakota. Under the Uniform time Act, State governments may decide to opt out of observing daylight saving time for all of the portion of a State in a given time zone. This issue is therefore outside the scope of this rulemaking. Those interested in the daylight saving time issue should explore the matter with their State officials.

The Decision

After weighing all the material in the record for this rulemaking, DOT has decided to place all of Mercer County on central time. We find that the proposed change requested by the County Commissioners suits "the convenience of commerce."

We believe that the change to central time will benefit the community in a variety of ways. Many individuals and businesses in Mercer County look to areas in the central time zone for commercial, health care, and transportation services. The change will improve access to medical care by making it easier to attend appointments in Bismarck. It will also simplify travel arrangements for those using the Bismarck airport. Employees of the coal or electric power industry in Mercer County, as well as those commuting to Bismarck-Mandan for work, will be on the same schedule at home and at work. The change should aid commerce by placing suppliers and businesses on the same schedule, thus eliminating the shortened workday that has arisen for many businesses in Mercer County. In addition, school children will no longer have to miss extra instructional time when they participate in extracurricular activities. Mercer County will now be in the same time zone as its main

television broadcasts and newspapers. Finally, having Mercer County on central time should alleviate much of the confusion and scheduling complexity that have become a part of many residents' daily lives.

We understand that there are a number of individuals who are satisfied with mountain time and that this change will not be an easy transition for them. However, the Department is required to apply the statutory criteria set forth in the Uniform Time Act, and the reasons advanced by proponents of mountain time were fewer and considerably less strong, with respect to the "convenience of commerce" criteria, than those made by persons favoring the change.

This decision will go into effect on November 7, 2010, at the same time that North Dakota changes from daylight saving time to standard time. Because the time zone change and the change from daylight saving time to standard time will coincide, Mercer County residents and organizations will not have to change their clocks this fall.

Regulatory Analyses and Notices

Executive Order 12866 and Regulatory Flexibility Act

The Department has determined that this action is not a significant regulatory action for purposes of Executive Order 12866 or the Department's regulatory policies and procedures. The rule primarily affects the convenience of individuals in scheduling their activities. It imposes no direct costs. Its impact is localized in nature, affecting only the residents of, and people who do business in, a single county. We expect the economic impact of this final rule to be so minimal that full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. While some small entities (*i.e.,* small business or governmental entities in Mercer County) will be affected by setting their clocks differently than in the past, the economic effects of doing so would not be significant, and would largely be economically favorable to them. Therefore, the Department certifies that the rule would not have a significant economic impact on a substantial number of small entities.

Federalism

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States. Therefore, the consultation requirements of Executive Order 13132 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership (58 FR 58093; October 28, 1993), govern the issuance of Federal regulations that impose unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or Tribal government, or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

Protection of Children

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

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

Consultation With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires DOT to have an accountable process to ensure "meaningful and timely input by Tribal officials" in the development of rules with Tribal implications. The Fort Berthold Indian Reservation is located in Mercer County. However, the Reservation already observes central time. This rule helps the Fort Berthold Indian Reservation by placing the surrounding areas in Mercer County in the same time zone as the Reservation. Furthermore, the representatives of the Reservation did not comment on the rule. This rule does not have substantial direct effects on an Indian tribe, or 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. Therefore, this rule does not have Tribal implications and does not preempt Tribal law.

Privacy Act

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

Paperwork Reduction Act

This rule does not create any information collection requirements covered by the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 71

Time zones.

Issued this 20th day of September, 2010, at Washington, DC.

Ray LaHood,

Secretary of Transportation.

■ For reasons discussed in the preamble, the Office of the Secretary amends Title 49 of the Code of Federal Regulations, Part 71, as follows:

PART 71—STANDARD TIME ZONE BOUNDARIES

■ 1. The authority citation for 49 CFR Part 71 continues to read as follows:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; Pub. L. 106–564, 15 U.S.C. 263, 114 Stat. 2811; 49 CFR 1.59(a), unless otherwise noted.

■ 2. Revise § 71.7 (a) to read as follows:

§ 71.7 Boundary line between central and mountain zones.

(a) *Montana-North Dakota.* Beginning at the junction of the Montana-North Dakota boundary with the boundary of the United States and Canada southerly along the Montana-North Dakota boundary to the Missouri River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Missouri and Yellowstone Rivers; thence southerly and easterly along the middle of the Yellowstone River to the north boundary of T. 150 N., R. 104 W.; thence east to the northwest corner of T. 150 N., R. 102 W.; thence south to the southwest corner of T. 149 N., R. 102 W.; thence east to the northwest corner of T. 148 N., R. 102 W.; thence south to the northwest corner of 147 N., R. 102 W.; thence east to the southwest corner

of T. 148 N., R. 101 W.; thence south to the middle of the Little Missouri; thence easterly and northerly along the middle of that river to the midpoint of its confluence with the Missouri River; thence southerly and easterly along the middle of the Missouri River to the midpoint of its confluence with the western land boundary of Mercer County; thence south along the western county line of Mercer County to the southwest boundary; thence east and south along the southwestern county boundary of Morton County to the intersection with the boundary with Sioux County; thence west and south along the northern boundary of Sioux County to the center of State Highway 31; thence south along the center of State Highway 31 to the State border with South Dakota; thence east along the southern boundary of Sioux County in the middle of the Missouri River.

* * * * *

[FR Doc. 2010–24376 Filed 9–28–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XY48

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure of the 2010–2011 Commercial Sector for Black Sea Bass in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for black sea bass in the exclusive economic zone (EEZ) of the South Atlantic. NMFS has determined that the quota for the commercial sector for black sea bass will have been reached by October 7, 2010. This closure is necessary to protect the black sea bass resource.

DATES: Closure is effective 12:01 a.m., local time, October 7, 2010, through 12:01 a.m., local time, on June 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727–824–5305, fax 727–824–5308, e-mail *Catherine.Bruger@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for black sea bass in the South Atlantic at 309,000 lb (140,160 kg) for the current fishing year, June 1, 2010, through May 31, 2011, as specified in 50 CFR 622.42(e)(5)(iii).

Black sea bass are managed throughout their range. In the South Atlantic EEZ, black sea bass are managed by the Council from 35° 15.19′ N. lat., the latitude of Cape Hatteras Light, North Carolina, south. From Cape Hatteras Light, North Carolina, through Maine, black sea bass are managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission. Therefore, the closure provisions contained in this notice are applicable to those vessels harvesting or possessing black sea bass from Key West, Florida, through Cape Hatteras Light, North Carolina.

Under 50 CFR 622.43(a), NMFS is required to close the commercial sector for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 309,000 lb (140,160 kg) for black sea bass will be reached on or before October 7, 2010. Accordingly, NMFS is closing the commercial sector for black sea bass in the South Atlantic EEZ from 12:01 a.m., local time, on October 7, 2010, through 12:01 a.m., local time, on June 1, 2011. The operator of a vessel with a valid commercial vessel permit for snapper-grouper having black sea bass onboard must have landed and bartered, traded, or sold such black sea bass prior to 12:01 a.m., local time, October 7, 2010.

During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(vii) and (d)(2), respectively, apply to all harvest or possession of black sea bass in or from the South Atlantic EEZ, and the sale or purchase of black sea bass taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of black sea bass that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, October 7, 2010, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for black sea bass would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the commercial sector to the harvest of black sea bass constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the black sea bass stock because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30–day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: September 24, 2010.

Carrie Selberg,

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

[FR Doc. 2010–24450 Filed 9–24–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XY47

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure of the July-December 2010 Commercial Sector for Vermilion Snapper in the South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic. NMFS has determined that the quota for the commercial sector for vermilion snapper will have been reached by October 6, 2010. This closure is necessary to protect the vermilion snapper resource.

DATES: Closure is effective 12:01 a.m., local time, October 6, 2010, through 12:01 a.m., local time, on January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone 727–824–5305, fax 727–824–5308, e-mail *Catherine.Bruger@noaa.gov*.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. Those regulations set the commercial quota for vermilion snapper in the South Atlantic at 302,523 lb (137,222 kg) for the current fishing period, July 1 through December 31, 2010, as specified in 50 CFR 622.42(e)(4)(ii).

Under 50 CFR 622.43(a), NMFS is required to close the commercial sector for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect with the Office of the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 302,523 lb (137,222 kg) for vermilion snapper will be reached on or before October 6, 2010. Accordingly, NMFS is closing the commercial sector for vermilion snapper in the South Atlantic EEZ from 12:01 a.m., local time, on October 6, 2010, through 12:01 a.m., local time, on January 1, 2011. The operator of a vessel with a valid commercial vessel permit for snapper-grouper having vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, October 6, 2010.

During the closure, the bag limit and possession limits specified in 50 CFR 622.39(d)(1)(v) and (d)(2), respectively, apply to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ, and the sale or purchase of vermilion snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, October 6, 2010, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the commercial sector to the harvest of vermilion snapper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the vermilion snapper stock because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30–day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: September 24, 2010.

Carrie Selberg,

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

[FR Doc. 2010–24454 Filed 9–24–10; 4:15 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 75, No. 188

Wednesday, September 29, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0859; Directorate Identifier 2010–NM–113–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes and Model A340–200, –300, –500, and –600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

* * * * *

* * * [T]here is a possible path for fluid ingress, resulting in connector internal arcing and hydraulic system malfunction. In addition, as the connectors are located in areas adjacent to fuel tanks, such arcing associated with the presence of a fuel leakage could lead to an uncontrolled fire.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 15, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0859; Directorate Identifier 2010–NM–113–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0086R1, dated June 16, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Several A330 and A340 operators have reported in service occurrences of hydraulic pump electrical motor connector internal arcing, resulting in:

—Either false hydraulic system overheat Electronic Centralized Aircraft Monitoring (ECAM) warnings

—And/or hydraulic pump electrical motor malfunction.

Investigations have shown that, due to the manufacturing tolerances of the cables and the connectors rear grommet, there is a possible path for fluid ingress, resulting in connector internal arcing and hydraulic system malfunction. In addition, as the connectors are located in areas adjacent to fuel tanks, such arcing associated with the presence of a fuel leakage could lead to an uncontrolled fire.

In order to protect the hydraulic pump electrical motor connectors against fluid ingress from the rear of the connector grommet and prevent false hydraulic system overheat ECAM warnings and/or hydraulic pump electrical motor malfunction, this AD requires modification of the three hydraulic pump electrical motor connectors associated to the Blue, Yellow and Green hydraulic systems.

This Revision 1 is issued to delete Airbus modifications 55923S18878 and 55924S19452 from the applicability of this AD.

The modification adds heat shrink sleeves to certain cable contacts and a sealing plug to the connector free cavity. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the service information specified in the table.

TABLE—APPLICABLE SERVICE INFORMATION

Airplane Model—	Airbus Mandatory Service Bulletin—	Revision—	Dated—
A330	A330–92–3088, including Appendix 01	01	February 22, 2010.
A340	A340–92–4081, including Appendix 01	01	February 22, 2010.
A340	A340–92–5053, including Appendix 01	01	February 22, 2010.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 43 products of U.S. registry. We also estimate that it would take about 13 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $877 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $85,226, or $1,982 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2010–0859; Directorate Identifier 2010–NM–113–AD.

Comments Due Date

(a) We must receive comments by November 15, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airbus Model A330–201, A330–202, A330–203, A330–223, A330–243, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, and A330–343 airplanes; certificated in any category; all serial numbers; except those on which Airbus modifications 58773 and 45968 have been embodied in production.

(2) Airbus Model A340–211, A340–212, A340–213, A340–311, A340–312, A340–313, A340–541, and A340–642 airplanes; certificated in any category; all serial numbers; except those on which Airbus modifications 58773 and 45968 have been embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 92.

Reason

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

* * * * *

* * * [T]here is a possible path for fluid ingress, resulting in connector internal arcing and hydraulic system malfunction. In addition, as the connectors are located in areas adjacent to fuel tanks, such arcing

associated with the presence of a fuel leakage could lead to an uncontrolled fire.

* * * * *

Compliance

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

Actions

(g) Within 3,600 flight hours after the effective date of this AD, modify the hydraulic pump electrical motor connectors of the blue, yellow, and green electric pumps, in accordance with the Accomplishment Instructions of the applicable service information specified in Table 1 of this AD.

TABLE 1—APPLICABLE SERVICE INFORMATION

Airplane Model—	Airbus Mandatory Service Bulletin—	Revision—	Dated—
A330	A330–92–3088	01	February 22, 2010.
A340	A340–92–4081	01	February 22, 2010.
A340	A340–92–5053	01	February 22, 2010.

Credit for Actions Accomplished in Accordance With Previous Issue of Service Information

(h) Modifications accomplished before the effective date of this AD in accordance with the service information specified in Table 2 of this AD are considered acceptable for compliance with the requirements of paragraph (g) of this AD.

TABLE 2—CREDIT SERVICE INFORMATION

Airplane Model—	Airbus Mandatory Service Bulletin—	Revision—	Dated—
A330	A330–92–3088	Original	September 2, 2009.
A340	A340–92–4081	Original	September 2, 2009.
A340	A340–92–5053	Original	September 2, 2009.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(j) Refer to MCAI EASA Airworthiness Directive 2010–0086R1, dated June 16, 2010, and the service information specified in Table 3 of this AD, as applicable, for related information.

TABLE 3—RELATED SERVICE INFORMATION

Airplane Model—	Airbus Mandatory Service Bulletin—	Revision—	Dated—
A330	A330–92–3088	01	February 22, 2010.
A340	A340–92–4081	01	February 22, 2010.
A340	A340–92–5053	01	February 22, 2010.

Issued in Renton, Washington, on September 21, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24238 Filed 9–28–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0594; FRL–9208–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compounds Emissions From Industrial Solvent Cleaning Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment (MDE). This SIP revision consists of an addition to Maryland's Volatile Organic Compounds from Specific Processes Regulation. Maryland has adopted standards for industrial solvent cleaning operations that satisfy the reasonably available control techniques (RACT) requirements for sources of volatile organic compounds (VOCs) covered by control techniques guidelines (CTG). This amendment reduces VOC emissions from industrial solvent cleaning operations. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0594 by one of the following methods:

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

B. *E-mail: pino.maria@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0594, Maria Pino, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2010–0594. 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 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 during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lewis, (215) 814–2037, or by e-mail at *lewis.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, *please see* the information provided in the direct final action, with the same title, "Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of Volatile Organic Compound Emissions from Industrial Solvent Cleaning Operations," that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 14, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–24422 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1140]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition,

these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before December 28, 2010.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1140, to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *roy.e.wright@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		
		Effective	Modified	Communities affected
Vermilion County, Illinois, and Incorporated Areas				
East Branch Lick Creek	Approximately 650 feet upstream of U.S. Route 136	None	+613	City of Danville, Unincorporated Areas of Vermilion County.
	Approximately 350 feet downstream of Lynch Road	None	+644	
North Fork Vermilion River	Approximately 940 feet downstream of Williams Street/Hungry Hollow Road.	None	+543	Unincorporated Areas of Vermilion County.
	Approximately 0.75 mile upstream of the water treatment plant dam.	None	+549	
Stoney Creek	Just upstream of Winter Avenue	None	+612	Unincorporated Areas of Vermilion County
	Approximately 0.5 mile upstream of Winter Avenue	None	+615	
Vermilion River	Approximately 0.75 mile downstream of I–74	None	+533	Unincorporated Areas of Vermilion County.
	Approximately 0.85 mile upstream of the railroad crossing upstream of the confluence of North Fork Vermilion River and parallel to H Avenue.	None	+542	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		
		Effective	Modified	Communities affected

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate.

Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Danville

Maps are available for inspection at City Hall, 17 West Main Street, Danville, IL 61832.

Unincorporated Areas of Vermilion County

Maps are available for inspection at the Vermilion County Courthouse, 6 North Vermilion Street, Danville, IL 61832.

Pottawatomie County, Kansas, and Incorporated Areas

North Unnamed Tributary	Approximately 500 feet northeast of the intersection of U.S. Route 24 and Walsh Road.	None	#2	City of Wamego, Unincorporated Areas of Pottawatomie County.
	Approximately 1.0 mile northeast of the intersection of U.S. Route 24 and Walsh Road.	None	#2	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Wamego

Maps are available for inspection at City Hall, 430 Lincoln Avenue, Wamego, KS 66547.

Unincorporated Areas of Pottawatomie County

Maps are available for inspection at the Pottawatomie County Courthouse, 207 North 1st Street, Westmoreland, KS 66549.

Yellowstone River	Approximately 3.26 miles downstream of Northern Pacific Railroad.	None	+4357	City of Livingston, Unincorporated Areas of Park County.
	Approximately 4.14 miles downstream of Tom Miner Creek Road.	None	+4953	
Yellowstone River East Branch.	Approximately 0.76 mile downstream of I–90	None	+4493	City of Livingston, Unincorporated Areas of Park County.
	Approximately 0.94 mile upstream of I–90	None	+4519	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Livingston

Maps are available for inspection at 414 East Callender Street, Livingston, MT 59047.

Unincorporated Areas of Park County

Maps are available for inspection at 414 East Callender Street, Livingston, MT 59047.

Elk County, Pennsylvania (All Jurisdictions)

Alysworth Run	Approximately 1,192 feet upstream of West Main Street.	+1400	+1397	Township of Ridgway.
	Approximately 75 feet downstream of Grant Road	+1424	+1420	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		
		Effective	Modified	Communities affected
Clarion River	Approximately 935 feet upstream of the confluence with Alysworth Run.	None	+1374	Township of Ridgway.
	Approximately 1,193 feet downstream of Gillis Ave	None	+1374	
Clarion River	Approximately 1,200 feet downstream of the confluence with Mason Creek.	None	+1384	Township of Ridgway.
	Approximately 0.56 mile upstream of the confluence with Mason Creek.	None	+1387	
Elk Creek	Approximately 1.18 mile upstream of the confluence with Mohan Run.	None	+1408	Township of Ridgway.
	Approximately 0.44 mile downstream of U.S. Route 219.	None	+1414	
Elk Creek	Approximately 1,867 feet downstream of the confluence with Elk Creek Tributary 1.	None	+1473	Township of Ridgway.
	Approximately 1,885 feet upstream of the confluence with Daguscahonda Run.	None	+1474	
Little Toby Creek	Approximately 0.71 mile downstream of the bridge over Coal Hollow Road.	+1680	+1674	Township of Fox.
	Approximately 0.62 mile downstream of the bridge over Coal Hollow Road.	+1690	+1692	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Fox

Maps are available for inspection at the Fox Township Municipal Building, 116 Irishtown Road, Kersey, PA 15846.

Township of Ridgway

Maps are available for inspection at the Township Municipal Building, 164 Ridgway Drive, Ridgway, PA 15853.

Armstrong Creek	Approximately 100 feet downstream of Waterworks Road.	None	+740	Unincorporated Areas of Ellis County.
	Approximately 1,040 feet upstream of Waterworks Road.	None	+746	
Bedford Branch	Approximately 0.5 mile downstream of Southern Pacific Railroad.	None	+538	City of Grand Prairie, Unincorporated Areas of Ellis County.
	Approximately 275 feet upstream of Southern Pacific Railroad.	None	+567	
Cottonwood Creek	Approximately 0.74 mile upstream of Old Fort Worth Road.	None	+574	City of Grand Prairie, Unincorporated Areas of Ellis County.
	At the confluence with Newton Branch	None	+584	
East Fork to Soap Creek	At the confluence with Soap Creek	None	+594	City of Midlothian, Unincorporated Areas of Ellis County.
	Just upstream of Weatherford Road	None	+616	
Hollings Branch	Approximately 0.66 mile downstream of Magic Valley Lane.	None	+641	City of Cedar Hill.
	Approximately 725 feet downstream of Magic Valley Lane.	None	+659	
Joe Pool Lake	Approximately 0.48 mile downstream of Southern Pacific Railroad.	None	+538	City of Grand Prairie, Unincorporated Areas of Ellis County.
	Approximately 0.37 mile upstream of FM 661	None	+540	
Newton Branch	At the confluence with Soap Creek	None	+550	City of Grand Prairie, City of Midlothian, Unincorporated Areas of Ellis County.
	Approximately 1,360 feet upstream of Kimble Road	None	+564	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		
		Effective	Modified	Communities affected
Soap Creek	At the confluence with Joe Pool Lake	None	+540	City of Grand Prairie, City of Midlothian, Unincorporated Areas of Ellis County.
	Approximately 0.26 mile downstream of U.S. Route 67.	None	+598	
West Soap Creek	At the confluence with Soap Creek	None	+581	Unincorporated Areas of Ellis County.
	Approximately 0.5 mile upstream of Ray White Road	None	+601	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate.
Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to Roy E. Wright, Deputy Director, Risk Analysis Division, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Cedar Hill
Maps are available for inspection at City Hall, 502 Cedar Street, Cedar Hill, TX 75104.

City of Grand Prairie
Maps are available for inspection at City Hall, 317 College Street, Grand Prairie, TX 75053.

City of Midlothian
Maps are available for inspection at City Hall, 104 West Avenue East, Midlothian, TX 76065.

Unincorporated Areas of Ellis County
Maps are available for inspection at the Ellis County Courthouse, 101 West Main Street, Waxahachie, TX 75165.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 17, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2010–24370 Filed 9–28–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 174, 177, 178, and 180

[Docket No. PHMSA–2009–0151 (HM–218F)]

RIN 2137–AE46

Hazardous Materials; Miscellaneous Amendments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes to make miscellaneous amendments to the Hazardous Materials Regulations to update and clarify certain regulatory requirements. Among other provisions, PHMSA is proposing to add a labeling exception for "consolidation bins" to facilitate use of bins as a method of consolidating packages for ease of handling when transported by motor vehicle and to clarify that the definition of "person," as that term is used in the regulations, also includes persons who manufacture, test, repair, and recondition packaging. PHMSA also proposes to provide an exception from regulation for permeation devices containing small amounts of hazardous materials.

DATES: Comments must be received by November 29, 2010.

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

- *Federal Rulemaking* Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Dockets Management System; U.S. Department of Transportation, Dockets Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* To U.S. Department of Transportation, Dockets Operations, M–30, 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.

Instructions: Include the agency name and docket number PHMSA–2009–0151 (HM–218F) or RIN 2137–AE46 for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. If sent by mail, comments must be submitted in duplicate. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://www.regulations.gov.*

Docket: You may view the public docket through the Internet at *http://www.regulations.gov* or in person at the Docket Operations office at the above address (See **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Deborah L. Boothe, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

This NPRM is designed to update and clarify existing requirements by incorporating changes into the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) based on PHMSA's own initiatives and petitions for rulemaking submitted in accordance with 49 CFR 106.95. To this end, PHMSA is proposing to eliminate, revise, clarify and relax certain regulatory requirements.

In this NPRM, PHMSA is proposing to:

- Update incorporations by reference of industry consensus standards issued by the Aluminum Association; the American Society for Testing and Materials; and the Institute of Makers of Explosives (*see* §§ 173.63 and 177.835).
- Add a requirement for each applicant to a special permit under §§ 107.105, 107.107, and 107.109 to identify their role as a shipper (offeror), carrier, or both.
- Revise the definition of "person" to include those who manufacture, test, repair, and recondition packages (*see* § 171.8).
- Revise the Hazardous Materials Table (HMT) to harmonize certain entries with international standards (*see* § 172.101) by adding and revising certain proper shipping names. Most significantly, we are adding a new entry "Formaldehyde solutions (with not less than 10% and less than 25% formaldehyde)" to clarify requirements applicable to formaldehyde and formalin with less than 10% formaldehyde; revising the entry for "Environmentally hazardous substances, liquid, n.o.s." to provide packaging exceptions for certain materials that are assigned to UN3082; and adding a new special provision 176 to § 172.102 to clarify the differences between Class 3 and Class 9 formaldehyde solutions.
- Add a new italicized entry to the HMT for "Permeation devices" referencing a new § 173.175 applicable to permeation devices to provide an exception for permeation devices containing hazardous materials. Permeation devices are used for calibrating air quality monitoring devices for consistency. This change harmonizes the HMR with the current exception in the international regulations for these devices.
- Update and clarify hazard communication requirements applicable to Class 9 label specifications; placard size; IBCs; and Division 6.2 labels.
- Authorize the use of an alternative bend test for DOT 3AA and 3AAX steel cylinders.
- Revise § 178.71 to authorize the use of either a proof pressure or volumetric expansion test as described in the ISO 7866 and 9809 standards.
- Revise § 171.14 transitional provisions to remove expired transitional provisions and incorporate certain transitional provisions into the specific sections of the HMR.
- Revise provisions in § 173.56(j) to further clarify the use of the American Pyrotechnics Association (APA) standard for classifying and approving fireworks.
- Revise § 172.404 to provide a labeling exception for consolidation bins used to transport hazardous materials by motor carrier.
- Revise § 178.345.1 to allow vapors to escape through a vent or drain.
- Revise § 178.320 cargo tank wall definition.
- Revise § 178.347–1 to clarify that a cargo tank motor vehicle with a Maximum Allowable Working Pressure (MAWP) greater than 35 psig or designed to be loaded by vacuum must be constructed and certified in accordance with the ASME Code.
- Revise § 178.347–4 to make a clear distinction between "designed to be loaded by vacuum" and "built to withstand full vacuum."

II. Proposals in This NPRM

A. Updated Incorporations by Reference
B. Definition of "Person"
C. Consolidation Bins
D. Transitional Provisions
E. Reporting Infectious Substances Incidents
F. Hazard Communication for IBCs
G. HMT Revisions
H. Hazard Communication
I. Exclusive Use Vehicles for Regulated Medical Waste (RMW)
J. Fireworks
K. Explosives
L. Rail Transportation of Hazardous Materials
M. Rail Transloading Operations
N. Cylinders
O. Cargo Tanks
P. Permeation Devices
Q. Alcoholic Beverage Exception
R. Special Permits
S. Batteries Containing Sodium or Cells Containing Sodium

A. Updated Incorporations by Reference

Section 171.7 lists the materials incorporated by reference into the HMR. In response to a petition for rulemaking (P–1495), PHMSA reviewed the updated American Society for Testing and Materials Standard pertaining to the use of an alternate bend test for DOT 3AA and 3AAX cylinders in accordance with (ASTM E290–97a (2004), "Standard Test Methods for Bend Testing for Material for Ductility"). PHMSA also reviewed the updated Association of American Railroads' (AAR) pamphlet pertaining to the Intermodal Loading of Products in Closed Trailers and Containers (AAR Pamphlet 6C); and the updated Institute of Makers of Explosives' Standard pertaining to the Safe Transportation of Detonators (IME SLP–22, Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, dated February 2007). PHMSA found no provisions that would impose additional requirements or would have an adverse impact on safety. Therefore, in this NPRM, PHMSA is proposing to update the materials incorporated by reference to include the most recent editions of these standards.

B. Definition of "Person"

Section 171.8 lists definitions for commonly used terms in the HMR. The current definition of "person" is inconsistent with the definition in the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) in that it does not include persons who manufacture, repair, or test packaging authorized for the transportation of hazardous materials. For consistency with the statutory definition, we are proposing to revise the definition of "person" in § 171.8 to include packaging manufacturers as well as repairers and testers of packaging used for the transportation of hazardous materials.

C. Consolidation Bins

Consolidation bins are commonly used by motor carriers to consolidate and transport hazardous materials packages. Consolidation bins are not offered by a shipper, rather, they are used by a motor carrier to consolidate, secure against movement, and provide additional protection for small packages. Currently, under the provisions of § 172.404(b), a consolidation bin is an outside container and must be labeled as required for each of the hazardous

materials it contains. The American Trucking Associations (ATA) petitioned PHMSA (petition number P–1545; Docket Number PHMSA–2009–0236) to allow motor carriers to use consolidation bins to transport packages of hazardous materials without having to affix labels to the consolidation bin for each class of hazardous material contained within the bin.

In its petition, ATA suggests that using consolidation bins promotes safety by reducing damage to packages of hazardous materials, improves regulatory compliance by ensuring that packages are effectively blocked and braced on a vehicle, improves transportation efficiency by minimizing handling of numerous small packages, and allows packages moving to a specific terminal to be grouped together and to be transferred more efficiently from one motor vehicle to another. However, according to ATA, motor carriers are foregoing the use of consolidation bins because the dynamic nature of motor carrier operations makes the labeling and un-labeling of the bins impracticable. ATA gives the following reasons:

- Drivers would have to be trained on when to affix and remove labels as freight is picked up and dropped off.
- Each motor vehicle would have to be equipped with multiple sets of all labels, as drivers do not know the hazard classes of freight they will pick up prior to arriving at the consignor's facility.
- It is physically difficult to properly affix labels on a reusable consolidation bin in a manner that ensures they do not come off while in transportation and then remove those labels as packages within the bins are delivered.

ATA states: "The use of unlabeled consolidation bins will not compromise the safe transportation of hazardous materials. Hazardous materials packaging loaded into the consolidation bin will be marked, labeled, and manifested on a hazardous material shipping paper. While some of these package labels may not be visible within the consolidation bin, this situation is identical to the current transportation of packagings where labels may be obscured by the position of the package or its placement in the vehicle * * *." In its petition, ATA proposes a new paragraph (c) to § 172.404 to allow a motor carrier to use an unlabeled consolidation bin for its own convenience, to include trailer-on-flatcar service, and proposes a specific definition in § 171.8 for the term "consolidation bin".

In addition to the petition for rulemaking by ATA, PHMSA issued special permit, DOT–SP 14881, authorizing the use of consolidation bins without hazard warning labels on the outside of the bins. This special permit was issued on December 3, 2009 and has been routinely used with no reported incidents. The special permit requires that the consolidation bin be marked with an indication of each hazard class or division within it; that the packages be secured within the bin by other packages or other suitable means to prevent shifting or significant relative motion between the packages; that the consolidation bins be otherwise properly blocked and braced within the transport vehicle; and that the packages be loaded only by employees of the motor carrier.

PHMSA agrees there are safety benefits to using consolidation bins and that it may be impractical for a motor carrier to label and remove labels for packages transported in consolidation bins. Therefore, we are proposing to allow an exception from labeling for consolidation bins used for the convenience of a motor carrier. However, PHMSA is concerned that, in the absence of any marking or label on the consolidation bin, a person other than the person who had placed packages in the bin may have no indication the bin contains a hazardous material. To address this concern, and consistent with the terms of the special permit, we propose to require the bin to be marked in a manner that indicates it contains a hazardous material. We also propose to incorporate several provisions of the special permit, including limiting the size of a consolidation bin to less than 64 cubic feet capacity, so as not to conflict with hazard communication requirements for freight containers. We also propose that the consolidation bin must be reusable, made of materials such as plastic, wood, or metal. PHMSA is concerned that consolidation bins made of cardboard are not of sufficient strength to meet the requirements in this proposal. Accordingly, PHMSA is requesting comments on the use of cardboard and what standards should be established if cardboard would be authorized for use, *i.e.,* thickness, wall type, burst strength, etc.

We also propose that packages may only be placed within the consolidation bin and the bin be loaded on a motor vehicle by an employee of a single motor carrier. Additionally, we propose that consolidation bins may only be transported by a single motor carrier, or on railcars transporting such vehicles. We believe the proposed language in § 172.404(c) obviates the need for a separate definition for "consolidation bin" in § 171.8.

In addition to the proposal to address the ATA petition, we propose to revise paragraph (b) of § 172.404, to clarify that an outside container or overpack need not be labeled, if labels on the packages contained therein are visible, for consistency with the overpack provisions of § 173.25(a)(2).

D. Transitional Provisions

Section 171.14 provides transitional provisions for recently adopted regulatory changes. Most of the provisions in this section are outdated. Therefore, for better understanding of the transitional provisions, we are proposing to remove this section and outdated provisions from the HMR and add the remaining provisions to the appropriate sections in the HMR to which they apply, as follows:

- *Shipping description sequence.* Section 171.14(e) permits the shipping description sequences in effect on December 31, 2006, to be used until January 1, 2013. In this NPRM, PHMSA proposes to relocate this transitional provision to § 172.202(b).
- *Division 5.2 labels and placards.* Section 171.14(f) authorizes the use of a Division 5.2 label and a Division 5.2 placard that conform to the label and placard specifications in effect on December 31, 2006, until January 1, 2011, except for transportation by highway. For transportation by highway, a Division 5.2 placard conforming to the specifications in § 172.552 of this subchapter in effect on December 31, 2006 may be used until January 1, 2014. In this NPRM, PHMSA is proposing to relocate these transitional provisions to §§ 172.427 and 172.552, respectively.
- *Class 3 and Division 6.1 definitions.* Section 171.14(g) authorizes the use of the Class 3 and Division 6.1 classification criteria and packing group assignments in effect on December 31, 2006, until January 1, 2012. In this NPRM, PHMSA proposes to relocate these transitional provisions to §§ 173.120 and 173.121 for Class 3 materials and to §§ 173.132 and 173.133 for Division 6.1 materials.
- *Gasohol.* The transitional provision for gasohol in § 171.14(h) would be relocated to a new Special Provision 178 to specify that effective October 1, 2010, the proper shipping name "Ethanol and gasoline mixture *or* ethanol and motor spirit mixture *or* ethanol and petrol mixture," and the revised proper shipping name "Gasohol *gasoline mixed with ethyl alcohol, with not more than 10% alcohol*" must be used, as

appropriate when describing gasoline and ethanol mixtures.

E. Reporting Infectious Substances Incidents

Section 171.15 establishes requirements for immediate notice of incidents involving certain hazardous materials incidents. The Centers for Disease Control and Prevention is no longer accepting calls providing notice of incidents involving an infectious substance (etiologic agent). Therefore, we are proposing to remove the alternative to provide notice to the Centers for Disease Control and Prevention of incidents involving an infectious substance (etiologic agent). Specifically, we are proposing to remove the following text from paragraph (a) referencing the Centers for Disease Control and Prevention which states: "Notice involving an infectious substance (etiologic agent) may be given to the Director, Centers for Disease Control and Prevention, U.S. Public Health Service, Atlanta, GA, 800–232–0124 (toll free), in place of notice to the NRC."

F. Hazard Communication for IBCs

Section 172.336 requires identification numbers to be displayed on either orange panels or a plain white square-on-point display configuration having the same outside dimensions as a placard. Section 172.514 provides an exception to placarding for IBCs which authorizes IBCs to be labeled rather than placarded. However, there is no provision in the HMR that allows the proper shipping name and UN number to be displayed in lieu of displaying the UN number on a placard, orange panel, or white square-on-point configuration [49 CFR 172.332(a)]. For international transport in accordance with the IMDG Code, IBCs are not required to display a UN number on a placard or orange panel. They are, however, required to be marked and labeled as a package. To comply with both the HMR requirements and IMDG Code provisions, some shippers are having difficulty fitting all of the various markings, labels, placards in a steel cage IBC. These IBCs are constructed with a metal plate and all of the required markings, labels, placards do not fit in the allowed space on the metal plate; some must be affixed to the metal boards with clips or other holding devices which, although secured, run the risk of becoming dislodged during transportation. To meet all of the necessary requirements, a shipper may place all of the following items on the IBC: A placard with the UN number; a hazard label; the proper shipping name and UN number; and the GHS product labeling requirements. Shippers generally do not use the UN number on the orange panel because this configuration is too large for the metal plate.

For international harmonization, we are proposing to revise § 172.336 by adding a new paragraph (d) to indicate that when a bulk packaging is labeled instead of placarded in accordance with § 172.514(c), identification numbers may be displayed in accordance with § 172.301(a)(1). Additionally, we are proposing to revise § 172.514(c)(4) to indicate that IBCs that are labeled on two opposite sides rather than placarded, are authorized to display the proper shipping name and UN number in lieu of displaying the UN number on a placard, orange panel, or white square-on-point configuration.

G. HMT Revisions

In this NPRM, PHMSA is proposing a number of revisions to the Hazardous Materials Table (HMT; § 172.101). Proposed changes to the HMT will appear under two sections of the Table, "add," and "revise." Proposed amendments to the HMT for the purpose of harmonizing with international standards include, but are not limited to, the following:

- Section 172.101(c) provides instruction on the use of the Column (2) list of hazardous materials descriptions and proper shipping names in the HMT. Included in paragraph (c)(2) is instruction on use of the word "or." The word "or" in italics indicates that there is a choice of terms in the sequence that may be used as the proper shipping name or as part of the proper shipping name. We are clarifying this provision by proposing further instruction on the use of the word "or." For clarification, we are proposing to include examples to indicate that the term "or" authorizes the use of either the first or the second term in the description of the hazardous materials in the proper shipping name. For example, the entry "Carbon dioxide, solid *or* Dry ice" means that either "Carbon dioxide, solid" or "Dry ice" may be used as the proper shipping name; and, the entry "Articles, pressurized pneumatic *or* hydraulic" means that either "Articles, pressurized pneumatic" or "Articles, pressurized hydraulic" may be used as the proper shipping name.
- The entries for "Formaldehyde, solutions" and "Formalin" are sometimes used incorrectly. Formalin is specifically defined as a 37% aqueous solution of formaldehyde. A 10% formalin solution and 10% formaldehyde solution are not the same materials for transport purposes. Many diagnostic and biological samples are transported by commercial aircraft in formaldehyde solutions of various concentrations. Some samples transported in 10% or greater formaldehyde solutions are incorrectly shipped as unregulated materials. Other samples transported in 3.7% formaldehyde (10% formalin) solutions are incorrectly shipped as fully regulated hazardous materials. A formaldehyde solution, with less than 25% but not less than 10% formaldehyde is a Class 9 material. In this NPRM, PHMSA is proposing to include a new italicized entry in Column (2) of the HMT for 10%–25% formaldehyde solutions to enhance understanding of the entries in the HMT. This new entry will reference the proper shipping names "Aviation regulated liquid, n.o.s" and "Other regulated substances, liquid, n.o.s."

  Formalin is an aqueous solution of formaldehyde and methanol and is a Class 3 flammable liquid material. The entry "Formaldehyde solutions, flammable, UN1198" is intended for use as a hazardous materials description for formalin. Note that the less common "methanol-free" formalin is not a Class 3 material. Therefore, for further clarification, we are also proposing to revise the "Formaldehyde, solutions, flammable entry by adding a new special provision 176 to specify that the entry is intended for use as proper shipping name for formaldehyde solutions containing methanol.
- In a final rule, under Docket HM–215I, PHMSA revised the proper shipping name for "Regulated medical waste, n.o.s, UN3291" to include "Clinical waste unspecified, n.o.s." and "(BIO) Medical waste, n.o.s." under a combined proper shipping name entry. It has come to our attention that combining all the proper shipping names under the one entry makes it difficult to know the other proper shipping names exist. We are proposing to give each proper shipping name its own entry in the HMT with a cross reference to the others.
- For the entry "Battery-powered vehicle *or* Battery-powered equipment, UN3171," the stowage category "A" entry in Column (10A) was inadvertently omitted. We are proposing to reinstate in Column (10A) of the HMT stowage category "A".
- A new italicized entry "Permeation devices, containing dangerous goods, for calibrating air quality monitoring equipment" will be added referencing § 173.175 to indicate that permeation devices that contain dangerous goods and are used for calibrating air quality monitoring devices are not subject to

these requirements provided the conditions are met. This proposed revision was submitted to PHMSA as a petition for rulemaking (P–1493) from the URS Corp. requesting harmonization with the international regulations on the exception for permeation devices in Special Provision A41 of the ICAO Technical Instructions.

Section 172.102 lists a number of special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. For consistency with international regulations, we propose to amend § 172.102, special provisions, as follows:

• PHMSA is proposing to add a new Special Provision 173 to provide a specification package exception for certain adhesives, printing inks, printing ink-related materials, paints, paint- related materials, and resin solution which are assigned to "Environmentally hazardous substances, liquid, n.o.s., UN3082." This is consistent with an exception recently adopted within the UN Model Regulations on the Transport of Dangerous Goods. The exception adopted by the UN was an expansion of the current packing provision PP1 of Packing Instruction P001 of the UN Model Regulations and provides that metal or plastic packaging for substances of Packing Groups II and III in quantities of 5 liters or less per packaging are not required to be packed in specification packaging when transported under specific conditions. In the HM–215J final rule published January 4, 2010 (75 FR 63), PHMSA indicated that it was evaluating the adoption of these provisions. PHMSA has completed this review and is proposing to adopt the provision on the basis that environmentally hazardous paints, adhesives, printing inks, etc. pose a lesser degree of risk than flammable and corrosive paints which are already provided this exception in the HMR.

H. Hazard Communication

Section 172.203(c) provides additional shipping paper description requirements. PHMSA received a petition for rulemaking (P–1456) from the AAR to suggest that a shipping paper be required to include a notation for shipments of non-odorized liquefied petroleum gas (LPG). Most LPG shipments contain an odorant. Thus, in the event of an accident involving LPG, emergency responders may assume that no LPG is leaking if they cannot detect an odor. To ensure that emergency responders are made aware that a shipment of LPG is not odorized, PHMSA proposes to revise § 172.203(c) to require a notation that the LPG shipment does not contain an odorant.

Section 172.324 provides additional marking requirements for hazardous materials in non-bulk packaging. For clarification purposes, in this NPRM, PHMSA proposes to amend this section to require a package containing a limited quantity that also meets the definition for a hazardous substance to be marked with the name of the hazardous substance on the package, in parentheses, in association with the proper shipping name or the identification number, as applicable.

Section 172.336 requires identification numbers to be displayed on either orange panels or a plain white square-on-point display configuration on transport vehicles and freight containers carrying hazardous materials. In a petition for rulemaking (P–1392), Vinings Industries, Inc., has noted that given the size of bulk packaging covered by the placard-to-label exception and the fact that these packagings are generally transported in closed vehicles, the same logic used to justify a small display of the hazard identity (e.g., labels instead of placards) would support a small, more flexible, display of the identification number. PHMSA agrees that the petition has merit. Therefore, in this NPRM, PHMSA proposes to revise § 172.336 by adding new paragraph (d) to allow the use of smaller identification markings when a bulk packaging is labeled instead of placarded.

Section 172.432 describes the Infectious Substance label size and color and provides an illustration of how it must appear. References to the Centers for Disease Control (CDC) are no longer required on this label. Therefore, we are proposing to remove the text that refers to the CDC on the label. (In U.S.A. Notify Director—CDC, Atlanta, GA 1–800–232–0124.) We are allowing three years from the effective date of the final rule to use up existing stocks.

Section 172.446 describes the Class 9 label specifications, including size, color, and an illustration of how it must appear. The Class 9 label specifications illustrated in the HMR is different from that in the United Nations (UN) and all of the modal regulations in that it features a thin, horizontal line running across the label at its midpoint (just at the bottom of the vertical black bars). There is no similar line in the UN or other international standards. Some shipments are being delayed and required to be relabeled by European carriers due to this difference in the Class 9 label specifications. In an effort to avoid continued frustrated or delayed shipments, in this NPRM, PHMSA proposes to revise the Class 9 label specifications by removing the horizontal line running across the label at its midpoint. We are allowing three years from the effective date of the final rule to use up existing stocks.

Section 172.519 establishes general specifications for placards. Paragraph (c)(1) states that each placard must measure at least 273 mm (10.8 inches) on each side and must have a solid line inner border approximately 12.7 mm (0.5 inches) from each edge. For international harmonization, we are proposing to authorize the use of placards measuring from 250 mm (9.84 inches) on each side and having a solid line inner border approximately 12.7 mm (0.5 inches) from each edge.

I. Exclusive Use Vehicles for Regulated Medical Waste (RMW)

Section 173.134 establishes definitions and exceptions for infectious substances. Paragraph (c)(2) requires RMW that contains Category B cultures and stocks to be transported on a vehicle "used exclusively" to transport RMW. In a letter of interpretation issued on March 19, 2007 (Ref. No. 07–0057), PHMSA clarified that the exception in § 173.134(c)(2) applies to their shipping scenario when transporting the various types of medical waste as described below. PHMSA is proposing to revise § 173.134(c)(2) to incorporate the clarifications from the March 19, 2007 letter of interpretation. Specifically, PHMSA is clarifying that the following materials may be transported on a vehicle used exclusively to transport RMW: (1) Plant and animal waste regulated by the Animal and Plant Health Inspection Service (APHIS); (2) waste pharmaceutical materials; (3) laboratory and recyclable wastes; (4) infectious substances that have been treated to eliminate or neutralize pathogens; (5) forensic materials being transported for final destruction; (6) rejected or recalled health care products; and (7) documents intended for destruction in accordance with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements.

J. Fireworks

Section 173.56 specifies the requirements for classification and approval of new explosives, including fireworks in § 173.56(j). The section incorporates by reference the APA Standard 87–1 for classifying and approving fireworks. The text of

§ 173.56(j) permits the use of APA Standard 87–1 for determining fireworks classification as Division 1.3 or 1.4 explosive materials. The APA standard is also used to classify a pyrotechnic device as 1.1G. Therefore, we are proposing to delete the words "Division 1.3 and 1.4" in the introductory paragraph so that the sentence reads, "Fireworks may be classed and approved by the Associate Administrator without prior examination and offered for transportation if the following conditions are met:"

K. Explosives

Section 173.60 provides general packaging requirements for shipping Class 1 (explosive) materials. In a petition for rulemaking (P–1527), Mr. Alexander Fucito, the petitioner, asks PHMSA to revise the HMR to allow flexibility in testing and preparation of unpackaged shipments consisting of large and robust explosive articles. The petitioner contends that the current thermal stability and drop test requirements provided by Test Series 4 of the UN Manual of Tests and Criteria are unsafe and pose an unrealistic burden for persons who transport these articles. The petitioner asks PHMSA to revise § 173.60(b) to allow large and robust foreign munitions to be transported in the original, manufacturer provided, shipping configuration.

Section 173.60(b)(14) contains the same language as the footnote in Packaging Instruction 130 for named UN numbers in the UN Recommendations, Paragraph 4.1.5.15. However, there is a second paragraph to Paragraph 4.1.5.15 that has not yet been incorporated into the HMR. That paragraph reads: "Where such large explosive articles are as part of their operational safety and suitability tests are subjected to test regimes that meet the intentions of these Regulations and such tests have been successfully undertaken, the competent authority may approve such articles to be transported under these Regulations." PHMSA is proposing to add modified text of this paragraph from the 15th Edition of the UN Recommendations to §§ 173.60(b)(14) and 173.62(c) Packing Instruction 130 in the Table of Packing Methods to provide greater harmonization and account for the concerns expressed by Mr. Fucito in Petition P–1527.

L. Rail Transportation of Hazardous Materials

Sections 174.55(a); 174.101(o)(2)(3); 174.112(c)(3), and 174.115(b)(3) establish general handling and loading requirements for the transportation of hazardous materials by rail. The Bureau of Explosives (BOE), part of the AAR, was founded in 1907 by the railroad industry to serve as a self-policing agency to promote the safe transportation of explosives and other hazardous materials. The BOE wrote some of the first hazardous materials regulations which were subsequently adopted and expanded upon by the Interstate Commerce Commission (ICC) and later the U.S. Department of Transportation. A number of BOE publications are referenced in the HMR for bulk and non-bulk shipments of hazardous materials.

Several of the BOE publications focus on the safe transportation of non-bulk packages of hazardous materials in trailer-on-flatcar service, including BOE Pamphlet No. 6, *Approved Methods for Loading and Bracing Carload and Less Than Carload Shipments of Explosives and Other Hazardous Materials;* Pamphlet No. 6A, *Approved Methods for Loading and Bracing Carload Shipments of Military Ammunition and Explosives;* and BOE Pamphlet 6C, *Approved Methods for Loading and Bracing Trailers and Less-Than-Trailer Shipments of Explosives and Other Dangerous Articles Via Trailer-on-Flat-car and Container-on-Flat-car.* Pamphlets 6 and 6A were last updated in 1976.

With the increasing use of intermodal methods as the preferred means of shipping non-bulk packages of hazardous materials, the AAR subsequently issued the *Intermodal Loading Guide for Products in Closed Trailers and Containers* (Guide), replacing BOE Pamphlet 6C, Pamphlet No. 45, and Circular No. 43–C. This Guide was issued in 1995. Despite the industry change, BOE Pamphlets 6 and 6A remain in effect and are referenced in the HMR.

The *Intermodal Loading Guide for Products in Closed Trailers and Containers* is intended to be a comprehensive manual for loading commodities in trailers and containers for shipment by rail. Incorporated into this Guide are AAR Circular 43–D, *Rules for Governing the Loading, Blocking and Bracing of Freight in Closed Trailers and Containers for TOFC/COFC Service,* the approved loading and bracing information contained in AAR Bureau of Explosives Pamphlet 6C, and AAR Pamphlet No. 45 on general loading in closed trailers and containers.

The "General Rules" as contained in Circular 43–D are issued by the Association of American Railroads, and have been formulated for the purpose of providing safe methods of loading in closed trailers or containers. During normal transportation, trailers and containers may move in a backwards or reverse direction for all or part of their journey. Dynamic forces may shift an unsecured load or cause lading to exert excessive pressure against the front, rear doors, or sides of the trailer or container. Lading that is improperly blocked and braced can shift and cause the vehicle to lean on the flatcar. A leaning vehicle can cause a sideswipe or contribute to a derailment. The loading methods, as described in the Guide, are approved by the Damage Prevention and Freight Claim Committee and are minimum industry acceptance standards that have been evaluated and approved by the member railroad carriers serving on the committee.

PHMSA is proposing to revise Part 174 to properly reflect the current Guide by replacing references to Pamphlet 6C in §§ 174.55(a); 174.101(o)(2)(3); 174.112(c)(3); and 174.115(b)(3). At each of these section references, places where Pamphlets 6 and 6C are referenced, Pamphlet 6 will remain and Pamphlet 6C will be replaced by the *Intermodal Loading Guide for Products in Closed Trailers and Containers.*

M. Rail Transloading Operations

Section 174.67 provides general requirements for rail tank car transloading operations for hazardous materials. In a petition for rulemaking (P–1481), Musket Corporation requests several revisions to this section. Specifically, the petitioner asks for clarification of manhole opening requirements, suggesting that the requirement for manhole covers to be opened during transloading operations conflicts with procedures to contain or control vapors during transloading or unloading operations where venting is accomplished through vapor valves rather than manhole openings. Additionally, certain companies pneumatically unload tank cars, and this process cannot be accomplished with the manhole cover open. In addition, the petitioner notes that the language requiring manhole covers to be opened during this process conflicts with regulations from other regulatory bodies, such as the EPA National Emission Standards for Hazardous Air Pollutants for Source Categories, Subpart PP. Finally, the petitioner suggests that this requirement conflicts with a number of air quality control permits that restrict the amount of emissions companies can vent into the atmosphere.

PHMSA agrees that the petition has merit. Therefore, in this NPRM, PHMSA

proposes to revise § 174.67 to clarify and further address closed systems in transloading operations. PHMSA proposes that for closed systems, before a manhole cover or outlet valve cap is removed from a tank car, the car must be relieved of all interior pressure by cooling the tank with water or by venting the tank by raising the safety valve or opening the dome vent at short intervals. However, if venting to relieve pressure will cause a dangerous amount of vapor to collect outside the car, venting and unloading must be deferred until the pressure is reduced by allowing the car to stand overnight, otherwise cooling the contents, or allow venting to a closed collection system. These precautions are not necessary when the car is equipped with a manhole cover that hinges inward or with an inner manhole cover that does not have to be removed to unload the car, and when pressure is relieved by piping vapor into a condenser or storage tank.

N. Cylinders

Section 173.302 provides the requirements for filling cylinders with non-liquefied (permanent) compressed gases. Section 173.304 provides the requirements for filling cylinders with liquefied compressed gases. In a final rule under Docket HM–224B, PHMSA added DOT 39 cylinders to the types of cylinders authorized for the transportation of compressed oxygen and other oxidizing gases aboard aircraft in §§ 173.302 and 173.304. It has come to our attention that when we included DOT 39 cylinders with the other types of cylinders, we did not recognize that DOT 39 cylinders have a different pressure relief device (PRD) setting tolerance than the other authorized cylinders. Therefore, in this NPRM, we are proposing to revise paragraph (f)(2) of § 173.302 and paragraph (f)(2) of § 173.304 to prescribe the PRD setting tolerance for DOT 39 cylinders.

Section 178.35 contains general requirements for specification cylinders. Paragraphs (c)(4) and (g) require the inspector to complete certain reports containing the applicable information listed in the Compressed Gas Association publication, CGA C–11 "Recommended Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture" and any additional information or markings required by the applicable specification. These documents must be provided to the cylinder manufacturer and, upon request, to the purchaser. PHMSA compliance inspections reveal sometimes these reports are completed several months after the cylinders are sold. PHMSA is proposing to consolidate the inspector's reports requirements into paragraph (c)(4). A new paragraph (g) would be added to clarify the cylinder manufacturer must have all completed test and certification reports available at or before the time of delivering the cylinders to the purchaser. In addition, the manufacturer's report retention requirement in paragraph (h) would be relocated to paragraph (g) and paragraph (h) would be removed.

Section 178.37 sets forth manufacturing specifications for DOT 3AA and 3AAX seamless steel cylinders, in addition to requirements set forth in § 173.35. Paragraphs (j) and (l) specify the flatting test procedures and rejection criteria respectively. PHMSA received a petition (P–1513) from Worthington Cylinders Corp. requesting a revision to § 178.37 to authorize the use of an alternate bend test conducted in accordance with the procedures in ASTM E 290–97a (2004) for DOT 3AA and 3AAX cylinders. The petitioner states that the proposed bend test demonstrates ductility of the cylinder with the same accuracy as the flattening test at a lower cost to cylinder manufacturers. We agree with the petitioner that the use of the bend test is acceptable for cylinders. Therefore, we are proposing to revise paragraphs (j) and (l) in § 178.37 to authorize the use of the bend test.

Section 178.71 contains design and manufacturing specifications for UN pressure receptacles, including the specification marking requirements. PHMSA is proposing to relax the requirements in paragraph (o)(6) of the HMR to allow the use of a proof pressure test. The ISO 7866 and 9809 standards permit either the proof pressure test or volumetric expansion test to be used. The volumetric expansion test measures the cylinder's elastic expansion and assures the cylinder received a proper heat treatment. However, the ISO standards also require each cylinder be subjected to a hardness test and a comprehensive shear wave ultrasonic examination (UE). PHMSA believes the combination of the proof pressure test, hardness test, and UE should provide adequate assurance that each cylinder received a proper heat treatment. In addition, PHMSA is revising paragraph (c)(1) to include the proof pressure test.

O. Cargo Tanks

Section 178.345–1(i)(2) establishes general design and construction requirements for DOT 406 (§ 178.346), DOT 407 (§ 178.347), and DOT 412 (§ 178.348) cargo tank motor vehicles. Previous interpretations of this section indicate that a vent must be located as close to the top centerline of the tank as practicable and the drain as close to the bottom centerline of the tank as practicable. Through discussions with industry and enforcement personnel, we have determined that requiring an opening on top of a cargo tank to vent vapors that accumulate in the void space may not be the best practice. In many instances, such as with gasoline, the vapors are heavier than air and it is not necessary to require cargo tanks to be vented to the atmosphere through a vent located near the top centerline. Vapors heavier than air escape through the drain opening. In addition, venting voids through the top of a cargo tank may cause premature corrosion of the void space as a result of water penetration. Allowing the vent to be plugged will also make it easier to identify when there is actually a leak in the bulkhead. Hazardous materials leaking from the drain will cause an obvious stain/dirt buildup that, with the top vent plugged, cannot be a result of water draining from the top vent and must be a leaking bulkhead.

To address this problem, in this NPRM, PHMSA proposes to revise § 178.345–1 to clearly indicate that any void area within the connecting structure of a cargo tank between double bulk heads must be vented to the atmosphere through the required drain or through a separate vent. The proposed revision will ensure that void spaces in the connecting structure of DOT 406, 407, and 412 cargo tank motor vehicles are properly vented to allow for the escape of product vapors. This change also promotes the longevity of the tanks by clarifying that it is not necessary to place a vent in the top of a void space where rain water can easily infiltrate the void space and cause corrosion if the product vapors are heavier than air and will vent through the drain. This clarification ensures that the vent is located in the most appropriate location for the material being transported. However, we urge manufacturers to continue allowing for access to the void space through the top of the tank. In addition, we suggest the continued placement of inspection openings of sufficient size and number to permit proper visual internal inspection of the connecting structure.

Section 178.320 includes a definition for "cargo tank wall"—the cargo tank wall includes those parts of the cargo tank that make up the primary lading retention structure, including shell, bulkheads, and fittings and, when closed, yield the minimum volume of the cargo tank assembly. Confusion has

resulted from the use of "cargo tank assembly" in the definition. The term "cargo tank assembly" as used in that definition, is simply referring to the completed cargo tank motor vehicle. Since "cargo tank assembly" is synonymous with "cargo tank motor vehicle," a term that is defined in § 178.320, we are proposing to replace the term "cargo tank assembly" with "completed cargo tank motor vehicle."

Section 178.347–1(c) requires a cargo tank with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum to be constructed and certified in accordance with the ASME Code. The wording used for this requirement has resulted in some confusion. Generally, the "and" would mean that a tank would need to be both designed to be loaded by vacuum and have a MAWP greater than 35 psig to be subject to the construction and certification requirements of the ASME Code. This is not the intent of the current requirement. Therefore, we are proposing to clarify the requirement to clearly state that a cargo tank motor vehicle with a MAWP greater than 35 psig or designed to be loaded by vacuum must be constructed and certified in accordance with the ASME Code, in line with our original intent.

The introductory text to § 178.347–1(d) requires tanks with a MAWP of 35 psig or less to be constructed in accordance with the ASME Code. We are clarifying this requirement to indicate, in line with § 178.347–1(b), cargo tanks that are designed to withstand full vacuum but have a MAWP of 35 psig or less and are not designed to be loaded by vacuum are only required to be constructed in accordance with the ASME Code. They do not require certification under the ASME Code.

Section 178.347–4(b) states that vacuum relief devices are not required for cargo tanks designed to be loaded by vacuum or built to withstand full vacuum. We are revising this section to make a clear distinction between the phrase "designed to be loaded by vacuum" and "built to withstand full vacuum." If a cargo tank manufacturer designs a cargo tank "to withstand full vacuum" it is only required to be constructed in accordance with the ASME Code, not certified. However, a cargo tank that is loaded by vacuum is required to be constructed and certified in accordance with the ASME Code. The intent of the final user of the equipment will determine whether a tank will be vacuum loaded and required to be a certified ("U" stamped) vessel. A manufacturer may design a tank to withstand full vacuum to ensure that it is sufficiently robust to endure the stresses associated with transportation of hazardous materials, including changes in product temperatures and the vacuum created during unloading. Designing a tank to withstand full vacuum does not mean that the tank is actually equipped to or used in vacuum service.

Section 180.417(b)(1)(v) requires the minimum thickness of the cargo tank shell and heads to be noted on inspection and test reports when the cargo tank is thickness tested in accordance with § 180.407(d)(4), § 180.407(e)(3), § 180.407(f)(3), or § 180.407(i). It has come to our attention that the reference to § 180.407(d)(4), which addresses thickness testing of ring stiffeners or other appurtenances, is incorrect. After reviewing the final rule to Docket HM–213 (68 FR 19257; April 18, 2003) and the response to appeals (68 FR 52363; September 3, 2003), the rules that established current paragraph (b)(1), it is apparent that the correct reference for this section should be § 180.407(d)(5), which refers to thickness testing of corroded or abraded areas of the cargo tank wall. Therefore, we are proposing to remove the reference to § 180.407(d)(4) in § 180.417(b)(1)(v) and replace it with the reference to § 180.407(d)(5).

P. Permeation Devices

Permeation devices are used to calibrate air quality monitoring equipment. These devices may contain extremely small quantities of hazardous materials and are subject to Special Provision A41 when transported by air under the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI). Special Provision A41 authorizes the transportation of permeation devices on aircraft provided stringent safety requirements are met. International shippers of these devices are able to take advantage of this special provision. However, no similar provision exists in the HMR. Therefore, in response to a petition (P–1493) from the URS Corporation, and to facilitate domestic and international transportation, we are proposing to add a new § 173.175 on Permeation devices in Part 173 that will authorize the transportation of permeation devices by aircraft in the same manner as is provided in Special Provision A41 of the ICAO TI.

Q. Alcoholic Beverage Exception

Section 173.150 provides for exceptions from regulation for Class 3 flammable liquid material. Specifically, § 173.150(d) provides exceptions for alcoholic beverages. An alcoholic beverage (as defined in 27 CFR 4.10 and 5.11) meeting one of three conditions outlined in § 173.150(d) is not subject to the requirements of the HMR for a Class 3 flammable liquid material. One of the conditions provides that the alcoholic beverage must be in an inner packaging of 5 L (1.3 gallons) or less, and for transportation on passenger aircraft, must conform to § 175.10(a)(4) of the HMR as checked or carry-on baggage (see § 173.150(d)(2)). This provision for transportation by passenger aircraft was added in a final rule published on June 21, 2001 (HM–215D; 66 FR 33316) to clarify that alcoholic beverages carried by passengers or crewmembers must conform to the air passenger and crewmember exception provided in § 175.10(a)(4). In the final rule, we stated:

> We are revising [§ 173.150(d)] by clarifying that alcoholic beverages containing over 24% alcohol by volume are not excepted from regulation when transported by a passenger or crewmember on passenger-carrying aircraft except as provided in [§ 175.10(a)(4)].

This provision for transportation by passenger aircraft was not intended to restrict cargo transport of an alcoholic beverage in the same manner as when carried by passengers or crewmembers. Therefore, in this NPRM, PHMSA is proposing to clarify § 173.150(d)(2) by specifying that the condition for transportation on passenger aircraft applies to an alcoholic beverage carried by passengers or crewmembers and that an alcoholic beverage (of any concentration of alcohol by volume) in an inner packaging of 5 L (1.3 gallons) or less transported as cargo on a cargo aircraft or a passenger aircraft is not subject to the requirements of the HMR.

R. Special Permits

Special Permit Application

Procedures for applying for special permits are established in 49 CFR part 107.

In a notice of proposed rulemaking under HM–233B (75 FR 43230; July 23, 2010), PHMSA proposed to incorporate new requirements for application of a new special permit, party status to a special permit and renewal of a special permit issued by PHMSA under 49 CFR part 107, subpart B (§§ 107.101 to 107.127). A special permit sets forth alternative requirements—or a variance—to the requirements in the HMR in a way that achieves a level of safety at least equal to the level of safety required under the regulations or that is consistent with the public interest. Congress expressly authorized DOT to issue these variances in the Hazardous

Materials Transportation Act of 1975. In this notice, we are proposing to incorporate an additional requirement for each applicant to identify whether they are acting as a shipper or a carrier under §§ 107.105, 107.107 and 107.109.

PHMSA conducts a fitness review of each company requesting action on a special permit including applications for a new special permit. Current criteria from the Federal Motor Carrier Safety Administration (FMCSA) require a Satisfactory rating based on a Compliance Review (with a few exceptions). FMCSA conducts a review of any motor carrier that does not meet their criteria. Their criteria does not, however, apply to a company that ships (offers) hazardous materials under the terms of a special permit and does not perform any carrier function. The ability of PHMSA to identify a company as a shipper (offeror), a carrier, or both will facilitate the fitness review process. Therefore, we are proposing to add a requirement for each applicant to identify their transport function under §§ 107.105, 107.107, and 107.109.

Lab Packs

In a final rule under docket HM–233A (75 FR 20275; May 14, 2010), PHMSA adopted amendments to eliminate the need for DOT–SP 13192. This special permit authorized certain hazardous materials packaged in lab packs conforming to § 173.12(b) to be excepted from segregation requirements in parts 174, 176, and 177 of the HMR provided the materials conform to the segregation requirements in § 173.12(e). We first issued DOT–SP 13192 in 2001 to consolidate earlier special permits that allowed different combinations of incompatible materials, including waste materials, to be transported together on the same transport vehicle and it has proven to be a safe method of transportation. In the final rule, we inadvertently left out a proposal to except lab packs from the requirement in § 172.203(i)(2) of the HMR which requires the minimum flashpoint if it is 60 °C (140 °F) or below (in °C closed cup (c.c.)) in association with the basic description when transported by water. This requirement may be overly restrictive for a lab pack which may contain a number of hazardous materials with different flashpoints. Instead, for those materials with a flashpoint of 61 °C or less, DOT–SP 13192 authorized the identification of the lowest flashpoint for all hazardous materials in the lab pack as a range of less than 23 °C or 23 °C to 61 °C. In this NPRM, we propose to incorporate this exception for lab packs transported by cargo vessel thus eliminating the need for DOT–SP 13192.

In this same final rule, PHMSA adopted exceptions from segregation for certain waste hazardous materials in lab packs and non-bulk packagings consistent with the provisions of DOT–SP 13192. These exceptions are referenced in the segregation requirements for public highway transport in § 177.848(c). In making the conforming amendment to § 177.848(c), we inadvertently prohibited all cyanides, cyanide mixtures and solutions from being stored, loaded and transported with acids. The prohibition applies only to those cyanides, cyanide mixtures and solutions that would generate hydrogen cyanide when mixed with acids. Therefore, we are proposing to correct this section by clarifying the segregation conditions.

S. Batteries Containing Sodium or Cells Containing Sodium

The HMR currently authorize the transport of sodium cells and batteries under the descriptions "Batteries containing sodium" or "Cells containing sodium" (UN3292). Section 173.189 limits the types of hazardous materials which may be contained in such batteries to sodium, sulfur and polysulfides. Over time, other sodium battery chemistries have emerged and become more widely used and commonly transported. For example, some batteries with sodium metal chloride chemistries use sodium tetrachloroaluminate as a secondary electrolyte. In this NPRM, PHMSA is proposing to expand the list of authorized chemistries to include all sodium compounds provided they meet the criteria specified in § 173.189. This amendment, if adopted, will align the HMR with the 17th Edition of the UN Model Regulations effective January 1, 2013.

III. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

In this notice, we propose to amend miscellaneous provisions in the HMR to clarify the provisions and to relax overly burdensome requirements. We are also responding to requests from industry associations to update and add references to standards that are incorporated in the HMR. PHMSA anticipates the proposals contained in this rule will have economic benefits to the regulated community. This NPRM is designed to increase the clarity of the HMR, thereby increasing voluntary compliance while reducing compliance costs. This NPRM also proposes to update a number of incorporations by reference to permit the industry to utilize the most recent versions of industry consensus standards. Incorporation of material by reference reduces the regulatory burden on persons who offer hazardous material for transportation and persons who transport hazardous materials in commerce. Industry standards developed and adopted by consensus are accepted and followed by the industry; thus, their inclusion in the HMR assures that the industry is not forced to comply with a different set of standards to accomplish the same safety goal.

Further, the addition of an exception for permeation devices containing hazardous materials used for calibrating air quality monitoring devices for consistency with the current exception in the international regulations for these devices, as well as adding a new italicized entry to the HMT for "Permeation devices" referencing § 173.175, will result in reduced compliance costs by reducing regulatory compliance. This exception will also promote international harmonization. The proposal to provide an exception to labeling for consolidation bins used to transport hazardous materials by motor carrier will reduce compliance costs.

Additionally, this NPRM proposes to add a new Special Provision 173 to provide a specification package exception for certain adhesives, printing inks, printing ink-related materials, paints, paint-related materials and resin solution assigned to "Environmentally hazardous substances, liquid, n.o.s., UN 3082." Overall, the proposals in this NPRM should reduce regulatory burdens on the regulated community

while increasing flexibility and transportation options.

C. Executive Order 13132

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The federal hazardous material transportation law, 49 U.S.C. 5125(b)(1), contains an express preemption provision (49 U.S.C. 5125(b)) preempting state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacture, fabrication, marking, maintenance, reconditioning, repair, or testing of a packaging or container which is represented, marked, certified, or sold as qualified for use in the transport of hazardous materials.

This proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous materials, among other covered subjects. If adopted, this rule would preempt any state, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are "substantively the same" (see 49 CFR 107.202(d) as the Federal requirements.)

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of Federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines the rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule would amend miscellaneous provisions in the HMR to clarify provisions based on our own initiatives and also on petitions for rulemaking. While maintaining safety, it would relax certain requirements that are overly burdensome and would update references to consensus standards that are incorporated in the HMR. The proposed changes are generally intended to provide relief to shippers, carriers, and packaging manufacturers, including small entities.

Consideration of alternative proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. In the case of hazardous materials transportation, it is not possible to establish exceptions or differing standards and still accomplish our safety objectives.

The impact of this proposed rule is not expected to be significant. The proposed changes are generally intended to provide relief to shippers, carriers, and packaging manufactures and testers, including small entities. Therefore, this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

By proposing to require additional information be included on certain shipping papers, this proposed rule will result in a minimal increase in annual paperwork burden and costs under OMB Control No. 2137–0034. PHMSA currently has an approved information collection under OMB Control No. 2137–0034, "Hazardous Materials Shipping Papers & Emergency Response Information" expiring on May 31, 2011 with 260,000,000 responses and 6,500,834 burden hours. This rule is proposing to impose new requirements pertaining to § 172.203(c), additional shipping paper information requirements. We are proposing to require non-odorized LPG shipments to indicate "non-odorized" on the shipping papers to aid emergency responders in the event of an accident involving non-odorized shipments of LPG. Since only 5% of LPG shipments are non-odorized, we anticipate only a minimal increase in burden to include this additional notation on the shipping paper.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies an information collection request that PHMSA is submitting to OMB for approval based on the proposal in this rule. PHMSA has developed burden estimates based on the proposed amendment in this rule. PHMSA estimates that the net information collection and recordkeeping burden for this proposed requirement would be as follows:

OMB Control No. 2137–0034

Annual Respondents: 29,850.
Annual Responses: 29,850.
Annual Burden Hours: 12.5.
Annual Costs: $312.50.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, PHH–10, Washington, DC 20590–0001, Telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141,300,000 or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires Federal agencies to analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order Federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process. PHMSA proposes to make miscellaneous amendments to the HMR based on petitions for rulemaking and PHMSA's own initiatives. The proposed amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand.

Description of Action:

Docket No. PHMSA–2009–0151 (HM–218F), NPRM

Transportation of hazardous materials in commerce is subject to requirements in the HMR, issued under authority of Federal hazardous materials transportation law, codified at 49 U.S.C. 5001 *et seq.* To facilitate the safe and efficient transportation of hazardous materials in international commerce, the HMR provide that both domestic and international shipments of hazardous materials may be offered for transportation and transported under provisions of the international regulations.

Proposed Amendments to the HMR:

In this NPRM, PHMSA is proposing to:

Update § 171.7 incorporations by reference of industry consensus standards issued by the Aluminum association; the American Society for Testing ad Materials; and the Institute of Makers of Explosives.

Add a requirement for each applicant to a special permit under §§ 107.105, 107.107, and 107.109 to identify their role as a shipper (offeror), carrier, or both.

Revise the definition of "person" in § 171.8 to include those who manufacture, test, repair and recondition packages.

Revise the HMT to harmonize certain entries with international standards by adding and revising certain proper shipping names. Most significantly, we are adding a new entry "Formaldehyde solutions (with not less than 10% and less than 25% formaldehyde" to clarify requirements applicable to formaldehyde and formalin with less than 10% formaldehyde; revising the entry for "Environmentally hazardous substances, liquid, n.o.s." to provide packaging exceptions for certain materials that are assigned to UN 3082; and adding a new special provision to clarify the differences between Class 3 and Class 9 formaldehyde solutions.

Add a new § 173.175 applicable to permeation devices to provide an exception for permeations devices containing hazardous materials that are used for calibrating air quality monitoring devices for consistency with the current exception in the international regulations for these devices; and add a new italicized entry to the HMT for "Permeation devices" referencing § 173.175.

Update and clarify hazard communication requirements applicable to Class 9 label specifications; placard size; IBCs; and Division 6.2 labels.

In § 178.37, authorize the use of an alternative bend test for DOT 3AA and 3AAX steel cylinders.

In § 178–347–1, clarify that cargo tank motor vehicles that have a MAWP greater than 35 psig or are designed to be loaded by vacuum must be constructed and certified in accordance with the ASME Code.

Revise § 171.14 transitional provisions to remove expired dates and incorporate certain dates in to the specific sections of the HMR.

Revise provisions in § 173.56(j) to further clarify the use of the American Pyrotechnics Association (APA) standard for classifying and approving fireworks.

Revise § 172.404 to provide a labeling exception for consolidation bins used to transport hazardous materials by motor carrier, and clarify labeling requirements for consolidated packages.

Alternatives Considered:

Alternative (1): Do nothing.

Our goal is to update, clarify and provide relief from certain existing regulatory requirements to promote safer transportation practices, eliminate unnecessary regulatory requirements, finalize outstanding petitions for rulemaking, and facilitate international commerce. We rejected the do-nothing alternative.

Alternative (2): Go forward with the proposed amendments to the HMR in this NPRM.

This is the selected alternative.

Environmental Consequences

Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to classify a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards through use of the hazard class, packing group, and proper shipping name on the shipping paper and the use of labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups based upon its degree of hazard, from a high hazard, Packing Group I to a low hazard, Packing Group III material. The quality, damage resistance, and performance standards of the packaging in each packing group are appropriate for the hazards of the material transported.

Under the HMR, hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en

route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, handling problems, or deliberate sabotage. The release of hazardous materials can cause the loss of ecological resources (*e.g.,* wildlife habitats) and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short term impacts that can be reduced or eliminated through prompt clean up/decontamination of the accident scene.

Conclusion

PHMSA proposes to make miscellaneous amendments to the HMR based on petitions for rulemaking and PHMSA's own initiatives. The proposed amendments are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand. The net environmental impact of this proposal will be positive.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

K. International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards are not considered unnecessary obstacles to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. PHMSA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure that it does not exclude imports that meet this objective. As a result, this proposed rule is not considered as creating an unnecessary obstacle to foreign commerce.

List of Subjects

49 CFR Part 107

Hazardous materials transportation, Packaging and containers, Radioactive.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Rail carriers, Reporting and recordkeeping.

49 CFR Part 177

Hazardous materials transportation, Loading and unloading, Segregation and separation.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Continuing qualification and maintenance of packaging.

In consideration of the foregoing, we propose to be amend 49 CFR Chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

2. In § 107.105, add new paragraph (c)(11) to read as follows:

§ 107.105 Application for special permit

* * * * *

(c) * * *

(11) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

* * * * *

3. In § 107.107, add new paragraph (b)(6) to read as follows:

§ 107.107 Application for party status.

* * * * *

(b) * * *

(6) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

* * * * *

4. In § 107.109, add new paragraph (a)(7) to read as follows:

§ 107.109 Application for renewal.

(a) * * *

(7) A statement indicating whether the applicant will be acting as a shipper (offeror), carrier or both under the terms of the special permit.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

5. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134, section 31001.

6. In § 171.7, in the paragraph (a)(3) table, is amended as follows:

a. Under the entry "The Aluminum Association," the organization's mailing address is revised;

b. Under the entry "The American Society for Testing and Materials," the entry ASTM E 290–97a, "Standard Test Methods for Bend Testing of Material for Ductility" is added in appropriate numerical order;

c. Under the entry "Association of American Railroads," the entry "Intermodal Loading Guide for Products in Closed Trailers and Containers" is added in appropriate alphabetical order; and

d. Under the entry "Institute of Makers of Explosives," the entry "IME Safety Library Publication No. 22,'' IME Standard 22, "Recommendation for the Safe Transportation of Detonators in a

Vehicle with Certain Other Explosive Materials" is revised.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
The Aluminum Association, 1525 Wilson Blvd., Suite 6000, Arlington, VA 22209, telephone 703–358–2960, *http://www.aluminum.org:*	
* * * * * * *	
American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohoken, PA 19428, telephone 610–832–9585,*http://www.astm.org:*	
* * * * * * *	
ASTM E 290–97a Standard Test Methods for Bend Testing of Material for Ductility	178.37.
* * * * * * *	
Association of American Railroads, 425 Third Street, SW., Suite 1000, Washington, DC 20001, telephone 202–639–2100, *http://www.aar.org:*	
* * * * * * *	
Intermodal Loading Guide for Products in Closed Trailers and Containers	174.55; 174.101; 174.112; 174.115.
* * * * * * *	
Institute of Makers of Explosives, 1120 19th Street, NW., Suite 310, Washington, DC 20036–3605, telephone 202–429–9280, *http://www.ime.org:*	
IME Safety Library Publication No. 22 (IME Standard 22), Recommendation for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, February 2007.	173.63; 177.835
* * * * * * *	

* * * * *

7. In § 171.8, the definition of "Person" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Person means an individual, corporation, company, association, firm, partnership, society, joint stock company; or a government, Indian tribe, or authority of a government or tribe; that offers a hazardous material for transportation in commerce, transports a hazardous material to support a commercial enterprise, or designs, manufacturers, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container, or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce. This term does not include the United States Postal Service or, for purposes of 49 U.S.C. 5123 and 5124, a Department, agency, or instrumentality of the government.

* * * * *

§ 171.14 [Removed and Reserved]

8. Section 171.14 is removed and reserved.

9. In § 171.15, paragraph (a) introductory text is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) *General.* As soon as practical but no later than 12 hours after the occurrence of any incident described in paragraph (b) of this section, each person in physical possession of the hazardous material must provide notice by telephone to the National Response Center (NRC) on 800–424–8802 (toll free) or 202–267–2675 (toll call) or online at *http://www.nrc.uscg.mil.* Each notice must include the following information:

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

10. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 1.53.

11. In § 172.101, paragraph (c)(2) is revised and the Hazardous Materials Table is amended by adding the entries under "[ADD]" and revising entries under "[REVISE]" in the appropriate alphabetical sequence to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(2) Punctuation marks and words in italics are not part of the proper shipping name, but may be used in addition to the proper shipping name. The word "or" in italics indicates that there is a choice of terms in the sequence that may alternately be used as the proper shipping name or as part of the proper shipping name, as appropriate. For example, for the hazardous materials description "Carbon dioxide, solid *or* Dry ice" either "Carbon dioxide, solid" or "Dry ice" may be used as the proper shipping name; and for the hazardous materials description "Articles, pressurized pneumatic *or* hydraulic" either "Articles, pressurized pneumatic" or "Articles, pressurized hydraulic" may be used as the proper shipping name.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols (1)	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
		*		*	*	*	*		*	*			
	[ADD]												
		*		*	*	*	*		*	*			
	Formaldehyde solutions (with not less than 10% and less than 25% formaldehyde), see Aviation regulated liquid, n.o.s. *or* Other regulated substances, liquid, n.o.s.												
		*		*	*	*	*		*	*			
	Permeation devices *for calibrating air quality monitoring equipment See § 173.175.*												
		*		*	*	*	*		*	*			
	[REVISE]												
		*		*	*	*	*		*	*			
	Battery-powered vehicle *or* Battery-powered equipment.	9	UN3171		9	134	220	220	None	No limit	No limit	A	
G	Environmentally hazardous substance, liquid, n.o.s..	9	UN3082	III	9	8, 146, 173, 335, IB3, T4, TP1, TP29.	155	203	241	No limit	No limit	A	
		*		*	*	*	*		*	*			
	Ethanol and gasoline mixture *or* Ethanol and motor spirit mixture *or* Ethanol and petrol mixture, *with more than 10% ethanol.*	3	UN3475	II	3	144, 177, 178, IB2, T4, TP1.	150	202	242	5 L	60 L	E	
		*		*	*	*	*		*	*			
	Formaldehyde, solutions, flammable.	3	UN1198	III	3, 8	176, B1, IB3, T4, TP1	150	203	242	5 L	60 L	A	40
		*		*	*	*	*		*	*			
D	Gasohol *gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	NA1203	II	3	144, 177, 178	150	202	242	5 L	60 L	E	
	Gasoline *includes gasoline mixed with ethyl alcohol, with not more than 10% alcohol.*	3	UN1203	II	3	144, 177, 178, B1, B33, IB2, T8.	150	202	242	5 L	60 L	E	
		*		*	*	*	*		*	*			

* * * * *

12. In § 172.102(c)(1), new Special Provisions 173, 176, 178 are added in appropriate numerical order to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

173 For adhesives, printing inks, printing ink-related materials, paints, paint-related materials, and resin solutions which are assigned to UN3082, and do not meet the definition of another hazard class, metal or plastic packaging for substances of packing groups II and III in quantities of 5 L (1.3 gallons) or less per packaging are not required to meet the UN performance package testing when transported:

a. Except for transportation by aircraft, in palletized loads, a pallet box or unit load device, (*e.g.* individual packaging placed or stacked and secured by strapping, shrink or stretch-wrapping or other suitable means to a pallet). For vessel transport, the palletized loads, pallet boxes or unit load devices must be firmly packed and secured in closed cargo transport units; or

b. Except for transportation by aircraft, as an inner packaging of a combination packaging with a maximum net mass of 40 kg (88 pounds). For transportation by aircraft, as an inner packaging of a combination packaging with a maximum gross mass of 30 kg when packaged as a limited quantity in accordance with § 173.27(f) and (j).

* * * * *

176 This entry must be used for formaldehyde solutions containing methanol as a stabilizer. Formaldehyde solutions not containing methanol and not meeting the Class 3 flammable liquid criteria must be described using a different proper shipping name.

* * * * *

178 The proper shipping name "Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol*" in effect on January 28, 2008, may continue to be used until October 1, 2010. Effective October 1, 2010, the new proper shipping name "Ethanol and gasoline mixture *or* ethanol and motor spirit mixture *or* ethanol and petrol mixture," and the revised proper shipping name "Gasohol *gasoline mixed with ethyl alcohol, with not more than 10% alcohol*" must be used, as appropriate.

* * * * *

13. In § 172.202, paragraph (b) is revised to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

* * * * *

(b) Except as provided in this subpart, the basic description specified in paragraphs (a)(1), (2), (3) and (4) of this section must be shown in sequence with no additional information interspersed. For example, "UN2744, Cyclobutyl chloroformate, 6.1, (8, 3), PG II." The shipping description sequences in effect on December 31, 2006, may be used until January 1, 2013.

* * * * *

14–15. In § 172.203, paragraph (i)(2) is revised and paragraph (p) is added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(i) * * *

(2) Minimum flashpoint if 60 °C (140 °F) or below (in °C closed cup (c.c.)) in association with the basic description. For lab packs packaged in conformance with § 173.12(b) of this subchapter, an indication that the lowest flashpoint of all hazardous materials contained in the lab pack is below 23 °C or is less than 23 °C but not more than 60 °C must be identified on the shipping paper in lieu of the minimum flashpoint.

* * * * *

(p) *Liquefied petroleum gas (LPG).* The word "non-odorized" must immediately precede the proper shipping name on a shipping paper when non-odorized liquefied petroleum gas is offered for transportation.

16. In § 172.324, paragraph (a) is revised to read as follows:

§ 172.324 Hazardous substances in non-bulk packaging.

* * * * *

(a) If the proper shipping name of a material that is a hazardous substance does not identify the hazardous substance by name, or if the package contains a limited quantity marked in accordance with § 172.315, the name of the hazardous substance must be marked on the package, in parentheses, in association with the proper shipping name or the identification number as applicable. If the material contains two or more hazardous substances, at least two hazardous substances, including the two with the lowest reportable quantities (RQ's), must be identified. For a hazardous waste, the waste code (*e.g.,* D001), if appropriate may be used to identify the hazardous substance.

* * * * *

17. In § 172.336, a new paragraph (d) is added to read as follows:

§ 172.336 Identification numbers; special provisions.

* * * * *

(d) When a bulk packaging is labeled instead of placarded in accordance with § 172.514(c) of this subchapter, identification numbers may be marked on the package in accordance with the marking requirements of § 172.301(a)(1) of this subchapter.

18. Section 172.404 is revised to read as follows:

§ 172.404 Labels for mixed and consolidated packaging.

(a) *Mixed packaging.* When hazardous materials having different hazard classes are packed within the same packaging, or within the same outside container or overpack as described in § 173.25 and authorized by § 173.21 of this subchapter, the packaging, outside container or overpack must be labeled as required for each class of hazardous material contained therein.

(b) *Consolidated packaging.* When two or more packages containing compatible hazardous material (see § 173.21 of this subchapter) are placed within the same outside container or overpack, the outside container or overpack must be labeled as required for each class of hazardous material contained therein, unless labels representative of each hazardous material in the outside container or overpack are visible.

(c) *Consolidation bins used by a single motor carrier.* Notwithstanding the provisions of paragraph (b) of this section, labeling of a consolidation bin is not required under the following conditions:

(1) The consolidation bin must be reusable, made of materials such as plastic, wood, or metal and must have a capacity of 64 cubic feet or less.

(2) Hazardous material packages placed in the consolidation bin must be properly labeled in accordance with this subpart;

(3) Packages must be compatible as specified in § 177.848 of this subchapter;

(4) Packages may only be placed within the consolidation bin and the bin be loaded on a motor vehicle by an employee of a single motor carrier;

(5) Packages must be secured within the consolidation bin by other packages or by other suitable means in such a manner as to prevent shifting of, or significant relative motion between, the packages that would likely compromise the integrity of any package;

(6) The consolidation bin must be clearly and legibly marked on a tag or

fixed display device with an indication of each hazard class or division contained within the bin;

(7) The consolidation bin must be properly blocked and braced within the transport vehicle; and

(8) Consolidation bins may only be transported by a single motor carrier, or on railcars transporting such vehicles.

18. In § 172.427, paragraph (c) is added to read as follows:

§ 172.427 ORGANIC PEROXIDE label.

* * * * *

(c) A Division 5.2 label conforming to the specifications of this section in effect on December 31, 2006 may continue to be used until January 1, 2011.

19. In § 172.432, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 172.432 INFECTIOUS SUBSTANCE label.

(a) Except for size and color, the INFECTIOUS SUBSTANCE label must be as follows:

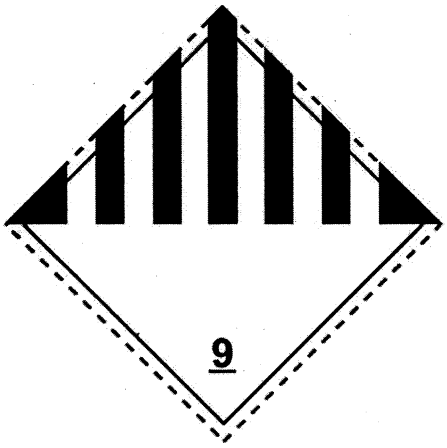
* * * * *

(c) Labels conforming to requirements in place on September 30, 2011 may continue to be used until October 1, 2014.

20. In § 172.446, paragraph (a) is revised and new paragraph (c) is added to read as follows:

§ 172.446 CLASS 9 label.

(a) Except for size and color, the "CLASS 9" (miscellaneous hazardous materials) label must be as follows:



* * * * *

(c) Labels conforming to requirements in place on September 30, 2011 may continue to be used until October 1, 2014.

21. In § 172.514, paragraph (c)(4), as amended February 2, 2010, at 75 FR 5392, and effective October 1, 2010, is revised to read as follows:

§ 172.514 Bulk packagings.

* * * * *

(c) * * *

(4) *An IBC.* For an IBC labeled in accordance with subpart E of this part instead of placarded, the IBC may display the proper shipping name and UN identification number in accordance with the size requirements of § 172.302(b)(2) in place of the UN number on an orange panel or placard.

22. In § 172.519, paragraph (c)(1) is revised to read as follows:

§ 172.519 General specifications for placards.

* * * * *

(c) * * *

(1) Each placard prescribed in this subpart must measure at least 250 mm (9.84 inches) on each side and must have a solid line inner border approximately 12.7 mm (0.5 inches) from each edge.

* * * * *

23. In § 172.552, paragraph (c) is added to read as follows:

§ 172.552 ORGANIC PEROXIDE placard.

* * * * *

(c) Except for transportation by highway, a Division 5.2 placard conforming to the specifications in this section in effect on December 31, 2006 may continue to be used until January 1, 2011. For transportation by highway, a Division 5.2 placard conforming to the specifications in this section in effect on December 31, 2006 may continue to be used until January 1, 2014.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

24. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53.

25. In § 173.56, paragraph (j) introductory text is revised to read as follows:

§ 173.56 New explosives—definition and procedures for classification and approval.

* * * * *

(j) *Fireworks.* Notwithstanding the requirements of paragraph (b) of this section, fireworks may be classed and approved by the Associate Administrator without prior examination and offered for transportation if the following conditions are met:

* * * * *

26. In § 173.60, paragraph (b)(14) is revised to read as follows:

§ 173.60 General packaging requirements for explosives.

* * * * *

(b) * * *

(14) Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged provided that a negative result was obtained in Test Series 4 of the UN Manual of Tests and Criteria on an unpackaged article. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against conditions encountered during normal transportation. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling, storage or launching devices in such a way that they will not become loose during normal conditions of transport and are in accordance with DOD-approved procedures. When such large explosive articles, as part of their operational safety and suitability tests, are subjected to testing that meets the intentions of Test Series 4 of the UN Manual of Tests and Criteria with successful test results, they may be offered for transportation in accordance with the requirements prescribed in (b)(14) above subject to approval by the Associate Administrator.

27. In § 173.62, in paragraph (c), in the Table of Packing Methods, Packing Instruction 130, as amended February 2, 2010, at 75 FR 5394, and effective October 1, 2010, is revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

TABLE OF PACKING METHODS

Packing instruction	Inner packaging	Intermediate packaging	Outer packaging
* *	*	*	* *
130	Not necessary	Not necessary	Boxes.
PARTICULAR PACKING REQUIREMENTS OR EXCEPTIONS:			
1. The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345, 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459 and 0488. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices.			Steel (4A). Wood natural, ordinary (4C1). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). Drums. Steel, removable head (1A2). Aluminum, removable head (1B2). Plywood (1D). Fiber (1G). Plastics, removable head (1H2). Large Packagings. Steel (50A). Aluminum (50B). Metal other than steel or aluminum (50N). Rigid plastics (50H). Natural wood (50C) Plywood (50D). Reconstituted wood (50F). Rigid fiberboard (50G).
2. Subject to approval by the Associate Administrator, large explosive articles, as part of their operational safety and suitability tests, subjected to testing that meets the intentions of Test Series 4 of the UN Manual of Tests and Criteria with successful test results, may be offered for transportation in accordance with the requirements of this subchapter.			
* *	*	*	* *

* * * * *

28. In § 173.120, paragraph (e) is added to read as follows:

§ 173.120 Class 3—Definitions.

* * * * *

(e) *Transitional provisions.* The Class 3 classification criteria in effect on December 31, 2006, may continue to be used until January 1, 2012.

29. In § 173.121, paragraph (c) is added to read as follows:

§ 173.121 Class 3—Assignment of packing group.

* * * * *

(c) *Transitional provisions.* The criteria for packing group assignments in effect on December 31, 2006, may continue to be used until January 1, 2012.

30. In § 173.132, paragraph (e) is added to read as follows:

§ 173.132 Class 6, Division 6.1—Definitions.

* * * * *

(e) *Transitional provisions.* The Division 6.1 classification criteria in effect on December 31, 2006, may continue to be used until January 1, 2012.

31. In § 173.133, paragraph (c) is added to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.

* * * * *

(c) *Transitional provisions.* The Division 6.1 criteria for packing group assignments in effect on December 31, 2006, may continue to be used until January 1, 2012.

32. In § 173.134, paragraph (c)(2) is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

* * * * *

(c) * * *

(2) The following materials may be offered for transportation and transported as a regulated medical waste when packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR

1910.1030 and transported by a private or contract carrier in a vehicle used exclusively to transport regulated medical waste:

(i) Waste stock or culture of a Category B infectious substance;

(ii) Plant and animal waste regulated by the Animal and Plant Health Inspection Service (APHIS);

(iii) Waste pharmaceutical materials;

(iv) Laboratory and recyclable wastes;

(v) Infectious substances that have been treated to eliminate or neutralize pathogens;

(vi) Forensic materials being transported for final destruction;

(vii) Rejected or recalled health care products;

(viii) Documents intended for destruction in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements; and

(ix) Medical or clinical equipment and laboratory products provided they are properly packaged and secured against exposure or contamination. Sharps containers must be securely closed to prevent leaks or punctures.

* * * * *

33. In § 173.150, revise paragraph (d)(2) to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(d) * * *

(2) Is in an inner packaging of 5 L (1.3 gallons) or less, unless carried by a passenger or crewmember aboard a passenger aircraft, then it must conform to § 175.10(a)(4) of this subchapter as checked or carry-on baggage; or

* * * * *

34. Add § 173.175 to read as follows:

§ 173.175 Permeation devices.

Permeation devices that contain hazardous materials and that are used for calibrating air quality monitoring devices are not subject to the requirements of this subchapter provided the following requirements are met:

(a) Each device must be constructed of a material compatible with the hazardous materials it contains;

(b) The total contents of hazardous materials in each device is limited to 2 ml (0.07 ounces) and the device must not be liquid full at 55 °C (131 °F);

(c) Each permeation device must be placed in a sealed, high impact resistant, tubular inner packaging of plastic or equivalent material. Sufficient absorbent material must be contained in the inner packaging to completely absorb the contents of the device. The closure of the inner packaging must be securely held in place with wire, tape or other positive means;

(d) Each inner packaging must be contained in a secondary packaging constructed of metal, or plastic having a minimum thickness of 1.5 mm (0.06 inches). The secondary packaging must be hermetically sealed;

(e) The secondary packaging must be securely packed in strong outer packaging. The completed package must be capable of withstanding, without breakage or leakage of any inner packaging and without significant reduction in effectiveness:

(i) The following free drops onto a rigid, non resilient, flat and horizontal surface from a height of 1.8 m (5.9 feet):

(A) One drop flat on the bottom;

(B) One drop flat on the top;

(C) One drop flat on the long side;

(D) One drop flat on the short side;

(E) One drop on a corner at the junction of three intersecting edges; and

(ii) A force applied to the top surface for a duration of 24 hours, equivalent to the total weight of identical packages if stacked to a height of 3 m (10 feet) (including the test sample).

(iii) Each of the above tests may be performed on different but identical packages.

(f) The gross mass of the completed package must not exceed 30 kg.

35. In § 173.189, the first sentence of paragraph (a) is revised to read as follows:

§ 173.189 Batteries containing sodium or cells containing sodium.

(a) Batteries and cells may not contain any hazardous material other than sodium, sulfur or sodium compounds (*e.g.,* sodium polysulfides, sodium tetrachloroaluminate, etc.). * * *

* * * * *

36. In § 173.302, revise paragraph (f)(2)(i) and (ii) and add paragraph (f)(2)(iii) to read as follows:

§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases.

* * * * *

(f) * * *

(2) * * *

(i) The rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, and 3E cylinders, and UN pressure receptacles conforming to ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders must be 100% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%;

(ii) The rated burst pressure of a rupture disc for a DOT 3HT cylinder must be 90% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%; and

(iii) The rated burst pressure of a rupture disc for a DOT 39 cylinder must be 100% of the cylinder minimum test pressure with a tolerance of plus 5 to minus 10%.

* * * * *

37. In § 173.304, revise paragraph (f)(2)(i) and (ii) and add paragraph (f)(2)(iii) to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

* * * * *

(f) * * *

(2) * * *

(i) The rated burst pressure of a rupture disc for DOT 3A, 3AA, 3AL, and 3E cylinders, and UN pressure receptacles conforming to ISO 9809–1, ISO 9809–2, ISO 9809–3 and ISO 7866 cylinders must be 100% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%;

(ii) The rated burst pressure of a rupture disc for a DOT 3HT cylinder must be 90% of the cylinder minimum test pressure with a tolerance of plus zero to minus 10%; and

(iii) The rated burst pressure of a rupture disc for a DOT 39 cylinder must be 100% of the cylinder minimum test pressure with a tolerance of plus 5 to minus 10%.

* * * * *

PART 174—CARRIAGE BY RAIL

38. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

39. In § 174.55, paragraph (a) is revised to read as follows:

§ 174.55 General requirements.

(a) Each package containing a hazardous material being transported by rail in a freight container or transport vehicle must be loaded so that it cannot fall or slide and must be safeguarded in such a manner that other freight cannot fall onto or slide into it under conditions normally incident to transportation. When this protection cannot be provided by using other freight, it must be provided by blocking and bracing. For examples of blocking and bracing in freight containers and transport vehicles, see Bureau of Explosives Pamphlet No. 6 and the Intermodal Loading Guide for Products in Closed Trailers and Containers (IBR, see § 171.7 of this subchapter).

* * * * *

40. In § 174.67, paragraphs (a)(6), (b) introductory text, (b)(1), and (c) introductory text are revised to read as follows:

§ 174.67 Tank car unloading.

* * * * *

(a) * * *

(6) Before a manhole cover or outlet valve cap is removed from a tank car, the car must be relieved of all interior pressure by cooling the tank with water or by venting the tank by raising the safety valve or opening the dome vent at short intervals. However, if venting to relieve pressure will cause a dangerous amount of vapor to collect outside the car, venting and unloading must be deferred until the pressure is reduced by allowing the car to stand overnight, otherwise cooling the contents, or venting to a closed collection system. These precautions are not necessary when the car is equipped with a manhole cover which hinges inward or with an inner manhole cover which does not have to be removed to unload the car, and when pressure is relieved by piping vapor into a condenser or storage tank.

(b) After the pressure is released, for unloading processes that require the removal of the manhole cover, the seal must be broken and the manhole cover removed as follows:

(1) *Screw type.* The cover must be loosened by placing a bar between the manhole cover lug and knob. After two complete turns, so that the vent openings are exposed, the operation must be stopped, and if there is any sound of escaping vapor, the cover must be screwed down tightly and the interior pressure relieved as prescribed in paragraph (a)(6) of this section, before again attempting to remove the cover.

* * * * *

(c) When the car is unloaded through a bottom outlet valve, for unloading processes that require the removal of the manhole cover, the manhole cover must be adjusted as follows:

* * * * *

41. In § 174.101, paragraphs (o)(2) and (o)(3) are revised to read as follows:

§ 174.101 Loading Class 1 (explosive) materials.

* * * * *

(o) * * *

(2) Each truck body or trailer must be secured on the rail car so that it will not permanently change position or show evidence of failure or impending failure of the method of securing the truck body or trailer under impact from each end of at least 13 km (8.1 miles) per hour. Its efficiency must be determined by actual test, using dummy loads equal in weight and general character to the material to be shipped. For recommended methods of blocking and bracing, see the Intermodal Loading Guide for Products in Closed Trailers and Containers (IBR, *see* § 171.7 of this subchapter).

(3) Lading must be loaded, blocked, and braced within or on the truck body or trailer so that the lading will not change position under impact from each end of at least 13 km (8.1 miles) per hour. For recommended methods of blocking and bracing, see the Intermodal Loading Guide for Products in Closed Trailers and Containers (IBR, *see* § 171.7 of this subchapter).

* * * * *

42. In § 174.112, paragraph (c)(3) is revised to read as follows:

§ 174.112 Loading Division 1.3 materials and Division 1.2 (explosive) materials (Also see § 174.101).

* * * * *

(c) * * *

(3) Packages of Division 1.2 materials and Division 1.3 (explosive) materials are blocked and braced within the truck body, trailer, or container to prevent their shifting and possible damage due to shifting of other freight during transportation (ends, sidewalls, or doors of the truck body, trailer, or container may not be relied on to prevent the shifting of heavy loads). For recommended methods of blocking and bracing see the Intermodal Loading Guide for Products in Closed Trailers and Containers (IBR, see § 171.7 of this subchapter).

43. In § 174.115, paragraph (b)(3) is revised to read as follows:

§ 174.115 Loading Division 1.4 (explosive) materials.

* * * * *

(b) * * *

(3) Packages of Division 1.4 (explosive) materials are blocked and braced within the truck body, trailer, or container to prevent their shifting and possible damage due to shifting of other freight during transportation. Ends, side walls, or doors of the truck body, trailer, or container may not be relied on to prevent shifting of heavy loads. For recommended methods of blocking and bracing see the Intermodal Loading Guide for Products in Closed Trailers and Containers.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

44. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53

45. In § 177.848, paragraph (c), as amended May 14, 2010, at 75 FR 27216, and effective October 1, 2010, is revised to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(c) In addition to the provisions of paragraph (d) of this section and except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids if a mixture of the materials would generate hydrogen cyanide; Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids; and Division 6.1 Packing Group I, Hazard Zone A material may not be stored, loaded and transported with Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

46. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

47. In § 178.35, paragraphs (c)(4) and (g) are revised and paragraph (h) is removed.

The revsions read as follows:

§ 178.35 General requirements for specification cylinders.

* * * * *

(c) * * *

(4) *Inspector's report.* Prepare a report containing, at a minimum, the applicable information listed in CGA C–11 (IBR, *see* § 171.7 of this subchapter). Any additional information or markings that are required by the applicable specification must be shown on the test report. The signature of the inspector on the reports certifies that the processes of manufacture and heat treatment of cylinders were observed and found satisfactory. The inspector must furnish the completed test reports required by this subpart to the maker of the cylinder and, upon request, to the purchaser. The test report must be retained by the inspector for fifteen years from the original test date of the cylinder.

* * * * *

(g) *Manufacturer's reports.* At or before the time of delivery to the purchaser, the cylinder manufacturer must have all completed certification documents listed in CGA C–11. The manufacturer of the cylinders must retain the reports required by this subpart for 15 years from the original test date of the cylinder.

48. In § 178.37, paragraphs (j) and (l) are revised to read as follows:

§ 178.37 Specification 3AA and 3AAX seamless steel cylinders.

* * * * *

(j) *Flattening test.* A flattening test must be performed on one cylinder taken at random out of each lot of 200 or less, by placing the cylinder between wedge shaped knife edges having a 60 ° included angle, rounded to ½-inch radius. The longitudinal axis of the cylinder must be at a 90-degree angle to knife edges during the test. For lots of 30 or less, flattening tests are authorized to be made on a ring at least 8 inches long cut from each cylinder and subjected to the same heat treatment as the finished cylinder. Cylinders may be subjected to a bend test in lieu of the flattening test. Two bend test specimens must be taken in accordance with ISO 9809–1 or ASTM E 290–97a (IBR, *see* § 171.7 of this subchapter), and must be subjected to the bend test specified therein.

* * * * *

(l) *Acceptable results for physical, flattening and bend tests.* An acceptable result for physical and flattening tests is elongation of at least 20 percent for 2 inches of gauge length or at least 10 percent in other cases. Flattening is required, without cracking, to 6 times the wall thickness of the cylinder. An acceptable result for the alternative bend test is no crack when the cylinder is bent inward around the mandrel until the interior edges are not further apart than the diameter of the mandrel.

* * * * *

49. In § 178.71, paragraphs (c) and (o)(6) are revised to read as follows:

§ 178.71 Specifications for UN pressure receptacles.

* * * * *

(c) Following the final heat treatment, all cylinders, except those selected for batch testing must be subjected to a proof pressure or a hydraulic volumetric expansion test.

* * * * *

(o) * * *

(6) The test pressure in bar, preceded by the letters "PH" and followed by the letters "BAR".

* * * * *

50. In § 178.320, in paragraph (a), the definition of "Cargo tank wall" is revised to read as follows:

§ 178.320 General requirements applicable to all DOT specification cargo tank motor vehicles.

(a) * * *

Cargo tank wall means those parts of the cargo tank that make up the primary lading retention structure, including shell, bulkheads, and fittings and, when closed, yield the minimum volume of the completed cargo tank motor vehicle.

* * * * *

51. In § 178.345–1, paragraph (i)(2) is revised to read as follows:

§ 178.345–1 General requirements.

* * * * *

(i) * * *

(2) The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must meet the structural design requirements in § 178.345–3. Any void within the connecting structure must be equipped with a drain located on the bottom centerline that is accessible and kept open at all times. For carbon steel, self-supporting cargo tanks, the drain configuration may consist of a single drain of at least 1.0 inch diameter, or two or more drains of at least 0.5 inch diameter, 6.0 inches apart, one of which is located as close to the bottom centerline as practicable. Vapors trapped in a void within the connecting structure must be allowed to escape to the atmosphere either through the drain or a separate vent.

* * * * *

52. In § 178.347–1, paragraphs (c) and (d) introductory text are revised to read as follows:

§ 178.347–1 General requirements.

* * * * *

(c) Any cargo tank motor vehicle built to this specification with a MAWP greater than 35 psig or any cargo tank motor vehicle built to this specification designed to be loaded by vacuum must be constructed and certified in accordance with Section VIII of the ASME Code (IBR, *see* § 171.7 of this subchapter). The external design pressure for a cargo tank loaded by vacuum must be at least 15 psi.

(d) Any cargo tank motor vehicle built to this specification with a MAWP of 35 psig or less or any cargo tank motor vehicle built to this specification designed to withstand full vacuum but not equipped to be loaded by vacuum must be constructed in accordance with Section VIII of the ASME Code.

* * * * *

53. In § 178.347–4, paragraph (b) is revised to read as follows:

§ 178.347–4 Pressure relief.

* * * * *

(b) *Type and construction.* Vacuum relief devices are not required for cargo tank motor vehicles that are designed to be loaded by vacuum in accordance with § 178.347–1(c) or built to withstand full vacuum in accordance with § 178.347–1(d).

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

54a. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

54b. In § 180.417, paragraph (b)(1)(v) is revised to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) * * *

(1) * * *

(v) Minimum thickness of the cargo tank shell and heads when the cargo tank is thickness tested in accordance with § 180.407(d)(5), § 180.407(e)(3), § 180.407(f)(3), or § 180.407(i);

* * * * *

Issued in Washington, DC, on September 22, 2010, under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2010–24274 Filed 9–28–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2010–0132]

RIN 2127–AK17

Federal Motor Vehicle Safety Standards; New Pneumatic Tires for Motor Vehicles With a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes to upgrade Federal Motor Vehicle Safety Standard (FMVSS) No. 119, which specifies requirements for new truck tires. We propose to amend FMVSS No. 119 to adopt more stringent endurance test requirements and a new high speed test for several heavy load range tires for vehicles with gross vehicle weight rating (GVWR) of more than 4,536 kilograms (10,000 pounds). We are also proposing that FMVSS No. 119 require that the tire sidewall be labeled with the tire's maximum speed rating.

DATES: You should submit your comments early enough to ensure that the Docket receives them not later than November 29, 2010.

ADDRESSES: You may submit comments (identified by the NHTSA Docket ID Number above) by any of the following methods:

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

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to http://www.regulations.gov or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call George Soodoo, NHTSA Office of Rulemaking (*Telephone:* 202–366–2720) (*Fax:* 202–493–2739). For legal issues, you may call Steve Wood, NHTSA Office of Chief Counsel (*Telephone:* 202–366–2992) (*Fax:* 202–366–3820). The mailing address for these officials is: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

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I. Background

This NPRM proposes to upgrade Federal Motor Vehicle Safety Standard (FMVSS) No. 119 (49 CFR 571.119) which, prior to the passage of the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act of 2000, had a wide application to new pneumatic tires for vehicles other than passenger cars. In response to the TREAD Act,[1] a June 26, 2003 final rule upgraded the standard's requirements [2] for tires designed for multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kilograms (kg) (10,000 pounds (lb)) or less, and moved those enhanced requirements to a new Federal Motor Vehicle Safety Standard No. 139 for new pneumatic radial tires for light vehicles. Requirements for load range C, D, and E tires used on light trucks and vans formerly set forth in FMVSS No. 119 were thus moved from that standard to FMVSS No. 139.[3] The June 26, 2003 final rule changed the title, scope, purpose and application sections of FMVSS No. 119 to reflect that the standard thereafter applied to only tires for motorcycles and vehicles with a GVWR greater than 4,536 kg (10,000 lb), but made no changes to FMVSS No. 119's performance requirements for those tires.[4]

NHTSA stated in the NPRM developing FMVSS No. 139 that the TREAD Act deadline to complete the tire upgrade by June 2002 did not allow the agency time to study and analyze sufficiently the different issues presented by medium and heavy vehicle tires, and that NHTSA will examine these types of tires after completion of the FMVSS No. 139 rulemaking (67 FR 10050, 10061; March 5, 2002). In today's document, we are proceeding to propose to make more stringent FMVSS No. 119's endurance test, adopt a new high speed test for several load range tires used on heavy vehicles, and require that the tire sidewall be labeled with the tire's maximum speed rating.

The agency is initiating this rulemaking to upgrade radial truck tires that have a load range of F, G, H, J, and L, and that are not for speed-restricted service ("non-speed-restricted service tires"). Tires used for speed-restricted service, known as "speed-restricted service tires," are those with a maximum speed rating of 90 km/h (55 mph) or less. Non-speed-restricted service tires

[1] Section 10 of the TREAD Act stated that the Secretary of Transportation shall conduct a rulemaking to revise and update the tire standards published at 49 CFR 571.109 and 49 CFR 571.119. The Act provided that the Secretary shall complete the rulemaking under this section not later than June 1, 2002. November 1, 2000, Public Law 106–414, 114 Stat. 1800.

[2] 68 FR 38116; June 26, 2003, Docket NHTSA–03–15400; response to petitions for reconsideration, 71 FR 877, January 6, 2006, Docket 2005–23439; technical amendments, 72 FR 49207, August 28, 2007, Docket 2007–29083. *See* also final rule, correcting amendments, 73 FR 72357; November 28, 2008, Docket 2007–29083.

[3] The term "load range" with a letter (C, D, E, etc.) is used to identify the load and inflation limits of tires used on light or heavy trucks, which increase in alphabetical sequence. For example, a load range E tire is able to handle greater loads and higher inflation pressures than a load range D tire.

[4] FMVSS No. 119 has been in effect since the original rule was published in 1973. The original standard applied to tires used on vehicles other than passenger cars, which included pickup trucks, multipurpose passenger vehicles, vans, and heavy vehicles. As a result of the TREAD Act mandate to upgrade FMVSS No. 109 and FMVSS No. 119, the agency revised the applicability of the tire standards to reflect the weight of the vehicle on which the tire is used. Given the increased consumer use to light trucks and vans (LTVs) for passenger transportation purposes over the past 20 years, the agency believed it was important to revise the applicability of the standards. As a result, the new tire standard for light vehicle tires, FMVSS No. 139, which was published in 2003, applies to tires used on vehicles with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less, and FMVSS No. 119 now applies to tires for vehicles with a gross vehicle weight rating of over 4,536 kg (10,000 pounds). (It is noted that other tires required to comply with No. 119 are new pneumatic light truck tires with tread depth of 18/32 inch or greater, light truck bias-ply tires, bias-ply tires used on vehicles with a GVWR of more than 4,536 kg (10,000 lb), and tires for use on special-use trailer (ST, farm implement and 8–12 rim or lower diameter code). The tires affected by this rulemaking are those used on heavy vehicles with a GVWR of more than 4,536 kg (10,000 lb) that are not for speed-restricted service.)

are those with a maximum speed rating above 90 km/h (55 mph). "Maximum speed rating" is the maximum speed, as specified by the manufacturer, at which the tire can carry a load corresponding to its maximum load rating for single usage at the corresponding inflation pressure.[5] We have commenced this rulemaking primarily because we have tentatively determined that the FMVSS No. 119 performance tests developed in 1973 should be updated to reflect the increased operational speeds and duration of truck tires in commercial service. NHTSA has tentatively determined that this NPRM would have a beneficial effect on safety in that it would increase tire durability as tires are held to more stringent standards than currently required.

FMVSS No. 119

FMVSS No. 119 specifies performance and marking requirements for tires for use on motorcycles and on motor vehicles with a GVWR of more than 4,536 kg (10,000 lb). Heavy vehicle tires regulated by FMVSS No. 119 are used in a wide variety of vehicle applications, such as delivery trucks, line haul trucks, transit buses, and logging trucks. FMVSS No. 119 includes a static test for tire strength, and dynamic tests for tire endurance and high-speed performance. The endurance test evaluates resistance to heat buildup when the tire is run at stepped-up loads at or near its rated load nonstop for a total of 47 hours. A high-speed test evaluates resistance to heat buildup when the tire is run at a certain percentage of its maximum load at stepped-up speeds for a specified interval at each speed.[6] FMVSS No. 119's high-speed performance requirement applies only to motorcycle tires and those with a rim diameter code of 14.5 or less (tires made to fit rims of diameter of 14.5 inches or less). Since this size restriction excludes all heavy vehicle tires currently listed in the Tire and Rim Association 2009 Year Book, the endurance test is currently the only dynamic test to which heavy vehicle tires must comply.

Today's NPRM would upgrade FMVSS No. 119 by proposing to adopt a more stringent endurance test, add a new high speed test, and include maximum speed rating labeling requirements for new radial tires used on heavy truck and bus applications, *i.e.,* load range F, G, H, J, and L tires that are not for speed-restricted service, which the agency believes comprise about 98 percent of the truck tires sold in the United States. These load range tires are typically used on heavy trucks for regional haul and long haul operations as well as on motorcoaches, and these load range tires have speed ratings ranging from 55–81 mph. Higher load range tires (*i.e.,* load ranges M and N) are more often used in heavy mixed-use service (on/off-road operations in lower speed applications), such as construction, logging, crane, and rigging operations. However, the agency is also considering requiring non-speed-restricted, load range M radial tires to comply with the upgraded endurance and new high speed test because some of these tires are used in similar applications in which the load range L tires are used. The agency is not proposing to upgrade non-speed-restricted service load range N radial tires since they represent less than 1 percent of the heavy vehicle tire market and are typically used in lower speed operations.

II. Overview of Endurance Test and High Speed Test Proposals

The proposed upgrade to the endurance test and the proposed adoption of a high speed test are based on the results of NHTSA's heavy truck tire tests, discussed later in the "NHTSA Tire Testing" section of this preamble.

a. Endurance Test

The purpose of the endurance test is to evaluate heavy truck tire performance at highway speeds for a long duration. The endurance test in FMVSS No. 119 applies to truck tires with load ranges F through N that are not for speed-restricted service. The test parameters used for the endurance test in FMVSS No. 119 include test speed, load, inflation pressure, duration, and ambient temperature. This NPRM proposes to upgrade the endurance test by changing some of these parameters to achieve more stringent conditions when testing load range F, G, H, J, and L radial tires that are not for speed-restricted service. Current endurance test parameters for load range N radial tires, load range F, G, H, J, L, M, and N tires that are for speed-restricted service, bias-ply tires, light truck tires (tread depth 18/32 inch or more), and motorcycle tires, would remain unchanged in the standard.

Test Speed

The current test speed for the endurance test in FMVSS No. 119 depends on the load range of the tire. Load range F tires are tested at 64 km/h (40 mph) on the 67-inch diameter test road wheel; load range G tires are tested at 56 km/h (35 mph); and tires with a load range H, J, L, M, or N are tested at 48 km/h (30 mph). NHTSA proposes to raise the test speed for the endurance test to 80 km/h (50 mph) for load range F, G, H, J, and L tires. This represents a 25 percent increase in speed for a load range F tire, a 43 percent increase for a load range G tire, and a 67 percent increase for load range H, J, and L tires that are not for speed-restricted service.

Load

The current test loads for the endurance test in FMVSS No. 119, identical for all the load ranges F through N, are specified as a percentage of the maximum load rating of the tire, and are 66 percent, 84 percent, and 101 percent. The loads are applied in a stepped fashion for durations of 7 hours, 16 hours, and 24 hours, respectively. NHTSA proposes to change the load combination for the endurance test to 85/90/100 percent of the tire's maximum load rating labeled on the tire's sidewall, from the 66/84/101 percent combination currently required.

Inflation Pressure

The current test inflation pressure specified in FMVSS No. 119 is the inflation pressure corresponding to the maximum load rating labeled on the tire's sidewall. NHTSA proposes to set the test inflation pressure at 80 percent of the sidewall-labeled inflation pressure that corresponds to the tire's maximum load rating. This represents a 20 percent decrease from the current endurance test, which requires tires to be fully inflated.

Duration

The current duration for the endurance test in FMVSS No. 119 is 47 hours: 7 hours at 66 percent load, 16 hours at 84 percent load, and 24 hours at 101 percent load. NHTSA proposes to leave FMVSS No. 119's endurance test duration at 47 hours.

Ambient Temperature

The ambient temperature specified for the endurance test in FMVSS No. 119 is 35 °C (95 °F). NHTSA proposes to add an ambient temperature tolerance, and thus proposes an ambient of 35 °C ± 3 °C (95 °F ± 5 °F) for the endurance test.

b. High Speed Test

The high speed test evaluates tire performance at higher speeds for shorter durations. FMVSS No. 119's high speed test currently applies only to motorcycle tires and to tires with rim diameters of 14.5 inches or below, and does not

[5] This NPRM would define these terms in FMVSS No. 119 to differentiate the types of service for which tires are used and the requirements in the standard that would apply to the different types of tire.

[6] *See, e.g.,* S6.2 of FMVSS No. 139.

apply to truck tires. The test parameters used for the high speed test in FMVSS No. 119 and in other tire standards include speed, load, inflation pressure, duration, and ambient temperature. This NPRM proposes to adopt a high speed test for load range F, G, H, J, and L tires that are not for speed-restricted service, as these are typically installed on vehicles in regional or long-haul service. The high-speed test would be initiated after a 2-hour break-in at 80 km/h (50 mph) and 85 percent of maximum load rating, with inflation pressure at 90 percent of maximum.

Test Speed

NHTSA proposes to set the test speed for the high-speed test at the tire's maximum speed less 20 km/h (12 mph) for step 1, maximum speed less 10 km/h (6 mph) for step 2, and at maximum speed for the final step. This would be a new approach for testing tires under the Federal motor vehicle safety standards, as motorcycle and passenger car tires are tested to one unvarying set of test speeds. The approach proposed in this NPRM is similar to that used by the United Nations Economic Commission for Europe (ECE) tire Regulations which establish tire test speeds based on the maximum rated speed of the tire, and is along the lines of a suggestion from the Rubber Manufacturers Association (RMA).[7]

Load

NHTSA proposes to set the test load for the high-speed test at 85 percent of the maximum load rating for the tire. The maximum load rating would be based on the tire sidewall marking per single tire use application.

Inflation Pressure

NHTSA proposes that the high-speed test inflation pressure be set at 90 percent of the sidewall-labeled inflation pressure that corresponds to the tire's maximum load rating.

Duration

NHTSA proposes a 90-minute duration for FMVSS No. 119's high-speed test, consisting of three 30-minute speed steps at the proposed test speeds.

Ambient Temperature

NHTSA proposes an ambient temperature range of 35 °C ± 3 °C (95 °F ± 5 °F) for the FMVSS No. 119 high speed test upgrade.

[7] *See* Docket No. NHTSA 2002–13707–0016.1, RMA Perspective on the FMVSS 119 Revisions and Updates Mandated by the TREAD Act.

III. NHTSA Tire Testing

a. Test Program

After passage of the TREAD Act, NHTSA began testing new heavy truck tires to assess the performance of current tires in endurance and high speed tests, and how load, inflation pressure, speed and duration affect tire performance. We tested more than 430 new heavy truck tires with load ranges G through N that were designed for commercial vehicle applications. The tires selected included a mixture of tire brands, models and sizes.

Testing was performed in two phases. In Phase I, new load range G tires were tested for durability ("endurance") and robustness at speed ("high speed"). Since the purpose of Phase I testing was to assess the current level of performance for truck tires, the test matrix for this phase included both destructive (extended duration) and non-destructive tests. The purpose of Phase II testing was to generate data with which specific proposals could be developed for an NPRM to upgrade FMVSS No. 119. In Phase II, the test conditions were further refined from Phase I, and the group of tires tested was expanded to include load ranges H, J, L and N. Additional testing was also conducted for tires with load ranges F, J, and L, and speed ratings less than 75 mph.

All of the tires tested were commercially available at the time of testing. For both Phases I and II, NHTSA developed test matrices that included the performance parameters of speed, load, inflation pressure, and test duration. The test matrices were developed with a series of test conditions that increased in severity for tire performance. The ambient temperature used in the testing for both Phase I and Phase II was 35 °C ± 3 °C (95 °F ± 5 °F). All tires were conditioned at the ambient temperature of 35 °C ± 3 °C (95 °F ± 5 °F) for 3 hours prior to testing. Testing was conducted on a 67-inch diameter curved test road wheel.[8]

Phase I Testing

In Phase I, NHTSA conducted testing on 180 new, size 11R22.5, load range G, heavy truck tires with a rib-type tread.[9] The 11R22.5 tire size was chosen due to its use in on-road applications for heavy vehicles: tire size 11R22.5 represents approximately 24 percent and 22 percent of the original equipment and replacement tire markets, respectively. We tested tires from brands Hankook, Dayton, Bridgestone, and General, all with tire size 11R22.5, load range G, and rib-type treads. Based on suggestions[10] from the Rubber Manufacturers Association (RMA), the Tire Industry Association (TIA), and the Tread Rubber/Tire Repair Materials Manufacturers Group (TRMG), we tested only rib-type tires, typically used on steer axle and trailer axle positions, to focus on a single tread type. Tires were tested to determine levels of endurance and high-speed performance under a variety of test conditions.

Phase I Endurance Test:

For the endurance test, we selected 120 new load range G tires from Hankook, Dayton, Bridgestone and General. The Phase I endurance test matrix consisted of 10 groups of varied test conditions, or "Test Methods,"[11] as shown below in Table 1, "Phase I Endurance Test Matrix." Other than in Test Methods 1 and 1A, three samples of each tire brand were tested for each Test Method (TM) in the matrix. Test Method 1 used one sample of each tire brand, and Test Method 1A used two samples of each tire brand.

Each TM consisted of a combination of the selected tire load, inflation pressure, test speed, and a specified duration at each load condition. Testing was performed so that each TM varied in severity by changing the load, inflation pressure or speed.

The applied test loads ranged from 66 percent of the maximum load rating to 110 percent of the maximum load rating. The loads used are similar to those used in the light vehicle tire research program that was conducted in 2001–2002 to support the upgrade of the endurance test for FMVSS No. 139. The stepped-up load combinations included 85, 90, and 100 percent; 90, 100, and 110 percent; and 100, 110, and 115 percent, which allowed the agency to understand limits of performance for light vehicle tires, including light truck tires with load ranges C, D, and E. For this research on medium and heavy duty truck tires, the agency also wanted

[8] Throughout this preamble, we use test speeds in miles per hour (mph) when presenting the test matrices, the test conditions, and the test results for the baseline tests, as specified in the current FMVSS No. 119. However, for the other tests in both the endurance and high speed test matrices, we selected test speeds in kilometers per hour (km/h) to be consistent with the metrification of the Federal motor vehicle safety standards. Some of the Tables presented in the preamble show speeds in miles per hour only, to facilitate comparison with the baseline test speeds.

[9] In the tire size description, the "11" represents the tire section width in inches, the "R" identifies the tire as a radial tire, and the "22.5" represents the tire rim diameter code, which equates to a rim diameter of 22.5 inches.

[10] *See* Docket No. NHTSA–2002–13707.

[11] Test Method 1A is considered a part of Test Method 1.

to understand the upper limits of performance for these tires when they are tested at normal loading conditions and at loads beyond their maximum load rating. As a result, we included stepped-up loads to 90/100/110 percent of the maximum load rating of the tires, since this represents an overloading condition for a truck tire on the test road-wheel.

Inflation pressures ranged from 80 to 100 percent of the maximum inflation pressure stated on the sidewall of the tires. The current endurance test in FMVSS No. 119 requires that the tire be tested at 100 percent of its maximum inflation pressure, but the agency sought to evaluate truck tires' performance when tested at some level of under-inflation, because that condition is occurring in real-world operation.[12] We chose 80 percent of the maximum inflation pressure as the lowest value for this testing, primarily because the truck industry considers a tire at that level of under-inflation to be significantly under-inflated.

The test speeds ranged from 56 km/h (35 mph) to 120 km/h (75 mph), which we believe represented the typical operating range of speeds for trucks using tires with the specified load ranges. Each tire was conditioned at the ambient test temperature of 35 °C ± 3 °C (95 °F ± 5 °F) for three hours. No break-in procedure was performed on tires tested for endurance performance since none is performed in the existing FMVSS No. 119 endurance test procedure. Table 1, "Phase I Endurance Test Matrix," below shows the test parameters used for the endurance test in Phase I and the structure of the test duration for the three samples in each Test Method. We note that for TMs 2–9, tire sample number 3 was tested for an additional amount of time after the rest of the TM was completed, which is why Table 1 shows an extra line for sample number 3 for these TMs.

[12] *See* Federal Motor Carrier Safety Administration, Final Report, "Commercial Vehicle Tire Condition Sensors," November 2003, at 7.

Table 1 - Phase I Endurance Test Matrix

Test Method #	Sample No.			Load Step	Load (%Max)	Duration (hours)	Speed (mph)	Inflation (%Max)
1	1	-	-	1	66	7	35	100
				2	84	16		
				3	101	24		
				4	110	48		
1A	-	2	3	1	66	7	50	100
				2	84	16		
				3	101	24		
				4	110	48		
2	1	2	3	1	85	7	55	90
				2	90	16		
				3	100	24		
	3			4	100	48		
3	1	2	3	1	90	7	55	90
				2	100	16		
				3	110	24		
	3			4	110	48		
4	1	2	3	1	85	7	63	90
				2	90	16		
				3	100	24		
	3			4	100	48		
5	1	2	3	1	90	7	63	90
				2	100	16		
				3	110	24		
	3			4	110	48		
6	1	2	3	1	85	7	55	80
				2	90	16		
				3	100	24		
	3			4	100	48		

7	1	2	3	1	90	7	55	80
				2	100	16		
				3	110	24		
			3	4	110	48		
8	1	2	3	1	85	7	63	80
				2	90	16		
				3	100	24		
			3	4	100	48		
9	1	2	3	1	90	7	63	80
				2	100	16		
				3	110	24		
			3	4	110	48		
10	1	2	3	1	90	7	75	100
				2	100	16		
				3	110	24		
				4	110	48		

The test parameters for the baseline tests (Test Method 1, load step 1–3) represent the current FMVSS No. 119 level for the endurance test. The tires (one sample of each tire brand) were tested at 56 km/h (35 mph), with a load of 66 percent of maximum load rating for 7 hours, 84 percent of maximum load rating for 16 hours, 101 percent of maximum load for 24 hours, and with an inflation pressure of 100 percent of the maximum inflation pressure value labeled on the sidewall. After the end of the 47-hour test, the tires were tested for an additional 48 hours, at a load of 110 percent of maximum load rating, and with the test parameters of speed, inflation pressure, and ambient temperature unchanged. Therefore, the total duration for the baseline endurance tests in Test Method 1 was 95 hours (47 hours per FMVSS No. 119 plus an additional 48 hours).

There were no failures in the baseline tests completed on the first of three samples for each tire brand. We then conducted a second baseline test by increasing the test speed for the remaining two samples to 80 km/h (50 mph) for the entire test, as shown in Test Method 1A. The inflation pressure and load parameters for the second baseline test were the same as in Test Method 1. The test load for the remaining two samples was 110 percent of maximum load rating for the last 48 hours of the test. The objective of the baseline tests in Test Method 1A was to determine how well tires performed under conditions slightly more stringent than the current endurance test in FMVSS No. 119.

As shown in Test Methods 2 through 9 (Table 1, above), test severity was increased by increasing the test speed, increasing the test loads, and reducing the inflation pressure. Road-wheel tests (not to failure) were conducted for 47 hours on two samples. The third sample was tested to 95 hours or until failure, whichever occurred first, with the load for the last 48 hours of the test being the same load applied in the last step for the 47-hour portion of the test.

All tires were inspected for belt separation, tread separation, and any other visual evidence of damage. For Test Method 10, all three tire samples were tested to 95 hours or until failure, whichever occurred first.

Phase I Endurance Test Results:

Of the 120 new tires tested for endurance performance under a variety of test conditions, 24 experienced failures. Of the 24 failures, 15 failed as a result of tread separation, 2 failed as a result of belt separation; 2 failed as a result of shoulder split; and 2 failed as a result of chunking. The remaining 3 failures consisted of other failure types such as tread splitting and sidewall separation. Table 2, "Phase I Endurance Test Results," summarizes the results for the endurance test on the four tire brands tested. Data for individual tests have been placed in the docket (NHTSA–2002–13707).

The Test Methods included in Table 2 are the same test methods for which the test conditions are shown in detail in Table 1. The test results in Table 2 show that the first sample for each of the four tire brands completed 95 hours for the baseline test in Test Method 1. The remaining two tire samples for each brand were tested to Test Method 1A, using the same test parameters, except for the test speed, which was increased from 56 km/h (35 mph) to 80 km/h (50 mph). Also note that for Test Methods 2 through 10, the first two samples of each Test Method were tested to 47 hours, while the third sample was tested to 95 hours. Four test errors occurred, where the test road-wheel stopped due to equipment or mechanical failure. These test errors are noted in Table 2 with an asterisk.

TABLE 2—PHASE I ENDURANCE TEST RESULTS

Test Method No.	Target (hours)			Tire brands (hours completed)											
				Hankook			Dayton			Bridgestone			General		
	Sample No.														
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
1	95	.....	.....	95	.....	.....	95	.....	.....	95	.....	.....	95	.....	.....
1A	.....	95	95	.....	95	95	.....	95	95	.....	95	95	.....	95	95
2	47	47	95	47	47	95	47	47	95	47	47	95	47	47	95
3	47	47	95	1	47	95	47	47	95	47	47	95	47	47	95
4	47	47	95	47	47	95	47	47	37	47	47	37	47	47	95
5	47	47	95	47	47	95	43	44	53	47	44*	95	47	47	95
6	47	47	95	47	47	95	47	47	95	47	47	95	47	47	95
7	47	47	95	47	47	95	47	47	69	47	47	95	47	47	95
8	47	47	95	47	44*	95	47	47	95	47	47	92	47	47	32
9	47	47	95	47	47	95	28	28	23	47	47	95	42	47	41
10	47	47	95	12	50	46*	27	3	14	31*	27	30	25	36	24

Note: * Test error.

Overall, the tires tested performed well throughout the endurance test matrix, particularly Test Methods 1 through 8, for which each tire brand had at least one sample that completed 47 hours of those Test Methods. The results indicate that decreased inflation pressure and increased speed of Test Method 9, and the even higher speed of Test Method 10, define the upper boundary of current new tire performance. For Test Methods 8 and 9, the inflation pressure was decreased to 80 percent of maximum inflation pressure, and the test speed was increased from 88 km/h (55 mph) to 100 km/h (63 mph). In addition, the test loads were increased in Test Method 9 to 90/100/110 percent of the tire's maximum load rating. For Test Method 10, inflation was increased to 100 percent and test speed raised to 120 km/h (75 mph), the same test speed used in the endurance test for light vehicle tires in FMVSS No. 139. The results indicate that higher speeds and lower inflation pressure appear to have the most impact on tire failure compared with changes in test load or duration.

Phase I High Speed Test:

We tested 60 new load range G tires from major tire manufacturers Hankook, Dayton, Bridgestone, and General for high speed performance. Since the FMVSS No. 119 high speed requirements currently apply only to tires with a rim diameter code of 14.5 or less and to motorcycle tires, the performance levels for the high speed baseline tests in our heavy truck tire test program (*see* Test Method A of Table 3 below, "Phase I High Speed Test Matrix") were set at the FMVSS No. 119 levels of performance for those tires, simply as a starting point for the test program. Test conditions were varied to produce different levels of severity by changing the load, inflation pressure and speed. *See* Table 3, "Phase I High Speed Test Matrix," below for a summary of the high speed test matrix.

Table 3 - Phase I High Speed Test Matrix

Test Method #	Sample No.			Speed Step	Speed (mph)	Duration (min)	Inflation (%Max)	Load (%Max)
A	1	2	3	1	75	30	100	88
				2	80	30		
				3	85	30		
				4	90	30		
				5	95	30		
				6	100	30		
	Total Time (hrs):					3.0		
B	1	2	3	1	75	30	95	80
				2	81	30		
				3	88	30		
	-	-	3	4	88	60		
	Total Time (hrs);					2.5		
C	1	2	3	1	75	30	95	90
				2	81	30		
				3	88	30		
	-	-	3	4	88	60		
	Total Time (hrs):					2.5		
D	1	2	3	1	75	30	90	80
				2	81	30		
				3	88	30		
	-	-	3	4	88	60		
	Total Time (hrs):					2.5		
E	1	2	3	1	75	30	90	90
				2	81	30		
				3	88	30		
	-	-	3	4	88	60		
	Total Time (hrs):					2.5		

Test severity, as defined by more severe running conditions (*i.e.* increased load, higher speed, or reduced inflation pressure), increased from Test Method A to Test Method E. In Test Method A, the first three speed steps represent the current conditions in FMVSS No. 119 (specified for applicable tires) and the next three test speeds represent speed conditions beyond those currently in FMVSS No. 119. The tires were tested to a stepped-up speed profile starting at 120 km/h (75 mph), with a load condition of 88 percent of maximum load rating for 30 minutes. The test speed was increased in 5-mph increments every 30 minutes until failure or a speed of 160 km/h (100 mph) was achieved, whichever occurred first. Therefore, the target completion time for the baseline high speed test was 3 hours for a total of six speed steps for Test Method A only. The primary reason for testing beyond 137 km/h (85 mph) in the baseline tests was to assess the upper boundary of high speed performance for heavy truck tires.

The initial test speed for Test Methods B through E was set to 120 km/h (75 mph), and increased to 130 km/h (81 mph) and 140 km/h (88 mph) in 30-minute intervals for a total of three test steps. The 10-km/h increments were used to increase the speed severity moderately for tire samples as they advanced through the different test methods. For each tire brand tested, the first two samples were tested for three 30-minute speed steps, for a total test duration of 1.5 hours. The third sample was tested for an additional hour at the last speed step of 140 km/h (88 mph), resulting in a test duration of 2.5 hours.

The test load was based on the maximum load rating for the subject tire as labeled on the sidewall. The test load ranged from 80 percent of maximum load rating to 90 percent of maximum load rating. Inflation pressures ranged from 90 percent to 100 percent of maximum pressure labeled on the sidewall.

Each tire was conditioned for the test at an ambient temperature of 35 °C ± 3 °C (95 °F ± 5 °F) for three hours, and then broken in for two hours under 88 percent of maximum load and 100

percent maximum inflation pressure at 80 km/h (50 mph).[13] The tire was allowed to cool to 35 °C ± 3 °C (95 °F ± 5 °F) and the inflation pressure was adjusted to applicable pressure immediately before the test. The break-in procedure was performed to bring the tire to operating temperature, which allows the tire to flex, expand and contract such that air within the tire may fully permeate into the tire cavity. The break-in procedure also removes mold release agents and flashings produced by the molding process, which could contribute to variability in the test.

At the completion of the test, tires were visually inspected for belt separation, tread separation, and evidence of damage.

Phase I High Speed Test Results:

Of the 60 new tires tested for high speed performance under a variety of test conditions, 7 experienced test failures. Of these 7 failures, 4 failed as a result of tread chunking, 2 failed as a result of tread separation, and 1 failed due to belt separation. Most of these failures occurred in Test Method A at test speeds of 152 km/h (95 mph) or at 160 km/h (100 mph). Table 4 below, "Phase I High Speed Test Results (Hours Completed)," shows how the tires performed, as tested under each test method. The Test Methods included in Table 4 are the same Test Methods for which the test conditions are shown in detail in Table 3.

TABLE 4—PHASE I HIGH SPEED TEST RESULTS (HOURS COMPLETED)

Test Method	Target hours			Tire Brands (hours completed)											
				Hankook			Dayton			Bridgestone			General		
	Sample No.														
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
A	3.0	3.0	3.0	3.0	3.0	3.0	2.3	2.8	2.5	2.9	3.0	2.9	3.0	3.0	2.8
B	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	2.5
C	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	2.5
D	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	2.5
E	1.5	1.5	2.5	1.5	1.5	2.5	1.5	1.5	1.8	1.5	1.5	2.5	1.5	1.5	2.5

Test Method A was extended so that samples would be tested to the baseline FMVSS No. 119 conditions and then tested at increased speeds. For Test Method A, speed was increased beyond the FMVSS No. 119 test speeds to 90, 95, and 100 mph, in 30-minute increments (the total test duration target was three hours). Inflation pressure and load were unchanged. Each sample was tested at 88 percent of maximum load rating, 100 percent inflation pressure and to speeds that were increased in 30-minute increments to a stepped profile, initiating at 120 km/h (75 mph) and concluding at 160 km/h (100 mph) or failure, whichever occurred first.

Overall, the new tires tested to the high-speed matrix performed well, as shown in Table 4. All of the 7 tires that failed completed at least 1.5 hours, which represents the first three 30-minute speed steps of the targeted test duration. Test Method A was designed to test tires to 100 mph or failure, whichever occurred first. The results for Test Method A reveal that all of the tires were able to withstand speeds of up to 90 mph, when inflated at 100 percent of maximum inflation pressure. The results also show that all of the tires tested to Test Methods B through E were able to complete the 1.5 hours at test speeds of 120, 130, and 140 km/h (75, 81 and 88 mph). In addition, when tested to an additional hour at the last speed step of 140 km/h (88 mph), all the tires tested, except one Dayton tire, were able to complete the entire 2.5 hours of the high-speed test.

Phase II Testing

While Phase I testing provided NHTSA with a general understanding of the current level of performance for new heavy duty truck tires, Phase II testing refined the test matrices to develop possible, practicable, proposals to upgrade the endurance and high speed tests in FMVSS No. 119. In Phase II, NHTSA tested 365 new tires. Testing also was expanded to include test tires of additional tire sizes (385/65 R 22.5 and 315/80 R 22.5), load ranges (F, H, J, L, and N tires, and load range G "bias ply" type tires), brands from other manufacturers (Continental, Goodyear, Michelin, Kumho, and Yokohama), and steer, drive, and all-position tread types, as shown in Table 5.

These tires included speed ratings ranging from 56 mph to 75 mph. Most of the tires were tested for both endurance performance and for high-speed performance. Some tire models were tested in 2005, and certain tire models tested were retested in 2008 to validate their performance. In the results section, superscripts were used to identify which tires were tested first. FMVSS No. 119 does not apply to speed-restricted service and bias-ply tires, therefore those tires were not included in the costs and benefits analysis section. The data for those tires were collected to learn about their performance levels. Of the 365 tires tested, 159 tires were tested to the proposed methods. Seventy-eight tires were tested for Endurance and 81 were tested for High Speed performance.

TABLE 5—PHASE II TIRE INFORMATION

Group No.	Manufacture/model	Tire size and LR	Max speed (mph)	Application
1	Goodyear G647 RSS	225/70R19.5 LR F	75	Regional/P&D
2	Michelin XRV	225/70R19.5 LR F	75	Long haul
3	Bridgestone R293	11R24.5 LR G	75	Long haul

[13] Traditionally, a high speed test has an initial break-in step that involves a tire running on the roadwheel under specified conditions to allow for tire growth. The endurance test does not need a break-in step primarily because the 47-hour test duration allows time for break-in during the test.

TABLE 5—PHASE II TIRE INFORMATION—Continued

Group No.	Manufacture/model	Tire size and LR	Max speed (mph)	Application
4	Bridgestone M1X 711	11R24.5 LR G	75	Long haul
5	General D460	11R24.5 LR G	75	Long haul
6	Michelin XZY3	11R24.5 LR G	65	Mixed service
7	General S580	11R24.5 LR H	75	Long haul
8	Goodyear G167	11R24.5 LR H	75	Long haul
9	Goodyear G395	11R24.5 LR H	75	Long haul
10	Goodyear Marathon LHT	245/70R17.5 LR H	62	N/A
11	Kumho 943	11R24.5 LR H	75	Regional/P&D
12	Kumho KRS02	11R24.5 LR H	75	N/A
13	Yokohama TY303	11R24.5 LR H	75	Long haul
14	Yokohama RY023	11R24.5 LR H	75	Long haul
15	Bridgestone R184 CZ	215/75R17.5 LR H	65	High Load Trailer
16	Bridgestone L320	11.00R24.5 LR H	65	Mixed service
17	Goodyear Unisteel G291	315/80R22.5 LR J	75	Regional/P&D
18	Goodyear G286 (wb)	385/65R22.5 LR J	68	Mixed service
19	Michelin XZY3 (wb)	385/80R22.5 LR J	65	Mixed service
20	Michelin XTA	215/75R17.5 LR J	62	L. haul/Regional
21	Kumho KRT02	235/75R17.5 LR J	62	Regional/P&D
22	Yokohama RY253 (wb)	385/65R22.5 LR J	65	Long haul
23	Continental HMS 45+	315/80R22.5 LR L	56	Mixed service
24	Michelin XZUS	315/80R22.5 LR L	65	Regional/P&D
25	Michelin XZA2 Energy	315/80R22.5 LR L	75	Long haul
26	Milestar TRX (bias-ply)	N/A LR G	N/A	N/A
27	Prime X Rockmaster	N/A LR N	N/A	N/A

Note: (wb) means it is a wide-base tire; * means speed-restricted service tire.

Phase II Endurance Test

NHTSA tested new tires with load ranges F, G, H, J, L and N from several major tire manufacturers. Table 6, "Phase II Endurance Test Matrix," shows the endurance test conditions used for Phase II testing. These test conditions were selected based on our analysis of the Phase I results. We varied the severity of the test conditions by adjusting load, inflation pressure and/or speed. For each test method, the test load was stepped-up through 85, 90, and 100 percent of maximum load rating. Inflation pressures ranged from 80 percent to 90 percent of maximum inflation pressure stated on the sidewall. Test speeds ranged from 80 km/h (50 mph) to 100 km/h (62 mph). Each tire was conditioned at ambient temperature 35 °C ± 3 °C (95 °F ± 5 °F) for three hours. All the tires were tested for a total duration of 71 hours consisting of the 47 hours of the current FMVSS No. 119 endurance test plus an additional 24 hours.

Table 6--Phase II Endurance Test Matrix

Test Method #	Samples	Load Step	*Load (%Max)	**Duration (hours)	Speed (km/h)	*Inflation (%Max)
1	3	1	85	7	80	90
		2	90	16		
		3	100	24		
		4	100	24		
2	3	1	85	7	80	80
		2	90	16		
		3	100	24		
		4	100	24		
3	3	1	85	7	90	90
		2	90	16		
		3	100	24		
		4	100	24		
4	3	1	85	7	90	80
		2	90	16		
		3	100	24		
		4	100	24		
5	3	1	85	7	100	90
		2	90	16		
		3	100	24		
		4	100	24		
6	3	1	85	7	100	80
		2	90	16		
		3	100	24		
		4	100	24		

Note: * Percent of sidewall maximum; ** Total hours per test method is 71

The results of the endurance tests for new tires in Phase I indicated that higher speeds and lower inflation pressure appear to have the most impact on tire failure compared with changes in test load or duration. Based on these results, in the Phase II program NHTSA decided to moderately increase the severity of its endurance test matrix over the current requirements in FMVSS No. 119. The least severe test condition, Test Method 1, had the lowest test speed (80 km/h or 50 mph), and the highest inflation pressure (90 percent of maximum inflation pressure). The most severe test condition, Test Method 6, had the highest test speed (100 km/h or 62 mph), and the lowest inflation pressure (80 percent of maximum inflation pressure).

Phase II Endurance Test Results

Tables 7 through 14 of this preamble, below, summarize the results of the endurance testing in Phase II. The results indicate that as the test severity increased, in going from Test Method 1 to Test Method 6, tire failure rate increased. Tires tested under Test Method 1 were more likely to achieve the target of 71 hours compared to tires tested to Test Method 6. All of the load range G (radial) and H tires tested under Test Methods 1 and 2 achieved the target of 71 hours, whereas only a few of the load range G tires and none of the load range H tires tested to Test Methods 5 and 6 were able to achieve the target of 71 hours. The dashes in the tables represent Test Methods that were not performed for that specified tire.

Three tire groups (Nos. 10, 20, and 21) were speed-rated 62 mph. These groups were tested with a variation in speed. Samples #1 from these three tire groups were tested at 50 mph. If sample #1 did not complete the 71-hour test, sample #2 was tested at 45 mph and sample #3 was tested at 40 mph. If sample #1 completed the 71-hour test at 50 mph, the remaining samples were tested at the same speed.

TABLE 7—PHASE II ENDURANCE TEST RESULTS, LOAD RANGE F

Test Method No.	Proposed (hours)			Tire Brands (Hours Completed)					
				Goodyear 647 RSS			Michelin XRV		
	Sample No.								
	1	2	3	1	2	3	1	2	3
2	47	47	47	71	71	71	71	71	71

TABLE 8—PHASE II ENDURANCE TEST RESULTS, LOAD RANGE G

Test Method No.	Proposed (hours)			Tire Brands (Hours Completed)								
				Bridgestone R293—Steer			Bridgestone MIX 711—Drive			General D460—Drive		
	Sample No.											
	1	2	3	1	2	3	1	2	3	1	2	3
1	47	47	47	71	71	71	71	71	71	.....	.....	.....
2	47	47	47	71	71	71	71	71	71	71	71	71
3	47	47	47	71	71	71	71	71	65	.....	.....	.....
4	47	47	47	71	71	71	71	71	71	.....	.....	.....
5	47	47	47	71	71	44	40	37	32	.....	.....	.....
6	47	47	47	24	71	33	33	33	34	.....	.....	.....

TABLE 9—PHASE II ENDURANCE TEST RESULTS, LOAD RANGE H

Test Method No.	Proposed (hours)			Group Samples (Hours Completed)														
				Goodyear G395—Steer			Goodyear G167—Drive			Kumho 943—Drive			Kumho KRS02—Drive			Yokohama RY023—Steer		
	Sample No.																	
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
1	47	47	47	71	71	71	71	71	71	71	.....	.....	.....	.....	.....	.....	.....	.....
2	47	47	47	71	71	71	71	71	71	71	71	71	71	71	71	71	71	71
3	47	47	47	41	35	50	46	69	71	.....	.....	.....	.....	.....	.....	.....	.....	.....
4	47	47	47	71	55	56	47	48	56	.....	.....	.....	.....	.....	.....	.....	.....	.....
5	47	47	47	18	19	19	24	5	27	.....	.....	.....	.....	.....	.....	.....	.....	.....
6	47	47	47	13	25	17	19	8	7	.....	.....	.....	.....	.....	.....	.....	.....	.....

TABLE 10—PHASE II ENDURANCE TEST RESULTS, LOAD RANGE H

Test Method No.	Proposed (hours)			Group Samples (Hours Completed)														
				Goodyear Marathon LHT			Bridgestone R184 CZ			Bridgestone L320			Yokohama TY303			General S580		
	Sample No.																	
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
2	47	47	47	22	30	35	71	71	71	71	71	71	71	71	71	71	71	71

Samples 2 and 3 from Goodyear LHT were tested at 45 and 40 mph.

TABLE 11—PHASE II ENDURANCE TEST RESULTS, LOAD RANGE J

Test Method No.	Proposed (hours)			Tire Brands (Hours Completed)														
				Yokohama RY253 (wb)—All Pos.			Goodyear G286 (wb)—Steer			[1] Michelin XZY3 (wb)—All Pos.			Goodyear Unisteel G291			[2] Michelin XZY3 (wb)—All Pos.		
	Sample No.																	
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
1	47	47	47	71	71	71	7	4	7	71	71	71	.....	.....	.....	.....	.....	.....
2	47	47	47	71	71	71	7	5	7	65	44	71	71	71	71	71	65	71
3	47	47	47	55	45	42	2	2	5	6	70	44	.....	.....	.....	.....	.....	.....
4	47	47	47	42	43	34	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Superscripts 1 and 2: 1 represents tires tested in 2005; 2 represents tires tested in 2008.

TABLE 12—PHASE II ENDURANCE TEST RESULTS, LOAD RANGE J

Test Method No.	Proposed (hours)			Group Samples (Hours Completed)								
				[2] Yokohama RY253 (wb)			Michelin XTA			Kumho KRT02		
	Sample No.											
	1	2	3	1	2	3	1	2	3	1	2	3
2	47	47	47	71	71	71	71	71	71	27	56	71

Samples 2 and 3 from Kumho KRT02 were tested at 45 and 40 mph.

TABLE 13—PHASE II ENDURANCE TEST RESULTS, LOAD RANGE L

Test Method No.	Proposed (hours)			Tire Brands (Hours Completed)														
				[1] Conti. HMS45 + Steer			[1] Michelin XZUS—All Pos.			[1] Michelin XZA2 Energy—All			Conti.HMS45 + − Steer			[2] Michelin XZUS—All Pos.		
	Sample No.																	
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
1	47	47	47	19	21	20	30	28	33	.....	.....	.....	.....	.....	.....	.....	.....	.....
2	47	47	47	29	20	30	30	32	48	64	59	56	55	46.7	43	55	40	41
3	47	47	47	8	9	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
4	47	47	47	14	14	17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
5	47	47	47	3	2	3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
6	47	47	47	4	4	3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Note: Superscript 1 represents tires tested in 2005, 2 represents tires tested in 2008.

TABLE 14—PHASE II ENDURANCE TEST RESULTS, LOAD RANGE G BIAS PLY (TRAILER APPLICATION) AND N

Test Method No.	Proposed (hours)			Tire Brands (Hours Completed)											
				(G-Bias) Milestar TRX			(G-Bias) Milestar TRX			(G-Bias) Milestar TRX			(N) Prime X Rockmaster		
	Sample No.														
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
1	47	47	47	71	71	71	71	71	70	71	71	64	5	6	4
2	47	47	47	52	10	48	71	66	62	71	53	67	.....	.....	.....
3	47	47	47	45	71	35	54	67	55	3	71	71	.....	.....	.....

Test results also indicate that some higher load range J, L, and N tires were overall less likely to achieve their target of 71 hours than the load range G and H tires. Some load range J and L tires are also used on inter-city coach buses (motorcoaches), which are operated at highway speeds. (Tire industry data show that load range J and L tires comprise 8 percent of the new truck tire market share (*see* Docket NHTSA–2002–13707, item 18.1).) Nineteen out of the 24 (79%) load range J tires met the proposed 47-hour test. Five out of the 9 (56%) load range L tires tested met the proposed conditions. The load range J and L tires we tested had speed ratings ranging from 62 to 75 mph, and all 9 tires speed-rated 75 mph met the proposed 47-hour endurance test requirements. The agency assumes that most load range J and L tires are speed-rated 75 mph, and that the tires would thus meet the proposed endurance requirements. The agency is seeking comment on the percentage of these tires that are speed-rated 75 mph.

All of the tires were not tested to every test method for several reasons. For load range G and H tires, the

Bridgestone and Goodyear tires were tested to Test Method 1 through Test Method 6. The Continental D 460, Kumho 943, Kumho KRS02, and Yokohama RY023 tires were not tested to Test Method 1 and Test Methods 3 through 6, primarily because failures from the other groups began to surface when tested to Test Method 3. In similar fashion, tires for load range J, L, N, and G (bias ply), were not tested once a pattern of failures indicated that a particular test method was beginning to result in failures for those tires.

Phase II High Speed Test

Based on the results of the high speed tests of new tires in Phase I,[14] we revised the high speed test matrix for Phase II by reducing the test speeds to speeds that are more representative of the upper limit for heavy vehicle application. Table 15 below summarizes the test conditions used for the high speed test in Phase II.

Table 15 - Phase II High Speed Test Matrix

Test Method #	Samples	Speed Step	Speed (km/h)	Duration (min)	Inflation (%Max)	Load (%Max)
A	3	1	100	30	95	90
		2	110	30		
		3	120	30		
		4	120	60		
	Total Time (hrs):			2.5		
B	3	1	100	30	90	90
		2	110	30		
		3	120	30		
		4	120	60		
	Total Time (hrs):			2.5		
C	3	1	100	30	95	85
		2	110	30		
		3	120	30		
		4	120	60		
	Total Time (hrs):			2.5		
D	3	1	100	30	90	85
		2	110	30		
		3	120	30		
		4	120	60		
	Total Time (hrs):			2.5		

We tested new tires of load ranges F, G, H, J, and L from several major tire manufacturers. Test conditions varied in severity by adjusting load, inflation pressure and/or speed. The applied load was based on the single maximum load for the subject tire, stated on the sidewall. The applied load ranged from 85 percent of maximum load rating to 90 percent of maximum load rating. In Test Method (TM) C, the least severe test method, the test load was set to 85 percent of maximum load rating, and inflation pressure at 95 percent of maximum. In the most severe Test Method (B), the load was set at 90 percent of maximum load rating, and inflation at 90 percent of maximum. Inflation pressures ranged from 90 percent to 95 percent of maximum pressure stated on the sidewall. Generally, test speeds were 100/110/120 km/h (62/68/75 mph). Each tire was conditioned at an ambient temperature of 35 °C ± 3 °C (95 °F ± 5 °F) for three hours, broken in for two hours at 80 km/h (50 mph) under 88 percent of maximum load rating, and then run for duration of 2.5 hours. The duration for the final speed step of 120 km/h (75 mph) was 1.5 hours, which represents an additional hour beyond the normal speed step of 30 minutes.

Phase II High Speed Test Results

Tables 16 through 24, below, summarize the results of the high-speed test for new tires tested in Phase II, and indicate that heavy truck tires performed well under the test matrix of Phase II. For the 138 tires tested for high-speed durability, only 10 tires failed to meet the set target of 2.5 hours at speed. For example, the Goodyear Drive tire samples 1, 2, and 3 (load range H) under Test Method C, completed 2.5, 2.4 and 2.1 hours, respectively (see Table 17). Similarly, the same tire brand completed 2.1, 2.4 and 1.9 hours under Test Method B. Eighty-one out of the 138 tires were tested to the proposed high speed requirements. Ninety-nine percent (80/81) met the 1.5-hour proposed requirement, Test Method D. Several

[14] Most failures occurred in Test Method A at test speeds of 152 km/h (95 mph) or at 160 km/h (100 mph).

tire models from Bridgestone and Goodyear tire brands were tested first and yielded very positive results under Test Methods C and D, which were less severe because of the lower loading conditions. Additional tire brands (Bridgestone, Continental, Michelin, Kumho and Yokohama) were tested to Test Methods C and D to validate the test conditions for use in a potential upgrade for the heavy truck tire standard.

TABLE 16—PHASE II HIGH SPEED TEST RESULTS, LOAD RANGE F

Test Method No.	Target (hours)			Tire Brands (Hours Completed)					
				Goodyear 647 RSS—Steer			Michelin XRV—All Pos.		
	Sample No.								
	1	2	3	1	2	3	1	2	3
D	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5

TABLE 17—PHASE II HIGH SPEED TEST RESULTS, LOAD RANGE G

Test Method No.	Target Hours			Tire Brands (Hours Completed)											
				Bridgestone R293—Steer			Bridgestone MIX 711—Drive			General D460—Drive			Michelin XZY3		
	Sample No.														
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
A	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	.....	.....	.....	.....	.....	.....
B	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	.....	.....	.....	.....	.....	.....
C	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
D	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5

TABLE 18—PHASE II HIGH SPEED TEST RESULTS, LOAD RANGE H

Test Method No.	Target Hours			Tire Brands (Hours Completed)														
				Goodyear G395—Steer			Goodyear G167—Drive			Kumho 943—Drive			Kumho KRS02—Drive			Yokohama RY023—Steer		
	Sample No.																	
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
A	2.5	2.5	2.5	2.5	2.5	2.5	1.6	2.2	1.9	.....	.....	.....	.....	.....	.....	.....	.....	.....
B	2.5	2.5	2.5	2.5	2.5	2.5	2.1	2.4	1.9	.....	.....	.....	.....	.....	.....	.....	.....	.....
C	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.4	2.1	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5
D	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.2	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5

TABLE 19—PHASE II HIGH SPEED TEST RESULTS, LOAD RANGE H

Test Method No.	Target Hours			Group Samples (Hours Completed)											
				Goodyear Marathon LHT			Bridgestone R184 CZ			Bridgestone L320			Yokohama TY303—Drive		
	Sample No.														
	1	2	3	1	2	3	1	2	3	1	2	3	1	2	3
C	2.5	2.5	2.5	.....	.....	.....	.....	.....	.....	.....	.....	.....	2.5	2.5	2.5
D	2.5	2.5	2.5	2.3	2.5	1.6	2.5	2.5	2.5	1.3	1.8	1.8	2.5	2.5	2.5

TABLE 20—PHASE II HIGH SPEED TEST RESULTS, LOAD RANGE J

Test Method No.	Target (hours)			Tire Brands (Hours Completed)								
				Goodyear Unisteel G291—All Pos.			Yokohama RY253 (wb)—All Pos.			Michelin XZY3 (wb)—All Pos.		
	Sample No.											
	1	2	3	1	2	3	1	2	3	1	2	3
D	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.5

TABLE 21—PHASE II HIGH SPEED TEST RESULTS, LOAD RANGE J

Test Method No.	Target Hours			Tire Brands (Hours Completed)					
				Michelin XTA			Kumho KRT02		
	Sample No.								
	1	2	3	1	2	3	1	2	3
D	2.5	2.5	2.5	2.5	2.5	2.5	2.3	2.5	2.5

TABLE 22—PHASE II HIGH SPEED TEST RESULTS, LOAD RANGE L

Test Method No.	Target Hours			Tire Brands (Hours Completed)								
				Continental HMS 45+			Michelin XZUS—All Pos.			Michelin XZA2 Energy—All Pos.		
	Sample No.											
	1	2	3	1	2	3	1	2	3	1	2	3
D	2.5	2.5	2.5	2.5	2.5	2.5	2.5	2.25	2.5	2.5	2.5	2.5

TABLE 23—PHASE II HIGH SPEED TEST RESULTS, LOAD RANGE J, NO BREAK-IN STEP

Test Method No.	Target (hours)			Tire Brands (Hours Completed)								
				Michelin XZY3 (wb)—All Pos.			Goodyear Unisteel G291—All Pos.			Yokohama RY253 (wb)—All Pos.		
	Sample No.											
	1	2	3	1	2	3	1	2	3	1	2	3
D	2.5	2.5	2.5	2.5	2.5	2.5	1.5	2. 5	2.5	2.5	2.5	2.5

TABLE 24—PHASE II HIGH SPEED TEST RESULTS, LOAD RANGE L, NO BREAK-IN STEP

Test Method No.	Target (hours)			Tire Brands (Hours Completed)					
				Michelin XZUS—All Pos.			Michelin XZA2 Energy—All Pos.		
	Sample No.								
	1	2	3	1	2	3	1	2	3
D	2.5	2.5	2.5	2.15	2.5	2.3	2.5	2.5	2.5

b. Summary

The results of the endurance and high speed tests indicated that the test requirements of FMVSS No. 119 can be upgraded for radial tires to specify more stringent, yet practicable, levels of performance that ensure better durability in real-world applications.

Based on these test results, NHTSA proposes to upgrade the endurance performance requirement and establish a new high-speed performance requirement for radial tires of load ranges F, G, H, J, and L, that are not for speed-restricted service, which comprise about 98 percent of the truck

tires sold in the United States.[15] These tires are typically used for regional haul and long haul operations and on motorcoaches. The remaining 2 percent represent the higher load rating tires and bias ply tires, which are more often used in mixed service (on/off-road operations in lower speed applications), such as construction, logging, crane, and rigging operations. However, the agency is also considering requiring non-speed-restricted, load range M radial tires to comply with the upgraded endurance and new high speed tests because some of these tires are used in similar applications as load range L tires. The agency is not proposing any new requirements for load range N tires, which represent less than 1 percent of new tires sold and are typically used in lower speed operations. The agency is also not proposing any new requirements for bias ply tires, primarily because they are typically not installed on new heavy vehicles and they represent a very small portion of the tires sold as replacement tires. These tires would continue to be required to comply with the current requirements. In addition, the agency is not proposing updated requirements for light truck tires with tread depth 18/32 inch or greater or for speed-restricted tires; these tires, used on light truck applications, are load range E category, and are not the focus of this rulemaking. The agency is not proposing any new requirements for bias ply tires, primarily because we are not aware that they are installed on new heavy vehicles, and we aimed at upgrading radial tires, which represent the vast majority of the tires used on heavy vehicles.

IV. Proposed Endurance Test

NHTSA is proposing to upgrade FMVSS No. 119's requirements for load ranges F, G, H, J, and L tires that are not for speed-restricted service by setting more stringent requirements for the endurance test. NHTSA proposes that the endurance test be conducted using the parameters shown in Table 25. The proposed and current endurance test parameters may be compared as shown in Tables 25 and 26 below:

TABLE 25—PROPOSED FMVSS NO. 119 ENDURANCE TEST CONDITIONS

Load ranges	Steps	Load (% max)	Duration (hrs)	Speed (km/h)	Inflation pressure (% max)
F, G, H, J, and L	1	85	7		
	2	90	16	80	80
	3	100	24	.....	.....

TABLE 26—CURRENT FMVSS NO. 119 ENDURANCE TEST CONDITIONS

Load ranges	Speed (km/h)	Inflation pressure (% max)	Load (% max)		
			Duration (hrs)		
			7	16	24
F	64	.....	.....	.....	.....
G	56	100	66	84	101
H, J, L, M, N	48	.....	.....	.....	.....

A tire would comply with the proposed requirements if, at the end of the endurance test as currently defined by the standard, there is no visual evidence of tread, sidewall, ply, cord, inner liner, belt or bead separation, chunking, open splices, cracking or broken cords, and the tire pressure, when measured at any time between 15 and 25 minutes after the end of the test, is not less than 95% of the initial test pressure.

a. Test Speed

NHTSA proposes to raise the test speed for the endurance test to 80 km/h (50 mph) for load range F, G, H, J, and L tires, which are not for speed-restricted service. This represents a 25 percent increase in speed for a load range F tire, a 43 percent increase for a load range G tire, and a 67 percent increase for load range H, J, and L tires. It is noted that these tests are performed on a curved road wheel, a 67-inch diameter steel drum, on which the tire being tested runs as on a treadmill. Because the road wheel is curved, it subjects the tire to reverse deflection compared to a tire running on a flat surface, which makes the tire run hotter (and is therefore a more severe test). According to American Society for Testing and Materials International (ASTM International) research on equivalent flat-to-curved speeds based on equivalent belt-edge temperatures, a load range G truck tire tested on a 67-inch diameter road wheel at 85 km/h (53 mph) experiences belt-edge temperatures similar to what a tire experiences when tested on a flat road surface at 120 km/h (75 mph). Thus, it was determined that the effects on the tire in the two situations will be similar, even though the one tire is rotating at 85 km/h (53 mph) and the other at 120 km/h (75 mph). ("Phase 1—Final Report," ASTM Truck/Bus Tire Test Development Task Group, 9/5/06, Docket No. NHTSA–2002–13707–10.)

In NHTSA's Phase II testing, tires were tested to speeds of 80, 90, and 100 km/h (50, 56, and 62 mph) as potential upgrades to the current test speeds. Only 3 of 30 tire samples were able to complete a 71-hour, or even a 47-hour test, at 100 km/h (62 mph). At 90 km/h (56 mph), all except three of the load range G and H tires were able to complete 47 hours. At 80 km/h (50 mph), all of the load range F, G and H tires completed the 71-hour test without failure, even at 80 percent inflation. Load range J tires had mixed results, and for load range L tires, only 7 of 21 tires tested were able to complete 47 hours of the endurance test.

Given these results, NHTSA believes that a speed of 80 km/h (50 mph) for the endurance test, when coupled with the inflation pressure and load parameters

[15] New truck tire market share by load range is as follows: F–5 percent, G–64 percent, H–23 percent, J–3 percent, L–5 percent, M and N is less than 1 percent. *See* Docket NHTSA–2002–13707, item 18.1.

we are proposing, represents a substantial and realistic upgrade over current requirements for commercial vehicle tires. In selecting this test speed, we considered the maximum speed rating of the tires we tested and those typically used in commercial vehicle applications, including motorcoaches, and found that, according to tire manufacturer catalogs,[16] the majority of the tires in these usage categories were rated at 120 km/h (75 mph). All the test tires that were rated at 120 km/h (75 mph) and some that were rated at 110 km/h (68 mph) or lower completed the proposed 47-hour Endurance test without failure. Even though load range J and L tires comprise only about 6 percent of the commercial vehicle tire market, NHTSA is aware that load range J and L tires are used on some commercial inter-city coach buses (motorcoaches), operated on interstate highways, and their use as such highlights the need to propose upgrading the endurance test speed for these tires. The agency is aware that while some load range J and L tires are rated at a maximum speed of 120 km/h (75 mph), many others are rated at speeds between 88 km/h (55 mph) and 110 km/h (68 mph). As a result, the agency solicits comment on the appropriateness of the 80 km/h (50 mph) test speed for load range F, G, H, J, and L tires in the endurance test.

The agency is also considering requiring non-speed-restricted, load range M radial tires to comply with the upgraded endurance test because some of these wide base tires may be used in similar applications that load range L tires are used. Given that the maximum speed rating of these tires allows them to be used in high speed operations, possibly instead of two lower load range tires, the agency believes that they should be considered for inclusion in the upgrade since they could be used in different vehicle applications than the typical speed-restricted, load range M radial tires. Accordingly, the agency solicits comment on requiring non-speed-restricted, load range M radial tires to comply with the upgraded endurance test.

We are unaware of non-speed restricted, radial, load range N tires being used in high speed operations, thus we are not proposing that they be required to comply with this upgrade. NHTSA does not propose to raise the endurance test speed for non-speed-restricted, load range N tires from 48 km/h (30 mph), given their typical use on heavy vehicles, and our concern that increasing the speed would not be practicable. Due to their design and typical application to heavy vehicles used in mixed (on/off-road) service at slow speeds, load range N tires performed poorly even at the lowest test speed used by NHTSA. As stated previously, these tires make up about 1 percent of the total market for truck tires. NHTSA believes there is no demonstrated safety need to upgrade these tires to comply with a more stringent endurance test, given the typical uses of the tires.

b. Load

NHTSA proposes to change the load combination for the endurance test to 85, 90, and 100 percent of the tire's maximum load rating, from the 66, 84, and 101 percent combination currently required. NHTSA's Phase II testing specified test loads at 85, 90, and 100 percent for the same durations as currently required in FMVSS No. 119. Increasing the first two load steps from 66 and 84 percent increased the stringency of the first 23 hours of the proposed test, and makes them consistent with the loads specified in FMVSS No. 139's endurance test for light vehicle tires. NHTSA believes increasing the test load combination from 66, 84, 101 percent to 85, 90, and 100 percent of the tire's maximum load rating represents an overall upgrade of the loading condition for FMVSS No. 119.

Tire failure on a vehicle in service can occur due to under-inflation or overloading, or both. Heavy vehicle tires are used predominantly on commercial vehicles, such as transit buses, tractor trailer combination vehicles, and ready-mix concrete trucks, for which loading to the vehicle's gross vehicle weight rating is typical of normal use. Non-commercial heavy vehicles such as recreational vehicles (motor homes) and school buses also use truck tires. Unlike passenger cars and other light vehicles, which are rarely loaded to their maximum vehicle weight, heavy vehicles are often used in commercial service where the vehicle is loaded to its rated cargo or passenger load to maximize the profitability of the vehicle's operation. Hence, the first two steps of the proposed endurance test reflect the tire's performance conditions at which it is expected to be used in normal service.

c. Inflation Pressure

NHTSA proposes to set inflation pressure at 80 percent of the sidewall-labeled inflation pressure that corresponds to the tire's maximum load rating. This represents a 20 percent decrease from the current endurance test, which requires tires to be fully inflated. Data from a tire pressure survey conducted by FMCSA suggests that tires on commercial vehicles (particularly trailers) are often run under-inflated by at least 140 kPa (20 psi).[17] For a load range G tire, which has a maximum inflation pressure of 760 kPa (110 psi), this level of under-inflation represents roughly an 18 percent loss of inflation pressure. NHTSA believes that conducting the endurance test at some level of under-inflation instead of fully inflated better reflects real-world conditions. NHTSA testing found that all load range G and H tires were able to complete the endurance test at an inflation of 80 percent of maximum, even at 80 km/h (50 mph).[18] Load range J tires, which have a higher maximum load rating than load range G and H tires, showed mixed results, while higher load range L and N tires experienced failure rates at both the 90 percent and 80 percent levels of inflation.

NHTSA believes that testing at this level of under-inflation represents an appropriate upgrade of the severity of the endurance test for load range F through L truck tires. We note that the endurance tests in the light vehicle tire standards, FMVSS Nos. 109 and 139, are conducted with the tire under-inflated to 25 percent below its maximum inflation pressure. NHTSA is aware that the tire industry considers 20 percent under-inflation to be essentially flat for truck tires, which are designed to run close to their maximum inflation.

d. Duration

NHTSA proposes not to amend FMVSS No. 119's endurance test duration of 47 hours. The current 47-hour test at 56 km/h (35 mph) results in a distance traveled for a load range G tire of 2,632 km (1,645 miles), and increasing the speed to 80 km/h (50 mph) increases the traveled distance to 3,760 km (2,350 miles), a 43 percent increase in distance. NHTSA's Phase II testing extended the endurance test duration to 71 hours so researchers could assess how long beyond the 47-hour duration the tires were able to

[16] Tire catalogs were found online (www.—) at manufacturer Web sites.

[17] The FMCSA study, "Commercial Vehicle Tire Condition Sensors" (Federal Motor Carrier Safety Administration, Nov. 2003), looked at a total of 6,087 units and 35,128 tire samples and found, among other things, that approximately 7 percent of the sampled heavy vehicles have at least one tire under-inflated by 20 psi or more.

[18] We also note that at higher test speeds, tire performance appears noticeably sensitive to inflation pressures. At 100 km/h, more failures occurred at the 80 percent inflation level, and time to failure was also shorter at that inflation level compared to 100 percent inflation.

perform. Because the failure rate did not change significantly in testing tires beyond 47 hours,[19] this indicates that the tires' performance to the endurance test is less sensitive to changes in duration than to changes in speed and inflation pressure. Thus, we believe that extending the duration beyond the 47 hours already required will not provide additional performance benefits.

e. Ambient Temperature

NHTSA proposes to add a ±3 °C (±5 °F) tolerance to the current ambient temperature specified for FMVSS No. 119's endurance test, 35 °C (95 °F). Tire test laboratories benefit from an ambient temperature tolerance. The proposed ±3 °C (±5 °F) tolerance for the ambient temperature is consistent with FMVSS No. 109 and FMVSS No. 139 in providing a ±3 °C (±5 °F) tolerance needed to facilitate the operations at the tire laboratories.[20]

f. Endurance Test Conclusions

The agency tentatively concludes that the proposed requirements for the endurance test better reflect the reality of tire usage than the current FMVSS No. 119 requirements. The proposed parameters for the endurance test, particularly the increased test speed and the reduced inflation pressure, reflect conditions that a heavy vehicle tire is more likely to experience in normal service.

Based on research performed by the ASTM, a tire operated at a highway speed of 120 km/h (75 mph) experiences an equivalent level of stringency when tested at 85 km/h (53 mph) on a curved test wheel.[21] We believe that the agency's proposed endurance test speed of 80 km/h (50 mph) on the curved test wheel is therefore a realistic speed.

The proposed inflation pressure for the endurance test is 80 percent of the maximum sidewall pressure, compared with 100 percent currently specified in FMVSS No. 119. According to the results of FMCSA's tire pressure monitoring survey cited above, on 6,087 heavy vehicle units with over 35,000 tires sampled, approximately 20 percent of the vehicles had at least one tire that was under-inflated by 20 psi or more. As a result, testing with some level of under-inflation reflects the reality of what heavy truck tires typically experience in service.

The agency's testing to the proposed endurance test showed that 85 percent of all the load range F, G, H, J, and L tires tested completed the 47-hour portion of the test, with the load range J and L tires speed-rated less than 75 mph comprising 11 out of 12 of the failures under 47 hours. All the load range G and H tires tested completed the 47-hour portion of the test without any failures. However, even though the load range G and H tires met the proposed requirements when tested for a duration of 47 hours, NHTSA expects that some manufacturers of load range G and H tires may make some design changes to these tires to maintain an adequate margin of compliance. We expect that design changes will be needed for some load range J and L tires, particularly those with a maximum speed rating lower than 120 km/h (75 mph), to enable them to comply with the proposed Endurance test requirements at 80 km/h (50 mph). The agency seeks comments on the appropriateness of the proposed endurance test parameters for these tires.

V. Proposed High Speed Test

In its tire testing program, NHTSA performed high speed tests on load range F, G and H tires because these are the ones predominantly used on commercial vehicles and are the most likely of all higher load range tires to be operated at the speed conditions proposed for this test. NHTSA performed high speed tests on load range J and L tires even though the tires have a small market share (about 8 percent), because some of these tires have a maximum speed rating of 75 mph and are used on motorcoaches.[22] NHTSA did not perform high speed tests on speed-restricted load range M or N tires, because we were aware that these tires are not typically operated at these speed conditions. After careful review of the testing results and of the information on the use of load range J and L tires on coach buses, NHTSA proposes to include in FMVSS No. 119 a high speed test for load range F, G, H, J, and L tires, that are not for speed-restricted service. In addition, the agency is also considering requiring non-speed-restricted, load range M radial tires to comply with the upgraded endurance and new high speed tests because some of these tires are used in high speed operations. Bias ply and load range N tires that are for speed restricted-service would not be subjected to a high speed test.

NHTSA proposes that the high speed test would be initiated after a 2-hour break-in at 80 km/h (50 mph) and 85 percent of maximum load rating, with inflation pressure at 90 percent of maximum. The break-in procedure conditions a new tire for testing since it exercises the tire components and increases the tire temperature, which results in some growth in the rubber components of the tire. This tire growth results in a slight decrease in the tire's inflation pressure at the end of the break-in period and leads to less growth and negligible pressure decrease at the end of the 90-minute high speed test.

There is currently a high speed test in FMVSS No. 119, but it applies only to motorcycle tires and to non-speed-restricted tires with a rim diameter code of 14.5 or less marked load range A, B, C, or D. Therefore, heavy vehicle tires with a load range of F or above have not been required to meet the high speed test requirements in the current standard. Table 22 shows test parameters for the proposed high speed test.

[19] When a tire failed, it generally failed well before 47 hours, rather than completing the 47 hours and then failing.

[20] In FMVSS No. 139, NHTSA requires an ambient temperature for road-wheel testing of not less than 32 °C and not more than 38 °C.

[21] ASTM Truck/Bus Tire Test Development Task Group, Phase I—Final Report, September 7, 2006. *Available at* Docket No. NHTSA–2002–13707, Item 10.

[22] The same size tire can become a load range G, H, or J tire depending on its construction and on its inflation pressure (*e.g.,* for a 315/80R22.5 tire, the maximum load rating (3,750 kg or 8,270 lbs) for the load range J tire is achieved at an inflation pressure of 830 kPa (120 psi), and the maximum load rating (3,450 kg or 7,610 lbs) when used in the load range H application is achieved at an inflation pressure of 760 kPa (110 psi)). A comparison of the load/inflation pressure values in the 2007 Tire and Rim Association Year Book for the proposed high-speed test conditions (85 percent of maximum load rating, 90 percent of maximum inflation pressure) indicates that the tires are well within the load limits specified for the test inflation pressure. For the tire size example used above, the test load for a load range J tire would be 3,188 kg or 7,030 lbs (85 percent of maximum load rating) and the test inflation pressure would be 747 kPa (108 psi), which is well above the inflation pressure of 670 kPa needed to support that test load according to the Year Book.

TABLE 27–HIGH SPEED TEST CONDITIONS

Load ranges	Steps	Speed (km/h)	Duration (minutes)	Load (% max)	Inflation pressure (% max)
F, G, H, J, and L	Break-in	80	120	85	90
	1	Max—20	30		
	2	Max—10	30	85	90
	3	Max	30		

A tire would comply with the proposed requirements if, at the end of the high speed test, there is no visual evidence of tread, sidewall, ply, cord, inner liner, or bead separation, chunking, open splices, cracking, or broken cords,[23] and the tire pressure, when measured at any time between 15 and 25 minutes after the end of the test, must not be less than 95% of the initial test pressure. Load range M tires are not included in the high speed test table but the agency seeks comments on whether those non-speed-restricted, radial tires, should be required to comply with the new proposed high speed test requirements. We are unaware of non-speed restricted, radial, load range N tires being used in high speed operations, thus we tentatively conclude that they not be required to comply with this upgrade.

a. Test Speed and Break-In Procedure

NHTSA proposes to set the test speed for the high-speed test at the tire's maximum speed less 20 km/h (12 mph) for step 1, maximum speed less 10 km/h (6 mph) for step 2, and at maximum speed for the final step. This approach is similar to the approach used by the United Nations Economic Commission for Europe (ECE) tire Regulations, which establish tire test speeds based on the maximum rated speed of the tire. It is also consistent with RMA's suggestion to the agency that tires should only be tested for high speed performance up to their maximum speed rating.[24] We are proposing this approach, instead of establishing one set of test speeds as a minimum requirement for all tires as we have done for motorcycle and passenger car tires, because unlike motorcycle and passenger car tires, heavy vehicle tires are designed for a wide range of applications and have a narrow range of maximum speed ratings.

The truck tires for which we are proposing a high speed test in FMVSS No. 119 have speed ratings ranging only from 100–120 km/h (62–75 mph), which are typical operating speeds for the heavy vehicles on which these tires are installed. If one set of test speeds were applied to these tires regardless of the speed rating, a tire speed rated at the lower end of the range could be subjected to test speeds above the speed rating of the tire, which could be inappropriate. (An example of this situation is a tire speed rated to 62 mph tested at a speed of 75 mph.) Conversely, subjecting a tire that is speed rated at the higher end of the range to a test speed substantially below the speed rating of the tire might under-test the tire and fail to evaluate its high speed performance. Therefore, we are proposing to establish test speeds based on the tire's speed rating because we believe that it results in a high speed test that better reflects the limits of the tire's performance.

However, we disagree with RMA's suggestion that the high speed test procedure should exclude the break-in step, which is normally the first step when conducting a high speed test. The regulatory text of this NPRM does not remove the break-in step from the procedure but we are soliciting comments on whether it is appropriate to do so. The agency's tire testing included a break-in step and we plan to gather additional data on tires tested without the break-in step to determine whether there is a difference in the tire's performance.

We have tentatively decided to retain the break-in step because the step helps to condition the rubber components of new tires through initial flexing that allows the tire to expand and grow prior to testing. As a result, tire growth is minimized during the test, which in turn minimizes the decrease of the test pressure at the end of the test. Further, the high speed test for light vehicle tires has a break-in step. When we issued the upgraded light vehicle tire standard in 2003, the agency included the tire break-in procedure in FMVSS No. 139's high speed test procedure with the support of the tire industry (68 FR 38151). Since the high speed test proposed today would be a new test for heavy vehicle tires, we are proposing to adopt a break-in procedure similar to that of light vehicle tires. As noted above, Phase II high speed testing included the break-in step to evaluate high speed performance, testing that involved testing most tires above their maximum speed rating.

Phase II testing used test speeds of 100, 110, and 120 km/h (62, 68, and 75 mph). The truck tires tested (load range G and H) performed well, and most were able to complete the 2.5-hour target duration without failure. All except one of the tires tested to the high-speed test in Phase II completed the first 1.5 hours without failure.

The agency solicits comments on the performance of tires to a high speed test, and is particularly interested in the performance of load range J and L tires. We are aware that while some load range J and L tires have maximum rated speeds at 120 km/h (75 mph), some are rated below that speed. Further, according to Tire and Rim Association Yearbook, manufacturers may recommend that tires may be used at speeds higher than the tire manufacturer's rated speed if the load and pressure are adjusted. As a result, the agency seeks comment on the appropriateness of the test speeds for load range F, G, H, J, and L tires in the high speed test. The agency tentatively concludes that a high speed test at the proposed test speeds represents an important and practicable improvement to FMVSS No. 119 in the safety requirements of load range F, G, H, J, and L tires that are not for speed-restricted service.

In addition, the agency is considering requiring load range M tires speed rated 75 mph to comply with the high speed test because some of these wide base tires may be used in similar applications load range L tires are used. Given that the maximum speed rating of these tires allows them to be used in high speed operations, possibly instead of two lower load range tires, the agency believes that they should be considered for inclusion in the upgrade since they could be used in different vehicle applications than the typical load range M and N tires. Accordingly, the agency seeks comment on the appropriateness of requiring load range M tires speed rated 75 mph to comply with the high speed test.

[23] We note that all of these terms are defined in the current standard.

[24] Docket No. NHTSA 2002–13707–0016.1.

b. Load

NHTSA proposes to set the test load for the high speed test at 85 percent of the maximum load rating for the tire. NHTSA's testing specified test loads at 85 and 90 percent. Most tires tested were able to complete the 90 percent load rating application without any failure,[25] and additional tire types tested to 85 percent load were also able to complete 1.5 hours without failure.

We chose to select a different load for the high speed test so as not to duplicate the load conditions used in the endurance test. The recent update of the high speed test in the FMVSS No. 139 specifies a test load of 85 percent of the tire's maximum load rating. NHTSA tentatively concludes that a test load of 85 percent of the maximum load rating of the tire will provide a necessary improvement, while setting a realistic level of performance for load range F, G, H, J, and L tires that are not for speed-restricted service.

c. Inflation Pressure

NHTSA proposes that the high speed test inflation pressure be set at 90 percent of the sidewall-labeled inflation pressure that corresponds to the tire's maximum load rating. For Phase II testing, NHTSA researchers selected inflation pressures of 90 and 95 percent to assess the tire's high-speed performance at slight levels of under inflation. The high speed test in the light vehicle tire standards, FMVSS Nos. 109 and 139, is conducted with the tire under inflated to about 8 percent below its maximum inflation pressure. Therefore, for this Phase II testing, inflation pressures of 5 and 10 percent below maximum were considered reasonable levels. Inflation test pressures in this range, with a test load of 85 percent, do not result in the tire being overloaded for the given inflation pressure. Based on the test results where only 10 out of 102 tires were unable to finish the 150 minute test, NHTSA proposes that the high speed inflation pressure be set at 90 percent of the sidewall-labeled inflation pressure that corresponds to the tire's maximum load rating per sidewall labeling.

d. Duration

NHTSA proposes a 90-minute duration for FMVSS No. 119's high speed test, to be applied to load range F, G, H, J and L tires, that are not for speed-restricted service. The current duration for the high speed test in FMVSS Nos. 119 and 139 is 90 minutes, consisting of three 30-minute speed steps. High speed tests are typically of relatively short duration, given that the purpose of the test is to assess the tire's performance close to its upper design limit of speed. Overall, 90 percent of the test tires performed well at the 100, 110, and 120 km/h (62, 68, and 75 mph) speeds, and were able to complete 90 minutes of the test without any failures.[26] Therefore, NHTSA proposes to extend FMVSS No. 119's high speed test to apply to load range F, G, H, J and L tires, that are not for speed-restricted service, with a total 90-minute duration.

e. Ambient Temperature

NHTSA proposes an ambient temperature range of 35 °C ±3 °C (95 °F ±5 °F) for the FMVSS No. 119 high speed test upgrade. The ambient temperature specified for FMVSS No. 119's high-speed test is currently 35 °C (95 °F) without any temperature tolerance. Because an ambient temperature tolerance provides test laboratories with needed flexibility, we propose specifying a 6 °C tolerance for the ambient temperature instead of a single temperature. The agency tentatively concludes that this proposal for FMVSS No. 119's high speed test is reasonable and appropriate.

VI. Tire Maximum Speed Marking

FMVSS No. 119 currently requires certain information to be marked on the tire sidewall. S6.5(d) of the standard requires that each tire's maximum load rating for single and dual applications and the corresponding inflation pressure be labeled on the sidewall, which provides information to the vehicle operator to ensure proper selection and use of tires. These load and inflation pressure values are also used by NHTSA to determine test values for compliance testing purposes.

The tire's maximum speed rating is currently not required to be labeled on the sidewall,[27] except for tires that are speed-restricted to 90 km/h (55 mph) or below. For speed-restricted tires, S6.5(e) of the standard requires that the label on the sidewall be as follows: "Max Speed __ km/h (__ mph)."[28] For tires that are not speed-restricted, the end user does not know from the tire sidewall labeling the design maximum speed capability of the tire for the specified maximum load rating and corresponding inflation pressure. We believe that having the maximum speed rating labeled on the sidewall would benefit the end user, especially as the speed capability in any one load range can vary.

As such, the agency is proposing a requirement for a maximum speed rating label for radial truck tires with load ranges F and above. The agency is proposing the same speed labeling format as the one described in S6.5(e)—which requires each tire to be labeled, "Max Speed __ km/h (__ mph)"—subject to aspects discussed below. The agency believes that a maximum speed label that includes a numerical value would be less subject to misunderstanding by consumers.

Numerical Value Versus a Symbol

We are aware that some tire manufacturers now voluntarily label the non-speed restricted heavy vehicle tires they sell in the U.S. with speed restrictions that use a different format, *i.e.*, speed symbols, to indicate the tire's speed.[29] For heavy vehicle tires, the speed symbols and the corresponding speed category used internationally are: F—80 km/h (50 mph); G—90 km/h (55 mph); J—100 km/h (62 mph); K—110 km/h (68 mph); and L—120 km/h (75 mph). We have tentatively determined that the speed symbol format is less desirable than labeling the tire with a numerical value, because the consumer is more likely to understand the meaning of the latter than that of a letter symbol. Further, the letter format could be lead to confusion given that the current load range label required on heavy vehicle tires uses a similar lettering scheme (load ranges F, G, H, J, L, M and N) that includes letters that are identical in some instances to the speed symbols used on heavy vehicles (speed symbols F, G, J, K, and L). The corresponding speed for these speed symbols are typically listed in the industry publications such as the annual Year Book of the Tire and Rim Association or the Japan Automobile Tyre Manufacturers Association.

[25] However, the Goodyear brand drive axle tire appeared sensitive to load, as it failed more at 90 percent load. The failure of these tires to reach the test target of 2.5 hours duration raised some concerns that other drive axle tires with lug-type treads may not pass at 90 percent load.

[26] NHTSA's Phase II testing extended the high-speed test to 2.5 hours to assess the limits of performance based on current truck tire technology, but not specifically with the aim of developing a proposal for a longer high-speed test.

[27] Currently the maximum speed ratings for most tires are listed only in tire manufacturers' catalogs. Some tire manufacturers identify their tires by maximum speed, maximum speed limit, or allowable speed range, while others may not publish the speed capability of their tires. Common maximum speed ratings for tires found in catalogs are 50, 56, 60, 62, 65, 68, 70, 75, and 81 mph.

[28] Tire manufacturers currently may include the speed rating, voluntarily, for tires that are not speed restricted to 90 km/h or less.

[29] As discussed later in this preamble, the Rubber Manufacturers Association has suggested to NHTSA that the agency require all radial tires with a load range of F and higher (that are not speed restricted) be labeled with a service description identified by an international labeling system.

We recognize that many large trucking fleets work closely with tire dealers, who have ready access to the industry publications and who recommend the best tires for the fleets based on vehicle use and in-service conditions. However, since many of the small fleets and owner-operated fleets make their own tire purchasing decisions without such help, labeling that is clear and easy to understand (the numerical value) should help users purchase the appropriate tires for their vehicles, know the speed restrictions of the tire, and use the tires in accordance with those speed restrictions.

Multiples of 10 km/h

We propose to require that manufacturers must label their tires with maximum rated speeds in multiples of 10 km/h (e.g., 100, 110, or 120 km/h). The proposed new high speed test specifies test speeds that are multiples of 10 km/h: the test speed for the high-speed test would be the tire's maximum speed less 20 km/h (12 mph) for step 1, the tire's maximum speed less 10 km/h (6 mph) for step 2, and at maximum speed for the final step. NHTSA believes that compliance testing for High Speed performance would be conducted more efficiently and be less subject to test-speed problems, if the markings are in multiples of 10 km/h.

Terminology

We note that some manufacturers use the term "Maximum Speed" in their tire catalogs, while others use "Speed Rating." We seek comment on whether "Speed Rating" should be used on the label, instead of or in addition to "Max Speed."

VII. Other Issues

a. Alternatives Considered

1. International Standards

The ECE regulation that is applicable to truck tires is ECE Regulation 54, *Uniform Provisions Concerning the Approval of Pneumatic Tyres for Commercial Vehicles and Their Trailers.* It applies to both heavy truck tires and light truck tires, as was the case for FMVSS No. 119 prior to the establishment of FMVSS No. 139. It includes a load/speed endurance test that is similar to the existing FMVSS No. 119 endurance test for medium/heavy truck tires. The test parameters for load, inflation pressure, and duration are identical to those specified in FMVSS No. 119, except for the ambient temperature, which is specified at 25 °C ± 5 °C, compared with the specification of 35 °C ± 3 °C as proposed for the revision to FMVSS No. 119. The other difference between the two standards is that ECE Regulation 54 uses the tire's speed category to determine its test speed, whereas FMVSS No. 119 uses the tire's load range to determine its test speed. The test speeds in ECE Regulation 54 are approximately 48–56 km/h (30–35 mph) lower than the maximum speed rating of the tire, which results in test speeds that are in a speed range not very much different from the test speed required in FMVSS No. 119 for non-speed-restricted tires. Test speeds in ECE Regulation 54 range from 32–72 km/h (20–45 mph) whereas the Endurance test speeds in FMVSS No. 119 range from 48–64 km/h (30–40 mph). Hence, the severity of the ECE regulation for heavy vehicle tires is about the same as for tires under the current FMVSS No. 119. Additionally, the ECE has no high speed test for truck tires. In short, ECE Regulation 54 contains test parameters and performance requirements that are, in some cases, similar to the current FMVSS No. 119, but that we believe are in other cases less stringent.

The agency is not aware of other truck tire standards that are different from ECE Regulation 54 or FMVSS No. 119, since many national regulations typically adopt some version of the ECE regulation or the FMVSS.

2. ASTM Truck/Bus Tire Test Development Task Group

The ASTM Truck/Bus Tire Test Development Task Group recommended that the agency consider the artificial stresses and temperature impacts that are introduced into tire testing when tires (particularly medium truck tires and larger) are tested on a 67-inch diameter test road-wheel, as compared to a flat surface. The task group has been working to develop a tire temperature prediction model for two critical crown area temperatures, tread centerline and belt edge, based on comparisons of tire temperatures obtained from tests of five load range G tires [30] on a 67-inch diameter curved road wheel, on a flat track test surface, and on an outdoor test track. ("Phase 1–Final Report," ASTM Truck/Bus Tire Test Development Task Group, 9/5/06, Docket No. NHTSA–2002–13707–10. "Phase I & II Review," ASTM Truck/Bus Tire Test Development Task Group, 5/15/08, Docket No. NHTSA–2002–13707–14.) As a result of this work, the task group found that, for the five load range G tires it tested: (a) The average predicted temperature increases an average of 39 °C (70 °F) at the tread centerline and 22 °C (40 °F) at the tire's belt edge when tested on a 67-inch diameter curved road-wheel as compared to temperatures obtained from tires tested on a flat surface; (b) equivalent tread centerline temperatures were obtained between tires tested on a curved road-wheel at 67 km/h (42 mph) and tires tested on a flat roadway surface at 120 km/h (75 mph); and (c) equivalent tread belt edge temperatures were obtained between tires tested on a curved road-wheel at 79 km/h (49 mph) and tires tested on a flat roadway speed at 120 km/h (75 mph). The task group recommended that NHTSA develop a standard based on maintaining equivalent tire crown area temperatures (*i.e.*, centerline, shoulder, and belt edge) between flat and curve test surfaces.

It should be noted that in 2008, the Task Group also completed a Phase II, which included load range J and L tires to validate the applicability of the truck tire test conditions to additional tire sizes and service applications such as inter-city buses and refuse trucks and ready mix cement trucks. ASTM concluded from the results of Phase II that for tires with a maximum speed rating below 120 km/h (75 mph) the Endurance test speed should be reduced from 80 km/h (50 mph) to 72 km/h (45 mph).

NHTSA is aware that a tire operated on a curved road-wheel, compared to a tire operated on a flat road surface, experiences higher centerline and belt edge temperatures due to several factors, *e.g.*, severe reverse curvature at the tire contact patch; distortion of the tire contact patch shape; and over-deflection of the tire sidewall. NHTSA's tests are conducted on a curved road-wheel. There appears to be several anomalies in the results from the ASTM model, such as the centerline temperatures being higher for the 18/32-inch tread depth tire compared with the centerline temperatures for the 30/32-inch tread depth tire. (A tire with a greater tread depth generally runs hotter than one with a lower tread depth.) There are also test conditions where the model predicted lower tire temperatures when tested on the road-wheel than the tire temperatures when tested on the flat track machine and the test track. In addition, the test duration for the tires the task group tested was limited to 60 minutes to achieve a steady-state temperature, which does not reflect the level of stringency a tire experiences during a 47-hour test as performed under the current FMVSS No. 119 endurance test.

[30] The test tires, from Bridgestone, Goodyear, and Michelin, included three drive axle tires with a tread depth of 30/32 inch; one steer axle tire with a tread depth of 18/32 inch; and one trailer axle tire with a tread depth of 12/32 inch.

Nevertheless, we note that our rulemaking proposal to upgrade the endurance test includes parameters that are on the same order of magnitude as those provided in the task group's recommendations. Our proposal includes an endurance test speed of 80 km/h (50 mph) on a curved road-wheel, up to 100 percent maximum load rating, 80 percent of the maximum inflation pressure, and 35 °C (95 °F) ambient temperature. From the results in our Phase II endurance and high-speed tests, we tentatively believe that these parameters are reasonable and practicable and consistent with the task group's recommendation.

3. Rubber Manufacturers Association

On May 14, 2009, RMA submitted information to the agency regarding an upgrade of FMVSS No. 119 (see Docket No. NHTSA 2002–13707–0016.1 (RMA Perspective on the FMVSS 119 Revisions and Updates Mandated by the TREAD Act)). RMA's information included suggestions for a number of matters regulated by FMVSS No. 119, including the endurance and high speed tests, and had data from tests it had conducted (although from only one manufacturer). The suggestions are briefly described below.

RMA suggested that NHTSA mandate that all radial tires with a load range of F and higher (that are not for speed-restricted service) be labeled with a service description identified by an international labeling system, in support of global harmonization and that it be used as the basis for testing.[31] RMA suggested that the endurance test speed in the upgraded FMVSS No. 119 be based on that speed symbol. RMA suggested that tires with speed symbols of J, K, L, and M be tested at a speed equal to the difference between the speed symbol and 40 km/h (25 mph). If the tire has a speed symbol L, which deciphered is a speed rating of 120 km/h (75 mph), the endurance test speed would be 80 km/h (50 mph), or if a tire has a speed symbol J, which deciphered is a speed rating of 100 km/h (62 mph), the endurance test speed would be 60 km/h (37 mph).

RMA suggested that if a high speed test is adopted in FMVSS No. 119, the test should be a stepped-up speed test with three 30-minute steps. The test speeds RMA suggested would be indexed to the corresponding speed symbol of the tire (*i.e.*, step 1 test speed is 20 km/h below the speed symbol, step 2 test speed is 10 km/h below the speed symbol, and step 3 test speed is run at corresponding speed for that symbol). Further, RMA believed that the high speed test should be conducted without the initial break-in step. According to RMA, there are data supporting that the tire growth during the break-in step was negligible, and that the step was thus unnecessary.

Test conditions such as inflation pressure, load, duration, and ambient temperature in RMA's suggested tests (endurance and high speed) would be the same as NHTSA's proposed test conditions. Other issues discussed by RMA may be found in the docket submission.

Some of RMA's suggestions have been incorporated into this NPRM. As discussed above, NHTSA has proposed requiring tires to have a maximum speed rating label on their sidewalls so that users will know a tire's maximum speed capability. Thus, a labeling proposal in included in this NPRM. However, as explained above, the agency believes that using an international labeling system to identify the tire's maximum load and speed ratings would not benefit end users in the U.S. because the literature used to reference these values may not be readily available for all users, and because the lettering system may be confusing. Accordingly, the NPRM proposes that a numerical value be labeled rather than a symbol.

This NPRM incorporates RMA's suggestion that a high speed test should comprise a stepped-up speed test with three 30-minute steps using test speeds indexed to the corresponding speed rating of the tire. However, as explained earlier in this document, this NPRM does not propose RMA's suggestion to remove the break-in step from the high speed test but we are soliciting comments on whether it is appropriate to do so.

With regard to RMA's suggestion about the endurance test, at this time the agency does not believe that all tires should be tested to 40 km/h (25 mph) less than the tire's maximum speed rating in the endurance test. RMA used research findings from the ASTM as a basis for the suggestion to establish the test speeds. ASTM found that there was an equivalence in belt edge temperatures for tires tested on a flat road surface at 120 km/h (75 mph) and on a curved road wheel at 80 km/h (50 mph). Hence, this 40-km/h (25-mph) differential was used by RMA in its recommendations for the test speeds NHTSA should propose for the endurance test.

The RMA test data used to support its recommendations was limited, generated from only one of its members, Bridgestone Firestone. Also, the mix of tires in the RMA data did not reflect the real-world mix of heavy vehicle tires sold in the U.S. Although the ASTM findings appear to support the finding that a 40-km/h (25-mph) differential exists in test speeds in the 120-km/h (75-mph) range, NHTSA does not have enough information to conclude that these findings can be extrapolated to include speeds much lower than 120 km/h (75 mph). The agency is currently reviewing data from lower speed rated tires 100 km/h (62 mph). We request data from tire manufacturers on the performance of lower speed rated tires, particularly for the proposed endurance test, and comments from the public on RMA's submission to the docket.

We believe that the NPRM's proposed test conditions for the endurance test are practicable and reasonable and reflect our recognition of the severity of the endurance test on the curved road wheel.[32] Our data show that some tires that are speed rated 65 mph were able to meet the proposed endurance test when tested to 80 km/h (50 mph). The vast majority of the tires we tested completed the proposed 47-hour endurance test at 80 km/h (50 mph) without failure.

b. Deep Tread Truck Tires

The agency tested tires with tread depths that are typical of on-road service, and included drive axle tires with tread depths of about 30/32 inch, steel axle tires with tread depths of about 18/32 inch, and trailer tires with tread depths around 12/32 inch. We are aware that there are deep tread truck tires with a load range of H, J, or L that have tread depths greater than 32/32 inch, but none of these tires was included in our testing because they appear to represent a very small percentage of heavy truck tires. We are soliciting public comments on the applicability of the proposed endurance and high speed requirements to deep tread truck tires and welcome test data submissions for the docket.

c. Correction of Table III

In Table III, "Endurance Test Schedule," of FMVSS No. 119, there are several minor items of information that have been inadvertently omitted from the table over the course of years of amendments to the standard, most recently when the standard was

[31] The corresponding values for the maximum load and speed symbols of that labeling system may be found in literature published by entities such as: Tire & Rim Association, European Tyre and Rim Technical Organization, Japan Automobile Tyre Manufacturers Association, and others.

[32] The endurance test is a more stringent test than the high speed test, primarily because of the lower inflation pressure and longer duration specified for the test.

amended on June 26, 2003. The Table III proposed in today's NPRM corrects those omissions, by including for tires described as "All other," a row for load range A, B, C, and D tires, and a row for load range E tires, which include bias-ply tires and others not covered under FMVSS No. 139. Footnote text has also been added to correspond to the footnote superscripts 1 and 2. In addition, the current Table III does not include load range C and D for speed-restricted service and load range M on the list of tires for non-speed-restricted service but it does include load range N, which is a higher load range tire. Load range C and D were inadvertently excluded from Table III. Also, load range M has been inadvertently excluded from Table III since both load range M and N tires are included in the list of speed-restricted tires required to comply with FMVSS No. 119. The agency seeks comments on including load range M on the list of non-speed-restricted tires covered under the standard. In addition, we are proposing to change the superscript format from numerical values 1 and 2 to alphabet letters A and B to enhance clarity. We are also seeking comments on this issue.

d. Separate Standard

We note for the reader that, assuming we issue a final rule on this subject, the final rule might separate the non-speed-restricted, radial tires of load ranges F, G, H, J, and L, from the requirements currently in FMVSS No. 119 that this NPRM does not propose to upgrade. We might set forth the upgraded requirements for the non-speed-restricted, radial tires of load ranges F, G, H, J, and L, in a new standard to make clear the regulatory language between those tires whose requirements were not upgraded. The agency took the same approach when it upgraded tires for vehicles with a GVWR of 4,536 kg (10,000 lb) or less, establishing FMVSS No. 139. RMA has also endorsed this approach in its letter to the agency; see Docket No. NHTSA 2002–13707–0016.1, p. 13.

VIII. Proposed Effective Date

NHTSA proposes that the proposed requirements for load range F, G, and H tires be effective two years after publication of a final rule. The results of the tire research indicate that most load range G and H tires are able to meet the proposed requirements with little if any modification. Load range J tires might need some design changes to comply with the upgraded requirements. Given the need for modification and the small market share of the tires, the agency proposes an effective date of three years after publication of a final rule for load range J and L tires. In addition, the agency's proposal to establish new labeling requirements for the maximum speed rating of the tire would require changes in some tire molds. We propose that the new maximum speed rating labeling requirements for load range F, G, H, J, and L tires be effective 5 years after the publication of the final rule. NHTSA requests comment on the proposed lead time for meeting the performance requirements and the labeling requirements.

IX. Costs and Benefits

According to Modern Tire Dealer, the 2008 sales for medium and heavy truck original equipment and replacement tires were 4.3 million and 15.5 million, respectively. Comments are requested on the number of tire sales by all (F, G, H, J, and L) load ranges and speed ratings. All of the G load range tires tested passed the proposed criteria. Also, all of the H load range tires tested, except for one brand speed rated at 62 mph, passed the proposed criteria. For the endurance test, of the six J load range brand/models tested, all three tires from three brand/models passed, two of three from a fourth brand/model passed, none of a fifth brand/model passed, and three tires from a sixth brand passed. Costs to bring the H and J load range tires into compliance with the proposal are not anticipated to be greater than $15 per tire.

Out of the fifteen load range L tires tested (three tires for each of five brand/models), only seven tires passed the proposed test and two did so with a small margin based on the proposed 47 hours duration for the endurance test. Comments are requested on the technology needed and cost to make other load range L tires pass the proposed endurance test. At one end of the cost spectrum, improved rubber compounds could be a countermeasure that could reduce heat retention with costs at about an additional $0.25 per pound. Since these tires have about 100 pounds of rubber this would add $25 in costs to each L load range tire. At the other end of the cost range, one could assume these tires need to be made significantly lighter to pass the test with better materials. This would entail using ultra high tensile strength steel costing an additional $2 per pound. Those tires now have 35 pounds of steel in them, totaling $70. Combining these two methods could add up to $95 per tire (these tires typically cost about $525 each). Comments are also requested on the costs associated with the new speed labeling requirement.

As discussed above, the costs to bring load range H, J and L tires to compliance with the proposed requirements are estimated to range from $15 to $95 per tire. The combined H, J, and L load range tire sales comprised about 29 percent of the total medium and heavy truck tire sales (19.8 million tires). Of the 29 percent, about 23 percent or 4,554,000 are believed to be H load range tires, about 3 percent or 594,000 are believed to be J load range tires, and about 3 percent or 594,000 to be L load range tires. There are an estimated 227,700 sales for H load range tires, 118,800 sales for J load range tires and 118,800 sales for L load range tires, all with a speed rating of 62, 65 or 68 mph. Applying the failure rate and cost per tire to the estimated sales of H, J and L load range tires with a speed rating of 62, 65 or 68 mph would result in a total cost of $13,314,362.

NHTSA believes that this NPRM has a beneficial effect on safety in that it would ensure greater tire durability as tires are held to more stringent standards than currently required. However, the agency has limited data on the crashes in the crash databases related to tires in these load ranges. Comments are requested on the different applications of various speed rating and load range tires (*e.g.,* over the road bus operations, etc.).

X. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). This document proposes upgrades to FMVSS No. 119 that we believe most tire manufacturers will be able to meet without substantial difficulty. NHTSA has prepared a regulatory evaluation that discusses the costs and other impacts of this proposed rule.[33]

NHTSA believes that this NPRM has a beneficial effect on safety in that it would ensure greater tire durability as tires are held to more stringent standards than currently required. However, there might be some cost impacts for manufacturers of lower speed rated load range J and L tires. Some of these tires may not meet the

[33] The evaluation may be obtained by contacting Docket Management at the address or telephone number provided at the beginning of this document. You may also read the document via the Internet, by following the instructions in the section below entitled, "Public Participation." The evaluation will be listed in the docket summary.

proposed requirements in NHTSA's test program. Of the heavy-duty load range J and L tires that did not uniformly pass the upgrade testing, we anticipate that the costs to bring them into compliance would be no greater than $15 per load range J tire and $95 per load range L tire. Comments are requested on the costs of meeting the proposed changes to 571.119.

Regulatory Flexibility Act

Pursuant to 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 proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rulemaking will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule, which would apply to new pneumatic tires, would affect tire manufacturers and/or suppliers. The agency does not believe that any of the tire manufacturers affected by this proposed rule are small businesses. However, small tire retail outlets across the country could in some small way be impacted by the proposal, in that the cost of some tires might increase.

The agency requests comments concerning the economic impact of the proposed rule on any small tire manufacturers, tire retail outlets, or any other entities which the agency has not mentioned.

Executive Order 13132 (Federalism)

NHTSA has examined today's proposed rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the proposal does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. 30103(b)(1). It is this statutory command that preempts any non-identical State legislative and administrative law [34] addressing the same aspect of performance, not today's rulemaking.

Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. That possibility is dependent upon there being an actual conflict between a FMVSS and the State requirement. If and when such a conflict exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000), finding implied preemption of State tort law on the basis of a conflict discerned by the court,[35] not on the basis of an intent to preempt asserted by the agency itself.[36]

NHTSA has considered the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's proposed rule and does not discern any existing State requirements that conflict with the proposed rule or the potential for any future State requirements that might conflict with it. Without any conflict, there could not be any implied preemption of State law, including State tort law.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (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." Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

NHTSA was unable to find any voluntary consensus standards relevant to this rulemaking. Additionally, please see section VI.A.1 above for discussion of international standards considered by the agency in this rulemaking.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 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 (adjusted for inflation with base year of 1995). This proposed rule will not result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729,

[34] The issue of potential preemption of State tort law is addressed in the immediately following paragraph discussing implied preemption.

[35] The conflict was discerned based upon the nature (*e.g.,* the language and structure of the regulatory text) and the safety-related objectives of FMVSS requirements in question and the impact of the State requirements on those objectives.

[36] Indeed, in the rulemaking that established the rule at issue in *Geier,* the agency did not assert preemption.

February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows.

The issue of preemption is discussed above in connection with E.O. 13132. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposed rule contains no reporting requirements or requests for information.

Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require 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 isn't 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 have any responses to these questions, please include them in your comments on this proposal.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

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

XI. Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments. Your comments must not be more than 15 pages long.[37] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit your comments by a method set forth in the **ADDRESSES** section at the beginning of this document.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.*

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[38]

In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

Will the Agency Consider Late Comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date. Therefore, if interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

If a comment is received too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the materials placed in the docket for this document (*e.g.,* the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the DOT Docket .

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, we propose to amend 49 CFR part 571 to read as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.119 is amended by revising S3(a), S6.1.2(b), S6.3, S6.5(e), S7.1.2, S7.2(a), S7.2(e), S7.4, S7.4.1, S7.4.2, and Table III, by removing and reserving S3(b), and by adding definitions to S4, in alphabetical order.

[37] *See* 49 CFR 553.21.

[38] *See* 49 CFR 512.

The revised and added paragraphs read as follows:

§ 571.119 Standard No. 119; New pneumatic tires for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds) and motorcycles.

* * * * *

S3. * * *

(a) New pneumatic light truck tires, for use on motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less manufactured after 1948, of the following type: With a tread depth of 18/32 inch or greater, bias-ply with tread depth of 18/32 inch or less, and speed-restricted service.

(b) [Reserved]

* * * * *

S4. * * *

Bias ply tire means a pneumatic tire in which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

* * * * *

Maximum speed rating means the maximum speed, as specified by the tire manufacturer, at which the tire can carry a load corresponding to the maximum load rating for single usage at the corresponding inflation pressure.

* * * * *

Non-speed-restricted service tire means a tire with a maximum speed rating above 90 km/h (55 mph).

Radial ply tire means a pneumatic tire in which the ply cords that extend to the beads are laid at substantially 90 degrees to the centerline of the tread.

Speed-restricted service tire means a tire with a maximum speed rating of 90 km/h (55 mph) or less.

* * * * *

S6.1.2 * * *

(b) The tire pressure, when measured at any time between 15 minutes and 25 minutes after the end of the test, shall not be less than 95 percent of the initial pressure specified in S7.2(a), for the endurance test, and in S7.4.2(a) for the high speed test.

* * * * *

S6.3 *High-speed performance.* When tested in accordance with the procedures of S7.4, a tire shall meet the requirements set forth in S6.1.1 and S6.1.2(a) and (b). However, this requirement applies only to motorcycle tires, to non-speed restricted tires of nominal rim diameter code 14.5 or less marked load range A, B, C, or D, and to non-speed restricted radial tires marked load range F, G, H, J, or L.

* * * * *

S6.5 * * *

(e)(1) Subject to S6.5(e)(2), the speed that corresponds to the maximum speed rating for each speed-restricted service tire and each non-speed-restricted service radial tire of load range F, G, H, J, and L shall be shown as follows:

Max speed ___ km/h (___ mph)

(2) For each non-speed-restricted service radial tire of load range F, G, H, J, and L, the speed shown shall be in a multiple of 10 km/h.

* * * * *

S7.1.2 The tire must be capable of meeting the requirements of S7.2 and S7.4 when conditioned to a temperature of 35 °C ± 3 °C (95 °F ± 5 °F) for 3 hours before the test is conducted, and with an ambient temperature maintained at 35 °C ± 3 °C (95 °F ± 5 °F) during all phases of testing. The tire must be capable of meeting the requirements of S7.3 when conditioned at a temperature of 21 °C ± 3 °C (70 °F ± 5 °F) for 3 hours before the test is conducted.

S7.2 *Endurance.* (a) Mount the tire on a model rim assembly and inflate it as follows: For a non-speed restricted radial tire of load range F, G, H, J, or L, inflate it to 80 percent of the inflation pressure corresponding to the maximum load rating marked on the tire. For all other tires, inflate it to 100 percent of the inflation pressure corresponding to the maximum load rating marked on the tire. Use the single maximum load value when the tire is marked with both single and dual maximum loads.

* * * * *

(e) Allow the tire to cool for between 15 and 25 minutes after running the tire for the required time. Measure the tire inflation pressure. Remove the tire from the model rim assembly, and inspect the tire for conditions specified in S6.1.2(a) and (b).

* * * * *

S7.4 *High-speed performance.*

S7.4.1 *Motorcycle tires, and non-speed restricted tires of nominal rim diameter code 14.5 or less marked load range A, B, C, or D.*

(a) Mount the tire on a test rim and inflate it to the pressure corresponding to the maximum load rating marked on the tire. Use the single maximum load value when the tire is marked with both single and dual maximum load.

(b) Condition the tire and rim assembly in accordance with S7.1.2.

(c) Before or after mounting the assembly on a test axle, adjust the tire pressure to that specified in S7.4.1(a).

(d) Mount the tire-rim assembly on an axle and press it against a flat-faced steel test wheel that is 1708 mm (67.23 inches) in diameter and at least as wide as the tread of the tire

(e) Apply a force of 88 percent of the maximum load rating marked on the tire (use the single maximum load value when the tire is marked with both single and dual maximum loads), and conduct the break-in procedure at 80 km/h (50 mph) for 2 hours.

(f) Remove the load, allow the tire to cool to 35 °C ±3 °C (95 °F ±5 °F), and then adjust the pressure to that specified in S7.4.1(a).

(g) Reapply the same load, and without interruption or readjustment of inflation pressure, conduct the test at 120 km/h (75 mph) for 30 minutes, then at 129 km/h (80 mph) for 30 minutes, and then at 137 km/h (85 mph) for 30 minutes.

(h) Allow the tire to cool between 15 minutes and 25 minutes. Measure its inflation pressure. Then, deflate the tire, remove the tire from the test rim, and inspect the tire for conditions specified in S6.1.2 (a) and (b).

S7.4.2 *Non-speed restricted radial tires marked load range F, G, H, J, or L.*

(a) Mount the tire on a test rim and inflate it to the pressure corresponding to 90 percent of the maximum load rating marked on the tire. Use a single maximum value when the tire is marked with both single and dual maximum load.

(b) Condition the tire in accordance with S7.1.2.

(c) Before or after mounting the assembly on a test axle, adjust the tire pressure to that specified in S7.4.2(a).

(d) Mount the tire-rim assembly on an axle and press it against a flat-faced steel test wheel that is 1708 mm (67.23 inches) in diameter and at least as wide as the tread of the tire.

(e) Apply a force of 85 percent of the maximum load rating marked on the tire (use the single maximum load value when the tire is marked with both single and dual maximum loads), and conduct the break-in procedure at 80 km/h (50 mph) for 2 hours.

(f) Remove the load, allow the tire to cool to 35 °C ± 3 °C (95 °F ± 5 °F), and then adjust the pressure to S7.4.2(a).

(g) Reapply the same load, and without interruption or readjustment of inflation pressure, conduct the test at maximum speed rating less 20 km/h for 30 minutes, then at maximum speed rating less 10 km/h for 30 minutes, and then at maximum speed rating for 30 minutes.

(h) Allow the tire to cool for between 15 minutes and 25 minutes. Measure its inflation pressure. Then, deflate the tire, remove the tire from the test rim, and inspect the tire for conditions specified in S6.1.2(a) and (b).

* * * * *

TABLE III—ENDURANCE TEST SCHEDULE

Description	Load range	Test wheel speed	Test load: Percent of maximum load rating		
		km/h	I—7 hours	II—16 hours	III—24 hours
Speed-restricted service:					
90 km/h (55 mph)	All	40	66	84	101
80 km/h (50 mph)	C, D	48	75	97	114
	E, F, G, H, J, L, M, N	32	66	84	101
56 km/h (35 mph)	All	24	66	84	101
Motorcycle	All	80	[1] 100	[2] 108	117
Radial	F, G, H, J, L	80	85	90	100
All other	A, B, C, D	80	[1] 75	[2] 97	114
	E	64	70	88	106
	F	64	66	84	101
	G	56	66	84	101
	H, J, L, M, N	48	66	84	101

[1] 4 hours for tire sizes subject to high speed requirements S6.3 .
[2] 6 hours for tire sizes subject to high speed requirements S6.3.

Issued: September 23, 2010.

Joseph Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2010–24347 Filed 9–28–10; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 75, No. 188

Wednesday, September 29, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0093]

Notice of Request for Extension of Approval of an Information Collection; Lacey Act Declaration Requirement; Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection required by the Lacey Act for the importation of certain plants and plant products.

DATES: We will consider all comments that we receive on or before November 29, 2010.

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

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0093*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0093, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0093.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on the Lacey Act declaration requirement, contact Mr. Craig Fedchock, Director, International Development, PPQ, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737; (301) 734-3779. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Lacey Act Declaration Requirement; Plants and Plant Products.

OMB Number: 0579-0349.

Type of Request: Extension of approval of an information collection.

Abstract: The Food, Conversation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act (the Act) by expanding its protection to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). The Lacey Act, as amended, makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that protects plants. The 2008 amendment to the Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant covered by the Act.

In addition, section 3 of the Act makes it unlawful to import certain plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. For paper and paperboard products with recycled plant content, the importer will not be required to specify the species or country of harvest with respect to the recycled plant product component, but will be required to provide the average percentage of recycled content. If the product also contains non-recycled plant materials, the basic declaration requirements still apply to that component of the product imported. PPQ Form 505 (Plant and Plant Product Declaration Form) is available at (*http://www.aphis.usda.gov/plant_health/lacey_act/downloads/declarationform.pdf*).

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 8 hours per response.

Respondents: Importers of certain plants and plant products.

Estimated annual number of respondents: 81,928.

Estimated annual number of responses per respondent: 20.

Estimated annual number of responses: 1,638,560.

Estimated total annual burden on respondents: 13,108,480 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 23rd day of September 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–24351 Filed 9–28–10; 12:01 pm]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Forest Service

Ashley Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ashley Resource Advisory Committee will meet in Vernal, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub.L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is conduct "welcomes" and introductions, review the Federal Advisory Committee Act requirements, brief participants on Payments to States legislative history, discuss the guidelines for Title II and Title III funding and proposals, capture and record preliminary project ideas and receive public comment on the meeting subjects and proceedings.

DATES: The meeting will be held October 29, 2010, from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held in the Interagency Fire Dispatch Center conference room at the Ashley National Forest Supervisor's Office, 355 North Vernal Avenue in Vernal, Utah. Written comments should be sent to Ashley National Forest, 355 North Vernal Avenue, Vernal, UT 84078. Comments may also be sent via e-mail to *ljhaynes@fs.fed.us,* or via facsimile to 435–781–5142. 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 Ashley National Forest, 355 North Vernal Avenue, Vernal, UT.

FOR FURTHER INFORMATION CONTACT: Louis Haynes, RAC Coordinator, Ashley National Forest, (435) 781–5105; *e-mail: Ljhaynes@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) Welcome and roll call; (2) Approval of minutes from the first meeting; (3) Review of committee operational guidelines; (4) Review concept papers received; (5) Discussion of preliminary project ideas; (6) Review of next meeting purpose, location, and date; (7) Receive public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by October 21, 2010 will have the opportunity to address the committee.

Dated: September 21, 2010.

Kevin B. Elliott,

Forest Supervisor.

[FR Doc. 2010–24333 Filed 9–28–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Arizona Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern Arizona Resource Advisory Committee will meet in Tucson, Arizona. The purpose of the meeting is for the committee members to discuss committee protocols, operating guidelines, and project proposal requirements.

DATES: The meeting will be held October 19, 2010, beginning at 10 a.m. to approximately 4 p.m.

ADDRESSES: The meeting will be held at the Tucson Interagency Fire Center, 2646 E. Commerce Center Place, Tucson, AZ 85706. Send written comments to Jennifer Ruyle, RAC Coordinator, Southern Arizona Resource Advisory Committee, do Coronado National Forest, 300 W. Congress, Tucson, Arizona 85701 or electronically to *jruyle@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jennifer Ruyle, Coronado National Forest, (520) 388–8351.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and opportunity for public input will be provided. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Pub. L. 110–343 related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: September 22, 2010.

Melissa Shafiqullah,

Acting Deputy Forest Supervisor, Coronado National Forest.

[FR Doc. 2010–24331 Filed 9–28–10; 8:45 am]

BILLING CODE M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary ATPDEA Countries From Regional Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the New 12–Month Cap on Duty and Quota Free Benefits.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 3103 of the Trade Act of 2002, Public Law 107–210; Title VII of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Pub. L. 109–432; H.R. 1830, 110th Cong. (2007) (H.R. 1830); Presidential Proclamation 7616 of October 31, 2002 (67 FR 67283, November 5, 2002).

Section 3103 of the Trade Act of 2002 amended the Andean Trade Preference Act (ATPA) to provide for duty and quota-free treatment for certain textile and apparel articles imported from designated Andean Trade Promotion and Drug Eradication Act (ATPDEA) beneficiary countries. Section 204(b)(3)(B)(iii) of the ATPA, as amended, provides duty- and quota-free treatment for certain apparel articles assembled in ATPDEA beneficiary countries from regional fabric and components. More specifically, this provision applies to apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if such fabrics are classifiable under heading 5602 and 5603 of the Harmonized Tariff Schedule (HTS) and are formed in one or more ATPDEA beneficiary countries). Such apparel articles may also contain certain other eligible fabrics, fabric components, or components knit-to-shape.

The TRHCA of 2006 extended the expiration of the ATPA to June 30, 2007. *See* section 7002(a) of the TRHCA 2006. H.R. 1830 further extended the expiration of the ATPA to February 29, 2008. H.R. 5264 further extended the expiration of the ATPA to December 31, 2008. H.R. 7222, 110th Cong. (2008), further extended the expiration of the ATPA to December 31, 2009. H.R. 4284, 111th Cong. (2009), further extended the expiration of the ATPA to December 31, 2010.

For the period beginning on October 1, 2010 and extending through December 31, 2010, preferential tariff treatment is limited under the regional fabric provision to imports of qualifying apparel articles in an amount not to exceed 5 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. For the purpose of this notice, the 12-month period for which data are available is the 12-month period that ended July 31, 2010. In Presidential Proclamation 7616 (published in the **Federal Register** on November 5, 2002, 67 FR 67283), the President directed CITA to publish in the **Federal Register** the aggregate quantity of imports allowed during each period.

For the period beginning on October 1, 2010 and extending through December 31, 2010, the aggregate quantity of imports eligible for preferential treatment under the regional fabric provision is 1,238,203,339 square meters equivalent. Apparel articles entered in excess of this quantity will be subject to otherwise applicable tariffs.

This quantity is calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2010–24457 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Publishing the New 12–Month Cap on Duty- and Quota-Free Benefits.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Don Niewiaroski, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

Authority: Title I, Section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Pub. L. 106–200, as amended by Division B, Title XXI, section 3108 of the Trade Act of 2002, Pub. L. 107–210; Section 7(b)(2) of the AGOA Acceleration Act of 2004, Pub. L. 108–274; Division D, Title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Pub. L. 109–432; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459).

Background

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary countries from yarn originating in the U.S. or one or more beneficiary countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Title VI of the TRHCA 2006 extended this special rule for lesser-developed countries through September 30, 2012.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the twelve-month period beginning October 1, 2010 will be an amount not to exceed 7 percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* Section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by Section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* Section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by Section 6002(a) of TRHCA 2006. Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register.**

For the one-year period, beginning on October 1, 2010, and extending through September 30, 2011, the aggregate quantity of imports eligible for preferential treatment under these provisions is 1,733,484,674 square meters equivalent. Of this amount, 866,742,337 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Kimberly Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2010–24460 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000 as Amended for Imports of Certain Worsted Wool.

OMB Control Number: 0625–0240.

Form Number(s): ITA–4139P and ITA–4140P.

Type of Request: Regular submission.

Burden Hours: 160.

Number of Respondents: 30.

Average Hours per Response: 3 hours, Application for TRQ License; and 1 hour, Request for Reallocation of Tariff Rate Quota.

Needs and Uses: Title V of the Trade and Development Act of 2000 ("the Act") as amended by the Trade Act of 2002, the Miscellaneous Trade Act of 2004, the Pension Protection Act of 2006, and the Emergency Economic Stabilization Act of 2008 contains several provisions to assist the wool products industries. These include the establishment of tariff rate quotas (TRQ) for a limited quantity of worsted wool fabrics. The Act requires the President to fairly allocate the TRQ to persons who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States, and who apply for an allocation based on the amount of suits they produced in the prior year. The Department must collect certain information in order to fairly allocate the TRQ to eligible persons.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: September 24, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–24375 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Office of the Secretary; National Telecommunications and Information Administration; International Trade Administration; National Institute of Standards and Technology

[Docket No. 100921457–0457–01]

RIN 0660–XA20

Global Free Flow of Information on the Internet

AGENCY: Office of the Secretary, U.S. Department of Commerce; National Telecommunications and Information Administration, U.S. Department of Commerce; International Trade Administration, U.S. Department of Commerce; and National Institute of Standards and Technology, U.S. Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The Department of Commerce's Internet Policy Task Force is examining issues related to the global free flow of information on the Internet. Specifically, the Department seeks public comment from all stakeholders, including the commercial, academic, and civil society sectors, on government policies that restrict information flows on the Internet. The Task Force seeks to understand why these restrictions have been instituted; what, if any, impact they have had on innovation, economic development, global trade and investment; and how best to address negative impacts. After analyzing the comments responding to this Notice, the Department intends to publish a report which will contribute to the Administration's domestic policy and international engagement on these issues.

DATES: Comments are due on or before November 15, 2010.

ADDRESSES: Written comments may be submitted by mail to the National Telecommunications and Information Administration at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4701, Washington, DC 20230. Submissions may be in any of the following formats: HTML, ASCII, Word (.doc and .docx), .odf, .rtf, or .pdf. Online submissions in electronic form may be sent to *freeflow-noi-2010@ntia.doc.gov*. Paper submissions should include a three and one-half inch computer diskette or compact disc (CD). Diskettes or CDs should be labeled with the name and organizational affiliation of the filer and the name of the word processing program used to create the document. Comments will be posted at *http://www.ntia.doc.gov/internetpolicytaskforce/gffi/index.html.*

FOR FURTHER INFORMATION CONTACT: For questions about this Notice contact: Chris Hemmerlein, Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4706, Washington, DC 20230; telephone (202) 482–1885; e-mail *chemmerlein@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs at (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background

Recognizing the vital importance of the Internet to U.S. prosperity, education and political and cultural life, the Department of Commerce has made it a top priority to ensure that the Internet remains open for innovation. The Department has created an Internet Policy Task Force (Task Force) to identify leading public policy challenges in the Internet environment. The Task Force leverages expertise across many bureaus at the Department, including those responsible for domestic and international information and communications policy, international trade, cybersecurity standards and best practices, intellectual property, business advocacy, and export control. This is one in a series of inquiries from the Task Force. Other reviews include Internet privacy, cybersecurity, and online copyright protection issues. The Task Force may explore additional areas in the future.

The Department of Commerce launched the Internet Policy Task Force to identify and examine the impact that restrictions on the flow of information over the Internet have on American businesses and global commerce. Businesses, emerging entrepreneurs and consumers alike benefit from the ability to transmit information quickly and efficiently both domestically and internationally. The Department aims to assist industry, and other stakeholders to operate in varying Internet environments and to identify policies that will advance economic growth and create jobs and opportunities for the American people.

Many countries have recognized that the free flow of information over the Internet is integral to economic growth and vibrancy, as well as to the promotion of democratic values that are essential to free markets and free societies. In 2008, members of the Organization for Economic Co-operation and Development (OECD) issued the

Seoul Declaration on the Future of the Internet Economy. The Seoul Declaration, signed by 39 governments and the European Community, called for governments to foster creativity in the development, use and application of the Internet, through policies that "maintain an open environment that supports the free flow of information, research, innovation, entrepreneurship and business transformation." [1]

Many governments continue to place restrictions on these flows despite recognizing the value of the free flow of information on the Internet. Some governments create specific restrictions based upon articulated reasons, including consumer protection and public safety. At times, however, such restrictions, or their implementation, may place undue burdens on businesses or Internet users. Governments may also restrict information flows as a way of promoting or protecting local businesses, such as by developing restrictions that mostly impact foreign competitors or by applying them on an unequal basis. In other cases, governments may wish to restrict information flows as a way of limiting access to certain types of information that are not themselves illegal, but that may contain objectionable political or social content. In some cases, laws, policies and rules restricting information flows may be vaguely articulated, inconsistently enforced, pretextual, or created without transparent and open processes. Government regulators may have difficulty in consistently applying laws or rules that are not clearly written or that have been developed without prior public comment. In such circumstances, business may also have difficulty ensuring their practices comply.

Contribution of this NOI to the Internet Policy Task Force

Responses to this Notice will assist the Task Force in preparing a report on the global free flow of information on the Internet. This report will examine the impact that restrictions on the free flow of information on the Internet have on innovation, global economic growth, trade, and investment. The Task Force's report may include policy options and recommendations for general regulatory, legislative, self-regulatory and voluntary steps that will enhance the free flow of information online. The Task Force anticipates that the dialogue launched by this document and the research conducted will contribute to Administration-wide policy positions and global discussions related to the Internet economy. The work of the Task Force has been and will continue to be closely coordinated with other agencies, including the State Department, as described below.

The Impact of the Global Free Flow of Information on Commerce

The ability to freely and efficiently distribute information on the Internet is at the very core of modern consumer, business, political and educational activity. Between 1999 and 2007, the United States economy enjoyed an increase of over 500 percent in business-to-consumer online commerce.[2] Taking into account business-to-business transactions, online commerce accounted for over $3 trillion dollars in revenue for U.S. companies in 2007.[3] The economic benefits provided by the information economy increased even during the recent economic downturn. During 2008, industry analysts estimate that sales by the top 100 online retailers grew 14.3 percent.[4] In contrast, the U.S. Census Bureau estimates a 0.9 percent decrease in total retail sales over that time period.[5]

In 2009, U.S. mobile commerce sales grew over 200 percent, reaching $1.2 billion.[6] Analysts expect this impressive growth in mobile commerce to continue in 2010.[7] Businesses have found this growing market to be extremely lucrative, as evidenced by the estimated $3.8 billion that they will spend on mobile advertising in 2010.[8]

Likewise, the free flow of information on the Internet has a significant impact on the types of technologies that consumers use to communicate, absorb, and process data. For example, integrated application stores on handheld devices have simplified how individuals purchase software over the Internet, and are projected to accrue $6.2 billion in consumer spending in 2010 alone.[9] Similarly, mobile VoIP software is growing in popularity and is estimated to be responsible for nearly $29.57 billion in annual global sales by 2015.[10]

The free flow of information on the Internet also has an impact on global commerce generally. Many small and medium sized businesses and entrepreneurs utilize new technologies and applications, such as VoIP, social networking and cloud computing services, to run their businesses more efficiently and to gain access to information, which allows them to compete effectively.

The U.S. Government's Involvement in the Information Flows Issue

The Department of Commerce has played an instrumental role in developing policies that facilitate commerce over the Internet. Over the past two decades, the National Telecommunications and Information Administration (NTIA), in its role as principal adviser to the President on telecommunications and information policy, has worked closely with other agencies of the U.S. Government on these issues. In 1993, the White House formed the Information Infrastructure Task Force, chaired by the Secretary of Commerce, which was tasked with developing telecommunications and information policies to promote the growth of the Internet. Since then, NTIA has facilitated the U.S. Government's participation in a variety of international agreements, including the OECD and the above-referenced Seoul Declaration on the Future of the Internet Economy, as well as the outcomes of the United Nations World Summit on the Information Society (WSIS), which aims to develop worldwide access to Information and Communications Technologies (ICTs) by 2015. In addition, NTIA continues to play a leading role in other international venues such as the International Telecommunication Union (ITU), the Internet Governance Forum (IGF), and

[1] The Seoul Declaration was signed by Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Senegal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States of America, and the European Community. The Seoul Declaration for the Future of the Internet Economy, June 2008, available at *http://www.oecd.org/dataoecd/49/28/40839436.pdf.*

[2] U.S. Census Bureau, "E–Stats," May 28, 2009.

[3] *Id.*

[4] Mark Brohan, *The Top 500 Guide,* Internet Retailer, *http://www.internetretailer.com/2009/05/29/the-top-500-guide* (June 2009).

[5] U.S. Census Bureau, Quarterly Retail E–Commerce Sales: 4th Quarter 2008 (Feb. 16, 2010), Table 4.

[6] Katie Deatsch, *U.S. M–Commerce Sales to Hit $2.4 Billion This Year, ABI Research Says* **Internet Retailer.** *http://www.internetretailer.com/2010/02/16/u-s-m-commerce-sales-to-hit-2–4-billion-this-year-abi-researc* (Feb. 16, 2010).

[7] *Id.*

[8] Khan, *et. al., Mobile Advertising: An In-Depth Look at the Future of Mobile Advertising,* **J.P. Morgan/North American Equity Research**, *https://mm.jpmorgan.com/stp/t/c.do?i=E8283–B8&u=a_p*d_423260.pdf*h_2tvncakf* (June 4, 2010).

[9] *Gartner Says Consumers Will Spend $6.2 Billion in Mobile Application Stores in 2010,* **Gartner Newsroom**, *http://www.gartner.com/it/page.jsp?id=1282413* (January 18, 2010).

[10] *Mobile VoIP Posed to Become the Principle Transport for Various Access Technologies,* **InfoTech**, *http://it.tmcnet.com/news/2010/05/20/4799884.htm* (May 20, 2010).

the Internet Corporation for Assigned Names and Numbers (ICANN).

The International Trade Administration (ITA) strengthens U.S. competitiveness abroad by helping shape industry-specific as well as general trade policy to assist U.S. companies and helps create trade opportunities through the removal of market access barriers. ITA also promotes U.S. exports, particularly by small and medium-sized enterprises, and provides commercial diplomacy support for U.S. business interests around the world. In addition to trade promotion, ITA enforces U.S. trade laws and agreements to prevent unfairly traded imports and to safeguard the competitive strength of U.S. businesses. ITA also works to improve the global business environment and helps U.S. organizations compete at home and abroad.

The National Institute of Standards and Technology (NIST) contributes significantly to the development of Internet security and interoperability standards, guidelines, best practices, and security measurement capabilities and tools. NIST actively engages with industry and academia to advance the state-of-the-art in information technology networking in such applications as cyber security and encryption, among the critical underpinnings of information flows over the Internet for American businesses and global commerce. NIST accelerates the development and deployment of Internet systems that are reliable, usable, interoperable, and secure, and conducts research to develop the measurement and standards infrastructure for the emerging Internet technologies and applications that will support future economic growth and vibrancy.

The Commerce Department has worked in a number of international fora to develop guidelines that foster international trade. ITA administers the U.S.–European Union (EU) Safe Harbor Framework, which facilitates U.S. companies' compliance with the requirements of the 1995 EU Directive on Data Protection for transferring data outside of the European Union. ITA also administers the U.S.-Swiss Safe Harbor Framework, which was implemented in 2009. The Department played a significant role in launching the Trilateral Committee on Transborder Data Flows in 2009 and is involved in bilateral Internet commerce policy initiatives with India, Japan, China, Korea and other key countries.

The United States Trade Representative (USTR) has addressed cross-border data issues in varying degrees in all recent major trade agreements, including World Trade Organization (WTO) agreements and Free Trade Agreements (FTA). One of the main 'modes of delivery' of services on which WTO members and FTA partners make binding trade commitments is cross-border trade, the importance of which has grown with the growth of globally interconnected broadband networks. The main commercial beneficiaries of such commitments have been data-centric services—telecoms, computer processing, and more recently, content-based services, for whom data flows are at the heart of their commercial offerings. Accordingly, governmental prohibitions or restrictions on data flows significantly undermine the value of a trade commitment, and in some cases could be actionable under trade law. Drafters of the 1994 WTO General Agreement on Trade in Services recognized the importance of this issue and included a provision ensuring that service suppliers covered by a Member's specific sectoral commitment (which vary country by country) would have the right to access public telecommunications networks in order to move information within and across borders and access data contained in data bases in the territory of any Member. To date, despite recognition of related problems in many countries, there has never been a case brought to formal dispute settlement.

The Department of State's Office of Communications and Information Policy (CIP) advocates international policies for expanded access to information and communications technologies, improved efficiency in the worldwide ICT and telecommunications market through increased reliance on free-market forces, and fair opportunities for U.S. companies to participate in this sector internationally. CIP leads U.S. delegations to multilateral organizations like the ITU and also coordinates bilateral consultations on Internet and telecom policies with several key countries, including India, Egypt, China, Japan and the EU.

The Net Freedom Taskforce is the Department of State's internal policy coordinating group on issues of global Internet freedom. The taskforce is co-chaired by State's Under Secretary of Economic and Agricultural Affairs and State's Under Secretary of Democracy and Global Affairs. The NetFreedom Taskforce works to increase access to uncensored content over the Internet and other connection technologies, in addition to monitoring and responding to threats to Internet freedom as they arise. This is accomplished through frequent engagement with civil society and business, programming support for initiatives that improve Internet Freedom and government-to-government consultations with both countries of concern and countries with similar perspectives on this issue.

Request for Comment

In developing this Notice, the Internet Policy Task Force conducted listening sessions with a range of companies and civil society organizations. Those conversations shaped the questions described below. The Task Force now seeks detailed comments from all stakeholders on their experiences in sharing and exchanging information through the Internet worldwide. It seeks to understand the specific nature of restrictions that exist with respect to the free flow of information, the rationale given for the restrictions, and whether and how these restrictions have influenced business decisions relating to innovation, trade or investment. It also seeks comment on how to best mitigate any negative impacts by using trade agreements and other tools that might foster international cooperation on Internet policy.

The questions below are intended to assist in framing the issues and should not be construed as a limitation on comments that parties may submit. The Department invites comment on the full range of issues that may be presented by this inquiry. Comments that contain references, studies, research and other empirical data that are not widely published should include copies of the referenced materials with the submitted comments.

1. Types of Restrictions on the Free Flow of Information on the Internet

In the United States and numerous countries around the world, the Internet has flourished as an economic and social innovation motivated by the complementary goals of encouraging the free flow of goods and services and the commitment to freedom of expression. At the same time, governments may place restrictions on the types of information available over the Internet in their jurisdiction for a number of reasons, including protecting consumers or the property rights of users. Numerous countries, for example, have laws prohibiting certain activities online, including the dissemination of child pornography, intellectual property infringement and the sending of

unsolicited email.[11] Some governments restrict Internet access by only allowing access to the Internet through a government controlled access point, or by requiring the installation of filtering software on user computers.[12] The most restrictive governments require Internet users to be registered or licensed by a government authority before being permitted access to the Internet. Governments can also impede the flow of information online by openly blocking particular websites, or by using technical measures, including infiltrating and exploiting computer systems with targeted viruses and by employing distributed denial-of-service attacks.[13]

Many restrictions on the flow of information on the Internet, both those accepted by stakeholders as legitimate and others, are implemented at the level of Internet intermediaries, such as Internet service providers (ISPs). Such restrictions may require ISPs or other intermediaries to take affirmative steps to block or filter information flows. Some countries require ISPs to block material, remove content in response to take-down notices, or remove search results. In some circumstances governments may also impose civil or criminal liabilities on intermediaries, including content hosts and Internet service providers.

In addition to restrictions focused on illegal content, governments have also blocked or prohibited the presence of certain types of Internet services or applications within their borders. Governments may also ban or heavily regulate foreign service suppliers from establishing a commercial presence in their country. The widespread growth of new data distribution mechanisms, such as social networking applications and VOIP services, for example, have prompted some governments to block or restrict the services or underlying software.

The Task Force seeks to understand what types of restrictions on the free flow of information on the Internet are present in different countries, what the stated policy objectives are when governments place restrictions on the flow of information and what impact such restrictions have on innovation, on trade and on investment in those countries. In particular, the Task Force seeks to understand the circumstances under which such restrictions become unduly burdensome on businesses and consumers in relation to the accepted public policy benefit, if any, of the restriction.

- What restrictions are there on the global free flow of information on the Internet due to government laws or regulations?
- What types of restrictions are most prevalent and in what markets?
- What impact, if any, do these restrictions have on investment and trade?
- What types of restrictions are most readily accepted as legitimate by the business community?
- What impact, if any, do these restrictions have on the types of Internet services and applications available to consumers, both locally and globally?
- Have such restrictions led companies to avoid certain markets altogether?
- What are some of the articulated policies or governmental objectives used to support such restrictions?
- Are the restrictions clearly linked to specific government objectives? Are the restrictions developed in a transparent manner?
- In what countries have businesses experienced restrictions on Internet information flows?
- Are such restrictions applied evenly to local and foreign businesses?
- How can the Department of Commerce and the federal government as a whole assist U.S. entities in gaining greater access to new markets?
- What role, if any, can the Department of Commerce play in helping to reduce restrictions on the free flow of information over the Internet?

2. Identifying Best Practices

Governments may attempt to pursue public policy objectives by placing restrictions on the free flow of information over the Internet. The challenge faced by every government is to strike a balance between the stated need for such action, the burden placed on stakeholders as a result of such restriction, and the social and economic benefits derived from the Internet. Most importantly, governments must craft national policies in a manner that recognizes the global nature of the Internet and therefore seek solutions that empower users to protect themselves where possible. The increasing accessibility of different types of information over the Internet as well as the development of new types of communications tools such as VoIP, social networking, blogging, and micro-blogging can provide businesses and entrepreneurs with valuable opportunities to engage in new business practices to stimulate economic growth and further innovation.

- Are there alternatives to government-mandated restrictions on the flow of information on the Internet that can realize legitimate policy objectives?
- Are there any best practices or baseline criteria for the development, articulation, and enforcement of policies restricting information flows that should be pursued by governments? For example, what are some best practices for governments to follow to secure their domestic Internet infrastructure, while minimizing restrictions on the free flow of information for their citizens?
- How should governments assure adequate levels of procedural due process and transparency to users, publishers and intermediaries when there is a determination that restricting the free flow of information is necessary?
- How effective are local restrictions given the global nature of the Internet and the possibility of individual users circumventing government regulations?

3. Impact of Restricted Internet Information Flows on Innovation, Trade and Commerce

Restrictions on the flow of information over the Internet may adversely impact service, content, and application providers and the Internet users who depend upon them. Some businesses, in the face of such restrictions, may opt to avoid or leave certain markets altogether. At times, businesses may limit or modify their product or service offerings in particular markets in order to comply with local requirements. In addition, if a government's Internet policies are non-transparent or unclear, businesses may alter their product development, trade and investment strategies.

The rise of globally-accessible cloud computing services—everything from Web-based mail and office productivity suites, to more general purpose computing, storage and communications services available through the cloud—raise a new set of questions regarding local restrictions that countries may impose on services accessible, though not physically located, in their country. Cloud services realize economies of scale and redundancy through flexible location of user data and processing capability. Internet users, in many circumstances, have no knowledge of or control over the precise location of the services they are receiving or the physical location of their data in cloud environments.

[11] *See, e.g.,* Italian Personal Data Protection Code (Legislative Decree no. 196 of 30 June 2003); Australia's Spam Act 2003.

[12] *Overview of Internet Censorship,* OpenNet Initiative, *http://opennet.net/about-filtering* (2010) (Last accessed Aug. 30, 2010).

[13] Deibert; Palfrey; Rohozinski; Zittrain, ed., *Access Controlled: The Shaping of Power, Rights, and Rule in Cyberspace* (MIT Press 2010), at 6.

- What are the economic impacts of government restrictions on the free flow of information? Please provide examples of the economic impact of such restrictions on individual businesses or on specific industries.
- Is it possible to quantify the impact that such restrictions have had on specific businesses or industries and in what markets?
- What role have individual countries' restrictions on the free flow of information on the Internet played in a business's decision to enter or remain in a market?
- Are there examples of situations where businesses have not invested or conducted business in a country because of such restrictions? What impact, if any, do these restrictions have on the types of Internet services and applications available to consumers, both locally and globally?
- Do local restrictions on Internet information flows impact the ability of businesses to innovate and to develop uniform products, services or standards?
- How do local restrictions on the free flow of information affect the development of cloud computing services?
- How are traditional notions of jurisdiction, venue and choice of law evolving as services are offered on a global basis and data storage varies based on efficiency, rather than only legal, considerations?
- Are there specific examples of how local restrictions have impacted a business's global practices?

4. The Role of Internet Intermediaries

Internet intermediaries play a vital role in the flow of information on the Internet by serving as a link between information producers and information users. Internet intermediaries provide access to, host, transmit or index information created by third parties, or provide Internet-based services to third parties.[14] Internet intermediaries include website hosts, blogging site hosts, social media sites and other services that allow individuals to provide and post information to be hosted online. The services Internet intermediaries provide are integral to the growth and vitality of the Internet because they allow widespread user participation with minimal upfront costs or technical resources.[15]

Governments must balance the interests of users who post information on the Internet, and other parties who access the user-generated material. In seeking to prevent the distribution of objectionable or illegal material, many governments have looked to Internet intermediaries to serve a role in implementing governmental restrictions on information. However, the burden of screening, analyzing and carefully filtering each piece of user-generated information is a task beyond the resources available to most Internet intermediaries. Moreover, if governments burden intermediaries with excessive or ill-defined responsibility for content not their own, then they will have no choice but to exercise harmful restrictions on the free flow of information, goods and services online. Governments therefore need to consider the effectiveness of requiring intermediaries to enforce or implement information restrictions against the costs that may deter intermediaries from operating in particular jurisdictions or from creating new Internet business models.

Governments have struck this balance differently in different countries. Some governments place affirmative obligations on Internet intermediaries to monitor or filter user posted content, while others provide an incentive for self-monitoring in exchange for immunity from otherwise applicable law.[16] Some governments regulate the Internet with the same laws that apply to traditional print and broadcast media, and treat intermediaries like traditional publishers and thus as legally responsible for information posted on the Internet, even by third parties.

Under U.S. law, traditional print and broadcast media may be liable for certain defamatory content in their publications only if a print or broadcast publisher exercised some editorial control. Congress was concerned that application of this law to Internet intermediaries would discourage Internet service providers from exercising any control over content posted on their services, such as removing profanity from chat room postings, for fear of being held liable for these postings.[17]

To address this issue, Congress passed Section 230 of the Communications Decency Act of 1996 (a common name for Title V of the Telecommunications Act of 1996).[18] Prior to the enactment of Section 230, an intermediary could only be certain of avoiding liability if it exercised no oversight at all over material posted or accessed by users. Congress recognized that this discouraged content-filtering that users might want, such as the creation of pornography and profanity-free, child-safe spaces. Section 230 does not require intermediaries to determine whether information posted by users is illegal, rather the immunity granted by Section 230 encourages them to do so without fear of being held liable for content posted by third parties.[19] There are, however, exceptions to the immunity rule and any intermediaries knowingly hosting illegal content can be held liable. Section 230 has spurred rapid growth in new Internet services and applications by allowing Internet service providers, Website hosts, social network sites, and others from worrying about potential liability for information stored on or moving across their networks, thus ensuring a flexible environment for innovation and growth.

U.S. law provides similar protection for intermediaries in the context of federal copyright law. Section 512 of the Digital Millennium Copyright Act (DMCA) creates a conditional safe harbor from copyright infringement liability for qualified Internet intermediaries serving as "mere conduits" for content.[20] While the DMCA does not require qualified Internet intermediaries to affirmatively ferret out each and every instance of copyright infringement on their services, it does require that Internet intermediaries comply with a "notice and takedown" system. This notice and takedown system is intended to provide a streamlined and effective way for copyright holders to notify Internet intermediaries of identified instances of infringement so that infringing content can be expeditiously removed. The notice and takedown system of the DMCA, like the immunity granted in Section 230, is one way a government may strike a balance where objectionable or illegal content is

[14] *The Economic and Social Role of Internet Intermediaries,* OECD (April 2010) at 10, available at *http://www.oecd.org/dataoecd/49/4/44949023.pdf.*

[15] *Human Rights Challenges Facing the Technology Industry Before Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary,* 111th Cong. (March 2, 2010) (Testimony of Daniel J. Weitzner, Associate Administrator for Policy Analysis and Development, National Telecommunications and Information Administration, United States Department of Commerce), available at *http://www.ntia.doc.gov/presentations/2010/Weitzner_Final_03022010.pdf.*

[16] *Overview of Internet Censorship, supra at http://opennet.net/about-filtering* (Last accessed Aug. 30, 2010).

[17] *See* Daniel J. Weitzner, National Telecommunications and Information Administration (NTIA) Position Paper, OECD Workshop, *The role of Internet intermediaries in advancing public policy objectives,* available at *http://www.oecd.org/dataoecd/17/31/45543576.pdf; see also* Comments of Representative Cox, 141 Cong. Rec. H8469–70 (1995).

[18] Public Law 104–104, codified at 47 U.S.C. 230.

[19] *See* generally, Comments of Representative Cox, 141 Cong. Rec. H8469–70 (1995).

[20] Digital Millennium Copyright Act (Pub. L. 105–304, codified at 17 U.S.C. 512).

removed, while preserving the ability of Internet intermediaries to continue to provide their vital services.

• What is the impact of third party liability laws on businesses' abilities to operate in global markets? How do businesses approach these differing liability regimes?

• To what extent do various governments' third party liability laws allow for immunity with exceptions for Internet intermediaries? How useful are such laws?

• Are there specific principles or factors that governments should take into account when dealing with content restrictions and the intermediaries who might be in a good position to monitor postings and remove illegal or objectionable content?

• How might governments promote innovation in the provision of new intermediary services (*e.g.,* by granting immunities), while at the same time encouraging responsible conduct by those same intermediaries?

5. Trade Agreements

Trade and investment rules exist in WTO commitments, FTAs, and other international treaties or agreements. The WTO addresses the free flow of information in multiple ways. For example, Members currently abide by a moratorium on customs duties on electronic transmissions. In addition, WTO member governments allow cross-border trade in services through commitments made in the General Agreement on Trade in Services, FTAs, and other international treaties or agreements, which support trade in digital products or ease restrictions on market access for certain information communication technology products and services.

• How might bilateral or multilateral trade or other agreements promote the free flow of information over the Internet?

• How might these agreements promote transparency and the provision of due process in the creation and application of government restrictions to the free flow of information online?

• With respect to cloud or other Web-based services, are there specific trade disciplines that can enhance market access for all providers and increase legal certainty for potential users?

• What other affirmative trade obligations related to the free flow of information over the Internet should be considered?

6. International Cooperation

There are several intergovernmental bodies, including the International Telecommunication Union (ITU), OECD, Council of Europe, and Asia-Pacific Economic Cooperation (APEC) forum, that attempt to guide the growth of the Internet and online commerce through policy negotiations and dialogues. Multi-jurisdictional governmental organizations such as these have the benefit of being inclusive (in that by definition they represent the interests of member governments) and the potential to be authoritative. By their nature however, these organizations move at a deliberate pace, which means that fast-moving Internet issues can be difficult for them to address.

Over the past decade the private sector, civil society, and academia increasingly have engaged in regional and international activities focused on the development of cross-border Internet policy. The IGF, for example, is a multi-stakeholder forum that places private sector, civil society and academic stakeholders on an equal footing with their government counterparts for an open and spirited dialogue on Internet policy. Another case in point is the Global Network Initiative, which is a voluntary multi-stakeholder initiative, composed of several human rights organizations and three major Internet companies who together aim to address restrictions on the free flow of information on the Internet.[21] Advocates of multi-stakeholder initiatives point out that a less formal structure can be more nimble and thus in a better position to address the fast-changing nature of Internet offerings. Multi-stakeholder initiatives can be formed around discrete issues and can be populated by interested parties on an ad hoc basis. While such organizations cannot establish law or regulation, they can accelerate the articulation of acceptable norms seen as good practices for large segments of the population.

• Are there some multi-jurisdictional, governmental forums or multi-stakeholder, private-sector organizations that are better suited than others to develop proposals or principles to guide governments as they develop policies concerning the free flow of information on the Internet?

• What attributes should multi-stakeholder organizations or initiatives possess in order to maximize their efficacy? What makes them well-suited to develop principles and best practices to guide the private sector? Are there examples of industry best practices or codes of conduct which provide useful guidance on how businesses should deal with restrictions on the free flow of information?

• What are the pros and cons of turning to multi-stakeholder initiatives to accelerate norm development instead of international governmental bodies?

• Has private-sector support for multi-stakeholder initiatives matured to the point where governments can rely on those initiatives for the long-term?

Commenters should feel free to raise and address other governance questions as they see fit.

Dated: September 23, 2010.

Gary Locke,

Secretary of Commerce.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

Francisco J. Sánchez,

Under Secretary of Commerce for International Trade.

Patrick Gallagher,

Director, National Institute of Standards and Technology.

[FR Doc. 2010–24385 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–60–P

[21] *Global Network Initiative,* available at *http://www.globalnetworkinitiative.org/* (2010).

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Initial Patent Applications.

Form Number(s): PTO/SB/01 and 01A, PTO/SB/02A and 02B, 02CN, 02DE, 02ES, 02FR, 02IT, 02JP, 02KR, 02NL, 02RU, 02SE, and 02LR, PTO/SB/03 and 03A, PTO/SB/04 through 07, PTO/SB/13/PCT, PTO/SB/14 and EFS-Web, PTO/SB/16 and EFS-Web, PTO/SB/17 through 19, PTO/SB/29 and 29A, and PTO/SB/101 through 110.

Agency Approval Number: 0651–0032.

Type of Request: Revision of a currently approved collection.

Burden: 11,553,888 hours annually.

Number of Respondents: 513,221 responses per year, with an estimated 466,385 responses filed electronically.

Avg. Hours Per Response: The USPTO estimates that it takes the public between 24 minutes (0.40 hours) and 33 hours and 12 minutes (33.2 hours) to complete the applications, petitions,

and additional papers in this collection, depending on the request. This includes the time to gather the necessary information, prepare the application, petition, or other papers, and submit the completed request to the USPTO. The USPTO calculates that, on balance, it takes the same amount of time to gather the necessary information, prepare the utility, design, or provisional application, and submit it to the USPTO, whether the applicant submits it in paper form or electronically.

Needs and Uses: This collection of information is required by 35 U.S.C. 131 and 37 CFR 1.16 through 1.84. Each patent applicant must provide sufficient information to allow the USPTO to properly examine the application, petition, or paper to determine whether the application, petition, or paper meets the criteria set forth in the patent statutes and regulations. The various fee and application transmittal forms, the declarations, the cover sheets, the petitions, and the papers filed under 37 CFR 1.41, 1.48, and 1.53(c)(2) permit applicants to supply all of the information necessary to process the application and enables the USPTO to ensure that all of the information has been provided in order to process the application.

Affected Public: Businesses or other for profits and non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, *e-mail: Nicholas_A_Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0032 copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before October 29, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A_Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: September 23, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–24354 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Correction to Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; *telephone:* (202) 482–2312.

SUPPLEMENTARY INFORMATION:

Correction

On September 2, 2010, the Department of Commerce ("Department") published the amended final determinations pursuant to court decision in the investigations of certain frozen warmwater shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam. *See Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Notice of Amended Final Determinations of Sales at Less than Fair Value Pursuant to Court Decision,* 75 FR 53947 (September 2, 2010) ("*Amended Final Determinations*"). The *Amended Final Determinations* stated that the Department determined dusted shrimp to be within the scope of the investigations. Subsequent to the announcement and release of the *Amended Final Determinations,* the Department identified an inadvertent error. Specifically, in the table listing the antidumping duty rates for the companies in the Socialist Republic of Vietnam, several companies were inadvertently omitted. Also, incorrect antidumping duty margins were listed for three of the Vietnamese companies. To resolve these discrepancies, the table below lists all of the Vietnamese companies along with the correct margin.

VIETNAM [1]

Manufacturer/exporter	Margin (percent)
Camau Frozen Seafood Processing Import Export Corporation [2]	5.24
Kim Anh Company Limited [3]	25.76
Minh Phu Seafood Corporation [4]	4.38
Minh Hai Joint Stock Seafoods Processing Company [5]	4.30
Amanda Foods (Vietnam) Ltd. [6]	4.57
Aquatic Products Trading Company [7]	4.57
Bac Lieu Fisheries Company Limited [8]	4.57
Coastal Fisheries Development Corporation [9]	4.57
Cai Doi Vam Seafood Import-Export Company [10]	4.57
Cam Ranh Seafoods Processing Enterprise Company [11]	4.57
Can Tho Agriculture and Animal Products Import Export Company [12]	4.57
Cantho Animal Fisheries Product Processing Export Enterprise [13]	4.57
C.P. Vietnam Livestock Co. Ltd.	4.57
Cuu Long Seaproducts Company [14]	4.57
Danang Seaproducts Import Export Corporation [15]	4.57
Hanoi Seaproducts Import Export Corporation [16]	4.57
Investment Commerce Fisheries Corporation [17]	4.57
Kien Giang Sea-Product Import-Export Company [18]	4.57
Minh Hai Export Frozen Seafood Processing Joint-Stock Company [19]	4.57

VIETNAM [1]—Continued

Manufacturer/exporter	Margin (percent)
Minh Hai Seaproducts Import Export Corporation [20]	4.57
Ngoc Sinh Private Enterprise [21]	4.57
Nha Trang Fisheries Joint Stock Company [22]	4.57
Nha Trang Seaproduct Company [23]	4.57
Pataya Food Industries (Vietnam) Ltd.[24]	4.57
Phu Cuong Seafood Processing and Import-Export Company Limited [25]	4.57
Phuong Nam Co. Ltd.[26]	4.57
Sao Ta Foods Joint Stock Company [27]	4.57
Soc Trang Aquatic Products and General Import Export Company [28]	4.57
Song Huong ASC Import-Export Company Ltd.[29]	4.57
Thuan Phuoc Seafoods and Trading Corporation [30]	4.57
UTXI Aquatic Products Processing Company [31]	4.57
Viet Foods Co., Ltd.[32]	4.57
Viet Nhan Company	4.57
Viet Hai Seafood Company Ltd.[33]	4.57
Vinh Loi Import Export Company [34]	4.57
Vietnam-Wide Rate	25.76

[1] The Department has determined that Bac Lieu Fisheries Joint Stock Company ("Bac Lieu JSC"), Cadovimex Seafood Import-Export and Processing Joint Stock Company ("Cadovimex Vietnam"), Soc Trang Seafood Joint Stock Company ("STAPIMEX JSC"), Thuan Phuoc Seafoods and Trading Corporation ("Thuan Phuoc JSC"), and UTXI Aquatic Products Processing Corporation ("UTXI Corp.") are successors-in-interest, respectively, to Bac Lieu Fisheries Company Limited ("Bac Lieu Limited"), Cai Doi Vam Seafood Import-Export Company ("Cadovimex"), Soc Trang Aquatic Products and General Import Export Company ("STAPIMEX"), Thuan Phuoc Seafoods and Trading Corporation ("Thuan Phuoc SOE"), and UTXI Aquatic Products Processing Company ("UTXI"). *See Frozen Warmwater Shrimp from Vietnam: Notice of Final Results of Antidumping Duty Changed Circumstances Reviews,* 74 FR 42050 (August 20, 2009).

[2] Also known as ("AKA") Camimex and Camau Seafood Factory No. 4.

[3] Not a separate rate.

[4] AKA Minh Phu Seafood Export-Import Corporation, Minh Phu, Minh Phu Seafood Pte., Minh Qui Seafood Co. Ltd., Minh Qui, Minh Phat Seafood Co. Ltd. and Minh Phat.

[5] AKA Seaprodex Minh Hai.

[6] AKA Amanda VN and Amanda.

[7] AKA APT and A.P.T. Co.

[8] AKA Bac Lieu, BACLIEUFIS, Bac Lieu Fis, Bac Lieu Fisheries Co. Ltd., Bac Lieu Fisheries Limited Company and Bac Lieu Fisheries Company Ltd.

[9] AKA COFIDEC.

[10] AKA Cadovimex.

[11] AKA Cam Ranh.

[12] AKA Cataco, Duyen Hai Foodstuffs Processing Factory, Caseafood, Coseafex and Cantho Seafood Export.

[13] AKA Cafatex, Cafatex Vietnam, Xi Nghiep Che Bien Thuy Suc San Xuat Khau Can Tho, CAS, CAS Branch, Cafatex Saigon, Cafatex Fishery Joint Stock Corporation, Cafatex Corporation and Taydo Seafood Enterprise.

[14] AKA Cuu Long Seapro.

[15] AKA Seaprodex Danang, Tho Quang Seafood Processing and Export Company and Tho Quang.

[16] AKA Seaprodex Hanoi.

[17] AKA INCOMFISH, Investment Commerce Fisheries Corp., INCOMFISH CORP. and INCOMFISH CORPORATION.

[18] AKA KISIMEX, Kien Giang Seaproduct Import & Export Company, Kien Giang Seaproduct Import and Export Company, Kien Giang Seaproduct Import Export Co., Kien Giang Sea Product Import & Export Co., Kien Giang Sea Product Import and Export Company, Kien Giang Sea Product Import & Export Company, Kien Giang Sea Product Import & Export Co. and Kien Giang Sea Product Im. & Ex. Co.

[19] AKA Minh Hai Jostoco.

[20] AKA Seaprimexco.

[21] AKA Ngoc Sinh Seafoods, Ngoc Sinh Fisheries, Ngoc Sinh Private Enterprises, Ngoc Sinh Seafoods Processing and Trading Enterprises and Ngoc Sinh.

[22] AKA Nhatrang Fisheries Joint Stock Company, Nha Trang Fisco and Nhatrang Fisco.

[23] AKA Nha Trang Seafoods.

[24] AKA Pataya VN.

[25] AKA Phu Cuong Seafood Processing Import-Export Company Ltd., Phu Cuong Co., Phu Cuong, Phu Cuong Seafood Processing & Import-Export Co. Ltd., Phu Cuong Seafood Processing, Phu Cuong Co. Ltd. and Phu Cuong Seafood Processing Import & Export Company Limited.

[26] AKA Phuong Nam Company Limited and Phuong Nam.

[27] AKA Fimex VN, Saota Seafood Factory and Sao Ta Seafood Factory.

[28] AKA STAPIMEX.

[29] AKA Song Huong ASC Joint Stock Company, SOSEAFOOD, ASC, Song Huong Import Export Seafood Joint Stock Company, Song Huong Import-Export Seafood Joint Stock Company, Song Huong Import Export Seafood Company, Song Huong Seafood Import-Export Company, Song Huong Seafood Import Export Co., Song Huong Seafood Im-Export Co., SongHuong and Songhuong Joint Stock Company.

[30] AKA Frozen Seafoods Factory No. 32.

[31] AKA UTXI, UTXI Co. Ltd., UT XI Aquatic Products Processing Company and UT–XI Aquatic Products Processing Company.

[32] AKA Viet Foods, Nam Hai Exports Food Stuff Limited, Nam Hai Export Foodstuff Company Ltd., Vietfoods Co. Ltd., Viet Foods Company Limited and Vietfoods Company Limited.

[33] AKA Vietnam FishOne, Vietnam Fish-One Company Co. Ltd., Vietnam Fish-One, Vietnam Fish-One Co. Ltd., Vietnam Fish One Co. Ltd., Vietnam Fish One Company Limited and Vietnam Fish-One Company Limited.

[34] AKA VIMEXCO, Vinh Loi Import/Export Co., VIMEX, VinhLoi Import Export Company and Vinh Loi Import-Export Company.

This notice is published in accordance with section 777(i) of the Tariff Act of 1930, as amended.

Dated: September 24, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–24585 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–851)

Certain Preserved Mushrooms from the People's Republic of China; Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Fred Baker, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4947 or (202) 482–2924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2010, the Department of Commerce (the Department) published in the **Federal Register** the initiation of two new shipper reviews (NSRs) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China, covering the period of February 1, 2009, to January 31, 2010. *See Certain Preserved Mushrooms From the People's Republic of China: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 75 FR 16075 (March 31, 2010). The current deadline for the preliminary results of these reviews is September 22, 2010.

Extension of Time Limits for Preliminary Results of Review

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(i)(1), require the Department to complete the preliminary results of a NSR of an antidumping duty order within 180 days after the date on which the review is initiated. However, the Department may extend the deadline for completion of the preliminary results of a NSR to 300 days if it determines the case is extraordinarily complicated. *See* Section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214 (i)(2).

The Department finds that these NSRs are extraordinarily complicated and, therefore, it requires additional time to complete the preliminary results. Specifically, the Department requires additional time to analyze certain discrepancies that exist between the entry documents that Shandong Fengyu Edible Fungus Co., Ltd., submitted to the record and those received from Customs and Border Protection regarding the same sale. With respect to Tongfa, we also require additional time to analyze the record concerning the *bona fide* nature of its sale because of its price relative to the price of other entries of subject merchandise during the period of review. Accordingly, the Department is extending the time limit for completion of the preliminary results of these NSRs by 30 days (*i.e.*, until October 22, 2010). We intend to issue the final results no later than 90 days after publication of the preliminary results.

This extension is issued and published in accordance with section 751(a)(2)(B)(iv) and 19 CFR 351.214(i)(2).

Dated: September 22, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–24453 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping duty order and one countervailing duty order in part.

DATES: *Effective Date:* September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street, and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea with respect to one exporter and the countervailing duty order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea with respect to two exporters.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review ("POR") listed below. If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it should notify the Department within 60 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of l930, as amended ("the Act"). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street, and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the POR. We intend to release the CBP data under

Administrative Protective Order ("APO") to all parties having an APO within *five* days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent Selection within *10* calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy ("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 administrative review 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.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *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 *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register**. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status **unless** they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 2011.

	Period to be reviewed
Antidumping Duty Proceedings	
Japan: Tin Mill Products A–588–854	8/1/09–7/31/10
JFE Steel Corporation	
Kawasaki Steel Corporation	
Nippon Steel Corporation	
NKK Corporation	
Toyo Kohan Co., Ltd.	
Mexico: Light-Walled Rectangular Pipe and Tube A–201–836	8/1/09–7/31/10
Maquilacero S.A. de C.V.	
Regiomontana de Perfiles y Tubos S.A. de C.V.	
Nacional de Acero S.A. de C.V.	
Productos Laminados de Monterrey S.A. de C.V.	
Republic of Korea: Corrosion-Resistant Carbon Steel Flat Products A–580–816	8/1/09–7/31/10
Dongbu Steel Co., Ltd.	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceedings (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Application.

	Period to be reviewed
Dongkuk Industries Co., Ltd.	
Haewon MSC Co., Ltd.	
Hyundai HYSCO	
LG Hausys, Ltd.	
LG Chem, Ltd.	
Pohang Iron and Steel Co., Ltd./Pohang Coated Steel Co., Ltd.	
Union Steel Manufacturing Co., Ltd.	
Socialist Republic of Vietnam: Certain Frozen Fish Fillets [3] A–552–801	8/1/09–7/31/10
An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish or AnGiang Fisheries Import and Export)	
Anvifish Joint Stock Company (also known as Anvifish JSC)	
Anvifish Co., Ltd.	
Asia Commerce Fisheries Joint Stock Company (aka as Acomfish JSC)	
Bien Dong Seafood Co., Ltd.	
Binh An Seafood Joint Stock Co.	
Cadovimex II Seafood Import-Export and Processing Joint Stock Company (aka Cadovimex II)	
Cantho Import-Export Seafood Joint Stock Company (CASEAMEX)	
CUU Long Fish Joint Stock Company (aka CL–Fish)	
East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co., Ltd.)	
East Sea Seafoods Joint Venture Co., Ltd.	
East Sea Seafoods LLC	
Hiep Thanh Seafood Joint Stock Co.	
International Development & Investment Corporation (also known as IDI)	
Nam Viet Company Limited (aka NAVICO)	
Nam Viet Corporation	
NTSF Seafoods Joint Stock Company (aka NTSF)	
QVD Food Company, Ltd.	
QVD Dong Thap Food Co., Ltd.	
Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO)	
Southern Fishery Industries Company, Ltd. (also known as South Vina)	
Thien Ma Seafood Co., Ltd.	
Thuan Hung Co., Ltd. (also known as THUFICO)	
Vinh Hoan Corporation	
Vinh Hoan Company, Ltd.	
Vinh Quang Fisheries Corporation	
Taiwan: Polyethylene Terephthalate Film, Sheet and Strip [4] A–583–837	7/1/09–6/30/10
Thailand: Polyethylene Retail Carrier Bags A–549–821	8/1/09–7/31/10
First Pack Co. Ltd.	
Hi-Pack Company, Ltd.	
ITW Minigrip (Thailand) Co. Ltd.	
K International Packaging Co., Ltd.	
Landblue (Thailand) Co., Ltd.	
Praise Home Industry, Co. Ltd.	
Siam Flexible Industries Co., Ltd.	
Thai Jirun Co., Ltd.	
Thai Plastic Bags Industries Co., Ltd.	
Trinity Pac Co. Ltd.	
U. Yong Industry Co., Ltd.	
The People's Republic of China: Certain Steel Nails [5] A–570–909	8/1/09–7/31/10
Aironware (Shanghai) Co., Ltd.	
Beijing Daruixing Global Trading Co., Ltd.	
Beijing Daruixing Nail Products Co., Ltd.	
Beijing Hong Sheng Metal Products Co., Ltd.	
Beijing Hongsheng Metal Products Co., Ltd.	
Beijing Tri-Metal Co., Ltd.	
Beijing Yonghongsheng Metal Products Co., Ltd.	
Besco Machinery Industry (Zhejiang) Co., Ltd.	
Cana (Tianjin) Hardware Ind., Co., Ltd.	
Certified Products International Inc.	
Chiieh Yung Metal Ind. Corp.	
China Silk Trading & Logistics Co., Ltd.	
China Staple Enterprise (Tianjin) Co., Ltd.	
Chongqing Hybest Nailery Co., Ltd.	
Chongqing Hybest Tools Group Co., Ltd.	
Cintee Steel Products Co., Ltd.	
Cyber Express Corporation	
CYM (Nanjing) Nail Manufacture Co., Ltd.	
Dagang Zhitong Metal Products Co., Ltd.	
Dezhou Hualude Hardware Products Co., Ltd.	
Dingzhou Ruili Nail Production Co., Ltd.	
Dong'e Fuqiang Metal Products Co., Ltd.	

	Period to be reviewed
Faithful Engineering Products Co., Ltd.	
Fujiansmartness Imp. & Exp. Co., Ltd.	
Fuzhou Builddirect Ltd.	
Guangdong Foreign Trade Import & Export Corporation	
Guangzhou Qiwei Imports and Exports Co., Ltd.	
GWP Industries (Tianjin) Co., Ltd.	
Haixing Hongda Hardware Production Co., Ltd.	
Haixing Linhai Hardware Products Factory	
Handuk Industrial Co., Ltd.	
Hangzhou Kelong Electrical Appliance & Tools Co. Ltd.	
Hangzhou New Line Co., Ltd.	
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	
Hebei Super Star Pneumatic Nails Co., Ltd.	
Hengshui Mingyao Hardware & Mesh Products Co., Ltd.	
Heretops (Hong Kong) International Ltd.	
Hilti (China) Limited	
Hong Kong Yu Xi Co., Ltd.	
Huadu Jin Chuan Manufactory Co., Ltd.	
Huanghua Huarong Hardware Products Co., Ltd.	
Huanghua Jinhai Hardware Products Co., Ltd.	
Huanghua Jinhai Metal Products Co., Ltd.	
Huanghua Shenghua Hardware Manufactory Factory	
Huanghua Xinda Nail Production Co., Ltd.	
Huanghua Xionghua Hardware Products Co., Ltd.	
Huanghua Yufutai Hardware Products Co., Ltd.	
Jinding Metal Products Ltd.	
Jining Huarong Hardware Products Co., Ltd.	
Jisco Corporation	
Joto Enterprise Co., Ltd.	
Koram Panagene Co., Ltd.	
Kyung Dong Corp.	
Le Group Industries Corp. Ltd.	
Liang's Industrial Corp.	
Lijiang Liantai Trading Co., Ltd.	
Maanshan Cintee Steel Products Co., Ltd.	
Maanshan Leader Metal Products Co., Ltd.	
Maanshan Longer Nail Product Co., Ltd.	
Marsh Trading Ltd.	
Mingguang Abundant Hardware Products Co., Ltd.	
Nanjing Dayu Pneumatic Gun Nails Co., Ltd.	
Nanjing Yuechang Hardware Co., Ltd.	
Ningbo Dollar King Industrial Co., Ltd.	
Ningbo KCN Electric Co., Ltd.	
Ningbo Ordam Import & Export Co., Ltd.	
OEC Logistics (Qingdao) Co. Ltd.	
Pacole International Ltd.	
Panagene Inc.	
PT Enterprise Inc.	
Qidong Liang Chyuan Metal Industry Co., Ltd.	
Qingdao Bestworld Industry Trading	
Qingdao D&L Group Ltd.	
Qingdao Denarius Manufacture Co. Limited	
Qingdao International Fastening Systems Inc.	
Qingdao Jisco Co., Ltd.	
Qingdao Koram Steel Co., Ltd.	
Qingdao Meijia Metal Products Co.	
Qingdao Rohuida International Trading Co., Ltd.	
Qingdao Sino-Sun International Trading Company Limited	
Qingdao Tiger Hardware Factory Co., Ltd.	
Qingyuan County Hongyi Hardware Products Factory	
Qingyun Hongyi Hardware Factory	
Q–Yield Outdoor Great Ltd.	
Rizhao Changxing Nail-Making Co., Ltd.	
Rizhao Handuk Fasteners Co., Ltd.	
Rizhao Qingdong Electric Appliance Co., Ltd.	
Romp (Tianjin) Hardware Co., Ltd.	
SDC International Australia Pty., Ltd.	
Senco-Xingya Metal Products (Taicang) Co., Ltd.	
Shandong Dinglong Import & Export Co., Ltd.	
Shandong Minmetals Co., Ltd.	
Shandong Oriental Cherry Hardware Group Co., Ltd.	

	Period to be reviewed
Shandong Oriental Cherry Hardware Import and Export Co., Ltd.	
Shanghai Chengkai Hardware Product Co., Ltd.	
Shanghai Colour Nail Co., Ltd.	
Shanghai Curvet Hardware Products Co., Ltd.	
Shanghai Ding Ying Printing & Dyeing CLO	
Shanghai Holiday Import & Export Co., Ltd.	
Shanghai Jade Shuttle Hardware Tools Co., Ltd.	
Shanghai March Import & Export Company Ltd.	
Shanghai Nanhui Jinjun Hardware Factory	
Shanghai Pioneer Speakers Co., Ltd.	
Shanghai Seti Enterprise International Co., Ltd.	
Shanghai Tengyu Hardware Tools Co., Ltd.	
Shanghai Yueda Nails Industry Co., Ltd.	
Shanghai Yuet Commercial Consulting Co., Ltd.	
Shanxi Hairui Trade Co., Ltd.	
Shanxi Pioneer Hardware Industrial Co., Ltd.	
Shanxi Tianli Enterprise Co., Ltd.	
Shanxi Tianli Industries Co.	
Shanxi Tianli Industries Co., Ltd.	
Shanxi Yuci Broad Wire Products Co., Ltd.	
Shanxi Yuci Wire Material Factory	
Shaoguang International Trade Co.	
Shaoxing Chengye Metal Producting Co., Ltd.	
Shijiazhuang Anao Imp & Export Co. Ltd.	
Shijiazhuang Glory Way Trading Co.	
Shijiazhuang Fangyu Import & Export Corp.	
Shouguang Meiqing Nail Industry Co., Ltd.	
Sinochem Tianjin Imp & Exp Shenzhen Corp.	
S-mart (Tianjin) Technology Development Co., Ltd.	
Suntec Industries Co., Ltd.	
Sunworld International Logistics	
Superior International Australia Pty Ltd.	
Suzhou Xingya Nail Co., Ltd.	
Suzhou Yaotian Metal Products Co., Ltd.	
The Stanley Works (Langfang) Fastening Systems Co., Ltd.	
Stanley Fastening Systems LP	
Stanley Fastening LP	
Shandex Industrial Inc.	
Tian Jin Sundy Co., Ltd. (a/k/a Tianjin Sunny Co., Ltd.)	
Tianjin Baisheng Metal Product Co., Ltd.	
Tianjin Bosai Hardware Tools Co., Ltd.	
Tianjin Certified Products Inc.	
Tianjin Chentai International Trading Co., Ltd.	
Tianjin City Dagang Area Jinding Metal Products Factory	
Tianjin City Daman Port Area Jinding Metal Products Factory	
Tianjin City Jinchi Metal Products Co., Ltd.	
Tianjin Dagang Dongfu Metallic Products Co., Ltd.	
Tianjin Dagang Hewang Nail Factory	
Tianjin Dagang Hewang Nails Manufacture Plant	
Tianjin Dagang Huasheng Nailery Co., Ltd.	
Tianjin Dagang Jingang Nail Factory	
Tianjin Dagang Jingang Nails Manufacture Plant	
Tianjin Dagang Linda Metallic Products Co., Ltd.	
Tianjin Dagang Longhua Metal Products Plant.	
Tianjin Dagang Shenda Metal Products Co., Ltd.	
Tianjin Dagang Yate Nail Co., Ltd.	
Tianjin Dery Import and Export Co., Ltd.	
Tianjin Foreign Trade (Group) Textile & Garment Co., Ltd.	
Tianjin Hewang Nail Making Factory	
Tianjin Huachang Metal Products Co., Ltd.	
Tianjin Huapeng Metal Company	
Tianjin Huasheng Nails Production Co., Ltd.	
Tianjin Jieli Hengyuan Metallic Products Co., Ltd.	
Tianjin Jietong Hardware Products Co., Ltd.	
Tianjin Jietong Metal Products Co., Ltd.	
Tianjin Jin Gang Metal Products Co., Ltd.	
Tianjin Jinchi Metal Products Co., Ltd.	
Tianjin Jinghai County Hongli Industry & Business Co., Ltd.	
Tianjin Jinjin Pharmaceutical Factory Co., Ltd.	
Tianjin Jishili Hardware Co., Ltd.	
Tianjin JLHY Metal Products Co., Ltd.	

	Period to be reviewed
Tianjin Jurun Metal Products Co., Ltd.	
Tianjin Kunxin Hardware Co., Ltd.	
Tianjin Kunxin Metal Products Co., Ltd.	
Tianjin Lianda Group Co., Ltd.	
Tianjin Linda Metal Company	
Tianjin Longxing (Group) Huanyu Imp. & Exp. Co., Ltd.	
Tianjin Master Fastener Co., Ltd.	
Tianjin Metals and Minerals	
Tianjin Port Free Trade Zone Xiangtong Intl. Industry & Trade Corp	
Tianjin Qichuan Metal Products Co., Ltd.	
Tianjin Ruiji Metal Products Co., Ltd.	
Tianjin Shenyuan Steel Producting Group Co., Ltd.	
Tianjin Shishun Metal Product Co., Ltd.	
Tianjin Shishun Metallic Products Co., Ltd.	
Tianjin Universal Machinery Imp. & Exp. Corporation	
Tianjin Xiantong Fucheng Gun Nail Manufacture Co., Ltd.	
Tianjin Xiantong Juxiang Metal MFG Co., Ltd.	
Tianjin Xiantong Material & Trade Co., Ltd.	
Tianjin Xinyuansheng Metal Products Co., Ltd.	
Tianjin Yihao Metallic Products Co., Ltd.	
Tianjin Yongchang Metal Product Co., Ltd.	
Tianjin Yongxu Metal Products Co., Ltd.	
Tianjin Yongye Furniture	
Tianjin Yongyi Standard Parts Production Co., Ltd.	
Tianjin Zhong Jian Wanli Stone Co., Ltd.	
Tianjin Zhonglian Metals Ware Co., Ltd.	
Tianjin Zhongsheng Garment Co., Ltd.	
Unicatch Industrial Co., Ltd.	
Union Enterprise (Kunshan) Co., Ltd.	
Wintime Import & Export Corporation Limited of Zhongshan	
Wenzhou Yuwei Foreign Trade Co., Ltd.	
Wuhan Xinxin Native Produce & Animal By-Products Mfg. Co. Ltd.	
Wuhu Shijie Hardware Co., Ltd.	
Wuhu Xin Lan De Industrial Co., Ltd.	
Wuqiao County Huifeng Hardware Products Factory	
Wuqiao County Xinchuang Hardware Products Factory	
Wuqiao Huifeng Hardware Production Co., Ltd.	
Wuxi Baolin Nail-Making Machinery Co., Ltd.	
Wuxi Chengye Metal Products Co., Ltd.	
Wuxi Qiangye Metalwork Production Co., Ltd.	
Wuxi Jinde Assets Management Co., Ltd.	
Xiamen New Kunlun Trade Co., Ltd.	
Xi'an Metals & Minerals Import and Export Co., Ltd.	
Xuzhou CIP International Group Co., Ltd.	
Yeswin Corporation	
Yitian Nanjing Hardware Co., Ltd.	
Yiwu Excellent Import & Export Co., Ltd.	
Yiwu Richway Imp & Exp Co., Ltd.	
Yongcheng Foreign Trade Corp.	
Yu Chi Hardware Co., Ltd.	
Zhangjiagang Lianfeng Metals Products Co., Ltd.	
Zhangjiagang Longxiang Packing Materials Co., Ltd.	
Zhaoqing Harvest Nails Co., Ltd.	
Zhejiang Gem-Chun Hardware Accessory Co., Ltd.	
Zhejiang Minmetals Sanhe Imp & Exp Co.	
Zhejiang Taizhou Eagle Machinery Co.	
Zhongshan Junlong Nail Manufactures Co., Ltd.	
ZJG Lianfeng Metals Product Ltd.	
The People's Republic of China: Floor-Standing Metal-Top Ironing Tables[6] A–570–888	8/1/09–7/31/10
Foshan Shunde Yongjian Housewares & Hardware Co., Ltd.	
The People's Republic of China: Laminated Woven Sacks[7] A–570–916	8/1/09–7/31/10
Zibo Aifudi Plastic Packaging Co., Ltd.	
The People's Republic of China: Light-Walled Rectangular Pipe and Tubing[8] A–570–914	8/1/09–7/31/10
Sun Group Co., Ltd.	
The People's Republic of China: Persulfates[9] A–570–847	7/1/09–6/30/10
United Initiators (Shanghai) Co. Ltd.	
The People's Republic of China: Polyethylene Retail Carrier Bags[10] A–570–886	8/1/09–7/31/10
Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively Nozawa).	
Countervailing Duty Proceedings	
Republic of Korea: Corrosion-Resistant Carbon Steel Flat Products C–580–818	1/1/09–12/31/09
Dongbu Steel Co., Ltd.	

	Period to be reviewed
Hyundai HYSCO	
Pohang Iron & Steel Co., Ltd. (POSCO)	
The People's Republic of china: Laminated Woven Sacks C–570–917	1/1/09–12/31/09
Zibo Aifudi Plastic Packaging Co., Ltd.	
The People's Republic of China: Light-Walled Rectangular Pipe and Tubing C–570–915	1/1/09–12/31/09
Sun Group Co., Ltd.	

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that the meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: September 23, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–24462 Filed 9–28–10; 8:45 am]

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[3] If one of the above named companies does not qualify for a separate rate, all other exporters of frozen fish fillets from the Socialist Republic of Vietnam who have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam entity of which the named exporters are a part.

[4] In the initiation notice that published on August 31, 2010 (75 FR 53274), the Department inadvertently included the exporter name: SRF Limited, under case number A–583–837 for the period of review: 7/1/09–6/30/10. The Department did not receive a request to review SRF Limited for case number A–583–837, therefore, the Department retracts its initiation of an administrative review of the antidumping order with respect to SRF Limited for case number A–583–837 and for the period of review 7/1/09–6/30/10.

[5] If one of the above named companies does not qualify for a separate rate, all other exporters of certain steel nails from the People's Republic of China ("PRC") who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If the above named company does not qualify for a separate rate, all other exporters of floor-standing metal-top ironing tables from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If the above named company does not qualify for a separate rate, all other exporters of laminated woven sacks from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If the above named company does not qualify for a separate rate, all other exporters of light-walled rectangular pipe and tubing from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[9] In the initiation notice that published on August 31, 2010 (75 FR 53274), the company FMC Corporation was incorrectly initiated for case number A–570–847 for the POR 7/1/09–6/30/10. The Department retracts its initiation of an administrative review for FMC Corporation and initiates a review for the company listed above for Persulfates from the PRC (A–570–847).

[10] If one of the above named companies does not qualify for a separate rate, all other exporters of polyethylene retail carrier bags from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Wednesday, October 13, 2010, from 8:30 a.m. to 5 p.m. and Thursday, October 14, 2010, from 8:30 a.m. to 2:30 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Wednesday, October 13, 2010 from 8:30 a.m. to 5 p.m. and Thursday, October 14, 2010, from 8:30 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, Gaithersburg, Maryland. The rooms for the VCAT Breakout Groups will be announced at the meeting. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1060, telephone number (301) 975–2667. Ms. Shaw's e-mail address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The first day's agenda will include an update on NIST; presentations on NIST proposed performance evaluation framework and example implementations for NIST calibration services and Standard Reference Materials; and a presentation on the Administration's Priorities on Innovation by Mr. Aneesh Chopra, Chief Technology Officer and Associate Director for Technology, Office of Science and Technology Policy. Three concurrent breakout groups will be convened in which NIST Division Chiefs will provide information on selected NIST measurement services to the VCAT members. The first day will conclude with the VCAT discussion on NIST measurement services planning and management. On the second day, the meeting will focus on measurement and standards needs in forensic sciences including external perspectives from guest speakers and an overview and examples of forensic science activities at NIST. Other topics include a discussion on the initial outputs of the Blue Ribbon Commission II Safety Management; an update on external needs assessment activities, and a wrap-up discussion, recommendations, and plans for the 2010 VCAT Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On October 13, 2010, approximately one-half hour will be reserved in the afternoon for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the VCAT, National Institute of Standards and Technology, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland 20899, via fax at 301–216–0529 or electronically by e-mail to *gail.ehrlich@nist.gov.*

All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Stephanie Shaw no later than Friday, October 8, 2010, and she will provide you with instructions for admittance. Ms. Shaw's e-mail address is *stephanie.shaw@nist.gov* and her phone number is (301) 975–2667.

Dated: September 27, 2010.

David Robinson,

Associate Director for Management Resources.

[FR Doc. 2010–24579 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[9/16/2010 through 9/23/2010]

Firm name	Address	Date accepted for investigation	Products
Custom Cable Crafters of Missouri, Inc..	30 Shakertown Hall Lane, Perryville, MO 63775–9796.	9/23/10	The firm manufactures telecommunications assemblies in both copper and fiber optics.
ECRM, Inc.	554 Clark Road, Tewksbury, MA 01876	9/17/10	The firm designs, manufactures, markets and services high-resolution imaging systems.
Gunnebo Johnson Corporation.	1240 N. Harvard Street, Tulsa, OK 74115	9/16/10	The firm manufactures pulley blocks, flywheels, and snatch blocks.
Melron Corporation	8110 Technology Drive, Schofield, WI 54476–4523	9/23/10	The firm manufacturers cast architectural metal hardware for the window manufacturing industry.
Mize and Co., Inc.	2020 N. Koch Industrial Avenue, Kingman, KS 67068–0516.	9/20/10	The firm manufactures wire harnesses, bulk wire, welding cable, electric terminals, trailer lights, jumper cables using various wires, plastics, and rubber and metal components.
Niche Electronics Technologies, Inc..	201 Dykeman Road, Shippensburg, PA 17257	9/20/10	The firm manufactures printed circuit assemblies.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[9/16/2010 through 9/23/2010]

Firm name	Address	Date accepted for investigation	Products
Pearce Pump Supply, Inc.	16161 Airline Highway, Prairieville, LA 70769	9/22/10	The firm manufactures centrifugal pumps for water supply, solids, and process control.
Sam M. Butler Inc. dba Service Thread Manufacturing Company.	504 King Street, Lauringburg, NC 28352	9/16/10	The firm manufactures industrial threads/yarns for bag closing.
Samscreen, Inc.	216 Broom Corporate Parkway, Conklin, NY 13748	9/16/10	The firm manufactures and distributes piano wire, perforated plates and wear parts.
Solid Comfort, Inc.	3931 37th Avenue South, Fargo, ND 58104	9/20/10	The firm manufactures furniture made from raw materials that include solid wood and veneered laminated wood.
Top Drawer Components, Inc..	5154 South Delaware Drive, Apache Junction, AZ 85220.	9/22/10	The firm manufactures cabinet doors and drawer boxes.
Vobeda Machine and Tool Company, Inc.	3801 Blue River Avenue, Racine, WI 53045	9/22/10	The firm manufactures die casts.

Any party having a substantial interest in these proceedings may request a public hearing on the matter.

A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: September 23, 2010.

Miriam J. Kearse,

Program Team Lead.

[FR Doc. 2010–24442 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–201–834

Purified Carboxymethylcellulose from Mexico: Preliminary Results of the First Five-year ("Sunset") Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 2, 2010, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on purified carboxymethylcellulose (CMC) from Finland, Mexico, the Netherlands, and Sweden, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

On the basis of the notice of intent to participate, and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department is conducting a full sunset review of the antidumping duty order on CMC from Mexico, pursuant to section 751(e)(3)(B) of the Act and 19 CFR 351.218(e)(2)(i).

As a result of this sunset review, the Department preliminarily finds that revocation of the antidumping duty order with respect to CMC from Mexico would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Preliminary Results of Review."

FOR FURTHER INFORMATION: Dena Crossland or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2010, the Department published in the **Federal Register** the notice of initiation of the sunset reviews of the antidumping duty orders on CMC from Finland, the Netherlands, Mexico, and Sweden, pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Review*, 75 FR 30777 (June 2, 2010) (*Notice of Initiation*).

The Department received a notice of intent to participate from domestic interested party Aqualon Company (Aqualon) within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested party claimed interested party status under section 771(9)(C) of the Act, as the sole manufacturer of a domestic–like product in the United States.

The Department received complete substantive responses to the *Notice of Initiation* from the domestic interested party and respondent interested party, Quimica Amtex S.A. de C.V. (Quimica Amtex), within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[1] The Department did not receive any rebuttal comments from the domestic interested party or respondent interested party.

On July 22, 2010, the Department determined that respondent interested party accounted for more than 50 percent of exports by volume of the subject merchandise and, therefore, submitted an adequate substantive response to the Department's *Notice of Initiation. See* Memorandum to Richard O. Weible, Director, AD/CVD Operations, Office 7, "Adequacy Determination in the First Five-year "Sunset Review" (2005 through 2009) of the Antidumping Duty Order on Purified Carboxymethylcellulose from Mexico," dated July 22, 2010 (Adequacy Memo). The Department also determined that the domestic interested party submitted an adequate response. *See* Adequacy Memo at 2 and 19 CFR 351.218(d)(3)(ii) and 19 CFR 351.218(e)(1)(A). In accordance with 19

[1] Domestic interested and respondent parties filed substantive responses on July 1, 2010, and July 2, 2010, respectively.

CFR 351.218(e)(2)(i), the Department determined to conduct a full sunset review of this antidumping duty order and notified the U.S. International Trade Commission. *See* Letter to Ms. Catherine DeFilippo, Director, Office of Investigations, U.S. International Trade Commission, from James Maeder, Director, Office 2, AD/CVD Operations, entitled "Expedited and Full Sunset Reviews of the Antidumping Duty Orders Initiated in June 2010," dated July 22, 2010.

On September 15, 2010, the Department contacted Aqualon regarding the reference to Harmonized Tariff Schedule of the United States (HTSUS) number 3913.31.00.10 at 12 of the Appendix of its substantive response, dated July 1, 2010. Aqualon stated on September 15, 2010, that it had mistakenly referenced the wrong HTSUS number in its substantive response and intended to reference HTSUS number 3912.31.00.10. *See* Memorandum to the File from Dena Crossland, Regarding Preliminary Results of First Sunset Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from Mexico; Correction to Domestic Interested Party's July 1, 2010, Substantive Response, dated September 16, 2010.

Scope of the Order

The merchandise covered by the order is all purified CMC, sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off–white, non–toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross–linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations, which, at a minimum, reduce the remaining salt and other by–product portion of the product to less than ten percent. The merchandise subject to the order is currently classified in the HTSUS at subheading 3912.31.00.[2] This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum for the Preliminary Results of First Sunset Review of the Antidumping Duty Order on Purified Carboxymethylcellulose from Mexico," from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memo), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 7046 of the main Commerce Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results

The Department preliminarily determines that revocation of the antidumping duty order on CMC from Mexico is likely to lead to continuation or recurrence of dumping at the following weighted–average margins:

Quimica Amtex	12.61 percent
All Others	12.61 percent

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Consistent with 19 CFR 351.309(c)(1)(i), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the time limit for filing the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested will be held two days after rebuttal briefs are due, unless the Department alters the date, in accordance with 19 CFR 351.310(d)(1). The Department intends to issue a notice of final results of the first sunset review, which will include the results of its analysis of issues raised in any such briefs, no later than January 28, 2011.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: September 20, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–24458 Filed 9–28–10; 8:45 am]

BILLING CODE 3510–DS–S

[2] Although HTSUS number 3912.31.00.10 may be more specific to subject merchandise, it was not created until 2005. As such, we are relying on HTSUS number 3912.31.00 for purposes of this sunset review because in determining whether revocation of an order would likely lead to continuation or recurrence of dumping, the Department considers the margins established in the investigation and/or reviews conducted during the sunset review period as well as the volume of imports for the periods before and after the issuance of the order. *See* section 752(c)(1) of the Act.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ29

NOAA Proposed Policy on Prohibited and Authorized Uses of the Asset Forfeiture Fund

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

ACTION: Notice; request for comments.

SUMMARY: The Magnuson-Stevens Fishery Conservation and Management Act authorizes the Secretary of Commerce through NOAA to pay certain enforcement related costs from sums received as fines, penalties, and forfeitures of property for violations of any marine resource law enforced by the Secretary. Fines, penalties, and forfeitures of property received by NOAA are deposited in an enforcement asset forfeiture fund. The Secretary is proposing a new policy to clearly articulate prohibited and authorized uses of these funds to ensure no conflict of interest– either real or perceived – associated with its use while continuing to promote a sound enforcement program dedicated to conserving and protecting our nation's marine resources. The Secretary requests comments from the public on listed prohibited and authorized uses of the funding and, in particular, expenditures for activities that would promote compliance with regulations promulgated by NOAA.

DATES: Written comments must be received on or before 5 p.m., EST, on November 29, 2010.

ADDRESSES: Written comments may be sent by any of the following methods:

- E-mail to the following address: *DraftAFFPolicy@noaa.gov*. Please note on your correspondence and in the subject line of e-mail comments the following identifier: "Draft Asset Forfeiture Fund Policy Comments.";
- Mail or hand deliver to Mr. Mark Paterni, Assistant Director, Office of

Law Enforcement, National Oceanic and Atmospheric Administration, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910. Mark the outside of the envelope "Draft Asset Forfeiture Fund Policy Comments"; or

• Fax to 301–427–2055 noting "Draft Asset Forfeiture Fund Policy Comments."

FOR FURTHER INFORMATION CONTACT: Mr. Mark Paterni, Assistant Director, Office of Law Enforcement, National Oceanic and Atmospheric Administration, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910, (telephone 301–427–2300).

SUPPLEMENTARY INFORMATION:

I. Proposed Policy on Prohibited and Authorized Uses of the Asset Forfeiture Fund

Strong management and oversight of the Asset Forfeiture Fund (AFF) is essential to restoring the public's trust in the National Oceanic and Atmospheric Administration's (NOAA) Enforcement Program. It is the goal of the Department of Commerce and NOAA to establish a stringent policy for effective oversight of the AFF that will ensure no conflict of interest — real or perceived – associated with its use while continuing to promote a sound enforcement program dedicated to conserving and protecting our nation's marine resources. This policy statement provides clear guidance on the approved uses of the AFF that are consistent with applicable legal authority and that will help assure those regulated that all fines and penalties are fairly and equitably assessed based solely on the severity of the violation. This policy statement also prohibits funding for specific activities. In addition, the Department will expand the use of AFF funding to include compliance assistance to better serve the needs of our stakeholders and improve the way NOAA engages and interacts with its regulated community.

Monies within the AFF are derived from fines, penalties, and property forfeitures associated with violations of marine resource laws (Magnuson-Stevens Act, Endangered Species Act, Marine Mammal Protection Act, and Lacey Act, among others). The Department believes, as did the Congress in establishing the AFF and specifying the allowable uses, that it is appropriate to use the proceeds of NOAA's enforcement program to offset in part the costs of administering that program. Those who violate these laws should help offset the cost of protecting our marine resources in lieu of those costs being borne by taxpayers. Further, the availability of these funds for enforcement reduces the requirement for additional appropriations and expands NOAA's ability to respond to violations of the laws it is charged with enforcing. NOAA's Office of Law Enforcement's (OLE) National Enforcement Operations Manual and the Office of the General Counsel for Enforcement and Litigation's (GCEL) Operating Procedures Manual will include the new policy, along with detailed guidance.

To ensure accountability and transparency in AFF accounting, NOAA will take a number of actions. The Agency will clearly identify and track AFF monies received and expended, and centralize the AFF approval processes for expenditures. Starting with the FY 2012 budget submission, NOAA will identify and account for the AFF in its annual budget. Beginning in FY2011, an annual operating budget will be developed for the AFF based upon the policy, and proposed modifications to that budget must be approved by the NOAA Chief Financial Officer.

Separately, NOAA will establish appropriate uses of other enforcement proceeds retained by the Secretary but not part of the AFF. In particular, NOAA will examine the use of fines and penalties collected for violations of the Northeast Multispecies Fishery Management Plan, which under section 311(f) of the Magnuson-Stevens Act must be used to enforce the Plan.

Prohibited Uses

The policy prohibits the use of the AFF for the following activities:

• Funding for any NOAA employee labor, benefits, or awards;

• Funding for any vehicle purchases or leases, including patrol vehicles, undercover vehicles, all terrain vehicles, vehicles assigned to agents to carry out their enforcement duties, or associated equipment, upgrades, modification, or maintenance of current vehicles;

• Funding for any vessel purchases or leases, including patrol vessels, undercover vessels, or associated equipment upgrades, modification, or maintenance of current vessels;

• Funding for any domestic or foreign travel that is not related to specific investigations, enforcement proceedings, or required training, such as attendance at general conferences or seminars except as specifically authorized below;

• Funding for any training that is not specifically required by policy as an integral part of an employee's job as detailed below; and

• Funding for the purchase of any equipment that is not directly related to a specific investigation or enforcement proceeding, including weapons and ammunition, uniforms, copiers or facsimile machines, desktop or laptop computers, Blackberries or other PDAs, cell phones or radios, video or audio recording equipment; or office furniture.

Authorized Uses

The policy *authorizes* funding for certain specific enforcement-related activities:

• Compliance assistance as discussed further below;

• Costs directly related to the proper storage of seized fish, vessels, or other property during a civil or criminal proceeding;

• Rewards for information related to enforcement actions;

• Valid liens, mortgages, and claims against, or interest in, seized or forfeited property;

• Reimbursement to other Federal or State agencies for enforcement related services provided pursuant to an agreement entered into with the Secretary;

• Expenditures related directly to specific investigations and enforcement proceedings; such as interviewing expert witnesses, witness participation at trials, hearings or depositions, expert witness fees, case support contracts, or required forensic or evidence handling supplies;

• Attendance at international bi- or multi-lateral meetings and negotiations to discuss enforcement specific agenda items;

• Training and associated travel required by policy for all enforcement personnel, mandatory courses at the Federal Law Enforcement Training Center and required field training assignments;

• Mandatory annual in-service or national training for OLE and GCEL employees;

• Training for Federal and state partners regarding Federal statutes and regulations under NOAA's authorities;

• Enforcement unique information technology infrastructure, including hardware, software and maintenance, required specifically for NOAA's enforcement and legal systems and databases;

• Annual interagency agreement and contract costs for the administrative adjudication process, including Administrative Law Judges; and,

• Efforts to combat international unregulated and unreported fishing through annual funding to the International Monitoring, Control, and Surveillance Network.

Compliance Assistance

The Department will implement activities to better serve the needs of our stakeholders and improve the way NOAA engages and interacts with its regulated community. This new component will be aimed at improving and expanding NOAA's compliance assistance, collaboration, and outreach activities. The Department will work with the Marine Fisheries Advisory Committee (additional information at: *http://www.nmfs.noaa.gov/ocs/mafac/*) to develop proposals for activities or program enhancements that will improve compliance with all marine resource statutes. Activities may include, but are not limited to:

- Placing a full or part-time Compliance Assistance Liaison in NMFS Regional Offices as needed, beginning with New England;
- Expanding the use of regional enforcement workshops and training sessions to bring together and educate stakeholders on regulations and other requirements associated with fishery management plans, National Marine Sanctuaries, and activities related to the protection of endangered species and marine mammals;
- Educating and involving fishermen in the development of potential solutions to regional and national enforcement-related issues; and
- Improving communication with regulated communities and the general public relative to enforcement issues through increased OLE and GCEL participation in Regional Fishery Management Council meetings or Sanctuary Advisory Committee meetings, improved websites, easy to understand compliance guides, and timely electronic or other notifications of changes in regulations.

These compliance assistance activities would likely be funded by the AFF through agreements with federal and state partners, or in the case of efforts addressing NE Multispecies, through enforcement proceeds available to the Secretary under section 311(f) of the Magnuson-Stevens Act.

II. Additional Information

Ensuring a Strong Enforcement Program

NOAA and other federal agencies with similar authorities must maintain adequate funding for enforcement. At the National Enforcement Summit held in early August, participants stressed the need for effective and fair enforcement around the country. They offered suggestions that NOAA should focus more on compliance and outreach to better balance its deterrence efforts.

The need for a strong enforcement program is widely recognized and supported as a key component of supporting legal fishers and the American public through barring illegal imports, ending illegal domestic harvests, and ensuring safe and wholesome seafood products. As NOAA completes the broad set of activities aimed at improving its enforcement programs, including a corrective action plan for the AFF, NOAA must ensure an adequate funding level is maintained. Otherwise, the many benefits of a strong enforcement program would be at risk.

Legislative Authorities

The specific statutory authority for use of the fund for certain enforcement related purposes is found in section 311(e)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861). Section 311(e)(1) authorizes six types of expenditures: (A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this Act or any other marine resource law enforced by the Secretary with respect to that fish or other property; (B) a reward of not less than 20 percent of the penalty collected or $20,000, whichever is the lesser amount, to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this Act or any other fishery resource law enforced by the Secretary; (C) any expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings; (D) any valid liens or mortgages against any property that has been forfeited; (E) claims of parties in interest to property disposed of under section 612(b) of the Tariff Act of 1930 (19 U.S.C. 1612(b)), as made applicable by section 310(c) of this Act or by any other marine resource law enforced by the Secretary, to seizures made by the Secretary, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and (F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a), or any similar agreement authorized by law.Though not part of the AFF, section 311(f) provides that fines and penalties collected for violations of the Northeast Multispecies Fishery Management Plan shall be used for purposes of enforcing the Plan.

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

Dated: September 24, 2010.

Eric C. Schwaab,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–24446 Filed 9–24–10; 4:15 pm]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0049, Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to procedures for submitting requests for exemptive, no-action, and interpretative letters.

DATES: Comments must be submitted on or before November 29, 2010.

ADDRESSES: Comments may be mailed to Christopher W. Cummings, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings (202) 418–5445; *Fax:* (202) 418–5528; *e-mail*: *ccummings@cftc.gov.*

SUPPLEMENTAL INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide

information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters, OMB control number 3038–0049—Extension

Commission Regulation 140.99 requires persons submitting requests for exemptive, no-action, and interpretative letters to provide specific written information, certified as to completeness and accuracy, and to update that information to reflect material changes. The regulation was promulgated pursuant to the Commission's rulemaking authority contained in Section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (2000). Regulation 41.3 requires securities brokers and dealers submitting requests for exemptive orders to provide specified written information in support of such requests. Regulation 41.3 was promulgated in response to the requirement in the Commodity Futures Modernization Act of 2000 that the Commission establish procedures for requesting such orders.

The Commission estimates the burden of this collection of information as follows:

THE COMMISSION ESTIMATES THE BURDEN OF THIS COLLECTION OF INFORMATION AS FOLLOWS:

Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
100	On occasion	150	7	1050

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of requests for such letters in the last three years. Although the burden varies with the type, size, and complexity of the request submitted, such request may involve analytical work and analysis, as well as the work of drafting the request itself.

Dated: September 23, 2010.

David Stawick,

Secretary of the Commission.

[FR Doc. 2010–24357 Filed 9–28–10; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0025, Practice by Former Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to practice before the Commission by former members and employees of the Commission.

DATES: Comments must be submitted on or before November 29, 2010.

ADDRESSES: Comments may be mailed to John P. Dolan, Office of the General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: John P. Dolan at (202) 418–5120; *FAX:* (202) 418–5524; *e-mail: jdolan@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 USC 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 USC 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

• Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

• The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

• Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Practice by Former Members and Employees of the Commission, OMB Control Number 3038–0025—Extension

Commission Rule 140.735–6 governs the practice before the Commission of former members and employees of the Commission and is intended to ensure that the Commission is aware of any existing conflict of interest. The rule generally requires former members and employees who are employed or retained to represent any person before the Commission within two years of the termination of their CFTC employment to file a brief written statement with the Commission's Office of General Counsel. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in Section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994).

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
17 CFR 140.735–6	3	1.5	4.5	.10	0.45

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of responses received over the last three years.

Dated: September 23, 2010.

David Stawick,

Secretary of the Commission.

[FR Doc. 2010–24358 Filed 9–28–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Final Environmental Impact Statement (EIS) Addressing Campus Development at Fort Meade

AGENCY: Department of Defense (DoD).

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Defense (DoD) announces the availability of the Final Environmental Impact Statement (EIS) as part of the environmental planning process for a Campus Development Project at Fort George G. Meade, Maryland (hereafter referred to as Fort Meade). The DoD proposes the development of a portion of Fort Meade (referred to as "Site M") as an operational complex and to construct and operate consolidated facilities to meet the National Security Agency's (NSA) and Intelligence Community's continually evolving requirements. The purpose of the Proposed Action is to provide facilities that fully support the Intelligence Community's mission. The need for the action is to consolidate multiple agencies' efforts to ensure capabilities for current and future missions as directed by Congress and the President. The EIS considered three alternative development options, in which total build-out could reach 5.8 million square feet, and the No Action Alternative.

The Final EIS is available for a 30-day period following publication of this Notice of Availability (NOA). Comments received on the Draft EIS (per the Draft EIS NOA published in the **Federal Register** on June 25, 2010 and July 2, 2010) have been considered during preparation of the Final EIS and are included in Appendix C of the EIS. Following this 30-day waiting period, the DOD intends to issue a Record of Decision (ROD) for the EIS.

DATES: Written comments must be received by October 29, 2010.

ADDRESSES: Written comments must be addressed to: "Campus Development EIS" c/o HDR|e²M, 2600 Park Tower Dr, Suite 100, Vienna, VA 22180 or sent by e-mail to *campuseis@hdrinc.com.*

Additional copies of the Final EIS are available at the Fort Meade Main Post Library, 4418 Llewellyn Avenue, Fort Meade, MD 20755; the Anne Arundel County Public Library North County Area Branch, 1010 Eastway, Glen Burnie, MD 21060; and the Anne Arundel County Public Library West County Area Branch, 1325 Annapolis Road, Odenton, MD 21113.

FOR FURTHER INFORMATION CONTACT: For further information or to request copies of the Final EIS, call (301) 688–6524 or send an e-mail to *campuseis@hdrinc.com.*

Dated: September 24, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–24426 Filed 9–28–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, DoD announces that the Defense Health Board (DHB) will meet November 1 and 2, 2010, in Arlington, VA.

DATES: The meeting will be held on the following dates and times—

November 1, 2010

8 a.m.–8:45 a.m. (Closed, Administrative Working Meeting)
9 a.m.–12:30 p.m. (Open Session)
12:30 p.m.–1:30 p.m. (Closed, Administrative Working Meeting)
1:30 p.m.–5 p.m. (Open Session)

November 2, 2010

8 a.m.–8:45 a.m. (Closed, Administrative Working Meeting)
9 a.m.–11:45 a.m. (Open Session)
11:45 a.m.–12:45 p.m. (Closed, Administrative Working Meeting)
12:45 p.m.–2 p.m. (Open Session)

ADDRESSES: The meeting will be held at the Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Bader, Director, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, Ext. 1215, *Fax:* (703) 681–3317, *Christine.bader@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: Additional information, agenda updates,

and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.* The public is encouraged to register for the meeting.

Purpose of the Meeting

The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

Agenda

On November 1 and 2, 2010, the DHB will receive briefings on military health needs and priorities. The following Defense Health Board Subcommittees will present updates to the Board: Department of Defense Task Force on the Prevention of Suicide by Members of the Armed Forces, Psychotropic Medication and Complementary and Alternative Medicine Use Work Groups, and Military Occupational/ Environmental Health and Medical Surveillance. Additionally, the Board will receive information briefings regarding Walter Reed National Military Medical Center, Joint Pathology Center, the National Intrepid Center of Excellence, the Department of Defense H5N1 Influenza Report, and Department of Defense Response to Evidence-Based Metrics Recommendations. The Board will vote on recommendations regarding proposed revisions to fluid resuscitation in tactical evacuation care.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Defense Health Board meeting on November 1, 2010 from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 5 p.m. and November 2, 2010 from 9 a.m. to 11:45 a.m. and from 12:45 p.m. to 2 p.m. is open to the public.

Written Statements

Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statements should address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (*see* **FOR FURTHER INFORMATION CONTACT**) at any point. If the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by October 22, 2010.

Dated: September 24, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–24429 Filed 9–28–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Missile Defense Agency (MDA), DoD.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Missile Defense Agency (MDA). The publication of PRB membership is required by 5 U.S.C. 4314(C)(4).

DATES: Effective September 3, 2010.

FOR FURTHER INFORMATION CONTACT: Jovey Martir, MDA SES Program Management, Missile Defense Agency, Arlington, Virginia, (703) 693–1568.

SUPPLEMENTARY INFORMATION: The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance scores to the Director, MDA.

In accordance with 5 U.S.C. 4314(C)(4), the following executives are appointed to the Missile Defense Agency PRB:

RDML Randall M. Hendrickson, USN (Chair),
RADM Joseph A. Horn, USN,
Brig Gen Terrence A. Feehan, USAF,
Mr. David Altwegg,
Ms. Nancy Morgan,
Mr. Richard Matlock.

Executives listed will serve a one-year term, effective September 3, 2010.

Dated: September 24, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–24432 Filed 9–28–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Information Systems Agency (DISA). The publication of PRB membership is required by 5 U.S.C. 4314(C)(4).

DATES: Effective October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Rebecca Polansky, DISA SES Program Manager, Defense Information Systems Agency, Arlington, Virginia, (703) 607–4411.

SUPPLEMENTARY INFORMATION: The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance scores to the Director, DISA.

In accordance with 5 U.S.C. 4314(C)(4), the following executives are appointed to the Defense Information Systems Agency PRB:

Major General Ronnie D. Hawkins, Jr., USAF,
John J. Penkoske,
Anthony S. Montemarano,
Paige R. Atkins.

Executives listed will serve a one-year renewable term, effective October 1, 2010.

Dated: September 24, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–24428 Filed 9–28–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Personnel Management Demonstration Project, Department of the Army, Army Research, Development and Engineering Command, Armament Research, Development and Engineering Center (ARDEC); Correction

AGENCY: Office of the Deputy Under Secretary of Defense (Civilian Personnel Policy) (DUSD (CPP)), Department of Defense (DoD).

ACTION: Notice of proposal to design and implement a personnel management demonstration project; correction.

SUMMARY: On September 9, 2010 (75 FR 55199), DoD published a notice concerning the proposed conversion of certain National Security Personnel System (NSPS)-covered employees to a personnel management demonstration project before the end of April 2011. The proposal pertains to NSPS-covered employees at the Army Research, Development and Engineering Command, Armament Research, Development and Engineering Center (ARDEC). Within that notice the descriptors for levels IV and V are incorrect under factor 1–1 and level VI was erroneously added to factor 2–3. This notice corrects those errors.

DATES: Written comments must be submitted on or before October 12, 2010 (*see* the September 9, 2010, notice for details).

FOR FURTHER INFORMATION CONTACT:

ARDEC: Ms. Christina Duncan, U.S. Army ARDEC, Human Capital Management Office, Building 1, 3rd Floor, RDAR–EIH, Picatinny Arsenal, NJ 07806–5000.

DoD: Ms. Betty Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

SUPPLEMENTARY INFORMATION:

Corrections

In the notice published on September 9, 2010, in FR Doc. 2010–22280:

1. On pages 55225 and 55226, in the table under factor 1–1, the entries for descriptor Levels I, II, III, and VI are republished and the entries for descriptor Levels IV and V are corrected to read:

LEVEL DESCRIPTORS	DISCRIMINATORS
Level I • Performs activities on a task; assists supervisor or other appropriate personnel. • Resolves routine problems within established guidelines. • Independently performs assigned tasks within area of responsibility; refers situations to supervisor or other appropriate personnel when existing guidelines do not apply. • Takes initiative in determining and implementing appropriate procedures.	• Scope/Impact • Complexity/Difficulty • Independence • Creativity
Level II • Plans and conducts functional technical activities for projects/programs. • Identifies, analyzes, and resolves complex/difficult problems. • Independently identifies and resolves conventional problems which may require deviations from accepted policies or instructions. • Adapts existing plans and techniques to accomplish complex projects/programs. Recommends improvements to the design or operation of systems, equipment, or processes.	• Scope/Impact • Complexity/Difficulty • Independence • Creativity
Level III • Independently defines, directs, or leads highly challenging projects/programs. Identifies and resolves highly complex problems not susceptible to treatment by accepted methods. • Develops, integrates, and implements solutions to diverse, highly complex problems across multiple areas and disciplines. • Anticipates problems, develops sound solutions and action plans to ensure program/mission accomplishment. • Develops plans and techniques to fit new situations to improve overall program and policies. Establishes precedents in application of problem-solving techniques to enhance existing processes.	• Scope/Impact • Complexity/Difficulty • Independence • Creativity
Level IV • Plans and performs work across a broad range of highly complex activities that require substantial	• Scope/Impact

LEVEL DESCRIPTORS	DISCRIMINATORS
depth of analysis and expertise and/or organizational problem solving skills. The work significantly affects policies/major programs. Actively engages in organizational planning.	
• Resolves critical, multifaceted problems and/or develops new theories or methods that affect the work of other experts, major aspects of management programs, or a large number of people.	• Complexity/Difficulty
• Independently plans and carries out work from general objectives. Work results are considered authoritative. Expertise is recognized both internally and externally.	• Independence
• Uses judgment and ingenuity in making decisions or developing methodologies for areas with substantial uncertainty. Adapts to tasks with changing/competing requirements. Approaches to solving problems require interpretation, deviation from traditional methods, or research of trends and patterns to develop new methods, scientific knowledge, or organizational principles.	• Creativity
Level V	
• Defines, establishes, and directs organizational focus (on challenging and highly complex project/programs). Identifies and resolves highly complex problems that cross organizational boundaries and promulgates solutions. Resolution of problems requires mastery of the field to develop new hypotheses or fundamental new concepts.	• Scope/Impact
• Assesses and provides strategic direction for resolution of mission critical problems, policies, and procedures.	• Complexity/Difficulty
• Works at senior level to define, integrate, and implement strategic direction for vital programs with long-term impact on large numbers of people. Initiates actions to resolve major organizational issues. Promulgates innovative solutions and methodologies.	• Independence
• Works strategically with senior management to establish new fundamental concepts and criteria and stimulate the development of new policies, methodologies, and techniques. Converts strategic goals into programs or policies.	• Creativity
Level VI	
• TBD	

2. On page 55236, in the table under factor 2–3, the entry for descriptor Level VI is removed.

Dated: September 22, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–24427 Filed 9–28–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the United States Marine Corps Basewide Utilities Infrastructure Project at Marine Corps Base Camp Pendleton, CA

AGENCY: Department of the Navy, DoD.

ACTION: Record of Decision.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, 42 United States Code (U.S.C.) Section 4332(2)(c), the regulations of the Council on Environmental Quality (CEQ) for Implementing the Procedural Provisions of NEPA (40 Code of Federal Regulations [CFR] parts 1500–1508), the Department of the Navy (DoN) NEPA regulations (32 CFR part 775), and the Marine Corps Environmental Compliance and Protection Manual, which is Marine Corps Order P5090.2A w/change 2 (MCO P5090.2A), the DoN announces its decision to upgrade and improve the Basewide water, wastewater, electrical, communication, and natural gas systems at Marine Corps Base Camp Pendleton (MCBCP), California as described in Alternative 1, the Preferred Alternative. The Preferred Alternative best meets the purpose and

need for the proposed action in terms of the screening criteria applied, including having the least number of impacts to the environment of the action alternatives and the least impacts to base operations and training.

The proposed action will include the construction, operation, and maintenance of utility infrastructure upgrades, expansions, and improvements within MCBCP. These improvements will include a new tertiary wastewater treatment plant and associated facilities serving the northern portion of MCBCP; upgrades to the Base electrical distribution systems and associated facilities, including replacement of existing 4.16kV and 12kV electrical distribution systems; upgrades to the Basewide communication systems; upgrades to the Basewide natural gas systems; and new water and wastewater facilities and road improvements to Range 130. All practical means to avoid or minimize environmental harm from the selected alternative have been adopted.

SUPPLEMENTARY INFORMATION: The complete text of the Record of Decision is available for public viewing on the project Web site at *http://www.cpp.usmc.mil/base/environmental/index.asp* along with copies of the final Environmental Impact Statement (EIS). For further information, contact the Basewide Utilities Infrastructure EIS Project Manager, 1220 Pacific Highway, San Diego, California 92132–5190. *Telephone:* 619–532–3844.

Dated: September 23, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–24463 Filed 9–28–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will support a retrospective Weatherization Assistance Program Evaluation for Program Years 2007 and 2008. A 60-day notice and request for comments was published in the **Federal Register** on June 9, 2010 (75 FR 32750–32751). No comments were received.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before October 29, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible. Comments should be directed to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503; and

Bruce Tonn, Environmental Sciences Division, Oak Ridge National Laboratory, One Bethel Valley Road, P.O. Box 2008, MS–6038, Oak Ridge, TN 37831–6038, Fax #: (865) 576–8646, *tonnbe@ornl.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to:

Bruce Tonn, Environmental Sciences Division, Oak Ridge National Laboratory, One Bethel Valley Road, P.O. Box 2008, MS–6038, Oak Ridge, TN 37831–6038, Fax #: (865) 576–8646, *tonnbe@ornl.gov.*

The plan for this evaluation can be found at *http://weatherization.ornl.gov.* The surveys and data forms that comprise this emergency information request can also be found at *http://weatherization.ornl.gov.*

SUPPLEMENTARY INFORMATION: This package contains: (1) OMB No.: 1910–5151; (2) Package Title: The Weatherization Assistance Program Evaluation; (3) Type of Review: Regular; (4) Purpose: This collection of information is necessary for a complete evaluation of the program that weatherized approximately 100,000 low-income homes in Program Years 2007 and 2008; (5) Information will be collected from fifty states and Washington, DC, nine hundred local weatherization agencies, approximately one thousand utilities, approximately two thousand three hundred residents, approximately one thousand weatherization staff and approximately 3,000 individuals who receive weatherization training; (6) The estimated burden is 74,051 hours; (7) There are no reporting or recordkeeping cost burdens associated with this request.

Statutory Authority: Section 6861 of title 42 of the United States Code and 10 CFR 440.25 authorize the collection of this information.

Issued in Washington, DC on September 23, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–24406 Filed 9–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before October 29, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503; and

Frank Norcross, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, Fax#: (202) 586–1233, *frank.norcross@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Frank Norcross, EE–2K, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290, Fax#: (202) 586–1233, *frank.norcross@ee.doe.gov*.

Reporting guidance concerning the Energy Efficiency and Conservation Block Grant (EECBG) Program is available for review at the following Web site: *http://www1.eere.energy.gov/wip/recovery_act_guidance.html.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5150; (2) Information Collection Request Title: "Energy Efficiency and Conservation Block Grant (EECBG) Program Status Report" ; (3) Type of Review: Regular; (4) Purpose: To collect information on the status of grantee activities, expenditures, and results, to ensure that program funds are being used appropriately, effectively and expeditiously (especially important for Recovery Act funds); (5) Annual Estimated Number of Respondents: 2,404; (6) Annual Estimated Number 12,504; (7) Annual Estimated Number of Burden Hours: 154,687; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: $5,525,140.

Authority: Title V, Subtitle E of the Energy Independence and Security Act (EISA), PL 110–140.

Issued in Washington, DC on September 23, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–24404 Filed 9–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 10–110–LNG]

Sempra LNG Marketing, LLC; Application for Blanket Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application, filed on September 2, 2010, by Sempra LNG Marketing, LLC (Sempra), requesting blanket authorization to export up to a total of 250 billion cubic feet (Bcf) of foreign sourced liquefied natural gas (LNG) for a two-year period commencing on February 1, 2011. The LNG would be exported from the Cameron LNG Terminal (Cameron Terminal) owned by Sempra's affiliate, Cameron LNG, LLC, in Cameron Parish, Louisiana to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy, over a two-year period commencing on the date of the authorization.

The application was filed under section 3 of the Natural Gas Act (NGA), as amended by section 201 of the Energy Policy Act of 1992. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., Eastern time, October 29, 2010.

ADDRESSES:

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Marc Talbert, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478; (202) 586–7991;

Edward Myers, U.S. Department of Energy, Office of General Counsel, Fossil Energy and Energy Efficiency, Forrestal Building, Room 6B–159, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Sempra, a Delaware limited liability company, is a wholly-owned subsidiary of Sempra LNG, a Delaware corporation. Sempra LNG, through its other subsidiaries, owns and operates LNG receipt and storage terminals in North America, including the Cameron Terminal in Cameron Parish, Louisiana.

Sempra is engaged in the business of purchasing and marketing supplies of LNG. Sempra is a customer of the Cameron Terminal. On June 22, 2010, FE issued DOE/FE Order No. 2806, which granted Sempra blanket authorization to import LNG from various international sources for a two-year period commencing on September 1, 2010.

Current Application

In the instant application, Sempra is seeking blanket authorization to export LNG from the Cameron Terminal that has been previously imported into the United States from foreign sources. Sempra requests this authority over a two-year period in an amount up to 250 billion cubic feet (Bcf) of natural gas. Sempra requests the blanket authorization provide for export to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy.

Sempra states it uses its blanket DOE/FE LNG import authorization and its capacity in the Cameron Terminal to receive, store and send out to domestic markets cargoes of LNG that have been imported from foreign countries. Sempra states that its requested blanket export authorization would provide Sempra the additional option of exporting volumes of foreign-sourced LNG that are not needed to service the domestic market. Sempra states that it is not proposing, and is not seeking authorization to export any domestically produced natural gas or LNG. This application seeks authorization only to export LNG that has been previously imported into the United States.

Sempra asserts that no facility modifications or additions are required in order for Sempra to export foreign-sourced LNG from the Cameron Terminal. FE takes notice that on September 3, 2010, Cameron LNG, LLC, the owner and operator of the Cameron Terminal, filed a petition under section 3(a) of the NGA with the Federal Energy Regulatory Commission to amend the authorizations issued September 11, 2003, in Docket No. CP02–378–000 for the additional purpose of exporting foreign-sourced LNG.

Public Interest Considerations

Sempra states that the requested blanket export authorization will allow Sempra to purchase LNG at prevailing international prices for import to the United States, even when prices in other markets may be higher, by giving it the ability to store LNG at the Cameron Terminal and later sell it in the most competitive market. Sempra states that

this ability to react to changing market conditions by either importing LNG for sale in the United States or importing LNG for subsequent export to other markets will enhance the potential supply and moderate the price of natural gas in the U.S. market. Sempra states that when natural gas supplies are in balance with domestic demand, LNG will be imported and used to supplement domestic natural gas supplies. Sempra states that when there is a surplus of domestic natural gas supplies, as at the present time, there will be the opportunity to import LNG with the ability to later export it to serve other markets. Sempra states that since only foreign-sourced LNG would be exported, the authorization would not negatively affect the availability of domestic natural gas supplies.

In support of its application, Sempra states that Section 3 of the NGA provides that applications to export natural gas to foreign countries will be authorized unless there is a finding that such exports "will not be consistent with the public interest." [1] Sempra states, in reviewing an export application, FE applies the principles set forth in DOE Delegation Order No. 0204–111, which focuses primarily on the domestic need for the gas to be exported and the Secretary of Energy's natural gas policy guidelines.[2] Sempra states that DOE/FE has recently issued blanket LNG export authorizations to other applicants, in each case finding that existing domestic supplies are sufficient to serve U.S. markets, without reliance on imported LNG supplies.

Sempra states that in DOE/FE Order No. 2795, which granted Cheniere Marketing, LLC (Cheniere) blanket authorization to export previously imported foreign-sourced LNG, FE found that "United States consumers presently have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which [Cheniere] seeks to export." [3] Sempra also states that in support of that finding, DOE/FE cited, among other sources, both the DOE 2010 Annual Energy Outlook and additional independently produced publicly available data. Sempra states that in light of the sufficiency and diversity of domestic supplies, and the benefits described above that would result from the ability to export foreign-sourced LNG, Sempra states the requested blanket authorization is consistent with the public interest.

Environmental Impact

Sabine states that no new facilities or modification to any existing facilities at the Cameron Terminal would be required in order for Sempra to export LNG from that facility. Sempra asserts that exports of LNG from the Cameron Terminal also would not increase the number of LNG carriers that the Cameron Terminal is designed and authorized to accommodate. Finally, Sempra states that approval of this application would therefore not constitute a federal action significantly affecting the human environment within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00I (Nov. 10, 2009) and DOE Redelegation Order No. 00–002.04D (Nov. 6, 2007). In reviewing this LNG export application, DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

You may submit comments in electronic form on the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the on-line instructions. Submit comments under FE Docket No. 10–110–LNG. DOE/FE suggests that you carefully review information provided in your submission, and include only information that you want publicly disclosed. You may not electronically file a protest, motion to intervene or notice of intervention, but may do so using the following process to submit these filings.

In response to this notice, any person may file a protest, motion to intervene or notice of intervention and written comments, as provided in DOE's regulations at 10 CFR part 590.301, *et seq.* Any person wishing to become a party to the proceeding and to have their written comments considered as a basis for any decision on the application must file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to the application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments shall be filed with the Office of Oil and Gas Global Security and Supply at the address listed above.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The application filed by Sempra is available for inspection and copying in the Office of Oil and Gas Global Security and Supply docket room, 3E–042, at the above address. The docket room is open between the hours of 8

[1] 15 U.S.C. 717b.

[2] *See* 49 FR 6684, February 22, 1984.

[3] *Cheniere,* DOE/FE Order No. 2795, June 1, 2010 at 7.

a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.* In addition, any electronic comments filed will also be available at: *http://www.regulations.gov.*

Issued in Washington, DC, on September 23, 2010.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2010–24389 Filed 9–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) (the Act). The Act requires that agencies publish these notices in the **Federal Register**. The Charter of the Commission can be found at: *http://www.OilSpillCommission.gov.*

DATES: Wednesday, October 13, 2010, 1 p.m.–4:45 p.m.

ADDRESSES: The Westin Grand, 2350 M Street, NW., Washington, DC 20037; telephone number: (202) 429–0100.

FOR FURTHER INFORMATION CONTACT: Christopher A. Smith, Designated Federal Officer, Mail Stop: FE–30, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–0716 or facsimile (202) 586–6221; *e-mail: BPDeepwaterHorizon Commission@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The President directed that the Commission be established to examine the relevant facts and circumstances concerning the root cause of the BP Deepwater Horizon explosion, fire, and oil spill and to develop options to guard against, and mitigate the impact of, any oil spills associated with offshore drilling in the future.

The Commission is composed of seven members appointed by the President to serve as special Government employees. The members were selected because of their extensive scientific, legal, engineering, and environmental expertise, and their knowledge of issues pertaining to the oil and gas industry. Information on the Commission can be found at its Web site: *http://www.OilSpillCommission.gov.*

Purpose of the Meeting: To discuss relevant facts and circumstances concerning the root causes of the Deepwater Horizon explosion, fire, and oil spill, and options to guard against, and mitigate the impact of, any oil spills associated with offshore drilling in the future.

Tentative Agenda: The meeting is expected to start on October 13, 2010, at 1 p.m. Commission discussions are expected to begin shortly thereafter and will conclude at approximately 4 p.m. Public comments can be made tentatively from 4:15 p.m. to 4:45 p.m. The final agenda will be available at the Commission's Web site: *http://www.OilSpillCommission.gov.*

Public Participation: The meeting is open to the public. Seats will be available on a first-come, first-serve basis. An overflow room will be available with a live video feed of the meeting. Those not able to attend the meeting may view the meeting live on the Commission's Web site: *http://www.OilSpillCommission.gov.* The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Approximately thirty minutes will be reserved for public comments. Time allotted per speaker will be three minutes. Opportunity for public comment will be available on October 13 *tentatively* from 4:15 p.m. to 4:45 p.m. Registration for those wishing to request an opportunity to speak opens onsite at noon on October 13.

Speakers will register to speak on a first-come, first-serve basis. Members of the public wishing to provide oral comments are encouraged to provide a written copy of their comments for collection at the time of onsite registration.

Those individuals who are not able to attend the meeting, or who are not able to provide oral comments during the meeting, are invited to send a written statement to Christopher A. Smith, Mail Stop FE–30, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or e-mail: *BPDeepwaterHorizionCommission@hq.doe.gov.* This notice is being published less than 15 days before the date of the meeting due to a national emergency.

Minutes: The minutes of the meeting will be available at the Commission's Web site: *http://www.OilSpillCommission.gov* or by contacting Mr. Smith. He may be reached at the postal or e-mail addresses above.

Accommodation for the hearing impaired: A sign language interpreter will be onsite for the duration of the meeting.

Issued in Washington, DC on September 24, 2010.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2010–24390 Filed 9–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–486–000]

Colorado Interstate Gas Company; Notice of Intent To Prepare An Environmental Assessment for the Proposed Spruce Hill Air Blending Project and Request for Comments on Environmental Issues

September 21, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Spruce Hill Air Blending Project involving construction and operation of facilities by Colorado Interstate Gas Company (CIG) in Douglas County, Colorado. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the **scoping period will close on October 21, 2010**.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about

the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice CIG provided to landowners. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

CIG proposes to construct and operate a new air blending station in Douglas County, Colorado. The Spruce Hill Air Blending Project would increase CIG's firm natural gas transportation capacity to 50,000 dekatherms per day (Dth/day) to meet contractual agreements with Black Hills Utility Holdings, Inc. (Black Hill) as a result of Black Hill's anticipated demand growth. According to CIG, its project would reduce the input factor of the gas to a level that conforms to the gas quality specifications in CIG's Tariff for its existing Valley Line, to which the blended gas would be discharged.

The Spruce Hill Air Blending Project would consist of the following:

- An air blending compressor station (the Spruce Hill Air Blending Station) containing a 215–, a 390–, and a 500–horsepower air compressor;
- A back-pressure regulator;
- Air blending controls and instrumentation;
- A gas heater;
- Auxiliary facilities and piping;
- Modifications to the existing Spruce Hill Meter Station;
- An interconnection at the air blending station between the existing Spruce Hill Meter Station and CIG's existing Line No. 212A; and
- A powerline connection within CIG's 35-acre parcel.

The general location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 5.5 acres of land for the air blending station and its auxiliary facilities. Following construction, about 3.3 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses. All construction would occur within a 35-acre land parcel owned by CIG.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Colorado State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

Washington, DC on or before **October 21, 2010**.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP10–486–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. **If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).**

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-Filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at **(866) 208–FERC**, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits, in the Docket Number field (*i.e.,* CP10–486). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

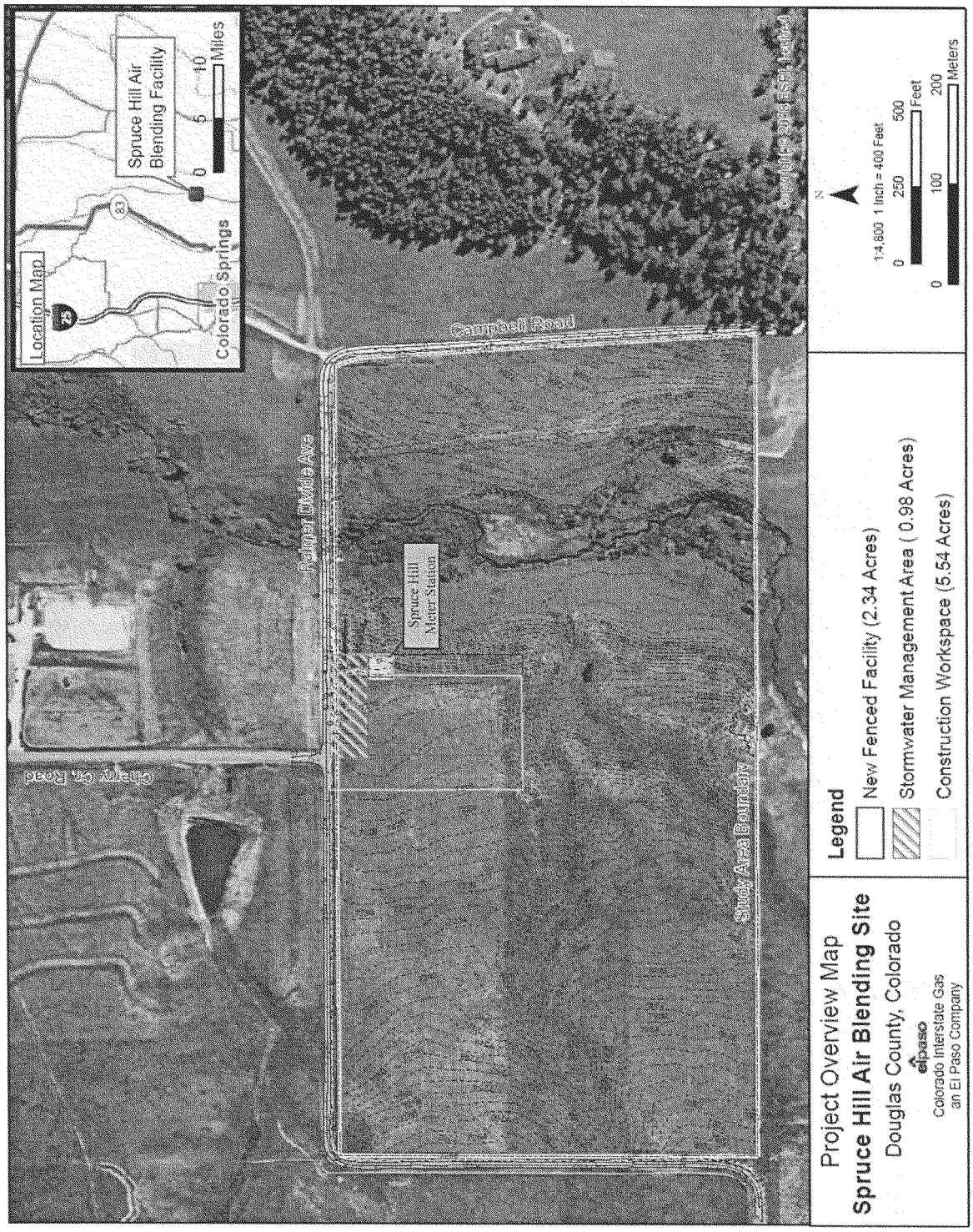
Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

BILLING CODE 6717–01–P

Appendix 1


Location Map
Colorado Springs
83
Spruce Hill Air Blending Facility
0 5 10 Miles
Chatty Ch. Road
Palmer Divide Ave
Campbell Road
Spruce Hill Meter Station
Study Area Boundary
Copyright © 2008 ESRI, Inc.
N
1:4,800 1 Inch = 400 Feet
0 250 500 Feet
0 100 200 Meters
Project Overview Map
Spruce Hill Air Blending Site
Douglas County, Colorado
elpaso
Colorado Interstate Gas
an El Paso Company
Legend
New Fenced Facility (2.34 Acres)
Stormwater Management Area (0.98 Acres)
Construction Workspace (5.54 Acres)

Appendix 2

INFORMATION REQUEST

Spruce Hill Air Blending Project

Name_____

Agency_____

Address_____

City_____**State**_____ **Zip Code**_____

☐ **Please send me a paper copy of the published NEPA document**

☐ **Please remove my name from the mailing list**

FROM_____

_____

_____

_____

ATTN: OEP - Gas 1, PJ – 11.1
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Docket No. CP10-486
Spruce Hill Air Blending Project

Staple or Tape Here

[FR Doc. 2010–24233 Filed 9–28–10; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Western Area Power Administration

South Dakota PrairieWinds Project (DOE/EIS–0418)

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Record of Decision and Floodplain Statement of Findings.

SUMMARY: The Western Area Power Administration (Western) received two requests from Basin Electric Power Cooperative (Basin Electric); one to interconnect their proposed South Dakota PrairieWinds Project (Proposed Project) and one to interconnect the South Dakota Wind Partners, LLC's (Wind Partners') proposed development to Western's transmission system. The U.S. Department of Agriculture, Rural Utilities Service (RUS), also received a request from Basin Electric for financial assistance for the Proposed Project. RUS is a joint lead agency in the Environmental Impact Statement (EIS) process.

The Proposed Project includes a 151.5-megawatt (MW) nameplate capacity wind-powered energy generation facility that would feature 101 wind turbine generators; 6,000 square-foot operations and maintenance building and fence perimeter; 64 miles of underground communication system and electrical collector lines (within the same trench); 34.5-kilovolt (kV) to 230-kV collector substation and microwave tower; 11 mile-long overhead 230-kV transmission line; temporary equipment/material storage or lay-down areas; temporary batch plant; temporary crane walks; and 81 miles of new and/or upgraded service roads to access the facilities. Wind Partners' proposed development would include the installation of an additional seven turbines within the Crow Lake Alternative and use a portion of the other facilities described for the Proposed Project. Through an agreement between Basin Electric and Wind Partners, Basin Electric would construct, operate, and maintain the Wind Partners' proposed development.

Western considered the interconnection requests under the provisions of its Open Access Transmission Service Tariff (Tariff), along with the information in the EIS and all comments received, and has made the decision to allow both of Basin Electric's requests to interconnect at Western's existing Wessington Springs Substation.

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Liana Reilly, National Environmental Policy Act (NEPA) Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228; telephone (800) 336–7288 or e-mail *sdprairiewinds@wapa.gov* for additional information concerning the Proposed Project and Wind Partners' proposed development.

For general information on the Department of Energy's (DOE) NEPA review process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (800) 472–2756.

For information on RUS financing, contact Mr. Dennis Rankin, Project Manager, Engineering and Environmental Staff, Rural Utilities Service, Utilities Program, 1400 Independence Avenue, SW., Mail Stop 1571, Washington, DC 20250–1571, telephone (202) 720–1953 or e-mail *dennis.rankin@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Western is a Federal agency within the DOE that markets and transmits wholesale electrical power through an integrated 17,000-mile, high-voltage transmission system across 15 western states.

Western received two requests from Basin Electric; one to interconnect the Proposed Project and one to interconnect the Wind Partners' proposed development, to Western's transmission system. The Proposed Project and the Wind Partners' proposed development are located within Western's Upper Great Plains Region, which operates and maintains nearly 100 substations and nearly 7,800 miles of Federal transmission lines in Minnesota, South Dakota, North Dakota, Montana, Nebraska, and Iowa.

Western and RUS published a Notice of Intent (NOI) to prepare an EIS on April 7, 2009, (74 FR 15718). A Notice of Availability of the Draft EIS was published by the United States Environmental Protection Agency (EPA) on January 15, 2010 (75 FR 2540), and a Notice of Availability of the Final EIS was published by the EPA on July 30, 2010 (75 FR 44951).

Western's Purpose and Need

Western's need for action is triggered by Basin Electric's interconnection requests. Western's Tariff describes the conditions necessary for access to its transmission system. Western provides an interconnection if there is available capacity on the transmission system, while considering transmission system reliability and power delivery to existing customers, and the applicant's objectives.

Western's Proposed Action

Western's Federal involvement, under the provisions of the Tariff, is limited to consideration of Basin Electric's interconnection request for their Proposed Project and the interconnection request for the Wind Partners' proposed development. Western's Proposed Action is to interconnect the Proposed Project and Wind Partners' proposed development to Western's transmission system. This involves adding electrical equipment to the Wessington Springs Substation and making other minor system modifications within the substation.

Basin Electric's Purpose and Need

Public policy regarding the electric industry has increasingly focused on the carbon intensity of the resources commonly used to generate electricity. As a result, incentives and regulations to encourage or require the generation of power from renewable or low-environmental-impact resources are being actively considered and/or implemented within the Basin Electric member service areas. With members in nine States, Basin Electric recognizes the need for additional renewable energy capacity to service forecasted member load-growth demands and to meet State-mandated RPS. In addition, Basin Electric membership passed a resolution at their 2005 annual meeting that established a goal to, "obtain renewable or environmentally benign resources equal to 10 percent of the MW capacity needed to meet its member demand by 2010."

Basin Electric's 2007 Power Supply Analysis (PSA) provided an in-depth look at Basin Electric's current operating system, future load growth and the framework for future expansion, including both supply-side and demand-side resource expansion. All future expansion portfolios include wind energy development. Basin Electric determined that a 151.5–MW wind farm would be the best available, least-cost renewable resource energy generation option to meet the State-mandated RPS and renewable energy objective (REO), meet Basin Electric's renewable energy goal established in 2005, and serve forecasted member load-growth demands. With the addition of 151.5 MW from the Proposed Project, Basin Electric would be able to meet the REO requirements for those States that currently have them.

Basin Electric's Proposed Project

The Proposed Project includes a 151.5–MW nameplate capacity wind-powered energy generation facility that would feature 101 wind turbine generators, operations and maintenance building and fence perimeter, underground communication system and electrical collector lines (within the same trench), collector substation and microwave tower, overhead transmission line, temporary equipment/material storage or lay-down areas, temporary batch plant, temporary crane walks, and new and/or upgraded service roads to access the facilities.

Wind Partners' Purpose and Need

The Wind Partners' proposed development would enable local community involvement and investment in wind projects. The proposed development would also help meet the State of South Dakota's voluntary REO of 10 percent.

Wind Partners' Proposed Development

The Wind Partners' proposed development would include the installation of an additional seven turbines within the Crow Lake Alternative and use a portion of the other facilities described for the Proposed Project. Through an agreement between Basin Electric and Wind Partners, Basin Electric would construct, operate, and maintain the Wind Partners' proposed development.

Alternatives Considered

The EIS reviewed the options considered by Basin Electric in its *PrairieWinds—SD 1 Alternative Evaluation Analysis and Site Selection Study* (PrairieWinds Study). The PrairieWinds Study determined a wind project to be the best available, least-cost renewable resource option to satisfy future load and RPS requirements. Western has no decision-making authority over these options. Western's Federal involvement is limited to the determination of whether to allow the interconnections of the Proposed Project and the Wind Partners' proposed development. For the purposes of furthering environmental decision making, the EIS analyzed three alternatives: No Action Alternative, Crow Lake Alternative, and Winner Alternative.

No Action Alternative

Under the No Action Alternative, Western would deny the interconnection request(s) and RUS would not provide financial assistance for the Proposed Project. For the purpose of impact analysis and comparison in the EIS, it was assumed that the Proposed Project and Wind Partners' proposed development would not be built and the environmental impacts, both positive and negative, associated with construction and operation would not occur. However, Basin Electric is a regulated utility with load growth responsibility and a need to meet RPSs, REOs, and renewable energy goals; therefore, it is reasonable to expect that it would construct a similar generation facility elsewhere in South Dakota. Such a facility might not interconnect to a Federal transmission system, involve Federal financing, or have any other Federal nexus that would require a NEPA process.

Crow Lake Alternative

The Crow Lake Alternative is located on approximately 36,000 acres approximately 15 miles north of the City of White Lake, South Dakota, within Aurora, Brule, and Jerauld counties, and would interconnect with Western's Wessington Springs Substation, located in Jerauld County, South Dakota. The Proposed Project includes a 151.5–MW nameplate capacity wind-powered energy generation facility that would feature 101 wind turbine generators; 6,000 square-foot operations and maintenance building and fence perimeter; 64 miles of underground

communication system and electrical collector lines (within the same trench); 34.5-kV to 230-kV collector substation and microwave tower; 11 mile-long overhead 230-kV transmission line; equipment/material storage or lay-down areas (temporary impact of 10 acres); batch plant (temporary impact of 8 acres); crane walks (temporary impact of 254.6 acres); and 81 miles of new and/or upgraded service roads to access the facilities. Wind Partners' proposed development would include the installation of an additional seven turbines within the Crow Lake Alternative and share use of a small portion of the other facilities described for the Proposed Project. Through an agreement between Basin Electric and Wind Partners, Basin Electric would construct, operate, and maintain the Wind Partners' proposed development. The Crow Lake Alternative would result in a temporary impact to 1,006 acres and permanent impact to 190 acres.

Winner Alternative

The Winner Alternative is located on an approximately 83,000-acre area entirely within Tripp County, approximately eight miles south of the City of Winner, South Dakota, and would interconnect with Western's Winner Substation, located in Tripp County, South Dakota. The Proposed Project would be similar to that described for the Crow Lake Alternative with the following exceptions: it includes 108 miles of underground communication system and electrical collector lines (within the same trench); 34.5-kV to 115-kV collector substation and microwave tower; a 10 to 11 mile-long overhead 115-kV transmission line; equipment/material storage or lay-down areas (temporary impact of 40 acres); crane walks (temporary impact of 530 acres); and117 miles of new and/or upgraded service roads to access the facilities. The Winner Alternative would result in a temporary impact to 3,187 acres and permanent impact to 261 acres. The Wind Partners' proposed development does not pertain to the Winner Alternative.

Environmentally Preferred Alternative

As required by 40 CFR 1505.2(b), Western has identified the No Action Alternative as the environmentally preferred alternative. Under this alternative, Western would deny the interconnection requests and not modify its transmission system to interconnect the Proposed Project and Wind Partners' proposed development and it was assumed for the EIS that the associated environmental impacts would not occur. However, Western must respond to Basin Electric's interconnection requests under the terms of the Tariff. The Tariff and underlying Federal Energy Regulatory Commission (FERC) orders mandating open access to transmission systems establish conditions under which interconnection requests must be considered (FERC Order Nos. 888 and 888–A).

Agency Preferred Alternative

Western's Tariff provides open access to its transmission system. If there is available capacity in the transmission system, Western provides transmission services through an interconnection. Transmission studies completed for the Crow Lake Alternative demonstrate that transmission capacity is available for the Proposed Project through an interconnection at Western's existing Wessington Springs Substation without the need to expand the substation. Facility expansion may be required at Western's Winner Substation to accommodate interconnecting the Winner Alternative. Since transmission capacity is available for the Crow Lake Alternative and transmission studies have demonstrated that system reliability and service to existing customers would not be jeopardized, and taking into account the environmental impacts, the interconnection at Western's Wessington Springs Substation was identified as Western's preferred alternative in the Final EIS.

Environmental Impacts

The analysis in the Final EIS demonstrated that the Proposed Project and Wind Partners' proposed development (at the Crow Lake Alternative) would have no impacts or less than significant impacts on geology and soils, water, land use (including farmland and recreation), transportation, visual resources, noise, socioeconomics, environmental justice, cultural resources, and health and safety. Expected impacts on other environmental resources are discussed below. The analysis in the Final EIS also demonstrated that Western's proposed action would have no impacts or less than significant impacts to all resources since modifications required for the interconnection would be confined to the existing Wessington Springs Substation.

Air Quality and Climate Change

Carbon dioxide (CO_2) is one of six greenhouse gases (GHGs) that contribute to climate change and represents approximately 84 percent of all GHG emissions in the United States. Wind power generates electricity without air emissions, including CO_2. Within South Dakota, CO_2 emissions resulting from fossil fuel combustion totaled 13.78 million tons in 2007; of these, activities related to the generation of electric power accounted for 2.96 million tons of CO_2. Further, operation of the Proposed Project and Wind Partners' proposed development would avoid 726,600 metric tons of CO_2 emissions per year compared to the average emissions of fossil fueled generating stations employed in South Dakota; thus, would contribute to the national and State efforts to minimize GHG emissions. This amount avoided is equal to the annual CO_2 emissions of approximately 130,000 average passenger cars.

Biology

Avian mortality from collisions with turbines would likely occur. Data obtained through baseline avian use surveys and local habitat characterization suggest that avian mortality rates are likely to be similar to or lower than those experienced at other United States wind farms. Based on the anticipated low level of mortality and incorporation of Best Management Practices (BMPs), Applicants' Proposed Measures (APMs), Operations and Monitoring Plan (OMP), and voluntary conservation measures for habitat offsets, impacts to birds would be less than significant. Based on existing avian use data from the Crow Lake Alternative, bird fatalities are expected to be low compared with other wind facilities around the United States.

Bat mortality from collisions with turbines would likely occur. Some researchers have concluded that observed mortality rates do not have population-level effects, and no significant difference has been noted in mortality rates at lit and unlit turbines. Preliminary data from bat call studies in 2009 indicate low bat activity in the Crow Lake Alternative; therefore, the frequency of collisions may be low based on recently collected bat data. Additionally, the incorporation of APMs, BMPs, and an OMP would minimize impacts to bats.

Public Involvement

An NOI describing the proposed action was published in the **Federal Register** on April 7, 2009 (74 FR 15718). The NOI announced the intent to prepare an EIS on the Proposed Project, described the proposal, provided scoping meeting locations and dates, started a 30-day comment period, and provided contacts for further information about the Proposed Project and for submitting scoping comments.

The public scoping meetings were held at Winner, South Dakota, on April 28, 2009, and at Plankinton, South Dakota, on April 29, 2009. Western and RUS held an interagency meeting in Pierre, South Dakota, on April 28, 2009. A total of 77 written comment documents from agencies and individuals were received during the scoping period; these comments were addressed in the Draft EIS.

A Notice of Availability of the Draft EIS was published by the EPA in the **Federal Register** on January 15, 2010 (75 FR 2540). Western and RUS held an interagency meeting in Pierre, South Dakota, on February 11, 2010. A public hearing to receive comments on the Draft EIS was held in Chamberlain, South Dakota, on February 11, 2010. Comments from three individuals were transcribed for the record during the public hearing and 30 written comment documents were received from agencies and individuals. Substantive, factual, and editorial comments were incorporated and addressed in the Final EIS; other comments not affecting the substance of the document have been noted.

The EPA published the Notice of Availability of the Final EIS on July 30, 2010. The 30-day review period ended on August 30, 2010. Two comments were received on the Final EIS (*see* below for response to comments on Final EIS).

Mitigation Measures

Through public and agency participation in the NEPA process, Basin Electric has altered the design of the Proposed Project and Wind Partners' proposed development to minimize impacts to the environment. As described in Chapter 2 of the Final EIS, the Proposed Project and Wind Partners' proposed development include APMs, BMPs, OMP, and voluntary conservation measures for habitat offsets to minimize, monitor, and/or mitigate environmental impacts. Generally, the APMs and BMPs represent standard measures to minimize impacts associated with construction and operation. The OMP provides a framework for post-construction wildlife monitoring for whooping cranes, bird and bat mortality, grassland breeding birds, and avian use. Basin Electric included voluntary conservation measures to offset indirect impacts to wetland and grassland habitat; the offsets included compensation for 76.7 acres of wetland habitat and 675 acres of grassland habitat and were developed in coordination with the U.S. Fish and Wildlife Service (USFWS). Furthermore, Basin Electric has committed to identify potential effects of the Proposed Project and Wind Partners' proposed development on birds and bats and to use the results of their 3-year Bird and Bat Fatality Monitoring to identify and incorporate, to the extent practicable, measures to minimize bird and bat mortality.

Western's authority is limited to mitigation associated with the interconnection of the Proposed Project and the Wind Partners' proposed development. Western will adhere to its own standard mitigation measures for all modifications within Wessington Springs Substation.

Consultation

Western is the lead Federal agency for compliance with section 106 of the National Historic Preservation Act (16 U.S.C. 479(f)). By letter of June 30, 2010, the South Dakota State Historic Preservation Officer concurred with the determination of No Adverse Effect based on the stipulations outlined in the Memorandum of Understanding entitled "Memorandum of Understanding among Western Area Power Administration, Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Flandreau Santee Sioux Tribe, Fort Peck Tribes, Lower Brule Sioux Tribe, Lower Sioux Indian Community, Oglala Sioux Tribe, Rosebud Sioux Tribe, Santee Sioux Tribe, Sisseton-Wahpeton Dakota Nation, Standing Rock Sioux Tribe, Spirit Lake Tribal Council, Three Affiliated Tribes, Upper Sioux Indian Community, Yankton Sioux Tribe, Wahpetkute Band of the Dakota, the South Dakota State Historic Preservation Officer, and Basin Electric Power Cooperative, regarding Treatment of Archaeological and TCP Historic Properties for the South Dakota Prairie Winds Project." Western will ensure that the provisions outlined in the MOU are implemented.

RUS is the lead Federal agency for compliance with section 7 of the Endangered Species Act (16 U.S.C. 1536). On February 18, 2010, a Biological Assessment was prepared and submitted with a determination that the Proposed Project and Wind Partners' proposed development would not likely affect the piping plover and is likely to adversely affect the whooping crane. The USFWS concurred via a March 16, 2010, letter with RUS's determination that the Proposed Project is not likely to adversely affect the piping plover and is likely to adversely affect the whooping crane. In the Biological Opinion dated July 13, 2010, the USFWS concluded that, "after reviewing the current status of the whooping crane, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service's biological opinion that the SDPW project [the Proposed Project and Wind Partners' proposed development] is not likely to jeopardize the continued existence of the whooping crane. Critical habitat for the whooping crane has been designated in other areas within the species' range but not in the action area nor in South Dakota; therefore, destruction or adverse modification of critical habitat will not occur." Section 7 consultation has concluded and the Biological Opinion identified that no terms and conditions or reasonable and prudent measures are required for the Proposed Project and Wind Partners' proposed development.

Floodplains and Wetlands

In accordance with 10 CFR Part 1022, Western considered the potential impacts of the Proposed Project and Wind Partners' proposed development on floodplains and wetlands. The Federal Emergency Management Agency has not mapped flood hazards in the unincorporated areas of Brule and Jerauld counties. Aurora County has been mapped and is designated as Zone D (*i.e.,* areas with possible but undetermined flood hazards, no flood hazard analysis has been conducted). Impacts to floodplains would be negligible because components would not be located in the areas that are the most prone to flooding (streams and wetlands [see below for wetland determination]), the impact area represents a small and dispersed footprint (190 acres spread across the 36,000 acre site), and engineering design and controls would minimize risk to and/or from flooding.

Field investigations were conducted to verify National Wetland Inventory (NWI) wetlands and map the actual location of wetlands within the Crow Lake Alternative. Wetlands that were field-verified (not NWI wetlands) were used in the impact analysis because (1) they were identified in the field as opposed to NWI wetlands that are identified on maps and not field-verified, and (2) field-verified wetlands accounted for a larger, more conservative, acreage than NWI wetlands. In addition, wetlands (including jurisdictional, non-jurisdictional and waters of the U.S., collectively termed "wetlands") were delineated for the Crow Lake Alternative. Basin Electric has committed to a voluntary conservation measure to offset 76.7 acres of indirect impact (*i.e.,* species avoidance effects) to wetland habitat. As currently

designed, the Proposed Project would have no temporary or permanent direct impacts to wetlands.

Some of the Proposed Project components have been adjusted based on engineering and resource issues since the original surveys were completed; therefore, additional wetland delineations will be completed within impact areas after final design with the intent that all wetlands will be identified and avoided. Upon final design, if wetlands cannot be avoided, further coordination will occur between Basin Electric and the U.S. Army Corps of Engineers (USACE). Basin Electric would obtain the necessary permit(s) under Section 404 of the Clean Water Act (33 U.S.C. 1344) and mitigate for impacts prior to construction.

A similar wetland delineation process will be conducted for the Wind Partners' proposed development, prior to the start of construction, in accordance with USACE standard protocols to identify and avoid wetlands. If final engineering results in layout modifications, then additional delineations will be performed within the final impact areas to identify wetlands that require minor project facility re-routes such that wetlands will be avoided. Although not anticipated, if impacts to wetlands (including jurisdictional waters of the U.S. [collectively termed "wetlands"]) are unavoidable, then Basin Electric would obtain a section 404 Permit through the USACE.

Comments on Final EIS

Western received comments from the EPA in a letter dated August 26, 2010, and comments from the USFWS through the U.S. Department of the Interior (DOI) in a letter dated August 27, 2010. Based on a review of these comments, Western has determined that the comments do not present any significant new circumstances or information relevant to environmental concerns and bearing on the Proposed Project or Wind Partners' proposed development or associated impacts, and thus a Supplemental EIS is not required. The basis for this determination is summarized below.

EPA noted that the Final EIS addressed many of their concerns on the Draft EIS, including cumulative impacts and protection of wetlands. Additionally, EPA recommended that the ROD require that wetlands be avoided and describe how this will be implemented; outline how Basin Electric will comply with the State's construction stormwater permit and Storm Water Pollution Prevention Plan requirements; and outline how roads and project features will be maintained to minimize or prevent erosion and/or stormwater runoff. Basin Electric has committed to avoiding wetlands and has modified the locations of Proposed Project components in accordance with this commitment (see above for wetland determination). The State of South Dakota issued Basin Electric a General Permit for Storm Water Discharges Associated with Construction Activities on July 30, 2010. Basin Electric will comply with this and all other State and Federal laws and regulations. Basin Electric has conducted geotechnical investigations and will consider compaction requirements for backfill, depth to the saturated zone, slope, erosion potential, and other similar factors in the engineering design of roadways and other project area features. Grading, drainage, roadway, and other project area feature designs will be engineered to manage runoff, and minimize/prevent erosion. Long-term stability of restored temporary disturbance areas and areas with permanent installations will be managed in accordance with the APMs and BMPs.

DOI's letter provided the following recommended corrections and offsetting measures: correct and clarify acres of affected habitat (wetland easements); prepare a voluntary Avian and Bat Protection Plan (ABPP) in coordination with USFWS; and include recurring costs of managing habitat offset lands. The following provides clarification on the potential impacts to USFWS wetland and grassland easements. The Final EIS correctly notes that the USFWS administers wetland easements within 15 parcels in the Crow Lake Alternative. Geospatial data for the locations of wetland easements was obtained from USFWS; per this data, the agencies included the entire area of the parcels in their assessment of wetland easement area estimates (2,718 acres within the project boundary or 2,836 acres including the full area for those parcels that are bisected by the project boundary). DOI's letter provided clarification that the wetland easements pertain only to the protected wetland basins within a portion of these parcels and portions of the parcels containing wetland easements are actually unprotected upland areas. Components of the Proposed Project and Wind Partners' proposed development located within parcels containing USFWS wetland easements would be located in the unprotected upland areas of these parcels. The correct impact estimate is that, while there would be a temporary impact of 120 acres and a permanent impact of 22 acres within the unprotected upland portions of parcels containing wetland easements, the Proposed Project and Wind Partners' proposed development would result in no temporary or permanent impacts to USFWS wetland easements. As stated in the Biological Opinion, "Refuges has worked with Basin and has determined that there are sites for project facilities that would have an acceptably minimal impact on the wildlife resources of the area."

The DOI letter provided a recommendation that an ABPP be prepared in coordination with USFWS before project operations commence and that the ABPP provide a process whereby the results of the OMP, "will be used to identify and incorporate, to the extent practicable, measures to minimize bird and bat mortality." DOI also noted that an ABPP and Adaptive Management Plan were identified during prior stages of EIS development, but were excluded from the Final EIS. As stated in Appendix F of the Final EIS (Comment and Response), the term ABPP was used incorrectly in the Draft EIS and was replaced with the OMP, which is specific to the Proposed Project and Wind Partners' proposed development, in the Final EIS. Basin Electric is preparing an ABPP per the Avian Protection Plan Guidelines, developed in part by USFWS. The ABPP is a corporate level document that is not specific to the Proposed Project and is not yet complete. The OMP contains project-specific construction requirements, post-construction monitoring, and reporting requirements. Furthermore, Basin Electric has committed to identify potential effects of the Proposed Project and Wind Partners' proposed development on birds and bats and to use the results of their 3-year Bird and Bat Fatality Monitoring from the OMP to identify and incorporate, to the extent practicable, measures to minimize bird and bat mortality.

The DOI letter also provided a recommendation to ensure that all lands for both temporary and permanent habitat impacts are offset and include a source of funds for both acquisition and recurring management. The agencies and Basin Electric had discussions with USFWS on April 6, 2010, regarding compensatory mitigation and habitat offsets. Through a voluntary process, Basin Electric included conservation measures to offset indirect impacts to wetland and grassland habitat; the offsets included compensation for 76.7 acres of wetland habitat and 675 acres of grassland habitat and were developed in coordination with the USFWS.

Decision

Western's decision is to allow Basin Electric's requests for interconnection at the Wessington Springs Substation in South Dakota and to complete modifications to the substation to support the interconnections.[1] Western's decision to grant these interconnection requests satisfies the agency's statutory mission and Basin Electric's objectives while minimizing harm to the environment. Two interconnection agreements will be executed in accordance with Western's Tariff.

Basin Electric has committed to minimize the Proposed Project and Wind Partners' proposed development impact on the environment through design and incorporation of APMs, BMPS, OMP, and voluntary conservation measures for habitat offsets as described in Chapter 2 of the Final EIS and summarized above. The Proposed Project and Wind Partner's proposed development employ all practicable means to avoid or minimize environmental harm. Furthermore, Basin Electric has committed to use the results of their 3-year Bird and Bat Fatality Monitoring from the OMP to identify and incorporate, to the extent practicable, measures to minimize bird and bat mortality. Western will adhere to its own standard mitigation measures for all modifications within Wessington Springs Substation. Western will ensure that the stipulations of the MOU are executed in support of section 106 of the NHPA in carrying out its decision.

This decision is based on the information contained in the South Dakota PrairieWinds Project Final EIS (DOE/EIS–0418). The EIS and this ROD were prepared pursuant to the requirements of the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR Parts 1500–1508), DOE Procedures for Implementing NEPA (10 CFR Part 1021), and DOE's Floodplain/Wetland Review Requirements (10 CFR Part 1022). Full implementation of this decision is contingent upon the Proposed Project and Wind Partners' proposed development obtaining all applicable permits and approvals.

Dated: September 21, 2010.

Timothy J. Meeks,

Administrator.

[FR Doc. 2010–24388 Filed 9–28–10; 8:45 am]

BILLING CODE 6450–01–P

[1] Western's authority to issue a record of decision for integrating transmission facilities is pursuant to authority delegated on October 4, 1999, from the Assistant Secretary for Environment, Safety and Health to Western's Administrator.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0682; FRL–9207–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for Petroleum Refinery Sector New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Residual Risk and Technology Review; EPA ICR No. 2411.01, OMB Control No. 2060—NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this action announces that EPA is planning to submit a new Information Collection Request to the Office of Management and Budget. Before submitting the Information Collection Request to the Office of Management and Budget for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0682, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Phone:* (202) 566–1742.
- *Fax:* (202) 566–9744.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0682. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Mr. Bob Lucas, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–0884; *fax number:* (919) 541–0246; *e-mail address: lucas.bob@epa.gov;* or Ms. Brenda Shine, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–3608; *fax number:* (919) 541–0246; *e-mail address: shine.brenda@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this Information Collection Request (ICR) under Docket ID No. EPA–HQ–OAR–2010–0682, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to Paperwork Reduction Act (PRA) section 3506(c)(2)(A), EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). In particular, EPA is requesting comments from small entities (small businesses primarily engaged in refining crude petroleum into refined petroleum as defined by North American Industry Classification System (NAICS) code 32411 whose parent company has no more than 1,500 employees) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for small entities affected by this collection.

What information collection activity or ICR does this apply to?

Affected entities: Respondents affected by this action are owners/operators of petroleum refineries, all of which are expected to be major sources of hazardous air pollutants (HAP).[1] Petroleum refineries are facilities engaged in refining and producing products made from crude oil or unfinished petroleum derivatives. Based on the *Energy Information Administration's Refinery Capacity Report 2009,* there are 152 operable petroleum refineries in the United States (U.S.) and the U.S. territories. We are aware that some refineries have integrated operations between two nearby, but non-contiguous, locations. Therefore, the questionnaire asks the refining companies to identify their refineries according to the definition of "facility" in the Clean Air Act (CAA), which could result in more than 152 responses. Petroleum refineries are located in 35 States, as well as Puerto Rico and the U.S. Virgin Islands. Texas, Louisiana, and California are the States with the most petroleum refining capacity. The NAICS code for respondents affected by the information collection is 32411.

Title: Information Collection Request for Petroleum Refinery Sector New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Residual Risk and Technology Review.

ICR numbers: EPA ICR No. 2411.01, *OMB Control No.* 2060–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: On March 8, 1974, the EPA issued Standards of Performance for Petroleum Refineries (40 CFR part 60, subpart J) under section 111 of the CAA. On August 18, 1995, the EPA issued NESHAP for petroleum refineries (40 CFR part 63, subpart CC) under section 112 of the CAA. On April 11, 2002, the EPA issued NESHAP for catalytic cracking units, catalytic reforming units, and sulfur recovery units at petroleum refineries (40 CFR part 63, subpart UUU) under section 112 of the CAA. This ICR is being conducted by EPA's Office of Air and Radiation to assist the EPA Administrator in determining the current affected population of petroleum refining processes and the emissions from those processes in order to evaluate whether to revise the existing emissions standards pursuant to sections 111(b), 112(d), and 112(f)(6) of the CAA.

Section 111(b)(1)(B) of the CAA mandates that EPA review and, if appropriate, revise existing NSPS every 8 years. The Standards of Performance for Petroleum Refineries were reviewed in 2008, and EPA promulgated amendments to the existing standards of performance and developed separate standards of performance for new process units (40 CFR part 60, subpart Ja). However, the Agency received and granted a number of petitions for reconsideration related to those standards. Similarly, section 112(f)(2) of the CAA directs EPA to conduct risk assessments on each source category subject to maximum achievable control technology (MACT) standards and determine if additional standards are needed to reduce residual risks. The CAA section 112(f)(2) residual risk review is to be done once, within 8 years of promulgation of the MACT standard. Section 112(d)(6) of the CAA requires EPA to review and revise the MACT standards, as necessary, taking into account developments in practices, processes, and control technologies. The CAA section 112(d)(6) technology review is to be done every 8 years.

The proposed ICR has two components: (1) A questionnaire to be completed by all 152 petroleum refineries, and (2) emissions testing to be performed for 92 selected emissions sources. To obtain the information necessary to identify and categorize all units potentially affected by any future revision to a standard, the first component of this ICR will solicit information from all potentially affected units in the format of an electronic survey under authority of section 114 of the CAA. This survey will include questions about the facility and individual emissions sources, and will ask the owners/operators to develop and provide an emissions inventory, submit cost data, provide copies of recent emissions test reports and continuous emission monitoring system (CEMS)/continuous monitoring system (CMS) data, and conduct crude oil sampling and analysis. As previously noted, all refineries are major sources of HAP, so the survey will be submitted to all facilities listed in the *Energy Information Administration's Refinery*

[1] As defined in 40 CFR 63.2, "*Major source*" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

Capacity Report 2009. The second component will consist of requiring emissions testing, again pursuant to the authority of section 114 of the CAA. A total of 92 individual emission sources will be selected for testing, and the owners and operators of each emission source will be notified of the requirement to test that source in accordance with an EPA-approved testing protocol.

By conducting the CAA-required reviews of both 40 CFR part 63, subparts CC and UUU, and addressing a number of the issues on reconsideration of 40 CFR part 60, subpart J/Ja all at the same time, EPA can make use of a single collection of information to consider control strategies that are the most effective for HAP, which are regulated under CAA section 112, and criteria air pollutants (such as particulate matter, sulfur dioxide, and nitrogen oxide), which are regulated under CAA section 111, and consider if additional amendments are appropriate to the CAA section 111 standards in light of this information and interaction with the CAA section 112 standards. The data would also allow EPA to evaluate compliance options for startup and shutdown periods, and consider ways to consolidate monitoring, reporting and recordkeeping requirements among the different rules under review. The data may also help EPA conduct reviews of other rules specific to petroleum refineries, including Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries (40 CFR part 60, subpart GGG), Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems (40 CFR part 60, subpart QQQ), and National Emission Standard for Benzene Waste Operations (40 CFR part 61, subpart FF).

This one-time collection will solicit information under authority of CAA section 114. The EPA intends to provide the survey in electronic format. The survey will be sent to all facilities identified as petroleum refineries through information available to the Agency. EPA envisions allowing recipients 90 days to respond to the survey and 6 months to complete emissions testing, if required. Non-confidential information from this ICR will be made available to the public. EPA estimates the total cost of the information collection (for 152 respondents) will be 47,000 hours and $23 million, which includes $912 in operation and maintenance (O&M) costs for postage for mailing hard copy test reports and confidential survey responses to EPA.

The data collected will be used to update facility and emissions source information, develop new estimates of the population of affected units, and identify the control measures and alternative emission limits being used for compliance with the existing rules that are under review. This information, along with existing emission limits, will be used to establish a baseline for purposes of the regulatory reviews. The emissions test data (test reports, CEMS data, and CMS data) collected will be used to verify the performance of existing control measures, examine variability in emissions, evaluate emission limits, determine the performance of the most effective control measures considered for purposes of reducing residual risk, and provide a basis for estimating nationwide emissions from emissions sources for which EPA has little information. Emissions data will also be used, along with process and emission unit details, to consider options for best demonstrated technology under the NSPS review, consider subcategories for further regulation, and estimate the environmental and cost impacts associated with any regulatory options considered.

The CAA requires sources subject to this collection of information to submit the information requested. All information submitted to EPA pursuant to this ICR for which a claim of confidentiality is made, is safeguarded according to Agency policies in 40 CFR part 2, subpart B. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Burden Statement: The projected cost and hour burden for industry for this one-time collection of information is $23 million and 47,000 hours. This burden is based on an estimated 152 respondents to the survey. This ICR does not include any requirements that would cause the respondents to incur either capital or start-up costs. The O&M costs of $912 are estimated for postage to mail hard copy test reports and confidential survey responses to EPA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here.

Estimated total number of potential respondents: 152 facilities.

Frequency of response: One time.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 47,000.

Estimated total annual burden costs: $23 million. This includes an estimated burden cost of $7.8 million for the electronic survey component and an estimated cost of $15 million for the stack testing component.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 10, 2010.

Peter Tsirigotis,

Director, Sector Policies and Programs Division.

[FR Doc. 2010–24424 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0761; FRL–8845–3]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1–day consultation meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review scientific issues associated with pesticide exposure models and climate change. The purpose of the meeting is for the Agency to seek advice on models for predicting human and ecological exposures to pesticides that might be appropriate to account for the effects of climate change.

DATES: The meeting will be held on December 7, 2010, from approximately 8:30 a.m. to 5 p.m.

Comments. The Agency encourages that written comments be submitted by November 23, 2010 and requests for oral comments be submitted by November 30, 2010. However, written comments and requests to make oral comments may be submitted until the date of the meeting, but anyone submitting written comments after November 23, 2010, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Nominations. Nominations of candidates to serve as ad hoc members of FIFRA SAP for this meeting should be provided on or before October 13, 2010.

Webcast. This meeting may be webcast. Please refer to the FIFRA SAP's website, *http://www.epa.gov/scipoly/SAP*, for information on how to access the webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

Comments. Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0761, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility 's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions. Direct your comments to docket ID number EPA–HQ–OPP–2010–0761. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

Nominations, requests to present oral comments, and requests for special accommodations. Submit nominations to serve as ad hoc members of FIFRA SAP, requests for special seating accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–3327; fax number: (202) 564–8382; e-mail address: *jenkins.fred@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action

to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
2. 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.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

C. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2010–0761 in the subject line on the first page of your request.

1. *Written comments*. The Agency encourages that written comments be submitted, using the instructions in **ADDRESSES**, no later than November 23, 2010, to provide FIFRA SAP the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after November 23, 2010, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT.** Anyone submitting written comments at the meeting should bring 30 copies for distribution to FIFRA SAP.

2. *Oral comments*. The Agency encourages that each individual or group wishing to make brief oral comments to FIFRA SAP submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than November 30, 2010, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of FIFRA SAP may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as ad hoc members of FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, FIFRA SAP staff routinely solicits the stakeholder community for nominations of prospective candidates for service as ad hoc members of FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas:

1. Cropping and agricultural practices to discuss how these practices have changed or may be impacted by climate change.
2. Climate change prediction approaches within the U.S. to discuss how exposure models could take future meteorological conditions into account.
3. Pest ecology to discuss how climate changes may affect pest control needs, including incidence of carriers of vector borne diseases and changes in pest pressure in agriculture.

Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before October 13, 2010. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency except the EPA. Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 10 ad hoc scientists.

FIFRA SAP members are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on the FIFRA SAP will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on FIFRA SAP. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP

members participating at this meeting will be posted on the FIFRA SAP website at *http://epa.gov/scipoly/sap* or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

II. Background

A. Purpose of FIFRA SAP

FIFRA SAP serves as the primary scientific peer review mechanism of EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) and is structured to provide scientific advice, information and recommendations to the EPA Administrator on pesticides and pesticide-related issues as to the impact of regulatory actions on health and the environment. FIFRA SAP is a Federal advisory committee established in 1975 under FIFRA that operates in accordance with requirements of the Federal Advisory Committee Act. FIFRA SAP is composed of a permanent panel consisting of seven members who are appointed by the EPA Administrator from nominees provided by the National Institutes of Health and the National Science Foundation. FIFRA, as amended by FQPA, established a Science Review Board consisting of at least 60 scientists who are available to the SAP on an ad hoc basis to assist in reviews conducted by the SAP. As a peer review mechanism, FIFRA SAP provides comments, evaluations and recommendations to improve the effectiveness and quality of analyses made by Agency scientists. Members of FIFRA SAP are scientists who have sufficient professional qualifications, including training and experience, to provide expert advice and recommendation to the Agency.

B. Public Meeting

The Agency recognizes that climate change will affect parts of its core mission. To achieve its core mission, EPA's Office of Pesticide Programs (OPP) assessment methodologies must continue to provide high quality science-based predictions of the risks from exposure to pesticides. OPP is in the early stages of examining how well existing assessment tools may perform in light of climate change and if any modifications are needed to respond to changes in climate. OPP's initial effort is to examine its exposure models.

EPA assesses pesticide exposure to people from the food and water they consume and from the pesticides they use or otherwise come in contact within and around the home, public areas and occupational settings. EPA also assesses environmental exposure to terrestrial and aquatic species. In assessing exposures to pesticides, EPA uses many peer reviewed models and methodologies.

OPP has reviewed most of its human and ecological exposure models used to assess exposure to conventional pesticides to explore which inputs and parameters may be affected by changing climatic conditions. Of the reviewed exposure assessment tools, OPP selected two human and two ecological models commonly used by OPP as case studies to illustrate the Agency's approach for considering the potential effects of climate change on the Agency's exposure estimates. Based on the reviews the Agency has reached some preliminary conclusions.

The purpose of this consultation is to seek the SAP's advice on the approach used by OPP to examine its exposure models' performance in light of climate change and on OPP's preliminary conclusions resulting from this review. The Agency is also seeking advice on sources of information or research that may inform identified gaps in our knowledge.

C. FIFRA SAP Documents and Meeting Minutes

EPA's background paper, related supporting materials, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and ad hoc members for this meeting), and the meeting agenda will be available by mid-November 2010. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, at *http://www.regulations.gov* and the FIFRA SAP homepage at *http://www.epa.gov/scipoly/sap*.

FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP website or may be obtained from the OPP Regulatory Public Docket at *http://www.regulations.gov*.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 22, 2010.

Frank Sanders,

Director, Office of Science Coordination and Policy.

[FR Doc. 2010–24433 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0001; FRL–8847–2]

SFIREG Full Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/State FIFRA Issues Research and Evaluation Group (SFIREG), Environmental Quality Issues (EQI) Committee will hold a 2-day meeting, beginning on October 27, 2010, and ending October 28, 2010. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Wednesday, October 27, 2010 from 8:30 a.m. to 5 p.m. and 8:30 a.m. to 12 noon on Thursday, October 28, 2010.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA. One Potomac Yard (South Bldg.), 2777 Crystal Dr., Arlington VA., 4th Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5561 *fax number:* (703) 308–1850; *e-mail address: kendall.ron@epa.gov.* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford DE 19963; *telephone number* (302) 422–8152; *fax* (302) 422–2435; *e-mail address:* Grier Stayton at *aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How can I get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2010–0001. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

II. Background

1. SFIREG/EQI letter re: environmental and human health benchmarks.
2. EPA use of monitoring data vs. use of modeling outputs in registration review process.
3. Endangered Species—bulletins update, possible rulemaking procedure, new biological opinions.
4. Bed bugs: "One State's Experience", EPA taskforce update, misuse of pesticide products, proposed next steps.
5. Water quality Pesticide Regulatory Education Program (PREP) update.
6. Water quality PREP—National Pollution Discharge Elimination System (NPDES) discussions.
7. NPDES permit update—rollout, feedback and comments, EPA responses, NPDES/FIFRA Workgroup meeting, next steps.
8. Pesticide Of Interest Tracking System (POINTS) database—reporting and use update.
9. OPP and OECA updates.
10. Office of Water updates—Drinking water strategy.
11. Status of deleted and under-review pesticides (endosulfan, atrazine), pyrethoids and pyrethrins reevaluation, chlorpyrifos lawsuit, and usefulness to the states of Study Profile Templates for pesticide registration applications?
12. Canary software—detect intentional or unintentional contamination in drinking water systems.

II. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification. Non EPA attendees will need to be signed in at lobby security and escorted to the fourth floor meeting room.

List of Subjects

Environmental protection.

Dated: September 17, 2010.

Kevin Keaney,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2010–24435 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0935; FRL–8804–7]

Pesticide Science Policy; Notice of Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA announces the withdrawal of the pesticide science policy document "Use of the Pesticide Data Program (PDP) in Acute Risk Assessment." In estimating dietary exposure to pesticides, the Agency uses a variety of data and different models. This science policy document was developed to explain a particular statistical methodology, known as decomposition, for using information from the U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP) in risk assessments of acute exposure to pesticide residues in food. EPA is withdrawing this policy because EPA has been using a less resource-intensive and generally comparable method of analyzing data on pesticide residues. This action is in response to the recommendations made by EPA's Office of Inspector General during its review of EPA's implementation of the Food Quality and Protection Act (FQPA). In its report "Opportunities to Improve Data Quality and Children's Health through the FQPA" issued January 10, 2006, the Office of Inspector General recommended that EPA should update the status of its Science Policy issue papers. This **Federal Register** notice updates the public on the status of one of those papers. EPA is withdrawing this policy because EPA has been using a less resource-intensive and generally comparable method of analyzing data on pesticide residues.

FOR FURTHER INFORMATION CONTACT: David J. Miller, Health Effects Division, Office of Pesticide Programs (7509P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5352; fax number: (703) 305-5147; e-mail address: *miller.davidj@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action, however, may be of interest to persons who produce or formulate pesticides or who register pesticide products. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0935. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

II. Discussion

A. Background on the Food Quality Protection Act of 1996

The Food Quality Protection Act of 1996 (FQPA) significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure and strengthened

health protections for infants and children from pesticide risks.

During 1998 and 1999, EPA and the U.S. Department of Agriculture (USDA) established a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the Tolerance Reassessment Advisory Committee (TRAC), to address FFDCA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states, and other interested groups. The TRAC met from May 27, 1998, through April 29, 1999.

As a result of the 1998 and 1999 TRAC process, EPA decided that the FQPA implementation process and related policies would benefit from providing notice and comment on the major science policy issues. The TRAC identified nine science policy areas it believed were key to implementation of tolerance reassessment. EPA agreed to provide an opportunity for public comment on each of the nine issues by announcing their availability in the **Federal Register**. In a notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA described its intended approach. Since then, EPA has issued a series of draft and revised documents concerning the nine science policy issues. Publication of today's notice is intended to update the public on the status of the science paper "Use of the Pesticide Data Program (PDP) in Acute Risk Assessment."

B. EPA's Use of a Decomposition Methodology for Acute Dietary Risk Assessment

In May 1999, EPA published the policy paper "Use of the Pesticide Data Program (PDP) in Acute Risk Assessment" (*http://www.epa.gov/fedrgstr/EPA-PEST/1999/May/Day-26/p13034.htm*) for public comment. This science policy document was developed to explain a particular statistical methodology, known as decomposition, for using information from the U.S. Department of Agriculture's (USDA) PDP in risk assessments of acute exposure to pesticide residues in food. The PDP tests commodities in the U.S. food supply for pesticide residues. The decompositing methodology consists of extrapolating from data on pesticide residues in composite samples of fruits and vegetables to residue levels in single units of fruits and vegetables.

Prior to publishing this policy, EPA policy did not use PDP residue data in acute dietary exposure assessments because of a concern that using these composite results could produce exposure estimates that would be biased low, underestimating high-end pesticide residues, and therefore would be inappropriate for human health risk assessments. Using a decompositing methodology could address these concerns.

OPP consulted the FIFRA Scientific Advisory Panel (SAP) in 1999 and 2000 on a variety of decomposition methodologies and technical issues surrounding the use of those methodologies. The SAP reports from those meetings are available at: *http://www.epa.gov/scipoly/SAP/meetings/1999/may/final.pdf* and *http://www.epa.gov/scipoly/sap/meetings/2000/february/partialfinalreport06292000.pdf*. The SAP recommended that the Agency use decompositing and stated that "for acute dietary exposure estimation, it is the residues in single items of produce that are of interest rather than "average" residues measured in composited samples." The Panel concluded that overall, a methodology called MaxLIP was the preferred method, but recommended additional studies and validation using actual individual samples of residues to develop a more complete understanding of methods of analysis.

For a time, OPP incorporated decomposition into risk assessment of acute exposure to pesticide residues in food. However, due to the time-consuming nature of the analysis, combined with the perception that utilizing decomposition was not making much of a difference in terms of risk estimates, the practice was discontinued. OPP has continued to evaluate the impact of conducting acute dietary risk assessments using residue levels measured in composite samples versus residue levels estimated to be present in decomposited samples. The key question has been the degree to which use of composite samples may underestimate risk at the high end of the exposure distribution. This assessment, though still exploratory, confirms OPP's initial impression that decomposition does not have a critical influence on the risk assessment. While, as expected, the results vary for each pesticide-commodity combination, findings suggest that use of composite residues may result in estimated exposures that are reasonably similar to those resulting from single-units (i.e., decomposited results).

III. International Interest in Working Together on Dietary Risk Assessment Analysis

EPA's evaluation of the impact of decompositing is ongoing. Currently, EPA is in the process of comparing results from the decomposition methodology to a method known as the "variability factor" used in other countries, including the member States in the European Union. EPA anticipates working collaboratively with the European Union, through the European Food Safety Authority (EFSA), to share data, to better characterize the differences between the two methodologies, and to better understand the risk assessment and risk management implications. EPA believes that seeking to develop a globally harmonized approach in this aspect of dietary risk assessment will benefit all involved by increasing understanding and facilitating the sharing of data as well as the assessments derived from those data. In addition, the process will facilitate better understanding and resolutions of trade questions and issues that may result from differences in approach.

IV. Withdrawing this Science Policy is Responsive to EPA's Office of Inspector General's Recommendations

This action is responsive to the recommendations made by EPA's Office of Inspector General during its review of EPA's implementation of FQPA. In its report "Opportunities to Improve Data Quality and Children's Health through the FQPA" issued January 10, 2006, *http://www.epa.gov/oig/reports/2006/20060110-2006-P-00009.pdf*, the Office of Inspector General recommended that EPA should update the status of its Science Policy issue papers. This **Federal Register** notice updates the public on the status of one of the Science Policy papers.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 22, 2010.

Steve A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–24307 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0248; FRL–8845–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective March 28, 2011, unless the Agency receives a written withdrawal request on or before March 28, 2011. The Agency will consider a withdrawal request postmarked no later than Mach 28, 2011.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before March 28, 2011.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2010–0248, by one of the following methods:

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0367; e-mail address: *green.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2010–0248. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Active Ingredient	Delete from Label
228–675	Nufarm Diquat SPC 2 L Herbicide	Diquat dibromide	Soybeans and Sorghum
1381–190	Sterling Herbicide	Benzoic acid	Cotton and Rest Areas
10163–196	Prefar 4E	Bensulide	Residential Uses
10163–198	Prefar 4E	Bensulide	Residential Uses
10163–199	Prefar 4E	Bensulide	Residential Uses
10163–200	Prefar 4E	Bensulide	Field Grown Flowers, Bulbs, Ornamentals and Tank Mix Recommendation with Alanap
10163–204	Prefar 4E	Bensulide	Residential Uses
34688–76	Aquatreat DNM-30	Nabam and Sodium dimethyldithiocarbamate	Fuel Oils, Lubricating Oils and Hydraulic Fluids in Marine Environments
67064–2	Admiral Liquid	Acid Blue 9	Fish Farms and Fish Hatcheries
82633–2	Sharda Diquat Concentrate	Diquat dibromide	Sorghum (seed crop only) and Soybean (seed crop only)
83529–13	Diquash Ag	Diquat dibromide	Sorghum (seed crop only) and Soybean (seed crop only)

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before March 28, 2011 to discuss withdrawal of the application for amendment. This 180–day period

will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
228	Nufarm Americas, Inc. 150 Harvester Drive Suite 200 Burr Ridge, IL 60527
1381	Winfield Solutions, LLC. P.O. Box 64589 MS 5705 St. Paul, MN 55164–0589
10163	Gowan, Co. P.O. Box 5569 Yuma, AZ 85366–5569
34688	Akzo Nobel Surface Chemistry, LLC. 7140 Heritage Village Plaza Gainesville, VA 20156
67064	Becker Underwood, Inc. 801 Dayton Avenue Ames, IA 50010
82633	Sharda Worldwide Exports Pvt Ltd. 7460 Lancaster Pike Suite 9 Hockessin, DE 19707
83529	Sharda USA, LLC. 7460 Lancaster Pike Suite 9 Hockessin, DE 19707

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Christopher Green using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than March 28, 2011.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 21, 2010.

Oscar Morales,

Director, Information Technology and Resouurces Management Division, Office of Pesticide Programs.

[FR Doc. 2010–24314 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0796; FRL–8847–6]

Biopesticides Registration Review Final Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's final registration review decisions for the pesticides listed in the table in Unit II.A. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without causing unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

FOR FURTHER INFORMATION CONTACT: *For pesticide–specific information, contact:* The person listed for the specific pesticide of interest provided in the table in Unit II.A., Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

For general information on the registration review program, contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5026; *fax number:* (703) 308–8090; *e-mail address: costello.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed for the specific pesticide of interest provided in the table in Unit II.A.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit II.A. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

A. What action is the Agency taking?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's final registration review decisions for the pesticides shown in the following table.

Capsaicin is a naturally occurring polymer that comprises the principal active element of chili peppers (genus Capsaicum). Capsaicin is used as a fungicide, insect repellent and

vertebrate animal repellent. Use sites are indoor and outdoor terrestrial uses. Applications are residential, commercial and when applied as a defensive repellent, circumstantial.

Garlic oil is the volatile oil extracted from the bulb of the garlic plant or the entire plant. Garlic oil is used as a repellent for the control of insects, mites, birds, deer, rabbits and squirrels and is registered for use on terrestrial food and feed such as vegetables, fruits, nuts, and grains. Garlic oil is also registered for use on terrestrial non-food crops such as ornamental plants and shrubs.

Registration review case name and No.	Pesticide docket ID No.	Chemical review manager, telephone No., e-mail address
Capsaicin (4018)	EPA–HQ–OPP–2009–0121	Chris Pfeifer 703–308–0031 *pfeifer.chris@epa.gov*
Garlic Oil (4007)	EPA–HQ–OPP–2009–0113	Cheryl Greene 703–308–0352 *greene.cheryl@epa.gov*

Pursuant to 40 CFR 155.57, a registration review decision is the Agency's determination whether a pesticide meets, or does not meet, the standard for registration in FIFRA. EPA has considered capsaicin and garlic oil in light of the FIFRA standard for registration. The pesticides listed above Final Decision documents in the dockets listed above describe the Agency's rationale for issuing a registration review final decision for these pesticides.

In addition to the final registration review decision document, the registration review docket for capsaicin and garlic oil also includes other relevant documents related to the registration review of this case. The proposed registration review decision was posted to the docket and the public was invited to submit any comments or new information. During the 60–day comment period, no public comments were received.

Pursuant to 40 CFR 155.58(c), the registration review case docket for capsaicin and garlic oil will remain open until all actions required in the final decision have been completed.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review.* Links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm.*

B. What is the Agency's authority for taking this action?

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Registration review, Pesticides and pests, Capsaicin and Garlic Oil.

Dated: September 22, 2010.

W. Michael McDavit,

Acting Director, Biopesticide and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–24431 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0118; FRL–8846–5]

Registration Review; Biopesticides Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before November 29, 2010.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM

you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide-specific information contact:* The Regulatory Action Leader (RAL) identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5026; *fax number:* (703) 308–8090; *e-mail address: costello.kevin @epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. Environmental Justice

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What action is the agency taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

Registration review case name and No.	Docket ID No.	Regulatory action leader, telephone No., e-mail address
Beauveria bassiana (6057)	EPA–HQ–OPP–2010–0564	Shanaz Bacchus, (703) 308–8097, *bacchus.shanaz@epa.gov.*
Egg Solids (4079)	EPA–HQ–OPP–2010–0726	Cheryl Greene, (703) 305–7928, *greene.cheryl@epa.gov.*

Registration review case name and No.	Docket ID No.	Regulatory action leader, telephone No., e-mail address
Indole-3-butyric acid (IBA) (2330) ...	EPA–HQ–OPP–2010–0608	Colin G. Walsh, (703) 308–0298, *walsh.colin@epa.gov.*
Phenethyl propionate (3110)	EPA–HQ–OPP–2010–0714	Cheryl Greene, (703) 305–7928, *greene.cheryl@epa.gov.*

B. Docket Content

1. Review Dockets

The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. Other Related Information

More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's Web site at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. Information Submission Requirements

Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 23, 2010.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–24436 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010-0032; FRL–8838–5]

Registration Review; Antimicrobial Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before November 29, 2010.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless

the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide-specific information contact*: The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Lance Wormell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0523; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration

review dockets for the cases identified in the following table.

REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Terbuthylazine	EPA–HQ–OPP–2010-0453	Eliza Blair (703) 308–7279 *blair.eliza@epa.gov*
Copper-8-Quinolinolate	EPA–HQ–OPP–2010-0454	Rebecca von dem Hagen (703) 305–8314 *vondem-hagen.rebecca@epa.gov*
Naphthenate Salts (Copper Naphthenate and Zinc Naphthenate)	EPA–HQ–OPP–2010-0455	Monisha Harris (703) 308–0410 *harris.monisha@epa.gov*

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

• An overview of the registration review case status.

• A list of current product registrations and registrants.

• **Federal Register** notices regarding any pending registration actions.

• **Federal Register** notices regarding current or pending tolerances.

• Risk assessments.

• Bibliographies concerning current registrations.

• Summaries of incident data.

• Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Antimicrobials, Copper naphthenate, Copper-8-quinolinolate, Naphthenate salts, Pesticides and pests, Terbuthylazine, Zinc naphthenate.

Dated: August 4, 2010.

Jennifer L. McLain,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2010–24317 Filed 9–28–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 23, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small

business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 29, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1060.

Title: Wireless E911 Coordination Initiative Letter.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local or tribal government.

Number of Respondents and Responses: 50 respondents; 50 responses.

Estimated Time Per Response: 0.75 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. sections 1, and 4(i).

Total Annual Burden: 38 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This expiring information collection will be submitted to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. There is no change in the reporting requirement. There is no change in the Commission's burden estimates since the last time this collection was submitted to OMB.

This voluntary collection was implemented in a letter that was sent, following the FCC's Second E911 Coordination Initiative, to pertinent State officials who have been appointed to oversee their States' programs to implement emergency (E911) Phase II service. This collection is necessary so that the Commission can correct inaccuracies and have up–to–date information to ensure the integrity of the Commission's database of Public Safety Answering Points (PSAPs) throughout the nation. The accurate compiling and maintaining of this database is an inherent part of the Commission's effort to achieve the expeditious implementation of E911 service across the nation and to ensure homeland security.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–24355 Filed 9–28–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 23, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 29, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0360.

Title: Section 80.409, Station Logs.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 18,876 respondents, 18,876 responses.

Estimated Time Per Response: 27.3 – 95 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 151 – 155, 301– 609, 3 UST 3450, 3 UST 4726, 12 UST 2377.

Total Annual Burden: 533,458 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring collection after this comment period to obtain the three year clearance approval from the Office of Management and Budget (OMB). The Commission is reporting no change in the recordkeeping requirement. However, the Commission is reporting a 41,050 hour burden reduction which is due to fewer respondents (1,583 fewer respondents).

The recordkeeping requirements contained in Section 80.409 is necessary

to document the operation and pubic correspondence service of public coast radiotelegraph, public coast radiotelephone stations and Alaska–public fixed stations, ship radiotelegraph, ship radiotelephone and applicable radiotelephone including the logging of distress and safety calls where applicable.

Section 80.409(c), Public Coast Station Logs: This requirement is necessary to document the operation and public correspondence of public coast radiotelegraph, public coast radiotelephone stations, and Alaska public–fixed stations, including the logging of distress and safety calls where applicable. Entries must be made giving details on all work performed which may affect the proper operation of the station. Logs must be retained by the licensee for a period of two years from the date of entry, and, where applicable, for such additional periods such as logs relating to a distress situation or disaster must be retained for three years from the date of entry in the log. If the Commission has notified the licensee of an investigation, the related logs must be retained until the licensee is specifically authorized in writing to destroy them. Logs relating to any claim or complaint of which the station licensee has notice must be retained until the claim or complaint has been resolved or barred by statute limiting the time for filing suits upon such claims.

Section 80.409(d), Ship Radiotelegraph Logs: Logs of ship stations which are compulsorily equipped for radiotelegraphy and operating in the band 90 to 535 kHz must contain specific information in log entries according to this subsection.

Section 80.409(e), Ship Radiotelephone Logs: Logs of ship stations which are compulsorily equipped for radiotelephony must contain specific information in applicable logs entries and the time of their occurrence. This subpart was slightly modified to include reference to upgraded technology, i.e., Global Maritime Distress and Safety Systems (GMDDS) equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–24356 Filed 9–28–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

DATES: Thursday, October 14, 2010, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of the economic outlook and condition of the industry, an overview of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the evolving deposit insurance assessment system, deposit insurance coverage and advertising rules, mitigating systemic risk and the FDIC's new resolution authority, consumer protection and compliance issues as well as hot topics in risk management. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet at *http://www.vodium.com/goto/fdic/communitybanking.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed Internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 2010–24419 Filed 9–28–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011328–002.

Title: Toko Line/Shinwa Space Charter and Cooperative Working Agreement.

Parties: Shinwa Kaiun Kaisha, Ltd. and Toko Kaiun Kaisha, Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 2040 Main Street, Suite 850; Irvine, CA 92616.

Synopsis: The amendment changes the name of Shinwa to NS United Kaiun Kaisha, Ltd.

Agreement No.: 200233–016.

Title: Lease and Operating Agreement between Philadelphia Regional Port Authority and Astro Holdings, Inc.

Parties: Philadelphia Regional Port Authority and Astro Holdings, Inc.

Filing Parties: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW.; Washington, DC 20036.

Synopsis: The amendment revises the break bulk cargo provisions and fees.

Agreement No.: 201048–006.

Title: Lease and Operating Agreement between Philadelphia Regional Port Authority and Delaware River Stevedores, Inc.

Parties: Philadelphia Regional Port Authority and Delaware River Stevedores, Inc.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW.; Tenth Floor; Washington, DC 20036.

Synopsis: The amendment allows for a temporary waiver of dockage fees on Rickmers-Linie vessels calling at the Tioga Marine Terminal from May 1, 2010 to December 31, 2010.

Agreement No.: 201062–003.

Title: Lease and Operating Agreement between PRPA and Penn City Investments, Inc.

Parties: Penn City Investments, Inc.; and Philadelphia Regional Port Authority

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1000 Connecticut Avenue, NW.; Washington, DC 20036.

Synopsis: The amendment adjusts minimum cargo fees provided certain conditions are met.

By Order of the Federal Maritime Commission.

Dated: September 24, 2010.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–24411 Filed 9–28–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

LICENSE NUMBER: 003555F.

NAME: Thomas Griffin International, Inc.

ADDRESS: 15903 Kent Ct., Tampa, FL 33647.

DATE REVOKED: September 9, 2010.

REASON: Surrendered license voluntarily.

LICENSE NUMBER: 019206NF.

NAME: Fun N Stuff International USA, Inc. dba Air Ocean Land Transport Logistics Inc.

ADDRESS: 13169 Alta Vista Way, Sylmar, CA 91342.

DATE REVOKED: September 16, 2010.

REASON: Surrendered license voluntarily.

LICENSE NUMBER: 020934N.

NAME: D.L. International Logistics Inc.

ADDRESS: 3500 NW 115th Avenue, Doral, FL 33178.

DATE REVOKED: August 23, 2010.

REASON: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–24407 Filed 9–28–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Aaron P.B. Production Corporation (NVO & OFF), 501 New County Road, Secaucus, NJ 07094, Officers: Mariusz Piwowarczuk, Vice President (Qualifying Individual), Czeslaw Golaszewski, Dir./Pres./Sec./Treas., Application Type: New NVO & OFF License

Aerocosta Global Group, Inc. dba Aerocosta Global Systems Inc. (NVO), 2463 208th Street, #205, Torrance, CA 90501, Officers: Edward H. Lee, Secretary (Qualifying Individual), Darren Kim, Chairman/President/CFO, Application Type: New NVO License

Baron Worldwide, Inc. (OFF), 5282 S. Newton Street, Littleton, CO 80123, Officers: Misha B. Schryer, President, Jim Stewart, Secretary/Treasurer, (Qualifying Individuals), Application Type: QI Change

BYTR International, Inc. (NVO & OFF), 13152 Rivergate Trail West, Jacksonville, FL 32223, Officer: Bahtiyar Yurdakul, President/Secretary/Treasurer (Qualifying Individual), Application Type: Add NVO Service

Interchez Global Services, Inc. (NVO & OFF), 600 Alpha Parkway, Stow, OH 44224, Officers: Radhika Mulastanam, Vice President Marketing (Qualifying Individual), Sharlene Chesnes, EVP/COB/EVP/Secretary, Application Type: QI Change

IAL Container Line (USA) Inc. (NVO & OFF), 50 Cragwood Road, Suite 115, South Plainfield, NJ 07080, Officers: Peter George, Vice President (Qualifying Individual), Arjun Menon, Director, Application Type: QI Change

LTA Import & Export, Inc. (NVO & OFF), 14331 SW 120th Street, #203, Miami, FL 33186, Officers: Eric E. Diaz, Director of Sales & Marketing (Qualifying Individual), Annette Trimino, President, Application Type: New NVO & OFF License

Max Intertrade, Inc. (OFF & NVO), 4471 N.W. 36th Street, #203, Miami, FL 33166, Officer: Maite Rodriguez-Blanco, President/Secretary/Treasurer (Qualifying Individual), Application Type: Add NVO Service

Montgomery International Inc. (OFF), 341 Erickson Avenue, P.O. Box 124, Essington, PA 19029, Officers: Ari M. Bobrow, Export Manager (Qualifying Individual), Jimmy Montgomery, President, Application Type: New OFF License

Myunghe Choi dba World Express Shipping (NVO), 4733 Torrance Blvd., #187, Torrance, CA 90503, Officer: Myunghe Choi, Sole Proprietor (Qualifying Individual), Application Type: New NVO License

Praxis SCM, LLC (NVO & OFF), 5725 Paradise Drive, #1000, Corte Madera, CA 94925, Officers: Chuck Patton, Vice President (Qualifying Individual), George W. Pasha, IV, Member/President/CEO, Application Type: New NVO & OFF License

RDD Freight International (Dallas) Inc. (OFF), 3400 Silverstone Drive, #190, Plano, TX 75023, Officers: Shan Sun, President (Qualifying Individual), Lang Zhang, Secretary, Application Type: New OFF License

Sea Star Logistics, Inc. (NVO), 729 E. Grand Avenue, Suite D, San Gabriel, CA 91776, Officers: Lee Wong, Secretary/Treasurer/CFO (Qualifying Individual), Victor L. Sheng, Director/

President/CEO, Application Type: New NVO License

The Logistics Solutions, LLC (NVO & OFF), 2828 E. Trinity Mills Road, #360, Carrollton, TX 75006, Officers: Hani A. Bekdash, Director of International Logistics (Qualifying Individual), Wasem Demashkiah, Director of Operations, Application Type: New NVO & OFF License

Whale Logistics, LLC (NVO), 84–43 Penelope Avenue, New York, NY 11379, Officer: Bonnie Ta, Member (Qualifying Individual), Application Type: New NVO License

Dated: September 24, 2010.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–24410 Filed 9–28–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
4002F	Ocean Trade International, Inc., 16517 SW 52nd Street, Miami, FL 33185	July 22, 2010.
004553F	Marianas Steamship Agencies, Inc. dba MSA Logistics, Commercial Port Annex, 2nd Floor, 1010 Cabras Highway, Piti, Guam 96915.	August 15, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–24412 Filed 9–28–10; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 14, 2010.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. The George W. Connell Revocable Trust, Radnor, Pennsylvania; to acquire voting shares of Drexel Morgan & Co., and thereby indirectly acquire voting shares of The Haverford Trust Company, both of Radnor, Pennsylvania.

Board of Governors of the Federal Reserve System, September 24, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–24401 Filed 9–28–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records Notices; Correction

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice; correction.

SUMMARY: The Federal Trade Commission published a document in the **Federal Rgister** of August 27, 2010, revising several of the notices that it is required to publish under the Privacy Act of 1974 to describe its systems of records about individuals. The document contained an incorrect change to one of the notices, FTC–I–1, System Name: Nonpublic Investigational and Other Nonpublic Legal Program Records. The heading under routine uses was improperly identified and this notice corrects that paragraphing error. We have also clarified that the records subject to this routine usage involve only the specific types of debt-related records as set out in the correction below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Richard Gold, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW., H–576, Washington, DC 20580, (202) 326–3355.

Correction: In the **Federal Register** of August 27, 2010, in FR Doc. 2010–21318, on page 52750, in the second column, under FTC–I–1, System Name: Nonpublic Investigational and Other Nonpublic Legal Program Records, correct starting at the third line to read:

"*Routine Uses Of Records Maintained In The System, Including Categories Of Users And The Purposes Of Such Uses:*

* * * * *

(5) Disclosed, to the extent that the records relate to a debt owed to the United States, through one or more of its departments and agencies; and/or States, territories and commonwealths of the United States, and the District of Columbia, for any other routine use set forth in the Government-wide system of records notice published for this system by the Department of Treasury, Financial Management System, see TREASURY/FMS.014, or any successor TREASURY/FMS system notice that may be published for this system (visit (*http://www.ustreas.gov*) for more information)."

David C. Shonka,

Acting General Counsel.

[FR Doc. 2010–24369 Filed 9–28–10; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the FTC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Karen Leydon, Chief Human Capital Officer, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3633.

SUPPLEMENTARY INFORMATION:

Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings, performance awards, and pay-for-performance pay adjustments to the Chairman.

The following individuals have been designated to serve on the Commission's Performance Review Board:

Charles H. Schneider, Executive Director, Chairman
Willard K. Tom, General Counsel
Pauline M. Ippolito, Deputy Director, Bureau of Economics
Richard A. Feinstein, Director, Bureau of Competition
Jessica L. Rich, Deputy Director, Bureau of Consumer Protection

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–24327 Filed 9–28–10; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Performance Review Board Members

Title 5, U.S.C. Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board Members be published in the **Federal Register.**

The following persons may be named to serve on the Performance Review Boards or Panels, which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services.

Russell J. Abbott
Mary K. Affeldt
Jay Angoff
Kathleen R. Annette
Jeanne A. Anson
F. R. Aronoff
Carol L. Austin
Joellen M. Austin
Deborah M. Autor
Charlene Avery
Jane A. Axelrad
Lawrence L. Bachorik
Jennifer Backus
Andrew C. Baldus
Glenda F. Barfell
Colleen F. Barros
Daniel J. Barry
Paul S. Bartley
Amy Bassano
Christopher H. Bates
Catherine P. Beck
Carol J. Bennett
David E. Benor
Rodney L. Benson
Susan Maureen Bernard
Joyce T. Berry
Malcolm J. Bertoni
Courtney R. Billet
Stephen B. Blount
Jonathan D. Blum
Eric M. Blumberg
David Blumenthal
Julie C. Boughn
Jennifer L. Boulanger
Marcia K. Brand
William G. Breithaupt
Angela M. Brice Smith
Barbara B. Broman
Peter P. Budetti
Gary J. Buehler
William G. Burel
John T. Burklow
Adriane R. Burton
Laina M. Bush
David S. Cade
Joseph R. Campbell
Michael W. Carleton
Cathy T. Carter
Lester D. Cash
George F. Chandler
Tina M. Cheatham
Laura W. Cheever
Beverly I. Chernaik
Giovanna M. Chiedi
Mark B. Childress
Kenneth Y. Choe
Richard M. Church
Frank D. Cipolloni
H. Westley Clark
Henry Claypool
Norris W. Cochran
Rima Cohen
Mary Sheila Conley
Glenda J Conroy
Alan R. Constantian
Cecil P. Conway Jr.
Dara A. Corrigan
Curtis L. Coy
Kelly Cronin
Regan L. Crump
Susan J. Cuerdon
Fatima A. Cuevas
William P. Cullen
Anthony J. Culotta
Robert C. Curlee
Michael E. Curtis
Jodi Goldstein Daniel
Todd D. Danielson
Nils Daulaire
Beverly W. Davis
Jeffrey S. Davis
L'Tonya J. Davis
Lori E. Davis
Diann Dawson
Molly P. Dawson
Hazel D. Dean
Gregory E. Demske
Philip Derfler
Marie P. Detherage
Elizabeth Devoss
Avis D. Dickey
Paul Dioguardi
Jason A. Donaldson
Alan S. Dorn
Gregory Doyle
Carlton M. Duncan
Dorothy A. Dupree
Shapour Ebadi
Barbara C. Edwards
Brenda K. Edwards
David K. Elder
Athena S. Elliott
Joseph J. Ellis
Elizabeth Engel
Diana Espinosa
Denise Esposito
James R. Farris Jr.
Barbara H. Fisher
J. M. Fitzmaurice
Catherine A. Flickinger
Valerie Florance
Ashley F. Flory
Yvette E. Fontenot
Tracey H. Forfa
Richard S. Foster
Elizabeth A. Fowler
Richard G. Frank
Diane J. Frasier
Thomas R. Frieden
Charles P. Friedman
Charles H. Fritz Ii
Charlene Frizzera
Robinsue Frohboese
Frank Fuentes Jr.
Sharon M. Fujii
Robin S. Funston
Daniel Galik
Susan N. Gardner
Donna M. Garland
Jacqueline S. Garner
Edward C. Gendron
John P. Gentile
Denise H. Geolot
Lillian J. Gill
Prudence J. Goforth
Larry J. Goldberg
Naomi C. Goldstein
Sally A. Good Burton
Christie A. Goodman
Maureen E. Gormley
Joe J. Green
Mark H. Greenberg
Elizabeth E. Greene
Ricardo H. Grijalva
Randy Grinnell
Nancy J. Gunderson
Anne C. Haddix
Amy B. Hall
Anne E. Hall
William H. Hall
Thomas E. Hamilton
John T. Hammarlund
Mark Handelman
Elisabeth A. Handley
David A. Hansell
Frances M. Harding
Carl L. Harper
Antonia T. Harris
Barbara W. Harris
David R. Harris
Walter S. Harris
Gary J. Hartz
Florence P. Haseltine
Michael M. Hash
Debbra M. Hattery
Stephen K. Heffler
Dianne E. Heffron
Janet Heinrich
Lynn C. Hellinger
Deborah J. Henderson
Rosemarie Henson Sampson
Mary Ann Higgins
Timothy B. Hill
Jeffrey Y. Hinson

Janice L. Hoffman
Kimberly A. Holden
Edward J. Holland Jr.
Mary J. Horner
Sally A. Howard
Sharon H. Hrynkow
John Hubbard Jr.
Kathy L. Hudson
Dora L. Hughes
Betsy L. Humphreys
Edward L. Hunter
Terry L. Hurst
Jeanne C. Ireland
Karen E. Jackson
Holli B. Jaffe
John S. Jarman
George E. Jenkins
Alfred C. Johnson
Earl S. Johnson
Lenora E. Johnson
Paul R. Johnson
Wanda K. Jones
Maria D. Joyce
Daryl W. Kade
Brian E. Kamoie
Daniel F. Kane
Lisa G. Kaplowitz
Susan Karol
Ruth E. Katz
Robin I. Kawazoe
Marilyn J. Keefe
Robert E. Keith
Alexia Kathryn Kelley
Howard D. Kelsey
Kathleen A. Kendrick
Judith N. Kenny
James T. Kerr
William D. Kerr
Margo D. Kerrigan
Thomas M. Kickham
Terris A. King
Kimberly C. Kleine
Paula L. Kocher
Richard T. Kopanda
Christine A. Kosmos
Alan A. Kotch
Sheldon Kotzin
A Michon Kretschmaier
Richard G. Kronick
James M. Kulikowski
Jeanne Lambrew
Michael M. Landa
Crayton J. Lankford Jr.
Steven B. Larsen
William S. Lasowski
Mary A. Laureno
Peter V. Lee
Joel J. Lerner
Caroline T. Lewis
Caya B. Lewis
Sharon B. Lewis
Carol D. Linden
Joan Lombardi
Timothy P. Love
James Macrae
Thomas P. Madden
Christine M. Major
Mary Anne Malarkey
Dennis G. Malcomson
Diane M. Maloney
Christopher Mandregan Jr.
Cynthia R. Mann
Teri Ann Manolio
Michael T. Marron
Anna L. Marsh
Michael R. Martin
Bethany R. Martino
Katherine Massey
Mary B. Mazanec
Susan D. McAndrew
William M. McCabe
Daniel G. McChesney
William A. McConagha
Leon R. McCowan
Barbara M. McGarey
Patrick O. McGarey
Ruth E. McKee
Cheryl L. McMillen
Sidney A. McNairy Jr.
Robert G. McSwain
Reginald R. Mebane
Donald E. Meeks
Eugene A. Migliaccio
Karen A. Milgate
Alfred R. Miller
Tamara L. Miller
George G. Mills Jr.
Samuel P. Mitchell
Madeline Mocko
John W. Molina
John T. Monahan
Judith A. Monroe
Maria C. Montilla
Jean D. Moody-Williams
Danielle R. Moon
Thomas G. Morford
Douglas Morgan
Lewis Morris
Thomas F. Morris
Oliver B. Morton
Farzad Mostashari
Donald B. Moulds
Molly V. Muldoon
Mary J. Mullaney
Theresa M. Mullin
Deanna B. Murphy
Thomas G. Murphy
Renard L. Murray
David A. Naimon
Eskinder Negash
Jon L. Nelson
William P. Nichols
Geraldine A. Nicholson
Teresa Nino
Robert M. Noonan
Steven D. Novy
Glen J. Nowak
William P. O'Rourke
Nancy B. O'Connor
Hankie Poafpybitty Ortiz
Cynthia R. Padilla
Andrea J. Palm
Anand K. Parekh
Todd Y. Park
Gerald W. Parker
Sharon E. Parrott
Elaine P. Parry
Dalton G. Paxman
Michael L. Perdue
Segundo Pereira
Wesley R. Perich
John J. Petillo
Laura Petrou
Dana J. Petti
Julia A. Pierce
Lori S. Pilcher
Vivian W. Pinn
Melinda K. Plaisier
Mark D. Polston
Richard A. Popper
Diane D. Porter
William T. Porter
A. Kathryn Power
Joy L. Pritts
Douglas J. Pruett
Alan S. Rabson
Charlene M. Red Thunder
George M. Reeb
Nanette F. Reilly
Andrew S. Rein
Lynne L. Rice
Elizabeth Richter
Deborah H. Ridgely
Brian P. Ritchie
Robin A. Robinson
Anthony D. Rodgers
Mark S. Roh
Dennis O. Romero
Luis A. Rosero
Mona J. Rowe
Gerald T. Roy
Bryan Samuels
Yvette L. Sanchez-Fuentes
William D. Saunders
David W. Sayen
James V. Scanlon
Donald L. Schneider
Lawrence N. Self
James D. Seligman
Suzanne J. Servis
Meena Seshamani
Raffie Shahrigian
Joshua Sharfstein
John D. Shatto
Karen M. Shebesh
Jean K. Sheil
Patrick A. Shirdon
Donald E. Shriber
Richard T. Sizemore III
Howard R. Sklamberg
William Slikker
Jean R. Slutsky
Dawn L. Smalls
Barbara M. Smith
Marc Smolonsky
Anna M. Snyder
Joyce G. Somsak
Richard M. Sorian
Lillian Sparks
Philip C. Spiller
Paul I. Spitalnic
Rebecca H. Spitzgo
Nancy Stade
Douglas L. Steiger
Gary A. Steinberg
Steven Silverman
Kenneth W. Stith
Ellen L. Stover
James M. Strachan
George A. Strait Jr.
Barry M. Straube
Stewart H. Streimer
Laverne Y. Stringfield
Patricia A. Stroup
Edgar M. Swindell
Jay A. Swope
Marilyn B. Tavenner
Deborah A. Taylor
John M. Taylor
Michael R. Taylor
John L. Teeter
Joyce A. Thomas
Delores E. Thompson
Penny R. Thompson
Constance B. Tobias
Brenda J. Tranchida
Anthony F. Trenkle
Brian Trent

Cynthia G. Tudor
Vicki Turetsky
Richard J. Turman
Ralph S. Tyler
Timothy A. Ulatowski
Robert T. Vaccaro
Mary Lou Valdez
Peter C. Van Dyck
Steven D. Vaughn
Robert Velasco II
Georgina C. Verdugo
Terrell L. Vermillion
Carmen S. Villar
Janet L. Vogel
Victoria Wachino
Dennis C. Wagner
Mary K. Wakefield
Edwin L. Walker
Sondra S. Wallace
Gerald T. Walters
David E. Wardrop Jr.
James W. Weber
Mark A. Weber
Michael Weinrich
Jaye Weisman
Marc R. Weisman
Denise L. Wells
Daniel G. Wheeland
Francis P. White
Jacquelyn Y. White
Alfred H. Whitley
David L. Whitmer
Donalda L. Wilder
Carlis V. Williams
Dennis P. Williams
Thomas D. Williams
Laurence D. Wilson
Helen N. Winkle
Ann H. Wion
Phyllis S. Wolfe
Edwin Woo
John T. Wren
Donald J. Wright
Stuart E. Wright
Margaret M. Yanchuk
Kevin S. Yeskey
Robert Yetter
Samir Zakhari
Phyllis M. Zucker

Dated: September 15, 2010.

Denise L. Wells,

Deputy Assistant Secretary for Human Resources, Department of Health and Human Services.

[FR Doc. 2010–24372 Filed 9–28–10; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Brain Power! The NIDA Junior Scientist Program and the Companion Program, Brain Power! Challenge Information Collection

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Drug Abuse (NIDA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented. The proposed information collection was previously published in the **Federal Register** on June 28, 2010 Volume 75, No. 123, pages 36659–36660, and allowed 60-days for public comment. No comments were received on this notice.

Proposed Collection: Title: Brain Power! The NIDA Junior Scientist Program, for grades K–5, and the companion program for Middle School, the Brain Power! Challenge.

Type of Information Collection Request: NEW. The previous OMB approval was discontinued on March 31, 2009 (OMB Control number 0925–0542 that was obtained in 2005), and the new submission is requested until July 31, 2011.

Need and Use of Information Collection: This is a request for clearance to evaluate the effectiveness of the Brain Power! Program's ability to:

- Increase students' knowledge about the biology of the brain and the neurobiology of drug addiction;
- Increase positive attitudes toward science, careers in science, and science as an enjoyable endeavor, and stimulating interest in scientific careers; and
- Promote more balanced perceptions and attitudes of scientists as being of many races, ages, and genders

The secondary goal is to determine the influence or change of attitudes toward and intentions about drug use. The findings will provide valuable information concerning the goals of NIDA's *Science Education Program* of increasing scientific literacy and stimulating interest in scientific careers. In order to test the effectiveness of the evaluation, information will be collected from students before and after exposure to the curriculum with pre- and post-test self-report measures. Surveys also will be administered to teachers after the completion of the program to examine ease and fidelity of implementation, as well as impact in knowledge and understanding of the neurobiology of addiction. Surveys will be administered to parents to obtain parental reaction and opinion on the materials and the degree to which parents find the curriculum informative and appropriate.

Frequency of Response: On occasion.

Affected Public: Elementary and middle school students, teachers, and parents.

Type of Respondents: Students, Teachers, and Parents. The reporting burden is as follows:

Estimated Number of Respondents: 1,260.

Estimated Number of Responses per Respondent: Students 2, Parents and Teachers: 1.

Average Burden Hours per Response: Students: .5, Parents: .5, and Teachers: .5.

Estimated Total Annual Burden Hours Requested: 892.5. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Types of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Students (K–grade 5)	375	2	.5	375
Students (grades 6–9)	375	2	.5	375
Parents (survey) (K–grade 5)	25	1	.25	6.25
Parents (survey) (grades 6–9)	25	1	.25	6.25
Parents (postcard) (K-grade 5)	200	1	.25	50
Parents (postcard) (grades 6–9)	200	1	.25	50
Teachers (evaluation)	30	1	.5	15
Teachers (online survey	30	1	.5	15
Total	1,260			892.50

Request 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 function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, *Attention:* Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Cathrine Sasek, Coordinator, Science Education Program, Office of Science Policy and Communications, National Institute on Drug Abuse, 6001 Executive Blvd, Room 5237, Bethesda, MD 20892, or call non-toll-free number (301) 443–6071; fax (301) 443–6277; or by e-mail to *csasek@nida.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: September 22, 2010.

Mary Affeldt,

Executive Officer, (OM Director, NIDA).

[FR Doc. 2010–24400 Filed 9–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Required Data Elements for Paternity Establishment Affidavits.

OMB No.: 0970–0171.

Description: Section 466(a)(5)(C)(iv) of the Social Security Act the Act) requires States to develop and use an affidavit for the voluntary acknowledgement of paternity. The affidavit for the voluntary acknowledgement of paternity must include the minimum requirements specified by the Secretary under section 452(a)(7) of the Act. The affidavits will be used by hospitals, birth record agencies, and other entities participating in the voluntary paternity establishment program.

Respondents: State and Tribal IV–D agencies, hospitals, birth record agencies and other entities participating in the voluntary paternity establishment program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours

Estimated Total Annual Burden Hours: 0

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 22, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–24212 Filed 9–28–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0482]

Draft Guidance for Industry and Investigators on Safety Reporting Requirements for Investigational New Drug Applications and Bioavailability/Bioequivalence Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and investigators entitled "Safety Reporting Requirements for INDs and BA/BE Studies." This draft guidance is intended to help sponsors and investigators comply with the new requirements in the final rule entitled "Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety

Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans," published elsewhere in this issue of the **Federal Register**.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 28, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Janet Norden, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6324, Silver Spring, MD 20993–0002, 301–796–2500; or Laura Rich, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and investigators entitled "Safety Reporting Requirements for INDs and BA/BE Studies." This draft guidance is intended to help sponsors and investigators comply with the new requirements for investigational new drug applications (IND) safety reporting and safety reporting for bioavailability (BA) and bioequivalence (BE) studies.

In the **Federal Register** of March 14, 2003 (68 FR 12406), FDA published a proposed rule to revise its regulations governing pre- and postmarket safety reporting for human drug and biological products. To make rulemaking more manageable, the Agency decided to issue revisions to the pre- and postmarket safety reporting regulations in two separate rulemakings. The final rule, entitled "Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans," published elsewhere in this issue of the **Federal Register**, revises the premarket regulations. The revisions in the final rule will improve the utility and quality of safety reports, expedite and strengthen FDA's ability to review critical safety information, improve safety monitoring of human drug and biological products, better protect human subjects enrolled in clinical trials, and harmonize safety reporting internationally. The new requirements revise the definitions used for IND safety reporting, make clear when to submit IND safety reports, and subject BA and BE studies to safety reporting requirements.

The draft guidance was developed to accompany the publication of the final rule. The draft guidance provides examples and explanations of the definitions used for IND safety reporting, makes recommendations for determining when and how to submit a safety report, and provides advice on other safety reporting issues that have generated questions from sponsors and investigators.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on safety reporting requirements for INDs and BA/BE studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection(s) of information in the draft guidance are estimated in section "VII. Paperwork Reduction Act of 1995" of the final rule entitled, "Investigational New Drug Safety Reporting Requirements for Human Drug and Biological Products and Safety Reporting Requirements for Bioavailability and Bioequivalence Studies in Humans" published elsewhere in this issue of the **Federal Register**.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: September 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–24295 Filed 9–28–10; 8:45 am]

BILLING CODE 4160–01–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; Basic and Translational Oncology P01.

Date: September 30–October 1, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Shakeel Ahmad, PhD, Scientific Review Officer, Research Programs

Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8137, Bethesda, MD 20892–8328, (301) 594–0114, *ahmads@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; Cancer Prevention Research Small Grant Program (R03).

Date: October 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington, DC DuPont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892, 301–594–1566, *gordienkoiv@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 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24414 Filed 9–28–10; 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 Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of an Interagency Autism Coordinating Committee (IACC) meeting.

The purpose of the IACC meeting is to listen to presentations on various aspects of autism spectrum disorder research and services and to discuss plans for the annual update of the IACC Strategic Plan for Autism Spectrum Disorders Research. The meeting will be open to the public and will be accessible by webcast and conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Open meeting.

Date: October 22, 2010.

Time: 10 a.m. to 5 p.m.* Eastern *Time *—Approximate end time.

Agenda: Invited speakers will give presentations on various aspects of autism spectrum disorder research and services and the IACC will discuss plans for the annual update of the IACC Strategic Plan for Autism Spectrum Disorder Research.

Place: The National Institutes of Health, Main Campus, William H. Natcher Conference Center, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Webcast Live: http://videocast.nih.gov/.

Conference Call Access: Dial: 1–888–577–8995; Access code: 1991506.

Cost: The meeting is free and open to the public.

Registration: http://www.acclaroresearch.com/oarc/10-22-10_IACC. Pre-registration is recommended to expedite check-in. Seating in the meeting room is limited to room capacity and on a first come, first served basis.

Deadlines: Notification of intent to present oral comments: October 14th by 5 p.m. ET.

Submission of written/electronic statement for oral comments: October 15th by 5 p.m. ET.

Submission of written comments: October 18th by 5 p.m. ET.

Access: Metro accessible—Medical Center Metro (Red Line).

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 8200, Bethesda, MD 20892–9669. Phone: 301–443–6040. E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: Any member of the public interested in presenting oral comments to the Committee must notify the Contact Person listed on this notice by 5 p.m. ET on Thursday, October 14, 2010 with their request to present oral comments at the meeting. Interested individuals and representatives of organizations must submit a written/electronic copy of the oral statement/comments including a brief description of the organization represented by 5 p.m. ET on Friday, October 15, 2010. Statements submitted will become a part of the public record. Only one representative of an organization will be allowed to present oral comments and presentations will be limited to three to five minutes per speaker, depending on number of speakers to be accommodated within the allotted time. Speakers will be assigned a time to speak in the order of the date and time when their request to speak is received, along with the required submission of the written/electronic statement by the specified deadline.

In addition, any interested person may submit written comments to the IACC prior to the meeting by sending the comments to the Contact Person listed on this notice by 5 p.m. ET, Monday, October 18, 2010. The comments should include the name and when applicable, the business or professional affiliation of the interested person. All written comments received by the deadlines for both oral and written public comments will be provided to the IACC for their consideration and will become part of the public record.

The meeting will be open to the public through a conference call phone number and webcast live on the Internet. Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard. If you experience any technical problems with the webcast live or conference call, please e-mail *IACCTechSupport@acclaroresearch.com.*

Individuals who participate in person or by using these electronic services and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request to the Contact Person listed on this notice at least 7 days prior to the meeting.

To access the webcast live on the Internet the following computer capabilities are required: (A) Internet Explorer 5.0 or later, Netscape Navigator 6.0 or later or Mozilla Firefox 1.0 or later; (B) Windows® 2000, XP Home, XP Pro, 2003 Server or Vista; (C) Stable 56k, cable modem, ISDN, DSL or better Internet connection; (D) Minimum of Pentium 400 with 256 MB of RAM (Recommended); (E) Java Virtual Machine enabled (Recommended).

NIH has instituted stringent security procedures for entrance onto the NIH campus. All visitors must enter through the NIH Gateway Center. This center combines visitor parking, non-commercial vehicle inspection and visitor ID processing, all in one location. The NIH will process all visitors in vehicles or as pedestrians. You will be asked to submit to a vehicle or personal inspection and will be asked to state the purpose of your visit. Visitors over 15 years of age must provide a form of government-issued ID such as a driver's license or passport. All visitors should be prepared to have their personal belongings inspected and to go through metal detection inspection.

When driving to NIH, plan some extra time to get through the security checkpoints. Be aware that visitor parking lots on the NIH campus can fill up quickly. The NIH campus is also accessible via the metro Red Line, Medical Center Station. The William H. Natcher Conference Center is a 5-minute walk from the Medical Center Metro Station.

Additional NIH campus visitor information is available at: *http://www.nih.gov/about/visitor/index.htm.*

As a part of security procedures, attendees should be prepared to present a photo ID at the meeting registration desk during the check-in process. Pre-registration is recommended. Seating will be limited to the room capacity and seats will be on a first come, first served basis, with expedited check-in for those who are pre-registered.

Meeting schedule subject to change.

Information about the IACC is available on the website: *http://www.iacc.hhs.gov.*

Dated: September 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24403 Filed 9–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; 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 Scientific Management Review Board.

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: Office of AIDS Research Advisory Council.

Date: November 9, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: The theme of the meeting will be "HIV/AIDS and Adolescents." The meeting will focus on research to address: The epidemiology of HIV infection among adolescents; HIV prevention, treatment and care for adolescents; biological and cognitive development of HIV-infected adolescents; and ethical and regulatory issues for involving youth in AIDS clinical research. An update also will be provided on the OARAC Working Groups for HIV Treatment and Prevention Guidelines.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level, Rockville, MD 20852.

Contact Person: Robert Eisinger, PhD, Executive Secretary, Director Of Scientific And Program Operations, Therapeutics Coordinating Committee, Office of AIDS Research, 5635 Fishers Lane, Msc 9310, Suite 400, Rockville, MD 20852, (301) 496–0357, *be4y@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: *http://www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24405 Filed 9–28–10; 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 National Cancer Institute Director's Consumer Liaison Group.

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: National Cancer Institute Director's Consumer Liaison Group.

Date: October 14–16, 2010.

Time: 11 a.m. to 12 p.m.

Agenda: Director's Update; Emerging Opportunities in Gen and Target-Based Research in the NCI Intramural Program; Expert Panel and Board Discussion on the Implications of Gene and Target-Based Research Approaches in the Research Paradigm.

Place: National Institutes of Health, Building 60, 1 Cloister Court, Room 142, Bethesda, MD 20814.

Contact Person: Benjamin Carollo, MPA, Advocacy Relations Manager, Office of Advocacy Relations, Building 31, Room 10A30, 31 Center Drive, MSC 2580, National Cancer Institute, NIH, DHHS, Bethesda, MD 20892–2580, 301–496–0307, carollob@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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.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 22, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24413 Filed 9–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) 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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Experimental Therapeutics Program (NExT).

Date: October 7, 2010.

Time: 8:30 a.m.–4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dr. Barbara Mroczkowski, Executive Secretary, NCI Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44,

Bethesda, MD 20817, (301) 496–4291, *mroczkowskib@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 22, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–24408 Filed 9–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes

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: 1651–0036.

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 Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes. 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 29, 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: Declaration of Ultimate Consignee That Articles Were Exported for Temporary Scientific or Educational Purposes.

OMB Number: 1651–0036.

Form Number: None.

Abstract: The Declaration of Ultimate Consignee that Articles were Exported for Temporary Scientific or Educational Purposes is used to document duty free entry under conditions when articles are temporarily exported solely for scientific or educational purposes. This declaration, which is completed by the ultimate consignee and submitted to CBP by the importer or the agent of the importer, is used to assist CBP personnel in determining whether the imported articles should be free of duty. It is provided for under 19 U.S.C. 1202, HTSUS Subheading 9801.00.40, and 19 CFR 10.67(a)(3) which requires a declaration to CBP stating that the articles were sent from the United States solely for temporary scientific or educational use and describing the specific use to which they were put while abroad.

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: Businesses.

Estimated Number of Respondents: 55.

Estimated Number of Annual Responses per Respondent: 3.

Estimated Number of Total Annual Responses: 165.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 27.

Dated: September 23, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–24359 Filed 9–28–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–0849]

Detroit Area Maritime Security Committee (AMSC); Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Solicitation for Membership.

SUMMARY: This notice requests individuals interested in serving on the Detroit Area Maritime Security Committee (AMSC) to submit their applications for membership to the Captain of the Port Sector Detroit.

DATES: Requests for membership should reach the U.S. Coast Guard Captain of the Port Detroit by November 1, 2010.

ADDRESSES: Applications for membership should be submitted to the Captain of the Port Detroit at the following address: U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, MI, 48207.

FOR FURTHER INFORMATION CONTACT: For questions about submitting an application or about the AMSC in general contact: Mr. Paul Raska, Planning Department, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit MI, 48207; 313–656–2667.

SUPPLEMENTARY INFORMATION:

Authority

Section 102 of the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295) added section 70112 to title 46 of U.S. Code and authorized the Secretary of the Department in which the Coast Guard is operating to establish Area Maritime Security Committees for any port area of the United States. (*See* 33 U.S.C. 1226; 46 U.S.C.; 33 CFR 1.05–1, 6.01; Department of Homeland Security Delegation No. 0170.1). The MTSA includes a provision exempting these AMS Committees from the Federal

Advisory Committee Act (FACA), Public Law 92–436, 86 Stat. 470 (5 U.S.C. App.2). The AMSCs shall assist the Captain of the Port in the development, review, update, and exercising of the AMS Plan for their area of responsibility. Such matters may include, but are not limited to: Identifying critical port infrastructure and operations; Identifying risks (threats, vulnerabilities, and consequences); Determining mitigation strategies and implementation methods; Developing strategies to facilitate the recovery of the MTS after a Transportation Security Incident; Developing and describing the process to continually evaluate overall port security by considering consequences and vulnerabilities, how they may change over time, and what additional mitigation strategies can be applied; and Providing advice to, and assisting the Captain of the Port in developing and maintaining the Area Maritime Security Plan.

AMS Committee Membership

Members of the AMSC should have at least 5 years of experience related to maritime or port security operations. The Detroit AMSC has 19 members. We are seeking to fill 15 vacancies with this solicitation. Applicants may be required to pass an appropriate security background check prior to appointment to the committee.

Members' terms of office will be for 5 years; however, a member is eligible to serve an additional term of office. Members will not receive any salary or other compensation for their service on the AMSC. In support of the policy of the USCG on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Request for Applications

Those seeking membership are not required to submit formal applications to the local Captain of the Port. However, because we do have an obligation to ensure that a specific number of members have the prerequisite maritime security experience, we encourage the submission of resumes highlighting experience in the maritime and security industries.

Dated: September 14, 2010.

E.J. Marohn,

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

[FR Doc. 2010–24365 Filed 9–28–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[USCBP–2007–0083]

Withdrawal of Notice of Proposed Interpretation of the Expression "Sold For Exportation to the United States" as Used in the Transaction Value Method of Valuation in a Series of Sales Importation Scenario

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: Withdrawal of proposed interpretation.

SUMMARY: This document withdraws a notice published in the **Federal Register** on January 24, 2008, which proposed a new interpretation of the phrase "sold for exportation to the United States" for purposes of applying the transaction value method of valuation in a series of sales importation scenario.

DATES: The proposed interpretation is withdrawn on September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Chief, Valuation & Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 325–0038.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2008, Customs and Border Protection (CBP) published in the **Federal Register** (73 FR 4254) a notice informing interested parties that CBP was proposing a new interpretation of the expression "sold for exportation to the United States" for purposes of applying the transaction value method of valuation in a series of sales importation scenario. Under this proposed interpretation, in a transaction involving a series of sales, the price actually paid or payable for the imported goods when sold for exportation to the United States would be the price paid in the last sale occurring prior to the introduction of the goods into the United States, instead of the first (or earlier) sale. Accordingly, the transaction value would typically be determined on the basis of the price paid by the buyer in the United States.

Intervening Legislation and Implementing Regulations

After CBP published its proposed interpretation document, Congress enacted the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246, 122 Stat. 1651 (June 18, 2008)) ("the Act"), in which section 15422 required the Commissioner of CBP to collect information from importers for a one-year period as to whether the declared value was based on a "first sale" in a series of sales transactions. CBP was required to report the data to the International Trade Commission (ITC) on a monthly basis and, in turn, the ITC was required to submit a report to Congress within 90 days of receiving CBP's final report.

Congress also stated in the Act that, prior to January 1, 2011, CBP should not implement any change to its existing interpretation of the expression "sold for exportation to the United States" for purposes of applying the transaction value method of valuation in a series of sales importation scenario and, then, only in accordance with the prescribed terms set forth in the Act.

An interim rule implementing the Act's first sale declaration requirement was published in the **Federal Register** (73 FR 49939) on August 25, 2008 setting forth in § 141.61(g) of title 19 of the Code of Federal Regulations (19 CFR 141.61(g)) that for a specified time period importers were required to declare, at the time of entry, whether the transaction value of the imported merchandise was determined on the basis of the price paid by the buyer in the first or earlier sale occurring prior to introduction of the merchandise into the United States. Per the statute and the interim regulations, this requirement set forth in § 141.61(g) expired on August 19, 2009.

In the interim rule document published on August 25, 2008, CBP informed the public that the agency intended to withdraw the proposed interpretation.

Withdrawal of Proposal

In accordance with its intent as stated in the interim rule, CBP withdraws the notice of proposed interpretation published in the **Federal Register** (73 FR 4254) on January 24, 2008.

Dated: September 24, 2010.

Alan Bersin,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2010–24464 Filed 9–28–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[USGS–8327CPDM2]

Notice of a Revision of a Currently Approved Information Collection (1028–0091)

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a revision of a currently approved information collection (1028–0091).

SUMMARY: We (the U.S. Geological Survey) have sent an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden on the public.

DATES: You must submit comments on or before *December 28, 2010.*

ADDRESSES: Please send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please also send a copy of your comments on the ICR to Phadrea Ponds, Information Collection Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue, Fort Collins, CO 80526 (mail); pondsp@usgs.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, please contact USGS, Earlene Swann by mail at U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 or by telephone at (970) 226–9346.

SUPPLEMENTARY INFORMATION:

I. Abstract

This study was approved by OMB (on September 30, 2009). We are requesting a revision of this collection. The U.S. Geological Survey's (USGS) Land Remote Sensing (LRS) Program has been briefed on the results associated with this ICR and has requested additional information to be collected concerning the users of Landsat Imagery. After careful consideration and review of the results, the LRS Program determined that they would like to know more about users of Landsat imagery. Specifically, in order to meet legal and programmatic responsibilities to effectively manage the Landsat system, the LRS has requested additional information about the uses and the values of a defined population of users who obtain imagery from the Earth Resources Observation and Science Center (EROS). EROS is responsible for collecting, processing, archiving, and distributing Landsat imagery. Between 2008 and 2009, there was a five-fold increase in users when imagery became available at no cost beginning in late 2008. The LRS Program is very interested in knowing more about this population of users. The initial information collection provided information about a diverse contingent of Landsat and other moderate-resolution imagery users, but was not generalizable to the entire population of users, and did not include new users who may have begun using Landsat after it became available at no cost. This collection has been revised to provide USGS with information about a population of users for which they currently have no existing data. Additionally, this information could help guide efforts to provide suitable replacement imagery in the event of a break in Landsat continuity by providing a better understanding of likely user responses to this scenario. This information collection will be conducted by scientists and staff in the Policy Analysis and Science Assistance Branch (PASA) of the USGS. The information collection will be conducted online.

II. Data

OMB Control Number: 1028–0091.

Title: Users, Uses, and Value of Landsat Satellite Imagery.

Type of Request: This is a revision of a currently approved collection.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time.

Estimated Annual Number of and Description of Respondents: 14,773. State and Local Government, private individuals, state and local land management officials, scientists, and geographic researchers.

	Annual number of responses	Estimated completion time per respondent	Estimated annual burden
Survey	13,051	30 minutes	6,526
Non-respondents	1,722	3 minutes	87
Total	14,773		6,613

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost": There are no "non-hour cost" burdens associated with this collection of information.

III. Request for Comments

We are inviting comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 22, 2010.

D. Bryant Cramer,

Associate Director for Geography.

[FR Doc. 2010–24374 Filed 9–28–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-LE-2010-N213] [99011-1224-0000-9B]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; 1018-0092; Federal Fish and Wildlife Permit Applications and Reports—Law Enforcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on

November 30, 2010. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before October 29, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0092.

Title: Federal Fish and Wildlife Permit Applications and Reports—Law Enforcement, 50 CFR 13 and 14.

Service Form Number(s): 3-200-2 and 3-200-3.

Type of Request: Revision of a currently approved collection.

Affected Public: Individuals, businesses, scientific institutions, and State, local, or tribal governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or periodically for reports; ongoing for recordkeeping.

Estimated Annual Nonhour Burden: $1,189,200 for fees associated with permit applications.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
3-200-2 - application and recordkeeping	1,350	1,350	1.25 hours	1,687
3-200-2 - report	5	5	1 hour	5
3-200-3 - application and recordkeeping	10,555	10,555	1.25 hours	13,194
3-200-3 - report	5	5	1 hour	5
Totals	11,915	11,915		14,891

Abstract: The Endangered Species Act (ESA) (16 U.S.C. 1531 et seq.) makes it unlawful to import or export fish, wildlife, or plants without obtaining prior permission as deemed necessary for enforcing the ESA or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)).

This information collection includes the following permit/license application forms:

(1) FWS Form 3-200-2 (Designated Port Exception Permit). Under 50 CFR 14.11, it is unlawful to import or export wildlife or wildlife products at ports other than those designated in 50 CFR 14.12 unless you qualify for an exception. These exceptions allow qualified individuals, businesses, or scientific organizations to import or export wildlife or wildlife products at a nondesignated port:

(a) When the wildlife or wildlife products will be used as scientific specimens.

(b) To minimize deterioration or loss.

(c) To relieve economic hardship. To request an import or export of wildlife or wildlife products at nondesignated ports, applicants must complete FWS Form 3-200-2. Designated port exception permits are valid for 2 years. We may require a permittee to file a report on activities conducted under authority of the permit.

(2) FWS Form 3-200-3 (Import/Export License). It is unlawful to import or export wildlife or wildlife products for commercial purposes without first obtaining an import/export license (50 CFR 14.91). Applicants must complete FWS Form 3-200-3 to request this license. We use the information that we collect on the application as an enforcement tool and management aid to: (a) monitor the international wildlife market and (b) detect trends and changes in the commercial trade of wildlife and wildlife products. Import/export licenses are valid for 1 year. We may require a licensee to file a report on activities conducted under authority of the import/export license.

Permittees and licensees must maintain records that accurately describe each importation or exportation of wildlife or wildlife products made under the license, and any additional sale or transfer of the wildlife or wildlife products. In addition, licensees must make these records and the corresponding inventory of wildlife or wildlife products available for our inspection at reasonable times, subject to applicable limitations of law. We believe the burden associated with these recordkeeping requirements is minimal because the records already exist. Importers and exporters must complete FWS Form 3-177 (Declaration for Importation or Exportation of Fish or Wildlife) for all imports or exports of wildlife or wildlife products. This form provides an accurate description of the imports and exports. OMB has approved the information collection for FWS Form 3-177 and assigned OMB Control Number 1018-0012. Normal business practices should produce records (e.g., invoices or bills of sale) needed to document additional sales or transfers of the wildlife or wildlife products.

Comments: On February 25, 2010, we published in the **Federal Register** (75 FR 8732) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on April 26, 2010. We received two comments. One comment supported the reporting and recordkeeping requirements and stated that they were essential to meet the requirements of the ESA. The other comment stated that the permitting system is flawed, but did not address information requirements or the cost and hour burden estimates. We did not make any changes to this collection as a result of these comments.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Comments that you submit in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: September 23, 2010

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. 2010–24361 Filed 9–28–10; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Removal of Listed Property

Pursuant to section 60.15 of 36 CFR Part 60, comments are being accepted on the following properties being considered for removal from the National Register of Historic Places. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 14, 2010.

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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

Request for REMOVAL has been made for the following resource:

OREGON

Multnomah County

United States Steel Corporation Office and Warehouse, 2828 NW Yeon Ave, Portland, 95000104.

[FR Doc. 2010–24362 Filed 9–28–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before September 11, 2010. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by October 14, 2010.

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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

FLORIDA

Leon County

Woman's Working Band House, 648 W Brevard St, Tallahassee, 10000848

KANSAS

Phillips County

Phillipsburg Community Building, (New Deal-Era Resources of Kansas MPS) 425 F St, Phillipsburg, 10000845

Saline County

Coronado Heights, (New Deal-Era Resources of Kansas MPS) 12th and Coronado Heights Rd, Lindsborg, 10000847

Shawnee County

Gordon Building, 900, 902, 904 S Kansas Ave, Topeka, 10000846

MISSOURI

Cape Girardeau County

Cape Girardeau Court of Common Pleas, 44 North Lormier, Cape Girardeau, 10000856

NEW YORK

Monroe County

Harrison, Edward, House, 75 College St, Brockport, 10000854

Suffolk County

Gravesite, Rev. Paul Cuffee, (Cemeteries of the Town of Southampton, 1640–1930) N side of Montauk HWY opposite 216 Montauk HWY, Hampton Bays, 10000852

Ulster County

Lattingtown Baptist Church, 425 Old Indian Rd, Lattingtown, 10000855

Westchester County

Woman's Club of White Plains, 305 Ridgeway, White Plains, 10000853

OREGON

Multnomah County

Irvington Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Roughly bounded by NE Fremont, NE 27th Ave, NE Broadway, NE 7th Ave, Portland, 10000850

Umatilla County

Central School, 306 SW 2nd Ave, Milton-Freewater, 10000849

SOUTH CAROLINA

Charleston County

Charleston Naval Hospital Historic District, Former Charleston Naval Hospital Historic District, North Charleston, 10000851

[FR Doc. 2010–24363 Filed 9–28–10; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0006]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine

ACTION: 30-Day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 138, page 42133 on July 20, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 29, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection 1117–0006:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Individual Manufacturing Quota for a Basic Class of Controlled Substance and for Ephedrine, Pseudoephedrine, and Phenylpropanolamine (DEA Form 189).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* DEA Form 189, Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: 21 U.S.C. 826 and 21 CFR 1303.22 and 1315.22 require that any person who is registered to manufacture any basic class of controlled substances listed in Schedule I or II and who desires to manufacture a quantity of such class, or who desires to manufacture using the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, must apply on DEA Form 189 for a manufacturing quota for such quantity of such class or List I chemical.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that each form takes 0.5 hours (30 minutes) to complete. In total, 31 firms submit 468 responses, with each response taking 0.5 hours (30 minutes) to complete. This results in a total public burden of 234 hours annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* In total, 31 firms submit 468 responses, with each response taking 0.5 hours (30 minutes) to complete. This results in a total public burden of 234 hours annually.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: September 23, 2010.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–24352 Filed 9–28–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,458]

Chrysler Financial Services Americas, LLC, a Subsidiary of Finco Intermediate Holding Co., LLC, Troy Customer Contact Center, Troy, Michigan; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated September 3, 2010, the petitioner 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 July 23, 2010. The Department's Notice of Determination was published in the **Federal Register** on August 6, 2010 (75 FR 47635).

The initial investigation resulted in a negative determination based on the findings that there have not been increased imports of services like or directly competitive with the financial services supplied by the subject firm, and there has not been a shift in the supply of services by the firm to a foreign country. In addition, the subject firm is not a supplier or downstream producer to a firm that employed a worker group eligible to apply for TAA.

The request for reconsideration states that "the workers at Chrysler Financial Services, Troy, Michigan were engaged in activities that initiated the need to produce automotive vehicles and automotive vehicle parts * * * multiple production facilities within the Chrysler Group has lost production due to imports which resulted in the decrease in sales" which contributed importantly to the workers' separations.

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, as amended.

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 21st day of September 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–24380 Filed 9–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,579]

Consolidated Glass and Mirror Corporation, a Subsidiary of Guardian Industries Corporation, Galax, VA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated September 2, 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 Consolidated Glass and Mirror Corporation, a Subsidiary of Guardian Industries Corporation, Galax, Virginia (subject firm). The determination was issued on August 5, 2010. The Department's Notice of Determination was published in the **Federal Register** on August 23, 2010 (75 FR 51849). Workers are engaged in employment related to the production of laminated glass products.

The negative determination was based on the findings that the subject firm did not, during the period under investigation, shift to a foreign country production of articles like or directly competitive with those produced by the workers or acquire these articles 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 articles; and that the workers did not produce an article 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 subject firm customers that employ workers who are eligible to apply for TAA.

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 petitioning workers meet the eligibility requirements of the Trade Act of 1974, as amended.

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 21st day of September 2010.

Del Min Amy Chen

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–24382 Filed 9–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,503]

Compass Group USA, Inc. Canteen: Webster City, Iowa; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated July 9, 2010, a petitioner 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 signed on May 24, 2010, and the Notice of Determination was published in the **Federal Register** on June 16, 2010 (75 FR 34175).

The initial investigation resulted in a negative determination based on the findings that the subject firm did not, during the investigation period, shift to a foreign county services like or directly competitive with the cafeteria services or vending machine services supplied by the workers or acquire from a foreign country services like or directly competitive with the cafeteria services or vending machine services supplied by the workers; that the workers' separation, or threat of separation, was not related to any increase in imports of like or directly competitive food services or a shift in service/acquisition of such food services abroad, 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.

The request for reconsideration stated that the subject workers provide "food services in direct support of Electrolux" and alleges that the shift of production by Electrolux to Mexico resulted in a shift to Mexico in the supply of food service services. The request also alleges that, in the case of adversely-affected secondary workers, the term "value-added" applies only to production process and does not apply to services.

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, as amended.

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 21st day of September 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–24381 Filed 9–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Comment Request

ACTION: Notice of solicitation of comments.

SUMMARY: The Department of Labor through the Bureau of Labor Statistics (BLS) is responsible for the development and publication of occupational employment projections and related career information, including the education and training requirements for detailed occupations. The BLS issued a **Federal Register** notice on November 18, 2008 (Volume 73, Number 223), requesting comments on a proposed education and training system. On May 26, 2009, a notice was issued on the BLS Web site announcing that the BLS would continue to refine the system to classify occupations into education and training categories for use in 2010, and provide an experimental dataset on the new system. The new education and training system has been developed and the experimental dataset is ready for users to provide feedback.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before November 30, 2010.

ADDRESSES: Send comments to Teri Morisi, Office of Occupational Statistics and Employment Projections, Bureau of Labor Statistics, Room 2135, 2 Massachusetts Avenue, NE., Washington, DC 20212 or by *e-mail* to: *educfeedback@bls.gov.*

FOR FURTHER INFORMATION CONTACT: Teri Morisi, Office of Occupational Statistics and Employment Projections, Bureau of Labor Statistics, telephone number 202–691–6501, or by *e-mail* at *educfeedback@bls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor through the Bureau of Labor Statistics (BLS) is responsible for the development and publication of occupational

employment projections and related career information, including the education and training requirements for detailed occupations. The BLS issued a **Federal Register** notice on November 18, 2008 (Volume 73, Number 223), requesting comments on a proposed education and training system. On May 26, 2009, a notice was issued on the BLS Web site announcing that the BLS would continue to refine the system to classify occupations into education and training categories for use in 2010, and provide an experimental dataset on the new system. The new education and training system has been developed and the experimental dataset is ready for users to provide feedback.

II. Current Action

The objective of the new system is to present a more complete picture of the education and training needed for entry into a given occupation and to become competent at performing the occupation. Its major features are:

- *Typical Entry-Level Education.* An education level assignment that represents the typical entry-level requirement for each occupation independent of training.
- *Previous Work Experience in a Related Occupation.* An assignment to indicate if previous work experience in a related occupation is commonly deemed necessary by employers for entry into the occupation, or is a commonly accepted substitute for formal types of training.
- *State Licensing.* Information on whether one or more States regulate the occupation through licensure.
- *Typical On-the-Job Training Needed to Attain Competency in the Occupation.* An assignment for the typical on-the-job training needed to attain competency in the occupation.

The typical entry level education, previous work experience, and State licensing categories represent "pre-employment" qualifications, and the typical training needed to attain competency in the occupation is attained once the worker is employed. The new system is depicted in Table 1.

TABLE 1—PROPOSED EDUCATION AND TRAINING CLASSIFICATION SYSTEM LAYOUT

Pre-employment			During employment
Typical entry level education	Previous work experience in a related occupation	State licensing	Typical on-the-job training needed to attain competency in the occupation
Doctoral or professional degree	Less than 1 year	Yes or No	Apprenticeship.
Master's degree	1–5 years		Internship/residency.
Bachelor's degree	More than 5 years		Short-term on-the-job training.
Associate's degree	None		Moderate-term on-the-job training.
Postsecondary non-degree award			Long-term on-the-job training.
Some college, no degree			None.
High school diploma or equivalent.			
Less than high school.			

The proposed system differs from the current system in a number of ways. The current system assigns occupations to a single education or training category that describes the most significant source of education or training. The proposed system breaks this out into three dimensions: Entry level education, previous work experience, and typical training. A new dimension is added that provides information on State licensing. In addition, the term "most significant source of education or training" as used in the current system has been replaced in favor of clearly defining the categories as needed either to enter the occupation (typical education level, previous work experience, and State licensing) or to attain competency once employed in the occupation (typical on-the-job training).

With the proposed system, the education level assignment will be determined based on educational attainment data from the *American Community Survey* (ACS); data on occupational skills, knowledge, work activities, and education and job training from the *Occupational Information Network* (O*NET); and BLS analysts' analytical judgment. ACS data aggregated by age can be a useful resource; in particular, ACS data on educational attainment for persons aged 18–29 can serve as a guide for assigning an entry-level educational attainment category; for occupations that have high levels of educational requirements, older cohorts may be more appropriate to examine. O*NET also serves as a source of information to assign occupations to work experience and typical training categories. BLS analysts also obtain information for assignments from employers, workers in the occupation, training experts, and representatives of professional and trade associations and unions.

The experimental dataset contains 106 occupations selected from all major groups in the 2000 Standard Occupational Classification (SOC) system, and has representation from all assignments within the education and training categories. Access the experimental dataset and definitions for the education and training classifications at the following Internet address: *http://www.bls.gov/emp/ep_propedtrain.htm.*

III. Desired Focus of Comments

Comments and recommendations are requested from the public on the following aspects of the proposed education and training system:

- The clarity of the new system of assigning education, previous work experience, State licensing, and on-the-job training categories to each occupation.
- The clarity of the proposed education categories.
- The suitability of the new system to meet the needs of customers.
- The understanding of how the new system is to be used.
- The usefulness of the new integrated system compared to the old ones.

Signed at Washington, DC, this 24th day of September 2010.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2010–24430 Filed 9–28–10; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Longshore and Harbor Workers' Compensation Continuing Collection; Comment request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)] This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation (OWCP) is soliciting comments concerning the proposed collection: **Application for Continuation of Death Benefit for Student (LS–266)**. A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 29, 2010.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1378, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION

I. Background

The Office of Workers' Compensation Programs, (OWCP) administers the Longshore and Harbor Workers' Compensation Act. This Act was amended on October 27, 1972, to provide for continuation of death benefits for a child or certain other surviving dependents after the age of 18 years (to age 23) if the dependent qualifies as a student as defined in section 2(18) of the Act. The benefit would also be terminated if the dependent completes four years of education beyond high school. Form LS–266 is to be submitted by the parent or guardian for whom continuation of benefits is sought. The statements contained on the form must be verified by an official of the education institution. The information is used by the DOL to determine whether a continuation of the benefits is justified. This information collection is currently approved for use through January 31, 2011.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval of this information collection in order to ensure that employers are complying with the reporting requirements of the Act and to ensure that injured claimants receive all compensation benefits to which they are entitled.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Application for Continuation of Death Benefit for Student.

OMB Number: 1240–0026.

Agency Number: LS–266.

Affected Public: Individuals or households; Business or other for-profit.

Total Respondents: 44.

Total Annual Responses: 44.

Estimated Total Burden Hours: 22.

Estimated Time Per Response: 30 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $20.68.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 23, 2010.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2010–24377 Filed 9–28–10; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,164]

International Business Machines (IBM), Global Technology Services Delivery Division, Including On-Site Leased Workers From Artech, Greenville, South Carolina; 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 August 25, 2010, applicable to workers of International Business Machines (IBM), Global Technology Services Delivery Division, Greenville, South Carolina. The Department's Notice of determination was published in the **Federal Register** on September 15, 2010 (75 FR 56143).

At the request of a State Workforce Agent, the Department reviewed the certification for workers of the subject firm. The workers provide customer help desk support.

During the review, the company confirmed that workers leased from Artech were employed on-site at the Greenville, South Carolina location of IBM, Global Technology Services Delivery Division. 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 Artech working on-site at the Greenville, South Carolina location of IBM, Global Technology Services Delivery Division.

The amended notice applicable to TA–W–74,164 is hereby issued as follows:

All workers of International Business Machines (IBM), Global Technology Services Delivery Division, including on-site leased

workers from Artech, Greenville, South Carolina, who became totally or partially separated from employment on or after May 26, 2009, through August 25, 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 21st day of September, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–24378 Filed 9–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,071]

ArvinMeritor, Incorporated, Currently Known as Camryn Industries LLC, Including On-Site Leased Workers From QPS Companies, Belvidere, IL; 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 June 23, 2010, applicable to workers and former workers of ArvinMeritor, Incorporated, including on-site leased workers from QPS Companies, Belvidere, Illinois (subject firm). The Department's Notice of determination was published in the **Federal Register** on July 7, 2010 (75 FR 39047).

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 the production of automotive chassis and modules.

New information shows that ArvinMeritor, Incorporated was purchased by Camryn Industries LLC in August 2010 and is currently known as Camryn Industries LLC. Workers separated from employment at the subject firm may have had their wages reported under a separate unemployment insurance (UI) tax account under the name Camryn Industries LLC.

Accordingly, the Department is amending this certification to show a change in ownership of the subject firm.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected as a secondary component supplier of automotive chassis and modules to a firm covered by an active TAA certification.

The amended notice applicable to TA–W–73,071 is hereby issued as follows:

All workers of ArvinMeritor, Incorporated, currently known as Camryn Industries LLC, including on-site leased workers from QPS Companies, Belvidere, Illinois, who became totally or partially separated from employment on or after December 9, 2008, through June 23, 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 17th day of September, 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–24379 Filed 9–28–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,924]

Amsted Rail Company, Inc., a Subsidiary of Amsted, Including On-Site Leased Workers From Kelly Services and Account Temps, Granite City, IL; 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 14, 2010, applicable to workers of Amsted Rail Company, Inc., a subsidiary of Amsted, including on-site leased workers from Kelly Services and Account Temps, Granite City, Illinois. The Department's Notice was published in the **Federal Register** on August 2, 2010 (75 FR 45162).

At the request of the State Agency, the Department reviewed the certification. The workers are engaged in the production of component parts for the rail car industry.

The Department's review shows that on January 11, 2008, a certification of eligibility to apply for adjustment assistance was issued for all workers of ASF–Keystone, Inc., a Division of Amsted, Granite City, Illinois, separated from employment on or after September 20, 2006 through January 11, 2010 (TA–W–62,177). The Department's notice was published in the **Federal Register** on January 25, 2008 (73 FR 4634). The certification of TA–W–62,177 did not include any on-site leased workers.

In order to avoid an overlap in worker group coverage concerning only the workers of Amsted Rail Company, Inc., a subsidiary of Amsted, the Department is amending the April 14, 2009 impact date to read January 12, 2010.

The amended notice applicable to TA–W–73,924 is hereby issued as follows:

All workers of Amsted Rail Company, Inc., a subsidiary of Amsted, Granite City, Illinois, who became totally or partially separated from employment on or after January 12, 2010, through July 14, 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;

And

All leased workers from Kelly Services and Account Temps, working on-site at Amsted Rail Company, Inc., a subsidiary of Amsted, Granite City, Illinois, who became totally or partially separated from employment on or after April 14, 2009 through July 14, 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 in Washington, DC, this 21st day of September, 2010.

Del Min Amy Chen

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2010–24383 Filed 9–28–10; 8:45 am]

BILLING CODE 4510–FN–P

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 September 13, 2010 through September 17, 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
73,471	Kelman Glass, LLC, DBA L.E. Smith Glass Company	Mount Pleasant, PA	February 3, 2009.
73,990	Trinity North American Freight Car, Inc., Freight Car, Plant #26	Fort Worth, TX	April 23, 2009.
74,280	Whirlpool Corporation, Benton Harbor Division, Leased Workers from Aerotek.	Benton Harbor, MI	June 18, 2009.

TA–W No.	Subject firm	Location	Impact date
74,412	Convergys	Albuquerque, NM	June 29, 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
73,152	Dell, Inc., Enterprise Server Technical Support for Americas	Round Rock, TX	December 18, 2008.
73,593	International Business Machines (IBM), Global Technology Services Delivery Division, Offsite Teleworkers.	Boulder, CO	February 24, 2009.
74,005	Pentair Residential Filtration, Leased Workers from Furst Staffing	Rockford, IL	April 15, 2009.
74,054	Dell, Inc., Dell Services, Insurance Solutions, Formerly Technical Mgmt., Inc.	Rome, GA	May 5, 2009.
74,168	Gerber Plumbing Fixtures, LLC, Kokomo Sanitary Pottery Division	Kokomo, IN	May 22, 2010.
74,269	ADP TotalSource, iMedx, Inc.; formerly Medware, Inc.; Reporting From Home Offices.	Winter Springs, FL	June 18, 2009.
74,363	ACS Commercial Solutions, Inc., Affiliated Computer Services, Xerox Co., Insurance East SBU, Pegasus SBU.	London, KY	July 1, 2009.
74,387	Allstate Insurance Company, Allstate Corporation, Allstate Claims Technology Services Department.	Northbrook, IL	July 6, 2009.
74,393	Henkel of America, Inc., Finance Department, Henkel AG and Co. KGAA, Leased Workers Robert Half, etc.	Rocky Hill, CT	July 15, 2009.
74,529	Fisher-Price Inc., Mattel, Inc., Information Technology, Leased Workers from Pro Unlimited.	East Aurora, NY	August 6, 2009.
74,541	Annex Manufacturing, LLC, Hannifin Corp., Leased Workers from Kelly Temporary Services.	Lyons, NY	August 17, 2009.
74,591	ProTeam, Inc., Emerson Electric, Leased Workers of SOS Staffing and Labormax.	Boise, ID	August 25, 2009.
74,591A	The United Electric Company, Proteam, Inc., Leased Workers from Manpower.	Burlington, NC	August 25, 2009.
74,609	Laserwords, U.S., Inc	Madison, WI	September 2, 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
74,151	Dick Lucier Excavation	Frenchtown, MT	May 11, 2009.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for 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
74,498	Holcim (US), Inc., North Region Terminal Operations Division, Detroit Terminal.	Detroit, MI	July 8, 2009.
74,498A	Holcim (US), Inc., North Region Terminal Operations Division, Elmira Terminal.	Elmira, MI	July 8, 2009.
74,498B	Holcim (US), Inc., North Region Terminal Operations Division, Grandville Terminal.	Grandville, MI	July 8, 2009.
74,498C	Holcim (US), Inc., North Region Terminal Operations Division, Cincinnati River Terminal.	Cincinnati, OH	July 8, 2009.
74,498D	Holcim (US), Inc., North Region Terminal Operations Division, Chicago Summit Terminal.	Summit, IL	July 8, 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
73,938	Management Resources Group, Inc	Southbury, CT	
74,309	National Precast Structural, Inc., Precast National, Inc.	Shelby Township, MI	
74,311	National Precast, Inc	Roseville, MI	

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 website, 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
73,868	Hewlett Packard Corporation	Marlborough, MA	
74,052	Green Design Furniture Company	Portland, ME	
74,127	Dyrsmith, LLC, Precisionworks Manufacturing	Berthoud, CO	
74,392	Beckman Coulter, Inc	Webster, TX	

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
74,499	Holcim (US), Inc., North Regional Terminal Operations Division, Elmira Terminal.	Elmira, MI	
74,500	Holcim (US), Inc., North Region Terminal Operations Division, Grandville Terminal.	Grandville, MI	
74,501	Holcim (US), Inc., North Region Terminal Operations Division, Cincinnati River Terminal.	Cincinnati, OH	
74,502	Holcim (US), Inc., North Regional Terminal Operations Division, Chicago Summit Terminal.	Summit, IL	

I hereby certify that the aforementioned determinations were issued during the period of September 13, 2010 through September 17, 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 website at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: September 22, 2010

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–24384 Filed 9–28–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–114)]

PNT Advisory Board; 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 National Space-Based Positioning, Navigation, and Timing (PNT) Advisory Board.

DATES: Thursday, October 14, 2010, 9 a.m. to 5 p.m., and Friday, October 15, 2010, 9 a.m. to 1 p.m.

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street, NW. (at Connecticut Ave.), Hampton Ballroom, Washington, DC 20008, *Phone:* (202) 234–0700, *Fax:* (202) 265–7972.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Space Communications and Navigation Program, Space Operations Mission Directorate, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, Phone 202–358–4417.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register. The agenda for this meeting will include discussion topics:

- Update on U.S. Space-Based Positioning, Navigation and Timing (PNT) Policy and Global Positioning System (GPS) modernization.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international Global Navigation Satellite Systems (GNSS).
- Examine emerging trends and requirements for PNT services in U.S. and international arenas through PNT Board technical assessments.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture options.
- Review GPS Standard Positioning Service Performance Standards and effects on non-ICD compliant receivers.

• Address future challenges to PNT service providers and users such as protecting the emerging role of PNT in cyber networks, including the need for back-ups.

Dated: September 24, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–24466 Filed 9–28–10; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

President's Committee on the Arts and the Humanities: Meeting #66

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities (PCAH) will be held on October 19, 2010, from 4 p.m. to 5:30 p.m. The meeting will be held in the Crystal Room, The Willard Intercontinental, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

The Committee meeting will begin with welcome, introductions, and announcements. Updates and discussion on recent programs and activities will follow. The meeting will also include a review of PCAH ongoing programming for youth arts and humanities learning, preservation and conservation, special events, and international cultural projects. The meeting will adjourn after discussion of other business, as necessary, and closing remarks.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982, which currently states that the "Committee shall advise, provide recommendations to, and assist the President, the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services on matters relating to the arts and the humanities."

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend are advised to contact Lindsey Clark of the President's Committee seven (7) days in advance of the meeting at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Clark at *lhansen@pcah.gov.*

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Suite 724, Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Dated: September 24, 2010.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 2010–24366 Filed 9–28–10; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0214]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on June 30, 2010.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 34, "Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations."

3. *Current OMB approval number:* 3150–0007.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

6. *Who will be required or asked to report:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

7. *An estimate of the number of annual responses:* 1,116 (371 reporting responses plus 745 recordkeepers).

8. *The estimated number of annual respondents:* 745 (647 Agreement State licensees plus 98 NRC licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 284,868 hours (503 reporting + 284,365 recordkeeping). The NRC licensees' total burden is 37,681 hours (69 reporting plus 37,612 recordkeeping). The Agreement State licensees' total burden is 247,187 hours (434 reporting plus 246,753 recordkeeping).

10. *Abstract:* 10 CFR Part 34 establishes radiation safety requirements for the use of radioactive material in industrial radiography. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments and questions should be directed to the OMB reviewer listed below by October 29, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0007), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 20th day of September, 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–24395 Filed 9–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–08; NRC–2010–0011]

Calvert Cliffs Nuclear Power Plant, LLC; Independent Spent Fuel Storage Installation; Notice of Issuance of Amendment to Materials License No. SNM–2505

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance of Amendment to Materials License No. SNM–2505

DATES: A request for a hearing must be filed by November 29, 2010.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Licensing Branch, 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:

I. Introduction

By application dated June 15, 2009, as supplemented February 18, March 31, May 6, and September 1, 2010, Calvert Cliffs Nuclear Power Plant, LLC (CCNPP) submitted an application to NRC, in accordance with 10 CFR Part 72, requesting an amendment to NRC Materials License No. SNM–2505. CCNPP's application requested that the Independent Spent Fuel Storage Installation (ISFSI) Technical Specifications (TS) be revised as follows:

1. TS Limiting Condition for Operation (LCO) 3.1.1(3), "Fuel to be Stored at ISFSI." Increases the maximum assembly average burnup limit for fuel stored in the NUHOMS®–32P Dry Storage Canisters (DSCs) to 52,000 MWd/MTU,

2. TS 2.1, "Fuel to be Stored at ISFSI." Adds a new gamma source for the NUHOMS®–32P DSC of 1.61×10^{15} MeV/sec/assembly to allow fuel that reaches the TS LCO 3.1.1(5) assembly thermal limit with a maximum cooling time of seven years to be loaded. Raises the NUHOMS®–32P DSC neutron source to 4.175×10^{8} neutrons/sec/assembly to support storage of the higher burnup fuel.

3. LCO 3.4.1.1, "Maximum Air Temperature Rise." Raises the allowable air temperature rise from inlet to outlet of the Horizontal Storage Module from 60 °F to 64 °F.

In accordance with 10 CFR 72.16, a Notice of Docketing was published in the **Federal Register** on January 14, 2010 (75 FR 2163). Pursuant to 10 CFR 72.46(b)(2), on September 9, 2010, the NRC approved and issued Amendment No. 9 to Materials License No. SNM–2505, held by CCNPP for the receipt, possession, transfer, and storage of spent fuel at the Calvert Cliffs ISFSI. Amendment No. 9 was effective as of the date of issuance.

Amendment No. 9 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. 9 Safety Evaluation Report (SER). The issuance of Amendment No. 9 satisfied the criteria specified in 10 CFR 51.22(c)(11) for a categorical exclusion. Thus, the preparation of an environmental assessment or an environmental impact statement is not required.

II. Opportunity To Request a Hearing

In accordance with 10 CFR 72.46(b)(2), the staff has determined that this license amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, immediate action on the license amendment may be taken and a notice of the action will be promptly published in the **Federal Register**. This **Federal Register** notice also informs interested persons of the right to request a hearing on whether the action should be rescinded or modified.

Any person whose interest may be affected by this proceeding and who desires to have this action rescinded or modified must file a request for a hearing and, a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). All documents filed in NRC adjudicatory proceedings, including documents filed by interested governmental entities participating under 10 CFR 2.315(c) and any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, must be filed in accordance with the E-Filing rule. The E-Filing rule 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 a waiver 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 petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (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/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* 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.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, they 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 filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE 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 EIE 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 through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must, in accordance with 10 CFR 2.302(g), file an exemption request 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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

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, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. 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.

The formal requirements for documents contained in 10 CFR 2.304(a), (c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b), must also be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by November 29, 2010.

In addition to meeting other applicable requirements of 10 CFR 2.309, a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;
2. The nature of the requester's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and
5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petition for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;
5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC documents that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further information

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	June 15, 2009	ML091680541.
Response to First Request for Additional Information	February 18, 2010	ML100560175.
Supplemental Information	March 31, 2010	ML100950449.
Response to Second Request for Additional Information	September 1, 2010	ML102530139.
License Amendment No. 1 Issuance Package	September 14, 2010	ML102571628.
Safety Evaluation Report	September 14, 2010	ML102571637.

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 21st day of September, 2010.

For the Nuclear Regulatory Commission.

Eric Benner,

Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–24393 Filed 9–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0209]

Notice of Public Meeting To Solicit Comments on the Draft Policy Statement on the Protection of Cesium-137 Chloride Sources

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of public meeting to solicit public comments.

SUMMARY: The NRC is conducting a public meeting to solicit public input on the draft policy statement on the protection of cesium-137 chloride (CsCl) sources that was published in the **Federal Register** on June 29, 2010 (75 FR 37483). During the public meeting, the NRC will request public comments on the issues discussed in this document. Additionally, the NRC is requesting names of individuals to participate at the public meeting in a round table discussion of the issues discussed in Section III of this document.

The purpose of this document is to announce the date and location of the public meeting which were not finalized in the June 29, 2010, document, as well as to publish an Issues Paper which will serve as a framework for the discussion of the major issues in the draft policy statement in the public meeting.

DATES: 1. The public meeting will be held on November 8–9, 2010.

2. Nominations for participation in the roundtable discussions of the public meeting should be submitted by October 8, 2010.

3. Written comments on the draft policy statement, outside the scope of the public meeting, are also accepted and should be submitted by December 17, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

4. To ensure efficient and complete comment resolution, comments should include reference to the section and page numbers of the Draft Policy Statement (75 FR 37483) to which the comment applies. When commenting on the CsCl issues presented, please exercise caution with regard to site-specific security-related information. Comments will be made available to the public in their entirety; personal information, such as your name, address, telephone number, e-mail address, etc. will not be removed from your submission.

ADDRESSES: Please include Docket ID NRC–2010–0209 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see Section I, "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods.

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0209. Address questions about NRC dockets to Carol Gallagher, telephone (301) 492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, MS: TWB–5 B1M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

The public meeting will be held at The Universities at Shady Grove Conference Center, 9630 Gudelsky Drive, Rockville, Maryland 20850–5822. Nominations for participation in the roundtable discussions of the public meeting should be submitted by October 8, 2010. For expeditious handling of the nominations, the NRC established a dedicated e-mail address. The nominations should be sent to the following NRC e-mail address: *CesiumDraftPolicy@nrc.gov.*

Other participants, who wish to attend the public meeting, may also pre-register at the dedicated e-mail address: *CesiumDraftPolicy@nrc.gov.* The NRC will appreciate pre-registration in order to properly plan for the conference facilities; however, pre-registration is not required and registration will be available on the opening day of the public meeting.

FOR FURTHER INFORMATION CONTACT: Dr. John P. Jankovich, Office of Federal and State Materials and Environmental Management Programs, telephone (301) 415–7904, e-mail *john.jankovich@nrc.gov,* or Dr. Cynthia G. Jones, Office of Nuclear Security and Incident Response, telephone (301) 415–0298, e-mail *cynthia.jones@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* To ensure efficient and complete comment resolution, comments should include reference to the section and page numbers of the Draft Policy Statement (75 FR 37483) and/or Issues Paper to which the comment applies. When commenting on the CsCl issues

presented, please exercise caution with regard to site-specific security-related information. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document, including the following documents, using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov*.

Federal Rulemaking Web Site: Public comments and supporting materials related to this document can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0209.

The NRC will also use a public Web site, *http://www.nrc.gov/materials/miau/licensing.html#cc* to make documents, relevant to the draft policy statement and to the public meeting, accessible. This public Web site will be continually updated as new information becomes available.

II. Background

The NRC is seeking public input on the major issues associated with its proposed policy and expectations on the secure uses of CsCl sources. As a first step, the NRC has prepared a draft policy statement, published June 29, 2010 (75 FR 37483), to address issues related to the safety and security of the International Atomic Energy Agency (IAEA) Category 1 and 2 CsCl sources.[1] The intent of this document is to foster discussion about the draft policy issues in the public meeting and to solicit comments on the draft policy statement.

Following the publication of the draft policy statement, additional information became available on security of radioactive sources. The Energy Policy Act of 2005 (Pub. L.109–58) named 12 Federal agencies and 2 State organizations to the interagency Radiation Source Protection and Security Task Force (Task Force) and named the NRC Chairman (or a designee) as its chairperson. The Task Force was charged with evaluating and providing recommendations to the President and Congress relating to the security of radiation sources in the United States from potential terrorist threats, including acts of sabotage, theft, or use of a radiological source in a radiological dispersal device. The first Task Force report was submitted in August 2006 (*see http://www.nrc.gov/reading-rm/doc-collections/congress-docs/correspondence/2006/president-08-15-2006.pdf*). On August 11, 2010, the NRC transmitted to the President and Congress with the second report documenting the efforts of the interagency Task Force. The second report included 11 recommendations to improve source security in the U.S. (*see* http://www.nrc.gov/security/byproduct/2010-task-force-report.pdf).

III. Issues Paper on the Draft Policy Statement on the Protection of Cesium-137 Chloride Sources

The objective of the public meeting is to solicit stakeholder comments on the policy issues that are presented in the draft policy statement. The following format is used in the presentation of the issues. Each issue is assigned a number, a description of the policy issue, a list of panel presentations with subjects for volunteers to address in short overview-type presentations, and a list of questions for discussion by the general public. These issues, questions and factors are not meant to be a complete or final list, but are intended to initiate discussion. Interested stakeholders are welcome to recommend additions, deletions, or modifications to the key issues. The Commission will consider all public feedback when issuing the final policy statement. Meeting participants and commenters are encouraged to read the proceedings of the previous public meeting held in 2008 and the written comments that the NRC received. The documents are available at *http://www.nrc.gov/materials/miau/licensing.html#cesium*.

Issues for Discussion

Issue 1: The safety and security of risk significant sources is an essential part of the NRC's mission. Licensees have the primary responsibility to securely manage and to protect sources in their possession from misuse, theft, and radiological sabotage.

Panel presentations:

- Outline of current security and control requirements.
- Overview of security inspection findings by the NRC Regional offices.
- Agreement State perspectives.

Participant deliberations:

- What is the status and history of the current security requirements and programs to reduce the potential vulnerability of IAEA Category 1 and 2 sources?
- What issues have licensees experienced when implementing the requirements?
- What is the status of the NRC and Agreement State inspections designed to verify implementation of the requirements?

Issue 2: Adequate protection of public health and safety is maintained if CsCl sources are managed in accordance with the security requirements of the NRC and the Agreement States. The NRC monitors the threat environment and maintains awareness of international and domestic security efforts. In the event that changes in the threat environment necessitate regulatory action, the NRC is ready to issue additional security requirements to apply appropriate limitations for the use of CsCl in its current form.

Panel presentations:

- Status of proposed 10 CFR Part 37 rulemaking, **Federal Register** Notice, June 15, 2010. (75 FR 33902)
- Licensees perspective of security requirements for CsCl sources.
- An overview of NRC's threat assessment process.
- Overview of the Federal Bureau of Investigation (FBI) outreach efforts.

Participant deliberations:

- Is security of CsCl sources adequately addressed by the current requirements?
- Should CsCl sources receive special consideration?
- How would the proposed Part 37 change the licensees' current/existing security measures for CsCl?
- How do the FBI outreach efforts affect the protection measures in place for CsCl sources?
- If needed, what additional cooperative efforts could be undertaken

[1] An IAEA Category 1 cesium-137 source contains a minimum of 3,000 Ci (100 TBq) and a Category 2 source contains a minimum of 30 Ci (1 TBq). *See http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004_web.pdf.*

to enhance security or minimize the risk?

Issue 3: Could hardware improvements be made that would further mitigate or minimize the radiological consequences?

Panel presentations:

• Irradiator manufacturers' presentation on safety features.

• Overview of the Department of Energy (DOE)/National Nuclear Security Administration (NNSA) voluntary security enhancement program.

• Licensee perspective of design changes.

Participant deliberations:

• What is the status of current CsCl designs regarding security enhancements?

• What are the benefits of the DOE/NNSA voluntary security enhancements and table-top exercises?

• Are other isotopes being considered for the future production of existing designs?

• Are new concepts being considered for new designs?

Issue 4: The development and use of alternative forms of cesium-137, while not required for adequate protection, is prudent and the NRC intends to monitor these developments closely.

Panel presentations:

• Overview of feasible alternatives from the irradiator manufacturers' perspective and from the users' perspective.

• Source manufacturers' presentation on new initiatives.

• Dispersibility considerations.

Participant deliberations:

• Are manufacturers currently considering the use of other forms of cesium (other than CsCl)? If yes, what alternatives are viable?

• What is the status of new developments?

• How can the effectiveness of new alternatives regarding solubility and dispersibility be measured?

○ What are the physical/chemical parameters?

○ How can risk reduction be quantified?

• How to formalize solubility and dispersibility parameters?

Issue 5: CsCl enables three specific classes of applications that benefit society:

(a) Blood irradiation;

(b) Bio-medical and industrial research; and

(c) Calibration of instrumentation and dosimetry.

Panel presentations:

• Equipment needs of the blood irradiation industry.

• Conduct of bio-medical research in view of cesium-137 irradiation.

• Issues in calibration technology in view of cesium-137 sources.

• Status of alternative technologies.

Participant deliberations:

• What impact does the Draft Policy Statement pose for each of these applications?

• What is the licensees' experience in complying with the current security requirements in view of the three fields of applications?

• What technological changes are anticipated in these applications regarding the use of cesium-137 sources?

Issue 6: The NRC recognizes that currently there is no disposal capability for commercial CsCl sources. The NRC considers it imperative to develop a pathway for the long-term storage and disposal of these sources whether or not there are alternatives developed.

Panel presentations:

• Update from DOE on development of Environmental Impact Statement for a disposal facility.

• Licensees' perspective on storage and disposal of CsCl sources.

• Disposal of CsCl sources through DOE's Off-Site Recovery Program or Conference of Radiation Control Program Directors.

Participant deliberations:

• What are the major issues for licensees (users of CsCl sources) regarding disposal of their sources?

• What options are available?

• What are the (security and cost) impacts of the current regulatory environment on licensees?

IV. Solicitation for Stakeholder Input

To solicit stakeholder input during the public meeting, NRC will conduct a roundtable panel discussion, with opportunity for audience participation, for each issue contained in Section III of this document. The NRC is seeking the names of individuals interested in participating on these panels. Nominations by interested individuals or organizations should include the name of the proposed panel member, the issues they are interested in discussing, viewpoint(s) on the issue(s), and affiliation (if any). Roundtable panel participants will be selected with the goal of providing balanced viewpoints on each of the various issues. *Please see* the **ADDRESSES** section of this document to submit nominations by October 8, 2010. Nominations received after this date will be considered if it is practical to do so.

We encourage previous participants who attended, either as panel members or attendees, the prior public workshop held on September 29–30, 2008, to also participate in this meeting. Information on the previous public meeting is accessible at *http://www.nrc.gov/materials/miau/licensing.html#cesium*.

Based on the comments received in both written and electronic form, and at the public meeting, the Commission will then be in a better position to proceed with the issuance of a final policy statement. The final policy statement, when issued by the Commission, will be published in the **Federal Register.**

Dated at Rockville, Maryland, this 20th day of September 2010.

For the Nuclear Regulatory Commission.

John P. Jankovich,

Team Leader, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–24392 Filed 9–28–10; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12329 and # 12330]

Colorado Disaster # CO–00033

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of COLORADO dated 09/23/2010.

Incident: Fourmile Canyon Fire.

Incident Period: 09/06/2010 through 09/18/2010.

Effective Date: 09/23/2010.

Physical Loan Application Deadline Date: 11/22/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 06/23/2011.

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: Boulder.

Contiguous Counties:

Colorado: Broomfield, Gilpin, Grand, Jefferson, Larimer, Weld.

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 12329 5 and for economic injury is 12330 0.

The State which received an EIDL Declaration # is Colorado.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 23, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–24398 Filed 9–28–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 3.250 (3¼) percent for the October–December quarter of FY 2011.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan which funds any portion of the cost of a 504 project (*see* 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

Richard C. Blewett,

Acting Director, Office of Financial Assistance.

[FR Doc. 2010–24399 Filed 9–28–10; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12283 and #12284]

MISSOURI Disaster Number MO–00041

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of MISSOURI (FEMA–1934–DR), dated 08/17/2010.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 06/12/2010 through 07/31/2010.

DATES: *Effective Date:* 09/20/2010.

Physical Loan Application Deadline Date: 10/18/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 05/17/2011.

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 Private Non-Profit organizations in the State of MISSOURI, dated 08/17/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Perry.

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. 2010–24397 Filed 9–28–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62980; File No. SR–CHX–2010–20]

Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Provide Credit for Transactions Involving Issues Priced Less Than One Dollar

September 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 16, 2010, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective September 20, 2010, to change its transaction fees and rebates to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm* and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange would amend its Fee Schedule to change the provide credit to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System.

The Exchange proposes to change the provide credit in the transactions described above from 0.20% of the trade value to $0.00009 per share executed. The Exchange notes that this pricing structure for transactions in securities priced under $1 is similar to those used by some of our competitors which have been recently approved by the Commission.[5] The proposed change in the provide credit will help us remain competitive while maximizing the income derived from transactions in securities priced under $1.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the change to the fee schedule would provide incentives to Participants to increase the amount of liquidity provided on our trading facilities for securities priced less than $1, which may contribute to an increase in trading volume on the Exchange and in the income derived therefrom.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60-days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2010–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2010–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CHX–2010–20 and should be submitted on or before October 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24416 Filed 9–28–10; 8:45 am]

BILLING CODE 8010–01–P

[5] For example, The NASDAQ Stock Market LLC changed its rebate for transactions in securities priced under $1 from 0.1% of the total dollar value to $0.00009 per share in May of 2010. *See* Securities Exchange Act Release No. 62138 (May 19, 2010), 75 29596 (May 26, 2010) (SR–NASDAQ–2010–059).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4)

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62989; File No. SR–NYSE–2010–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 4560 To Correspond With a Rule Change Filed by the Financial Industry Regulatory Authority, Inc.

September 24, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 13, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 4560 to correspond with a rule change filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[4] The text of the proposed rule change is available at the Exchange, *http://www.nyse.com,* the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 4560 (Short-Interest Reporting) to correspond with a rule change filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.[5]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Current NYSE Rule 4560

The Exchange adopted NYSE Rule 4560 in May 2009.[7] Rule 4560 requires each member organization to maintain a record of the total short positions in its customer and proprietary accounts in securities listed on a national securities exchange and that such information must be reported to FINRA. NYSE Rule 4560 is based on, and is substantially the same as, FINRA Rule 4560 (Short-Interest Reporting). The principal distinction between the two rules is that, as adopted by the Exchange, NYSE Rule 4560 does not apply to OTC Equity Securities (as defined in FINRA Rule 6420) since the Exchange does not trade OTC Equity Securities.

Proposed Conforming Amendments to NYSE Rule 4560

In April 2010, FINRA amended FINRA Rule 4560 to provide, in part, that it applies to all equity securities (other than Restricted Equity Securities as defined in FINRA Rule 6420) and not just to OTC Equity Securities or securities listed on a national securities exchange.[8] The Exchange proposes to amend NYSE Rule 4560, as applicable, to conform with FINRA's amendments to FINRA Rule 4560 so that NYSE Rule 4560 applies to all equity securities (other than Restricted Equity Securities as defined in FINRA Rule 6420).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for Dual Members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rule, such changes are technical in nature and do not change the substance of the proposed NYSE Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the

[4] *See* Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010) (order approving SR–FINRA–2010–003).

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); *and* 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] *See* Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (order approving NYSE 2009–25).

[8] *See* Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–68 and should be submitted on or before October 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24449 Filed 9–28–10; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62987; File No. SR–NYSEAmex–2010–92]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rule 4560—NYSE Amex Equities To Correspond With a Rule Change Filed by the Financial Industry Regulatory Authority, Inc.

September 24, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 13, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4560—NYSE Amex Equities to correspond with a rule change filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[4] The text of the proposed rule change is available at the Exchange, *www.nyse.com,* the Commission's Public Reference Room, and on the Commission's Web site at *www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 4560—NYSE Amex Equities (Short-Interest Reporting) to correspond with a rule change filed by FINRA and approved by the Commission.

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, the New York Stock Exchange LLC ("NYSE"), NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The Exchange became a party to the Agreement effective December 15, 2008.[5]

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010) (order approving SR–FINRA–2010–003).

[5] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); *and* 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding

Continued

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[6]

Current Rule 4560—NYSE Amex Equities

The Exchange adopted Rule 4560—NYSE Amex Equities in May 2009.[7] Rule 4560—NYSE Amex Equities requires each member organization to maintain a record of the total short positions in its customer and proprietary accounts in securities listed on a national securities exchange and that such information must be reported to FINRA. Rule 4560—NYSE Amex Equities is based on, and is substantially the same as, FINRA Rule 4560 (Short-Interest Reporting). The principal distinction between the two rules is that, as adopted by the Exchange, Rule 4560—NYSE Amex Equities does not apply to OTC Equity Securities (as defined in FINRA Rule 6420) since the Exchange does not trade OTC Equity Securities.

Proposed Conforming Amendments to Rule 4560—NYSE Amex Equities

In April 2010, FINRA amended FINRA Rule 4560 to provide, in part, that it applies to all equity securities (other than Restricted Equity Securities as defined in FINRA Rule 6420) and not just to OTC Equity Securities or securities listed on a national securities exchange.[8] The Exchange proposes to amend Rule 4560—NYSE Amex Equities, as applicable, to conform with FINRA's amendments to FINRA Rule 4560 so that Rule 4560—NYSE Amex Equities applies to all equity securities (other than Restricted Equity Securities as defined in FINRA Rule 6420).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for joint members. To the extent the Exchange has proposed changes that differ from the FINRA version of the Rule, such changes are technical in nature and do not change the substance of the proposed NYSE Amex Equities Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–92 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex-2010–92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[6] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE, while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[7] *See* Securities Exchange Act Release No. 59975 (May 26, 2009), 74 FR 26449 (June 2, 2009) (order approving NYSEAmex 2009–26).

[8] *See* Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–92 and should be submitted on or before October 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24448 Filed 9–28–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62983; File No. SR–FINRA–2010–047]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Rule Cross-References and Make Non-Substantive Technical Changes to Certain FINRA Rules

September 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 13, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update cross-references within certain FINRA rules to reflect changes adopted in the consolidated FINRA rulebook and to make non-substantive technical changes to certain FINRA Rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is in the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references to reflect recent changes adopted in the Consolidated FINRA Rulebook. In this regard, the proposed rule change would update references in FINRA Rules 6630 and 9610 to reflect the adoption into the Consolidated FINRA Rulebook of FINRA Rule 4320 and the deletion of NASD Rule 3210.[5]

In addition, at the request of SEC staff, the proposed rule change would make technical amendments to FINRA Rules 5110, 6432 and 6540. The proposed rule change would replace references to the SEC's Interactive Data Electronic Applications ("IDEA") with the term "Electronic Data Gathering, Analysis, and Retrieval ('EDGAR')."

Finally, the proposed rule change would correct an inaccurate cross-reference in FINRA Rule 9810. In 2008, in connection with updating cross-references in that rule, FINRA inadvertently replaced a reference to NASD Rule 2110 with FINRA Rule 2020 rather than FINRA Rule 2010.[6] The proposed rule change would correct that technical error.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be October 15, 2010, the date on which the previously approved rule change regarding FINRA Rule 4320 will be implemented.[7]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 62533 (July 20, 2010), 75 FR 43588 (July 26, 2010) (Order Approving File No. SR–FINRA–2010–028).

[6] *See* Securities Exchange Act Release No. 59057 (December 12, 2008), 73 FR 78412 (December 22, 2008) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2008–057).

[7] *See Regulatory Notice* 10–35 (August 2010).

[8] 15 U.S.C. 78*o*–3(b)(6).

become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–047 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE. Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2010–047 and should be submitted on or before October 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24445 Filed 9–28–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62990; File No. SR–DTC–2010–12]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Automate the Approval Process in Providing Trustee Access to the Security Position Report Service

September 24, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 14, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to replace the manual approval process whereby trustees of an issue receive access to DTC's Security Position Report ("SPR") service with an automated approval process.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's SPR service provides valuable information on the record date holdings of an issuer's security in DTC Participant accounts. An SPR provides information needed to contact shareholders on corporate-related events such as annual meetings. DTC currently provides SPRs to Issuers, Trustees, and authorized third parties.

DTC's Proxy area receives requests for SPR services access and reviews such requests to ensure that only appropriate parties receive access. The review process to approve a Trustee's access to the SPR service for a security is done manually, and the process is therefore subject to error. Currently, the SPR system sends an e-mail to the DTC Proxy mailbox notifying the Proxy staff that a Trustee has added a CUSIP to its eligible issues list. Any Trustee can add a CUSIP to its eligible issues list. The CUSIP will show "unauthorized" until reviewed and approved by the DTC Proxy staff. DTC Proxy staff requires that the Trustee provide to it one of the following: Trust agreement, Annual Report, 10K, 10Q, SEC filing, and/or any other document deemed necessary and appropriate. Generally, it takes two or more days for a response on access requests because of the manual process associated with the review of trustee information.

To increase the efficiency by which DTC provides Trustees with access to the SPR service, DTC is seeking to collect Trustee data at the point of eligibility of the issue. This will allow DTC to store and maintain Trustee data on the Entity Master File and the Security Master File ("Master Files"). DTC will then have the ability to automate the validation done by the SPR system against the information stored on the Master Files in response to a Trustee request for SPR access.

Initially, DTC will populate and update the Trustee field on the Master Files through DTC's Participant Terminal System. Ultimately, and as set forth below, this information will be updated through DTC's UW (underwriting) Source System by underwriters at the time of issue eligibility. This change requires DTC to update the UW Source System to

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

designate trustee data as a mandatory field at the time of eligibility. In order to provide the time it may take for underwriters to update their systems to populate the information required by this new mandatory field, DTC plans to implement the change to the UW Source System in the fourth quarter of 2011. In the event of a change in trustee, DTC will require that the new and the prior trustees both update the trustee information using the 17Ad–16 form used today to update transfer agent changes. By making the trustee authorization process more efficient, DTC will increase information flow to industry participants and will reduce the risk associated with the manual processing of trustee data.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act,[3] as amended, and the rules and regulations thereunder applicable to DTC because the proposed rule change is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by replacing the manual approval process whereby trustees of an issue receive access to DTC's SPR service with an automated approval process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2010–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2010–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/legal/rule_filings/dtc/2010.php.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2010–12 and should be submitted on or before October 20, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[4]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–24452 Filed 9–28–10; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7189]

Determination Concerning the Bolivian Military and Police Under the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010

Pursuant to the authority vested in the Secretary of State, including under the heading "International Narcotics Control and Law Enforcement" of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117), I hereby determine that the Government of Bolivia is investigating, prosecuting, and punishing military and police personnel who have been credibly alleged to have violated internationally recognized human rights.

This Determination shall be transmitted to the Congress and published in the **Federal Register**.

Dated: September 17, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–24418 Filed 9–28–10; 8:45 am]

BILLING CODE 4710–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2010–0026]

WTO Dispute Settlement Proceeding Regarding China—Certain Measures Affecting Electronic Payment Services

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on September 15, 2010, the United States requested consultations with the People's Republic of China ("China") under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") concerning issues relating

to certain restrictions and requirements maintained by China pertaining to electronic payment services for payment card transactions and the suppliers of those services. That request may be found at www.wto.org contained in a document designated as WT/DS413/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 29, 2010 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2010–0026. If you are unable to provide submissions to *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Frank J. Schweitzer, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9444.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

On September 15, 2010, the United States requested consultations with China concerning issues relating to certain restrictions and requirements maintained by China pertaining to electronic payment services for payment card transactions and the suppliers of those services. Electronic payment services involve the services through which transactions involving credit card, debit card, charge card, check card, automated teller machine ("ATM") card, prepaid card, or other similar card or money transmission product, are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated.

In the financial services sector, as set out in China's Schedule of Specific Commitments on Services annexed to the *Protocol on the Accession of the People's Republic of China,* China undertook both market access and national treatment commitments with respect to electronic payment services.

Despite those commitments, China appears to impose market access restrictions and requirements on services suppliers of other Members seeking to supply electronic payment services in China. It appears that China UnionPay ("CUP"), a Chinese entity, is the only entity that China permits to supply electronic payment services for payment card transactions denominated and paid in renminbi ("RMB") in China. Service suppliers of other Members can only supply these services for payment card transactions paid in foreign currency. In addition to permitting only CUP to supply electronic payment services for payment card transactions in China denominated and paid in RMB, China also requires all payment card processing devices at merchant locations to be compatible with CUP's system, which gives CUP guaranteed access to all merchants in China who accept payment cards. Electronic payment services suppliers of other Members or their participating institutions, by contrast, must negotiate for access to merchants. In addition, China requires that all payment cards, including "dual currency" cards, issued in China for transactions denominated and paid in RMB bear the CUP logo. These and other requirements and restrictions maintained by China appear to be inconsistent with China's market access commitments and to accord less favorable treatment to electronic payment services suppliers of other Members than to Chinese suppliers of these services. The United States considers that China therefore appears to be acting inconsistently with its obligations under Articles XVI and XVII of the *General Agreement on Trade in Services.*

In its request for consultation, the United States identified the following instruments through which China maintains these measures:

- Measures for the Administration of Bank Card Business by the People's Bank of China (Yinfa [1999] 17), issued on 27 January 1999;
- Circular of the People's Bank of China on Promulgation of Opinions on Implementation of Joint Work in Bank Card Interoperability in 2001 (Yinfa [2001] 37), issued on 19 February 2001;
- Circular on Uniform Use of CUP Logo and its Holographic Label for Anti-counterfeiting by the People's Bank of China (Yinfa [2001] 57), issued on 13 March 2001;
- Notice of Circulating the Bank Card Connection Business Standard by the People's Bank of China (Yinfa [2001] 76), issued 29 March 2001;
- Opinions on Bank Card Interoperability Related Work in 2002 by the People's Bank of China (Yinfa [2002] 94), issued on 5 April 2002;
- Circular regarding Issues concerning Bank Card Interoperability Related Work by the People's Bank of China (Yinfa [2002] 272), issued on 29 August 2002;
- Circular on Further Improving Bank Card Interoperability Related Work by the People's Bank of China (Yinfa [2003] 129), issued on 2 July 2003;
- Announcement of Clearing Arrangements Provided by Banks in relation to Individuals' Deposits, Exchanges, Bank Card and Remittance in RMB in Hong Kong (PBOC Announcement [2003] 16), issued on 19 November 2003;
- Circular on Regulating the Administration of Foreign Currency Bank Cards by the State Administration of Foreign Exchange Circular (Huifa [2004] 66), issued on 30 June 2004;
- Announcement of Clearing Arrangements Provided by Banks in relation to Individuals' Deposits, Exchanges, Bank Cards and Remittance in RMB in Macao (PBOC Announcement [2004] 8), issued on 3 August 2004;
- Notice of the People's Bank of China concerning Relevant Issues on Accepting and Using Renminbi Bank Cards in Border Areas (Yinfa [2004] 219), issued on 21 September 2004;
- Circular regarding Issues concerning Individual RMB Business Handled by Banks in Mainland China and Banks in Hong Kong and Macao by the People's Bank of China (Yinfa [2004] 254), issued on 28 October 2004;
- Some Opinions of the People's Bank of China, the National Reform and Development Commission, the Ministry of Public Security, the Ministry of Finance, the Ministry of Information Industry, the Ministry of Commerce, the Station Administration of Taxation, China Banking Regulatory Commission and the State Administration of Foreign Exchange on Promoting the Development of Bank Card Industry (Yinfa [2005] 103), issued 24 April 2005;
- Guiding Opinions of the People's Bank of China on Regulating and Promoting the Development of Bank Card Acceptance Market (Yinfa [2005] 153), issued on 16 June 2005;

• Notice of the People's Bank of China on the Relevant Issues concerning Strengthening the Administration of Oversea Business Acceptance of Bank Cards (Yinfa [2007] 273), issued on 6 August 2007;

• Notice of the China Banking Regulatory Commission on the Issues Concerning Wholly Foreign-funded and Chinese-foreign Equity Joint Banks in Conducting the Bank Card Business (Yin Jian Fa [2007] 49), issued 6 June 2007;

• Notice of the People's Bank of China, the China Banking Regulatory Commission, the Ministry of Public Security and the State Administration for Industry and Commerce on Strengthening the Safety Management of Bank Cards and Preventing and Combating Bank Card Crimes (Yinfa [2009] 142), issued 27 April 2009; and

• The Opinions of the Standing Office of the People's Bank of China on the Circular on Strengthening the Safety Management of Bankcards and Preventing and Fighting Crimes in Bank Cards by the People's Bank of China, the China Banking Regulatory Commission, the Ministry of Public Security and the State Administration for Industry and Commerce (Yinfa [2009] 149), issued 1 August 2009;

• As well as any amendments, related measures, or implementing measures.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to www.regulations.gov docket number USTR–2010–0026. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via www.regulations.gov, enter docket number USTR–2010–0026 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the www.regulations.gov Web site, please consult the resources provided on the website by clicking on "How to Use This Site" on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at www.ustr.gov, and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the web site of the World Trade Organization, *http://www.wto.org.*

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Steven F. Fabry,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2010–24456 Filed 9–28–10; 8:45 am]

BILLING CODE 3190–W0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS414]

WTO Dispute Settlement Proceeding Regarding China—Countervailing and Antidumping Duties on Grain Oriented Flat-Rolled Electrical Steel

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on September 15, 2010, the United States requested consultations with the People's Republic of China ("China") under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") concerning issues relating to countervailing and antidumping duties imposed by China on imports from the United States of grain oriented flat-rolled electrical steel. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS414/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before October 29, 2010 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2010–0027. If you are unable to provide submissions to *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the

comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Randy Miller, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9655.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

On September 15, 2010, the United States requested consultations with China concerning the imposition of countervailing and antidumping duties on grain oriented flat-rolled electrical steel ("GOES") exported from the United States. In June of 2009, China initiated separate countervailing and antidumping duty investigations on GOES exported from the United States. In April of 2010, China issued final determinations of subsidization, dumping, and injury, along with a notice of the imposition of countervailing and antidumping duties.

China has obligations under the *Agreement on Subsidies and Countervailing Measures* (the "SCM Agreement"), the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the "AD Agreement"), and the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") regarding the imposition of countervailing and antidumping duties on imports. In the course of its countervailing and antidumping investigations regarding GOES, China appears to have acted inconsistently with various obligations of the SCM Agreement, the AD Agreement, and the GATT 1994. Actions apparently inconsistent with China's obligations include initiation of the investigations without sufficient evidence, failure to objectively examine the evidence, failure to disclose essential facts underlying its conclusions, and failure to provide an adequate explanation of its calculations and legal conclusions.

In particular, in the request for consultations, the United States states that China's countervailing and anti-dumping duties on GOES from the United States appear to be inconsistent with the following provisions of the SCM Agreement, the AD Agreement, and the GATT 1994:

1. Articles 10 and 19 of the SCM Agreement, because China improperly determined that government purchases under U.S. Buy American Laws conferred a "benefit."
2. Article 12.8 of the SCM Agreement, because China failed to disclose the "essential facts" underlying its determinations.
3. Article 12.7 of the SCM Agreement, because China improperly based its determinations on the facts available.
4. Article 22.3 of the SCM Agreement, because China failed to provide in sufficient detail the findings and conclusions it reached on all issues of fact and law it considered material.
5. Article 22.5 of the SCM Agreement because China failed to make available all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures.
6. Article 11.2 of the SCM Agreement because: (a) The application for a countervailing duty investigation failed to contain information reasonably available to the applicant regarding the existence of a financial contribution, a benefit, specificity, injury and causation; and (b) there was not sufficient evidence in the application to justify the initiation of an investigation.
7. Article 11.3 of the SCM Agreement because China failed to review appropriately the accuracy and adequacy of the evidence provided in the application.
8. Articles 12.3 and 12.4.1 of the SCM Agreement, because China failed to provide, or require the applicant to provide, adequate non-confidential summaries of allegedly confidential information.
9. Article 22.2(iii) of the SCM Agreement, because China included in its countervailing duty investigation the *American Recovery and Reinvestment Act of 2009* ("Recovery Act") and laws of the various U.S. states dealing with the government purchase of goods.
10. Articles 15.1, 15.2, 15.5, 12.8, of the SCM Agreement, and Articles 3.1, 3.2, 3.5, 6.9 and 12.2 of the AD Agreement, because: (a) China's analysis of the effect of imports under investigation and alleged causal link was not based upon an objective examination on the basis of positive evidence; (b) China failed to provide in sufficient detail the findings and conclusions reached on all issues of fact and law it considered material; and (c) China failed to disclose the "essential facts" underlying its determinations.
11. Article 10 of the SCM Agreement as a consequence of the breaches of the SCM Agreement described above.
12. Article 1 of the AD Agreement as a consequence of the breaches of the AD Agreement described above.
13. Article VI of the GATT 1994.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2010–0027. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2010–0027 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the website by clicking on "How to Use This Site" on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to

www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's web site at *http://www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the web site of the World Trade Organization, *http://www.wto.org.*

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Steven F. Fabry,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2010–24455 Filed 9–28–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Aviation Safety Subcommittee; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: The Future of Aviation Advisory Committee (FAAC): Aviation Safety Subcommittee; Notice of Meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Aviation Safety Subcommittee, which will be held October 19, 2010, in Everett, Washington. 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 subcommittee will discuss issue areas identified for potential recommendations, the process of drafting recommendations, and develop a work plan for future meetings.

DATES: The meeting will be held on October 19, 2010, from 9 a.m. to 12 p.m. Pacific Daylight Time.

ADDRESSES: The meeting will be held at the Boeing Everett Site, 40–88 Building, Seaway Boulevard and 75th Street, SW., Everett, Washington 98203. (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 Aviation Safety Subcommittee, the term "Aviation Safety" should be listed in the subject line of the message. To ensure such comments can be considered by the subcommittee before its October 19, 2010, meeting, public comments must be filed by close of business on Thursday, October 14, 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 an FAAC Aviation Safety Subcommittee meeting taking place on October 19, 2010, from 9 a.m. to 12 p.m. Pacific Daylight Time, at the Boeing Everett Site, 40–88 Building, Seaway Boulevard and 75th Street, SW., Everett, Washington 98203. The subcommittee will—

1. Review the status of issue items and possible solutions.

2. Develop a work plan for the next meeting.

Registration

The conference room can accommodate up to 30 members of the public. Persons desiring to attend must pre-register through e-mail to *FAAC@dot.gov.* The term "Registration: Safety Subcommittee" must be listed in the subject line of the message, and admission will be limited to the first 30 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 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 October 14, 2010.

FOR FURTHER INFORMATION CONTACT: Tony Fazio, Director, Office of Accident Investigation and Prevention, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC; telephone (202) 267–9612; *Tony.Fazio@FAA.gov.*

Issued in Washington, DC, on September 24, 2010.

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–24367 Filed 9–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Shared-Use Path in New York State

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA, USACE, and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed Shared-Use Path Construction Project: PIN 4760.35 Auburn Trail Extension, Town of Victor, Ontario County, New York State. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before 180 days after publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Jeffrey W. Kolb, Division Administrator, Federal Highway Administration, Leo W. O'Brien Building, Suite 719, Clinton Avenue and North Pearl Street, Albany, New York 12207; *telephone:* (518) 431–4121; *e-mail: NewYork.fhwa@dot.gov*. The FHWA New York Division Office's normal business hours are 7:45 a.m. to 4:15 p.m. (eastern time). For New York State Department of Transportation, Mr. Robert Traver, Acting Regional Director, 1530 Jefferson Road, Rochester New York, 14623; *telephone:* (585) 272–3310. For the Town of Victor, Jack Marren, Supervisor, Town of Victor Town Hall, 85 East Main Street, New York 14564; *telephone:* (585) 924–3311.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing a Finding of No Significant Impact (FONSI) for the following trail project in the State of New York: PIN 4760.35 Auburn Trail Extension, Town of Victor, Ontario County. The project is a portion of the Auburn Trail located in the northwest quadrant of the Town of Victor, Ontario County with a small portion in the Towns of Perinton and Pittsford, Monroe County. The project begins at Main Street in the Hamlet of Fischers and extends northerly to Woolston Road in Monroe County for a total length including the connection to Powder Mills Park of 2.5 miles. The project primarily provides for the construction of an 8-foot wide Two-Way Shared-Use Path with 2-foot wide graded grass shoulders on either side and is further described under Alternative #5 in the June 2010 Final Design Report/Environmental Assessment. The proposed Shared-Use Path will be built on an old railroad embankment currently under permanent easement by the Town of Victor. The actions by the Federal Highway Administration, and the laws under which such action was taken, are described in the Final Design Report/Environmental Assessment for the project, approved on July 26, 2010 and in the FHWA Finding of No Significant Impact (FONSI) issued on September 22, 2010 and published in the **Federal Register.** The FONSI, and other project records are available by contacting the FHWA, the New York State Department of Transportation or the Town of Victor at the addresses provided above. The FHWA FONSI can be viewed and downloaded from the project Web site at *http://www.victorny.org* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. § 139(*l*)(1)

Issued on: September 22, 2010.

Jeffery W. Kolb,

New York Division Administrator, Albany.

[FR Doc. 2010–24249 Filed 9–28–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–42]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (CFR) part 25. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication

of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before October 19, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0446 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

FOR FURTHER INFORMATION CONTACT: Michael Menkin, ANM–113, Federal Aviation Administration, Transport Airplane Directorate, 1601 Lind Ave., SW, Renton, WA 98057; 425–227–2793; or Katherine Haley, ARM–203, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW.; Washington, DC 20591; (202) 493–5708.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 24, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0446.

Petitioner: Gulfstream Aerospace Corporation (GAC).

Section of 14 CFR Affected: 14 CFR 25.813(e).

Description of Relief Sought: To allow the installation of doors between passenger seats, occupiable for taxi, take off and landing, and a passenger emergency exit for the Gulfstream GVI airplane. GAC intends to operate the airplane under part 135.

[FR Doc. 2010–24368 Filed 9–28–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice Regarding Consideration and Processing of Applications for Financial Assistance Under the Railroad Rehabilitation and Improvement Financing (RRIF) Program

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

ACTION: Notice of priorities for consideration of applications.

SUMMARY: Under this notice, FRA is providing the basis for its consideration of potential applications for financial assistance under the RRIF Program authorized by 45 U.S.C. 821 *et seq.*

DATES: This notice is effective for all applications received by FRA after October 29, 2010.

FOR FURTHER INFORMATION CONTACT: Barbara Amani, Chief of the Credit Programs Division, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* (202) 493–6051; *fax:* (202) 493–6333; and *e-mail: Barbara.Amani@dot.gov*); or Casey Symington, Attorney Advisor, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* (202) 493–6349; *fax:* (202) 493–6068; and *e-mail: Casey.Symington@dot.gov*).

SUPPLEMENTARY INFORMATION: Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94–210 (1976), authorized a program of financial assistance necessary to furnish assistance to railroads for facilities maintenance, rehabilitation, improvements and acquisitions. FRA used this financial assistance program to provide financial assistance to portions of the then-fiscally challenged rail industry. The program was most active during the four years following the enactment of the statute. The improving financial condition of the rail industry subsequent to enactment of the Staggers Rail Act of 1980 and the partial economic deregulation of the rail industry helped improve the larger railroads' access to private capital, reducing interest in the program.

The Federal Credit Reform Act of 1990 resulted in fundamental changes in all federal credit programs, by requiring that the subsidy cost of any federal credit assistance be reserved prior to the credit assistance being made available. Although the subsidy cost required an appropriation, FRA's subsequent annual appropriations acts contained a specific prohibition on the use of FRA's funds for this purpose. As a result, use of the Title V program was limited to projects specifically authorized by Congress.

A secondary impact of the Staggers Rail Act of 1980 was a more liberalized approach to restructuring railroads, which led to the growth in the number and importance of short line and regional railroads (also known as Class III and Class II railroads). A number of studies conducted during the 1980s and 1990s concluded that significant portions of the short line and regional railroad industry were challenged by deferred maintenance and a lack of access to the private capital markets at rates and terms comparable to debt financing opportunities available to the larger, Class I railroads.

In 1998, Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 was amended by the Transportation Equity Act for the 21st Century of 1998, Public Law 105–178 (1998) (TEA–21) to establish the RRIF Program. TEA–21 authorized a program of financial assistance to the rail industry in the form of loans and loan guarantees and other financial instruments. The program was subsequently amended and expanded in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law 109–59 (2005) (SAFETEA–LU) and the Rail Safety Improvement Act of 2008 (RSIA), Division A of Public Law 110–432.

TEA–21 addressed capital needs by providing a program of loans and loan guarantees for rail investment purposes. A combined total of $3.5 billion in direct loans and loan guarantees was

authorized to be outstanding at any one time. One billion dollars were specifically reserved for non-Class I railroads. The financial terms available for such loans were significantly better than those available to Class III and Class II railroads in private markets. Those terms included a term up to 25 years and an interest rate equal to the treasury rate for similar-term securities. Most importantly, the TEA–21 amendments provided that non-Federal sources could pay the subsidy cost of the loan (referred to in the RRIF Program as the Credit Risk Premium) on behalf of an eligible applicant. Thus, FRA through the RRIF Program could provide financial assistance without the need for an appropriation or any other specific act by Congress.

SAFETEA–LU amended the RRIF Program to, among other things, increase the amount of financial assistance available from $3.5 billion to $35 billion, and to increase the amount reserved for other than Class I railroads from $1 billion to $7 billion. SAFETEA–LU also repealed, by statute, certain regulatory provisions. The RRIF program was further amended in the RSIA to extend the maximum term of a loan under the RRIF program from 25 years to 35 years. A total of 22 loans in an aggregate initial principal amount of $779 million have been made under the RRIF Program since TEA–21 was enacted. Of these, a total of 3 loans in an aggregate initial principal amount of $381 million have been repaid.

This notice supplements the existing notice of evaluation criteria for the RRIF Program published in the **Federal Register** on September 26, 2005 (70 FR 56207) and provides policy guidance.

The public has an interest in how federal funds are allocated, including use of federal loans. To provide sound stewardship of federal funds, the Secretary of Transportation has authority and discretion in approving loan applications. That authority has been delegated to the Administrator of the Federal Railroad Administration (49 CFR 1.49(t)). In exercising discretion to evaluate the merits of proposed loans, the Administrator may consider public policy priorities and federal credit policies as outlined in the Office of Management and Budget Circular A–129, Revised, November 2000. FRA will perform a cost-benefit analysis of each loan or loan guarantee application and examine public benefits derived from the loan relative to the amount of financial assistance committed to achieve those public benefits. Proposals generating public benefits using limited federal financial assistance to achieve policy goals will be viewed more favorably than proposals generating limited public benefits with significant federal RRIF assistance. Please note that the collection of information associated with the RRIF Program is currently approved under OMB No. 2130–0580. This approval expires on January 31, 2013.

Priority Projects: Selection of projects falls into eight priorities for RRIF financial assistance as described in 45 U.S.C. 822(c). These priorities are restated below with clarifying language (where appropriate) and consistent with DOT's Strategic Plan FY 2010–FY 2015 "Transportation for a New Generation" (draft).

FRA will give priority to projects that—

(1) *Enhance public safety.* This is DOT's highest programmatic priority. FRA will prioritize projects that ensure safe and efficient transportation choices. DOT's goal is to improve public health and safety by reducing transportation-related fatalities and injuries and improving the safety experience for all transportation system users, including passengers, employees, pedestrians and motorists. In determining which projects best enhance public safety, FRA will pay particular attention to projects that do the following: Address specific chronic safety concerns, including those identified during periodic inspections by FRA's Office of Railroad Safety; facilitate implementation of enhancements of signal and train control systems; reduce or eliminate the potential for accidents at highway-rail at-grade crossings; limit the access to rail infrastructure by trespassers and other unauthorized persons; lead to a sustained improvement in the class of track as defined by FRA's safety regulations; and/or lead to the operation of safer railroad equipment.

(2) *Enhance the environment.* FRA prioritizes projects that promote environmental sustainability of transportation through investments that focus on energy efficiency and environmental quality. DOT pursues transportation policies and investments that reduce carbon emissions and protect the human and natural environment. In determining which projects best further those goals, FRA will give priority to investments that do the following: Reduce the consumption of fossil fuels and otherwise improve energy efficiency of rail operations; reduce air pollutant emissions from rail equipment and facilities, including acquisition of locomotives meeting the U.S. Environmental Protection Agency's locomotive emissions standards; facilitate the development of intercity and commuter rail public transportation alternatives to single occupant motor vehicle transportation; reduce the levels of noise emitted from rail operations, including reductions of noise experienced by on-board personnel; and/or reduce the contribution of pollutants into the Nation's waterways. It is important to note that applications for financial assistance under the RRIF Program will require environmental review in compliance with the National Environmental Policy Act (NEPA).

(3) *Promote economic development, and (4) Enable United States companies to be more competitive in international markets.* FRA will prioritize projects that build a foundation for economic competitiveness. DOT fosters transportation policies and investments that serve the travelling public and freight movement to bring lasting economic and social benefit to the Nation. DOT seeks to encourage the expansion and development of domestic manufacturing of transportation systems and equipment in a manner consistent with law. In determining which projects best promote economic development and enable American companies to be more competitive in international markets, FRA will pay particular attention to projects that do the following: Lead to the construction, reconstruction or improvement of infrastructure or the acquisition of equipment or other capital assets on both freight and passenger (including commuter) rail corridors and related intermodal and multi-modal facilities that address capacity constraints in the Nation's transportation system and deliver integrated transportation system improvements, while spurring domestic employment in both the short-term and long-term; facilitate the development of new industries and businesses' access to the Nation's transportation system; and/or improve the efficiency and reduce the cost of freight movements of domestic products into global commerce. To further address these priorities, FRA will expect recipients of direct loans or loan guarantees under the RRIF Program to agree to use funds provided to them under the RRIF Program to purchase steel, iron and other manufactured goods produced in the United States for the project. Mitigating factors include but are not limited to limitations on sufficient quantity, availability and quality; inability to purchase and have delivered rolling stock or power train equipment within a reasonable time; and whether including domestic material would increase the cost of the overall project by more than 25 percent.

(5) *Are endorsed by the plans prepared under 23 U.S.C. 135 by the*

State or States in which they are located.

(6) *Preserve or enhance rail or intermodal service to small communities or rural areas, and (7) Enhance service and capacity in the national rail system.* FRA will prioritize projects that support the development of interconnected, livable communities. DOT promotes place-based policies that provide transportation choices and improve the quality of life for all Americans. In determining which projects will best preserve or enhance rail or intermodal service to small communities or rural areas and enhance service and capacity in the national rail system, FRA will pay particular attention to projects that do the following: Preserve access for small communities and rural America to the Nation's rail system; facilitate the development of rail and rail-related intermodal facilities that encourage the reduction of highway freight transportation in urban areas; facilitate the development of rail-related intermodal passenger facilities that improve the operation of and expand the public's access to public transportation; and/or provide investments that expand the access to intercity passenger and commuter rail transportation by persons with disabilities.

(8) *Materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.* FRA will prioritize projects promoting a state of good repair for transportation assets to ensure a reliable and safe rail system. In determining which projects best enhance service and capacity in the national rail system, alleviate rail capacity problems which degrade the provision of service to shippers and fulfill a need in the national transportation system, FRA will give priority to projects that do the following: Assure sustained performance of rail and rail-related intermodal infrastructure and equipment in a safe, reliable and efficient manner, including the replacement of capital assets before they reach the end of their economic and useful life; permit rail infrastructure to accommodate safe operation of 286,000 pound rail cars; and/or incorporate into the rail infrastructure innovative design and construction procedures, innovative quality assurance practices, and/or innovative materials to extend the useful life of assets and reduce onsite repairs, rehabilitation and reconstruction.

Eligible Purposes: A list of eligible purposes is provided in 45 U.S.C 822(b). Although that section permits RRIF financial assistance for certain categories of refinancing, FRA believes the greatest benefit to the public of providing financial assistance under the RRIF Program occurs when that assistance is used to directly fund capital improvements. In particular, the RRIF Program has its most positive impact by directly financing those improvements that would not otherwise be undertaken, or whose undertaking would be substantially delayed without RRIF assistance. Thus, in considering whether to approve a loan or loan guarantee under the RRIF Program, FRA will give more weight to those projects that need the type of financial assistance provided by the RRIF Program to be financially feasible. FRA is mindful that Congress at times imposes statutory mandates on the rail industry that require certain specific investments by specified times. In order to meet those statutory requirements, some eligible applicants may be required to divert available fiscal resources away from other investment needs, including investment needs that align with DOT's strategic goals. In those circumstances, such statutory mandates will also be afforded greater weight, to the extent that the applicant can demonstrate the adverse impact on its investment plan if RRIF financial assistance were not made available. FRA will also consider the applicant's use of other forms of federal assistance and subsidies including tax credits and grant programs in its financing plan.

FRA will also consider applications for RRIF financial assistance for projects that the applicant would and could undertake without such assistance. It will be the obligation of the applicant to identify with specificity how the public's interest would benefit from RRIF financial assistance when compared to use of conventional funding. It is the difference between the two scenarios that can be viewed as the net benefit to the public of providing financial assistance under the RRIF Program. FRA will evaluate this net benefit in comparison to the amount of financial assistance required to achieve this benefit. FRA intends to include requirements in its RRIF loan documents to ensure that the net financial benefit made available through the RRIF financial assistance results in increased public benefits.

The refinancing of eligible capital investments poses similar issues. In a refinancing, RRIF financial assistance is not required to achieve the benefits of the project being refinanced. Thus, when reviewing RRIF applications for refinancing, FRA will expect that the financial resources made available by refinancing at the favorable rates under RRIF be used by the applicant to achieve public benefits. However, proposals to use RRIF funds directly for capital improvements will be given preference over those that include refinancing. FRA will evaluate those benefits against the cost of the financial assistance in order to assess the overall benefit of the application. Examples of preferred uses from the decreased cost of capital from a RRIF loan are: Improving cash flow to implement a demonstrably expanded capital improvement program, preserving the viability of a rail service, or lowering the debt service obligation burden of States and public agencies. In considering requests for RRIF loans to refinance debt, FRA will evaluate the borrower's ability to efficiently access private sector capital. FRA will request that prospective borrowers describe the terms of equivalent debt that they believe would be available from private sector sources and the amount they anticipate to save should a RRIF loan be approved. As described above, FRA intends to protect the public benefits of a RRIF loan through binding covenants in its loan documents when appropriate.

Requests to refinance debt incurred to finance the acquisition of a railroad by an equity owner raise different considerations. Under the statute, FRA may refinance debt that was originally incurred for any eligible purpose stated in 45 U.S.C. 822(b)(1)(A). Under the statute, RRIF loans may not be incurred to refinance outstanding debt incurred for purposes other than the acquisition, improvement or rehabilitation of eligible rail equipment or facilities. Since RRIF loans may not be used to refinance outstanding debt incurred to acquire, for example, goodwill or intangibles, FRA's ability to refinance acquisition debt is limited. The value of railroad property, like the value of any other asset, is normally set by the market. FRA is concerned that the potential for long-term, low-cost federal refinancing of short-term, high-cost acquisition debt might skew the true value of the assets being acquired, and perhaps even have an inflationary impact in the rail industry as a whole. RRIF financial assistance for refinancing the acquisition of eligible railroad property might encourage transactions that otherwise would not be made or transactions by entities that might lack the full knowledge of the rail industry that will be needed to assure the sustainability of the railroad. In considering proposed financing or refinancing debt, in particular short-

term debt, used for the acquisition of a significant amount of rail assets, FRA will require the applicant to demonstrate significantly more than minimal public benefit from the transaction. Circumstances where the acquisition is required to preserve essential rail service or where a public agency is acquiring a rail property for direct public benefit (*e.g.* use for public transportation) are more favorably considered.

Applicants: A list of eligible applicants is provided in 45 U.S.C. 822(a). The RRIF Program was originally established as a means to provide access to capital for critical infrastructure improvements by the Class III and Class II railroads. Although the RRIF program has changed since its creation, FRA views the original purpose as one of the highest priorities for the use of RRIF financial assistance.

In recent months, FRA has seen increased interest for RRIF financing by public authorities and publicly owned and/or controlled railroads providing passenger service. The public interest in using federal credit is easier to identify in situations where the credit program preserves or expands transportation services used by the public or where the credit reduces the burden on public agencies and federal or State taxpayers to provide such services. The challenge in considering public transportation for credit financing comes from the fact that few, if any, of these systems generate sufficient revenues to cover all of their costs. Indeed, public policy frequently finds sufficient value in the non-monetary benefits of increasing the utilization of such systems to justify the use of public funds to keep fares low. FRA as a potential lender will look to other revenue sources for assured repayment.

Some public transportation entities have access to relatively reliable long-term sources of revenue (*e.g.* a sales tax or access to a dedicated revenue stream) or can offer the full faith and credit of their States as a guarantee that the RRIF loan will be repaid. In such cases, FRA's ability to make findings on the likelihood of repayment is easier than for applications that can only be repaid through ongoing actions by future Congresses or State legislatures. Solely relying on future appropriations for repayment may not be optimal and could result in a 100% credit risk premium. However, FRA will consider appropriations as a repayment source if it is part of an overall financing package that uses other revenue streams to service the debt. Among the factors that FRA will consider, in addition to the public benefits derived from the financing, will be the history of support for the public transportation entity in the past and the extent that the total amount of debt service, including the RRIF financing, falls within the historic range of debt service obligations of the entity that has been publicly funded.

Loan Amount: Pursuant to 45 U.S.C. 822(d), the RRIF Program is authorized to provide up to $35 billion in direct loans and loan guarantees at any one time. The RRIF Program is subject to authority provided in annual appropriations. Appropriations are not required to pay for the credit risk premium, but merely grant FRA the authority to obligate the remaining balance of the $35 billion authorized. The balance currently available is approximately $34.6 billion. The timing and sequencing of this volume of credit assistance could, under some circumstances, create dislocations in the rail industry, which could create inflationary pressures and lead to inefficient practices, particularly in light of other federally sponsored rail investments occurring over the next several years. FRA sees the need to balance the volume of RRIF-financed work at any one time with a need to timely realize the Department's strategic goals. FRA will not set an arbitrary limit on the size of an application or the total dollar value of applications under consideration at any one time. FRA will periodically, however, assess whether the volume of RRIF-assisted rail capital improvements is continuing to have a positive impact on rail investment in the U.S.

Ability To Repay: Pursuant to 45 U.S.C. 822(g), and as a prerequisite to making loans or loan guarantees, the FRA must make a number of findings including the finding that "the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government * * *." To this end, FRA will evaluate the credit risk of the application including the financial strength of the applicant or of the project and the potential recovery in the event of default including the nature and value of collateral if offered.

Additionally, pursuant to 45 U.S.C. 823(a), FRA is permitted to establish terms and conditions for loans and loan guarantees made under 45 U.S.C. 822. To this end, FRA will continue to require terms and conditions in its RRIF loan documents sufficient to ensure that applicants will repay their loans with interest within the term of the loan.

Pre-Application Discussions: The application process can involve a substantial amount of work and expense for potential applicants, particularly for smaller railroads or entities proposing larger projects that might require additional levels of review, such as projects requiring an environmental impact statement to comply with NEPA. Regulations governing the RRIF Program have always included provisions for pre-application discussions, which provide a foundation to better address expectations about both the timing and ultimate outcome of the process. FRA will use the pre-application meetings and requests for clarification to develop a project outline, including a preliminary analysis of the benefits of the proposed financing.

Evaluation Charge: Demand for funding under the RRIF Program has increased significantly in the past two years. In addition to the increased volume of applications, FRA has noted a significant increase in the size and complexity of the proposed transactions.

FRA has typically staffed RRIF transactions solely with FRA attorneys and not employed outside counsel. As a result, while we are permitted to pass on the cost of outside counsel as an evaluation charge under 45 U.S.C. 823(k), we have not had a need to do so. Given the increased demand for RRIF loans and the increasing size and complexity of the transactions submitted for our consideration, we expect to employ outside counsel more frequently in the future. We believe that employing outside counsel will both enhance our ability to structure and document our transactions in a way that best protects the taxpayers' investment and helps us manage the increased volume of complex financing proposals more quickly and efficiently.

While we may include the cost of outside counsel in our evaluation charges, the total evaluation charges for a given transaction will not exceed one-half of 1 percent of the principal amount of our loan, as provided in the statute. We do not expect that we will employ outside counsel for traditional RRIF loans to Class III applicants, unless the loan contains complicated structuring or documentation issues.

Issued in Washington, DC, on September 24, 2010.

Joseph C. Szabo,

Administrator.

[FR Doc. 2010–24467 Filed 9–28–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 23, 2010.

The Department of Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submissions may be obtained by calling the Bureau Information Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before October 29, 2010 to be assured of consideration.

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0031.

Type of Review: Extension of a currently approved information collection.

Title: CDFI/CDE Fund Project Profile Web Form.

Form: CDFI 0030.

Description: The voluntary collection of narrative descriptions of projects financed by CDFI Fund awardees and allocates via the CDFI/CDE Project Profile Web Form. The purpose is to more fully describe and record the innovative approaches (Community Development Financial Institutions) CDFIs and (Community Development Entity) CDEs use in revitalizing communities and serving families, and impact that these CDFIs and CDEs are realizing.

Estimated Total Burden Hours: 250 hours.

OMB Number: 1559–0036

Type of Review: Extension of a currently approved information collection.

Title: Capital Magnet Fund Application.

Form: CDFI 0003.

Description: Under the Capital Magnet Fund (CMF) the Community Development Financial Institutions (CDFI) Fund will provide competitively awarded grants to CDFIs and qualified nonprofit housing organizations to finance affordable housing and related community development projects.

Estimated Total Burden Hours: 1,250 hours.

CDFI Fund Clearance Officer: Ashanti McCallum, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (202) 622–9018

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2010–24394 Filed 9–28–10; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0675]

Proposed Information Collection (Vetbiz Vendor Information Pages Verification Program) Activity: Comment Request

AGENCY: Center for Veterans Enterprise, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Center for Veterans Enterprise (CVE), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify veterans owned businesses.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before *November 29, 2010.*

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or Gail Wegner (00VE), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *gail.wegner@va.gov.* Please refer to "OMB Control No. 2900–0675" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gail Wegner at (202) 303–3296 or FAX (202) 254–0238.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, CVE invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of CVE's functions, including whether the information will have practical utility; (2) the accuracy of CVE's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Vetbiz Vendor Information Pages Verification Program, VA Form 0877.

OMB Control Number: 2900–0675.

Type of Review: Extension of a currently approved collection.

Abstract: Vetbiz Vendor Information Pages Verification Program is used to assist federal agencies in identifying small businesses owned/controlled by veterans and service-connected disabled veterans. The information is necessary to ensure that veteran/owned businesses are given the opportunity to participate in Federal contracts and receive contract solicitations information automatically. VA will use the data collected to verify small businesses as veteran-owned or service-disabled veteran-owned.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: Vetbiz Vendor Information Pages Verification Program—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–24437 Filed 9–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0080]

Proposed Information Collection (Claim for Payment of Cost of Unauthorized Medical Services) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to initiate and document expenditures, to claim reimbursement as well as make funeral arrangements and authorize burial benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 29, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0080" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Claim for Payment of Cost of Unauthorized Medical Services, VA Form 10–583.

b. Funeral Arrangements Form for Disposition of Remains of the Deceased, VA Form 10–2065.

c. Authority and Invoice for Travel by Ambulance or Other Hired Vehicle, VA Form 10–2511.

d. Authorization and Invoice for Medical and Hospital Services, VA Form 10–7078.

e. Request for Payment of Beneficiary Travel After the Date of Service.

OMB Control Number: 2900–0080.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. VA Form 10–583 is used to request payment or reimbursement of the cost of unauthorized non-VA medical services.

b. VA Form 10–2065 is completed by VA personnel during an interview with relatives of the deceased, and to identify the funeral home to which the remains are to be released. The form is also used as a control document when VA is requested to arrange for the transportation of the deceased from the place of death to the place of burial, and/or when burial is requested in a National Cemetery.

c. VA Form 10–2511 is used to process payment for ambulance or other hired vehicular forms of transportation for eligible veterans to and from VA health care facilities for examination, treatment or care.

d. VA uses VA Form 10–7078 to authorize expenditures from the medical care account and process payment of medical and hospital services provided by other than Federal health providers to VA beneficiaries.

e. Claimants who request payment for beneficiary travel after the time of service may do so in writing or in person.

Affected Public: Business or other for profit.

Estimated Total Annual Burden:

a. VA Form 10–583—19,376.

b. VA Form 10–2065—2,053.

c. VA Form 10–2511—2,333.

d. VA Form 10–7078—8,900.

e. Request for Payment of Beneficiary Travel After the Date of Service—417.

Estimated Average Burden per Respondent:

a. VA Form 10–583—15 minutes.

b. VA Form 10–2065—5 minutes.

c. VA Form 10–2511—2 minutes

d. VA Form 10–7078—2 minutes.

e. Request for Payment of Beneficiary Travel After the Date of Service—1 minute.

Frequency of Response: Annually.

Estimated Number of Respondents:

a. VA Form 10–583—77,504 respondents.

b. VA Form 10–2065—24,630 respondents.

c. VA Form 10–2511—70,000 respondents.

d. VA Form 10–7078—267,021,000 respondents.

e. Request for Payment of Beneficiary Travel After the Date of Service—25,000

Dated: September 24, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 2010–24438 Filed 9–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0749]

Proposed Information Collection (Disability Benefits Questionnaires) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to adjudicate a claim for disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 29, 2010.

ADDRESSES: Submit written comments on the collection of information through

Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0749" in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

SUPPLEMENTARY INFORMATION:

Titles:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960a–1.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960b–1.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960c–1.

OMB Control Number: 2900–0749.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 21–0960a–1, 21–0960b–1, and 21–0960b–1 are used to expedite claims for the following presumptive diseases based on herbicide exposure: Hairy Cell and Other Chronic B-cell Leukemias, Parkinson's and Ischemic Heart diseases. Veterans have the option of providing the forms to their private physician for completion and submission to VA in lieu of scheduling a VA medical examination. The data collected will be used to adjudicate veterans claim for disability benefits.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960a–1—13,750.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960b–1—500.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960c–1—1,250.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Ischemic Heart Disease (IHD) Disability Benefits Questionnaire, VA Form 21–0960a–1—55,000.

b. Hairy Cell and Other B-Cell Leukemias Disability Benefits Questionnaire, VA Form 21–0960b–1—2,000.

c. Parkinson's Disease Disability Benefits Questionnaire, VA Form 21–0960c–1—5,000.

Dated: September 24, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–24439 Filed 9–28–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0521]

Proposed Information Collection (Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to underwrite VA-guaranteed loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 29, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0521" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Report and Certification of Loan Disbursement, VA Form 26–1820.

b. Request for Verification of Employment, VA Form 26–8497.

c. Request for Verification of Deposit, VA Form 26–8497a.

OMB Control Number: 2900–0521.

Type of Review: Extension of a currently approved collection.

Abstracts: Lenders must obtain specific information concerning a veteran's credit history in order to properly underwrite the veteran's loan. VA loans may not be guaranteed unless the veteran is a satisfactory credit risk. The data collected on the following forms will be used to ensure applications for VA-guaranteed loans are underwritten in a reasonable and prudent manner.

a. VA Form 26–1820 is completed by lenders closing VA guaranteed and insured loans under the automatic or prior approval procedures.

b. VA Form 26–8497 is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. VA does not require the exclusive use of this form for verification purposes, any alternative verification document would be acceptable provided that all information requested on VA Form 26–8497 is provided.

c. Lenders making guaranteed and insured loans complete VA Form 26–8497a to verify the applicant's deposits in banks and other savings institutions.

Affected Public: Business or other for profit.

Estimated Annual Burden:

a. Report and Certification of Loan Disbursement, VA Form 26–1820—75,000 hours.

b. Request for Verification of Employment, VA Form 26–8497—25,000 hours.

c. Request for Verification of Deposit, VA Form 26–8497a—12,500 hours.

Estimated Average Burden Per Respondent:

a. Report and Certification of Loan Disbursement, VA Form 26–1820—15 minutes.

b. Request for Verification of Employment, VA Form 26–8497—10 minutes.

c. Request for Verification of Deposit, VA Form 26–8497a—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Report and Certification of Loan Disbursement, VA Form 26–1820—300,000.

b. Request for Verification of Employment, VA Form 26–8497—150,000.

c. Request for Verification of Deposit, VA Form 26–8497a—150,000.

Dated: September 24, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–24440 Filed 9–28–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0546]

Proposed Information Collection (Gravesite Reservation Survey (2 Year)) Activity: Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine reserved gravesite availability.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 29, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Mechelle Powell, National Cemetery Administration (40D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: mechelle.powell@va.gov.* Please refer to "OMB Control No. 2900–0546" in any correspondence. During the comment period, comments may be viewed online through *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 461–4114 or FAX (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Gravesite Reservation Survey (2 Year), VA Form 40–40.

OMB Control Number: 2900–0546.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 40–40 is sent biennially to individuals holding gravesite set-asides to ascertain their wish to retain the set-aside, or relinquish it. Gravesite reservation surveys are necessary as some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside. The survey is conducted to assure gravesite set-asides do not go unused.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 2,750.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Biennially.

Estimated Number of Respondents: 16,500.

Dated: September 24, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–24441 Filed 9–28–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
September 29, 2010

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Incidental Takes of Marine Mammals During Specified Activities; Marine Seismic Survey in the Arctic Ocean, August to September, 2010; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW05

Incidental Takes of Marine Mammals During Specified Activities; Marine Seismic Survey in the Arctic Ocean, August to September, 2010

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

ACTION: Notice; issuance of an incidental take authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS issued an Incidental Harassment Authorization (IHA) to the U.S. Geological Survey (USGS) for the take of small numbers of marine mammals, by Level B harassment, incidental to conducting a marine seismic survey in the Arctic Ocean during August to September, 2010.

DATES: Effective August 11, 2010, through October 21, 2010.

ADDRESSES: A copy of the IHA and application are available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 or by telephoning the contact listed here.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States (U.S.) citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization not to exceed one year to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

16 U.S.C. 1362(18)

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period for any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On March 9, 2010, NMFS received an IHA application and a draft Environmental Assessment (EA) from USGS for the taking, by Level B harassment only, of small numbers of several species of marine mammals incidental to conducting a marine seismic survey in the Arctic Ocean during August to September, 2010. NMFS received a revised IHA application on June 1, 2010, and a final EA on August 6, 2010.

Description of the Specified Activity

USGS is conducting a marine geophysical (seismic reflection/refraction) and bathymetric survey in the Arctic Ocean in August and September, 2010 (see Tables 1 and 2, and Figure 3 of the IHA application). The survey is being conducted from the Canadian Coast Guard (CCG) vessel CCGS *Louis S. St. Laurent* (*St. Laurent*) which will be accompanied by the U.S. Coast Guard Cutter (USCGC) *Healy,* both of which are polar-class icebreakers. Descriptions of the vessels and their specifications are presented in Appendix A of the IHA application. The two vessels operate in tandem in the presence of ice but may diverge and operate independently in open water. Some minor deviation of the dates is possible, depending on logistics and weather (i.e., the cruise may depart earlier or be extended due to poor weather; there could be extra days of seismic operations if collected data are of sub-standard quality).

One CCG helicopter is available for deployment from the *St. Laurent* for ice reconnaissance and crew transfers between the vessels during survey operations. Helicopter transfer of crew from the *Healy* is also planned for approximately one day during a ship-to-shore crew change at Barrow, Alaska at the end of the survey. The helicopter operations in Barrow will be conducted under Department of Interior (DOI) contract. Daily helicopter operations are anticipated pending weather conditions. Spot bathymetry will also be conducted from the helicopter outside U.S. waters.

Acoustic sources onboard the *St. Laurent* include an airgun array comprised of three Sercel G-airguns and a Knudsen 320BR "Chirp" pulse echosounder operating at 12 kHz. The *St. Laurent* also tows a 3 to 5 kHz sub-bottom profiler while in open water and when not working with the *Healy.* The airgun array consists of two 500 in^3 and one 150 in^3 airguns for an overall discharge of 1,150 in^3. Table 2 of the IHA application presents different sound pressure level (SPL) radii of the airgun array. Acoustic sources being operated on the *St. Laurent* are described in detail in Section VII and Appendix B in the IHA application. The seismic array and a hydrophone streamer towed from the *St. Laurent* operate under the provisions of a Canadian authorization based on Canada's environmental assessment of the proposed survey while in Canadian or international waters, and under the provisions of an IHA issued to the USGS by NMFS in U.S. waters. NMFS cannot issue an IHA directly to a non-U.S.

citizen, however, the Geological Survey of Canada (GSC) has written a Categorical Declaration stating that "while in U.S. waters (i.e., the U.S. 200 mile Exclusive Economic Zone), the GSC will comply with any and all environmental mitigation measures required by the U.S. NMFS and/or the U.S. Fish and Wildlife Service." The *St. Laurent* follows the lead of the *Healy.* The *Healy* breaks and clears ice approximately 1.6 to 3.2 km (1 to 2 miles [mi]) in advance of the *St. Laurent.* In situations where the array (and hydrophone streamer) cannot be towed safely due to ice cover, the *St. Laurent* may escort the *Healy.* The *Healy* uses a multi-beam echosounder (Kongsberg EM122), a sub-bottom profiler (Knudsen 3.5 kHz Chirp), and a "piloting" echosounder (ODEC 1500) continuously when underway and during the seismic profiling. Acoustic Doppler current profilers (75 kHz and 150 kHz) may also be used on the *Healy.* The *Healy*'s acoustic systems are described in further detail in Section VII and Appendix B of the IHA application.

In addition to the hydrophone streamer, marine sonobuoys are deployed to acquire wide angle reflection and refraction data for velocity determination to convert seismic reflection travel time to depth. Sonobuoys are deployed off the stern of the *St. Laurent* approximately every eight hours during seismic operations with as many as three deployments per day. The sonobuoy's hydrophone activates at a water depth of approximately 60 m (196.9 ft) and seismic signals are communicated via radio to the *St. Laurent.* The sonobuoys are pre-set to scuttle (i.e., deliberately sink) eight hours after activation.

The program within U.S. waters consists of approximately 806 km (500.8 mi) of survey transect line, not including transits when the airguns are not operating (*see* Figure 1 and Table 1 of the IHA application). U.S. priorities include another 997 km (619.5 mi) of survey lines north of the U.S. Exclusive Economic Zone (EEZ), for a total of 1,804 km (1,121 mi) of tracklines of interest to the U.S. Table 1 of the IHA application lists all U.S. priority tracklines; Figure 1 of the IHA application includes all U.S. priority tracks and the area of interest to Canada near the proposed U.S. tracklines. Water depths within the U.S. study area range from approximately 1,900 to 4,000 m (6,233.5 to 13,123.4 ft) (*see* Figure 1 of the IHA application). There may be additional seismic operations associated with airgun testing, start-up, and repeat coverage of any areas where initial data quality is sub-standard. The tracklines being surveyed in U.S. waters include the southern 263.8 km (164 mi) of the line that runs North-South in the western EEZ, the southern 264.5 km (164.4 mi) of the line that runs North—South in the central EEZ, and 277.7 km (172.6 mi) of trackline that connects the two (*see* Table 1 here and in Figure 1 of the IHA application). The IHA application requested the authorization of incidental takes of marine mammals for activities within U.S. waters. The survey line nearest to shore in U.S. waters is approximately 116 km (63 nmi) offshore at its closest point.

TABLE 1—U.S. PRIORITY TRACKLINES FOR USGS AND GEOLOGICAL SURVEY OF CANADA (GSC) 2010 EXTENDED CONTINENTAL SHELF SURVEY IN THE NORTHERN BEAUFORT SEA AND ARCTIC OCEAN

Location	End point 1	End point 2	Kilometer (km)	Nautical mile (nmi)	Time (Hour [hr]) @ 4 nmi/hr
NS in central EEZ (south)	71.22° North; 145.17° West	72.27° North; 145.41° West	118	64	16
NS in central EEZ (north)	72.27° North; 145.41° West	73.92° North; 145.30° West	183	100	25
Central-western EEZ connector.	73.92° North; 145.30° West	71.84° North; 151.82° West	317	171	43
NS in western EEZ	71.84° North; 151.82° West	74.32° North; 150.30° West	281	152	39
South Northwind Ridge	74.32° North; 150.30° West	74.96° North; 158.01° West	239	129	32
Northwind Ridge connector	74.96° North; 158.01° West	76.30° North; 155.88° West	161	87	22
Mid-Northwind Ridge	76.30° North; 155.88° West	75.41° North; 146.50° West	274	148	37
Northwind Ridge connector	75.41° North; 146.50° West	76.57° North; 146.82° West	129	70	17
Mid-Northwind Ridge	76.57° North; 146.82° West	76.49° North; 150.73° West	102	55	14
Totals			1,804	976	245

The two vessels operate cooperatively during the seismic survey. The *St. Laurent* conducts seismic operations using an airgun array and also operates a 12 kHz Chirp echosounder. The *St. Laurent* also operates a 3 to 5 kHz sub-bottom profiler in open water when not working with the *Healy.* The *Healy* normally escorts the *St. Laurent* in ice cover, and continuously operates a bathymetric multi-beam echosounder, a 3.5 kHz Chirp sub-bottom profiler, a piloting echosounder, and two acoustic Doppler current profilers.

The *St. Laurent* accessed the survey area from Canada and rendezvoused with the *Healy* on approximately August 10, 2010; the *Healy* approached the survey area from the Bering Straits. The *St. Laurent* deploys a relatively small airgun array comprised of three G-airguns and a single hydrophone streamer approximately 300 m (984 ft) in length. The airgun array consists of two 500 in^3 and one 150 in^3 airguns for an overall discharge of 1,150 in^3. The *St. Laurent* follows the lead of the *Healy* which operates approximately 1.9 to 3.8 km (1 to 2 nmi) ahead of the *St. Laurent.* In ice conditions where seismic gear cannot be safely towed, the *St. Laurent* escorts the *Healy* to optimize multi-beam bathymetry data collection. If extended open-water conditions are encountered, *Healy* and *St. Laurent* may operate independently. After completion of the survey the *St. Laurent* will return to port in Canada, and the *Healy* will change crew at Barrow via helicopter or surface conveyance before continuing on another project.

Vessel Specifications

The CCGS *St. Laurent* was built in 1969 by Canadian Vickers Ltd. in Montreal, Quebec, and underwent an extensive modernization in Halifax, Nova Scotia between 1988 to 1993. The *St. Laurent* is based at CCG Base Dartmouth in Dartmouth, Nova Scotia. Current vessel activities involve summer voyages to the Canadian Arctic for sealifts to various coastal communities and scientific expeditions. A description of the *St. Laurent* with vessel specifications is presented in Appendix A of the IHA application and is available online at: *http://www.ccg-*

gcc.gc.ca/eng/Fleet/Vessels?id=1111&info=5&subinfo.

The *Healy* is designed to conduct a wide range of research activities, providing more than 390.2 m^2 (4,200 ft^2) of scientific laboratory space, numerous electronic sensor systems, oceanographic winches, and accommodations for up to 50 scientists. The *Healy* is designed to break 1.4 m (4.5 ft) of ice continuously at 5.6 km/hour (three knots) and can operate in temperatures as low as −45.6 C (−50 degrees F). The *Healy* is a USCG icebreaker, capable of traveling at 5.6 km/hour (three knots) through 1.4 m (4.5 ft) of ice. A "Central Power Plant," four Sultzer 12Z AU40S diesel generators, provides electric power for propulsion and ship's services through a 60 Hz, three-phase common bus distribution system. Propulsion power is provided by two electric AC Synchronous, 11.2 MW drive motors, fed from the common bus through a Cycloconverter system, that turn two fixed-pitch, four-bladed propellers.

The science community provided invaluable input on lab lay-outs and science capabilities during design and construction of the ship. The *Healy* is also a capable platform for supporting other potential missions in the polar regions, including logistics, search and rescue, ship escort, environmental protection, and enforcement of laws and treaties, and will also serve as the platform from which vessel-based Protected Species Observers (PSOs) will watch for marine mammals before and during airgun operations. Other details of the *Healy* can be found in Appendix A of the IHA application.

NMFS believes that the realistic possibility of a ship-strike of a marine mammal by the vessel during research operations and in-transit during the proposed survey is discountable. The probability of a ship strike resulting in an injury or mortality of an animal has been associated with ship speed; however, it is highly unlikely that the proposed seismic survey would increase the rate of injury, serious injury, or mortality given the *St. Laurent* and *Healy's* slow survey speed.

Acoustic Source Specifications—Seismic Airguns and Radii

The seismic source for the seismic survey is comprised of three Sercel G-airguns with a total volume of 1,150 in^3. The three-airgun array is comprised of two 500 in^3 and one 150 in^3 G-airguns in a triangular configuration (see Figure B–1 in the IHA application). The single 150 in^3 G-airgun is used if a power-down is necessary for mitigation. The G-airgun array is towed behind the *St. Laurent* at a depth of approximately 11 m (36.1 ft) (see Figure B–2 in the IHA application) along predetermined lines in water depths ranging from 1,900 to 4,000 m (6,233.6 to 13,123.4 ft). One streamer approximately 232 m (761.2 ft) in length with a single hydrophone is towed behind the airgun array at a depth of approximately 9 to 30 m (29.5 to 98.4 ft).

A square wave trigger signal is supplied to the firing system hardware by a FEI–Zyfer GPStarplus Clock model 565, based on GPS time (typically at approximately 14 to 20 sec intervals). Vessel speed is approximately 10.2 km/hour (5.5 knots) resulting in a shot interval ranging from approximately 39 to 56 m (128 to 183.7 ft). G-airgun firing and synchronization are controlled by a RealTime Systems LongShot fire controller, which sends a voltage to the airgun solenoid to trigger firing with approximately 54.8 ms delay between trigger and fire point.

Pressurized air for the pneumatic G-airguns is supplied by two Hurricane compressors, model 6T–276–44SB/2500. These are air cooled, containerized compressor systems. Each compressor is powered by a C13 Caterpillar engine which turns a rotary screw first stage compressor and a three stage piston compressor capable of developing a total air volume of 600 SCFM @ 2,500 pounds per square inch (PSI). The seismic system is operated at 1,950 PSI and one compressor could easily supply sufficient volume of air under appropriate pressure.

Seismic acquisition requires a watchkeeper in the seismic lab and another in the compressor container. The seismic lab watchkeeper is responsible for data acquisition/recording, watching over-the-side equipment, airgun firing and log keeping. A remote screen permits monitoring of compressor pressures and alerts, as well as communication with the compressor watchkeeper. The compressor watchkeeper is required to monitor the compressor for any emergency shut-down and provide general maintenance that might be required during operations.

Sound level radii for the proposed three airgun array were measured in 2009 during a seismic calibration (Mosher *et al.,* 2009; Roth and Schmidt, 2010). A transmission loss model was then constructed assuming spherical (20LogR) spreading and using the source level estimate 235 dB re 1 μPa (rms) 0–peak; 225 dB re 1 μPa (rms) from the measurements. The use of 20LogR spreading fit the data well out to approximately 1 km (0.6 mi) where variability in measured vales increased (*see* Appendix B in the IHA application for more details and a figure of the transmission loss model compared to the measurement data). Additionally, the Gundalf modeling package was used to model the airgun array and estimated a source level output of 236.7 dB 0–peak (226.7 dB [rms]). Using this slightly stronger source level estimate and a 20LogR spreading the 180 and 190 dB (rms) radii are estimated to be 216 m (708.7 ft) and 68 m (223.1 ft), respectively. As a conservative measure for the proposed safety radii, the sound level radii indicated by the empirical data and source models have been increased to 500 m (1,640.4 ft) for the 180 dB isopleths and to 100 m (328 ft) of the 190 dB isopleths.

The rms received levels that are used as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airguns. The measurement units used above to describe the airgun source, peak or peak-to-peak dB, are always higher than the rms dB referred to in much of the biological literature. A measured received level of 160 dB (rms) in the far field would typically correspond to a peak measurement of about 170 to 172 dB, at the same location (Greene, 1997; McCauley *et al.,* 1998, 2000). The precise difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or peak-to-peak level for an airgun-type source.

TABLE 2—DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 190, 180, AND 160 DB RE 1 μPA (RMS) COULD BE RECEIVED IN DEEP (GREATER THAN 1,000 M) WATER DURING THE SURVEY IN THE ARCTIC OCEAN, AUGUST 7, TO SEPTEMBER 3, 2010

Source and volume	Tow depth (m) ice/open water	Water depth	Predicted received RMS distances (m)		
			190 dB	180 dB	160 dB
Single Mitigation Airgun (150 in^3)	11/6–7	Deep (>1,000 m)	30	75	750
Three G-airguns (1,150 in^3)	11/6–7	Deep (>1,000 m)	100	500	2,500

Acoustic Source Specifications—Multibeam Echosounders (MBES), Sub-Bottom Profilers (SBP) and Acoustic Doppler Current Profilers (ADCP)

Along with the airgun operations, additional acoustic systems that are operated during the cruise include a 12 kHz Chirp echosounder and a 3–5 kHz SBP from the *St. Laurent*. The *Healy* operates a 12 kHz Kongsberg MBES, a Knudsen 320BR profiler, a piloting echosounder, and two ADCPs. These sources are operated throughout most of the cruise to map bathymetry, as necessary, to meet the geophysical science objectives. During seismic operations, these sources are deployed from the *St. Laurent* and the *Healy* and generally operate simultaneously with the airgun array deployed from the *St. Laurent*.

The Knudsen 320BR echosounder provides information on depth and bottom profile. The Knudsen 320BR is a dual-frequency system with operating frequencies of 3.5 and 12 kHz, however, the unit functions at the higher frequency, 12 kHz, because the 3.5 kHz transducer is not installed.

While the Knudsen 320BR operates at 12 kHz, its calculated maximum source level (downward) is 215 dB re μPa at 1 m. The pulse duration is typically 1.5 to 5 ms with a bandwidth of 3 kHz (FM sweep from 3 kHz to 6 kHz). The repetition rate is range dependent, but the maximum is a one percent duty cycle. Typical repetition rate is between ½ s (in shallow water) to 8 s in deep water. A single 12 kHz transducer (sub-bottom) array, consisting of 16 elements in a 4x4 array will be used for the Knudsen 320BR. The 12 kHz transducer (TC–12/34) emits a conical beam with a width of 30°.

The 3–5 kHz chirp SBP is towed by and operated from the *St. Laurent* in open water when the *St. Laurent* is not working in tandem with the *Healy*. The SBP provides information about sedimentary features and bottom topography. The chirp system has a maximum 7.2 kW transmit capacity into the towed array. The energy from the towed unit is directed downward by an array of eight transducers in a conical beamwidth of 80 degrees. The interval between pulses is no less than one pulse per second. SBPs of that frequency can produce sound levels 200 to 230 dB re 1 μPa at 1 m (Richardson *et al.,* 1995).

The Kongsberg EM 122 MBES operates at 10.5 to 13 (usually 12) kHz and is hull-mounted on the *Healy*. The transmitting beamwidth is 1° or 2° fore-aft and 150° athwartship. The maximum source level is 242 dB re 1 μPam (rms). Each "ping" consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft. Continuous-wave (CW) pulses increase from two to 15 ms long in water depths up to 2,600 m (8,530 ft), and FM chirp pulses up to 100 ms long are used in water greater than 2,600 m (8,530 ft). The successive transmissions span an overall cross-track angular extent of about 150°, with 2 ms gaps between pulses for successive sectors.

The Knudsen 320BR hydrographic SBP provides information on sedimentary layering, down to between 20 and 70 m (65.6 to 229.7 ft), depending on bottom type and slope. The Knudsen 320 BR is a dual-frequency system with operating frequencies of 3.5 and 12 kHz; only the low frequency is being used during this survey. At 3.5 kHz, the maximum output power into the transducer array, as wired on the *Healy* (where the array impedance is approximately 125 ohms), is approximately 6,000 watts (electrical), which results in a maximum source level of 221 dB re 1 μPa at 1 m downward. Pulse lengths range from 1.5 to 24 ms with a bandwidth of 3 kHz (FM sweep from 3 kHz to 6 kHz). The repetition rate is range dependent, but the maximum is a one percent duty cycle. Typical repetition rate is between ½ s (in shallow water) to 8 s in deep water. The 3.5 kHz transducer array on the *Healy,* consisting of 16 (TR109) elements in a 4x4 array, is being used for the Knudsen 320BR. At 3.5 kHz the SBP emits a downward conical beam with a width of approximately 26°.

The piloting echosounder on the *Healy* is an Ocean Data Equipment Corporation (ODEC) Bathy–1500 that provides information on water depth below the vessel. The ODEC system has a maximum 2 kW transmit capacity into the transducer and has two operating modes, single or interleaved dual frequency, with available frequencies of 12, 24, 33, 40, 100, and 200 kHz.

The 150 kHz ADCP has a minimum ping rate of 0.65 ms. There are four beam sectors and each beamwidth is 3°. The pointing angle for each beam is 30° off from vertical with one each to port, starboard, forward, and aft. The four beams do not overlap. The 150 kHz ADCP's maximum depth range is 300 m (984.3 ft).

The Ocean Surveyor 75 is an ADCP operating at a frequency of 75 kHz, producing a ping every 1.4 s. The system is a four-beam phased array with a beam angle of 30°. Each beam has a width of 4° and there is no overlap. Maximum output power is 1 kW with a maximum depth range of 700 m (2,296.6 ft).

Acoustic Source Specifications—Icebreaking

Icebreaking is considered by NMFS to be a continuous sound and NMFS estimates that harassment occurs when marine mammals are exposed to continuous sounds at a received sound level of 120 dB SPL or above. Potential takes of marine mammals may ensue from icebreaking activity in which the *Healy* is expected to engage outside of U.S. waters, i.e., north of approximately 74.1° North. While breaking ice, the noise from the ship, including impact with ice, engine noise, and propeller cavitation, will exceed 120 dB (rms) continuously. If icebreaking does occur in U.S. waters, USGS expects it will occur during seismic operations. The exclusion zone (EZ) for the marine mammal Level B harassment threshold during the proposed seismic activities is greater than the calculated radius during icebreaking. Therefore, if the *Healy* breaks ice during seismic operations within the U.S. waters, the greater radius, i.e., that for seismic operations, supersedes that for icebreaking, so no

additional takes have been estimated within U.S. waters.

Dates, Duration, and Specific Geographic Area

The seismic survey is being conducted for approximately 36 days from approximately August 2 to September 6, 2010. The approximately 806 km (501 mi) of tracklines within U.S. waters will be surveyed first. These survey lines are expected to be completed by approximately August 19, 2010. The seismic vessel *St. Laurent* departed from Kugluktuk, Nunavut, Canada on August 6, 2010 and returned to the same port on approximately September 15, 2010. The *Healy* departed from Dutch Harbor, Alaska on August 2, 2010, to meet the *St. Laurent* on August 10, 2010. After completion of this survey, the *Healy* is changing crew through Barrow via helicopter or surface vessel on September 6, 2010 (*see* Table 3 of the IHA application). The entire survey area will be bounded approximately by 145° to 158° West longitude and 71° to 84° North latitude in water depths ranging from approximately 1,900 to 4,000 m (6,234 to 13,123 ft) (see Figure 1 and Table 1 of the IHA application). Ice conditions are expected to range from open water to 10/10 ice cover. *See* Table 3 of the IHA application for a synopsis of the 2010 *St. Laurent* and *Healy* Extended Continental Shelf expeditions in the Arctic Ocean, August 2 to September 15, 2010.

Icebreaking outside U.S. waters will occur between the latitudes of approximately 74° to 84° North. Vessel operations and ice conditions from similar survey activities and timing in 2008 and 2009 were used to estimate the amount of icebreaking (in trackline km) that is likely to occur in 2010. USGS expects that the *St. Laurent* and the *Healy* will be working in tandem through the ice for a maximum of 23 to 25 days while outside of U.S. waters. The average distance travelled in 2008 and 2009 when the *Healy* broke ice for the *St. Laurent* was 135 km/day (83.9 mi/day). Based on the 23 to 25 day period of icebreaking, USGS calculated that, at most approximately 3,102 to 3,372 km (1,927.5 to 2,095.3 mi) of vessel trackline may involve icebreaking. This calculation is likely an overestimation because icebreakers often follow leads when they are available and thus do not break ice at all times.

TABLE 3—PROJECTED 2010 ICEBREAKING EFFORT FOR USGS/GSC 2010 EXTENDED CONTINENTAL SHELF SURVEY IN THE NORTHERN BEAUFORT SEA AND ARCTIC OCEAN

	Two-Ship operations (days)	Two-Ship operations (km)	km/day
2008	19	2,469	130
2009	27	37,744	140
Average 2008 to 2009	23	3,122	135
Projected 2010	23–25	3,102–3,372	

Comments and Responses

A Notice of Receipt of the USGS application and proposed IHA was published in the **Federal Register** on July 8, 2010 (75 FR 39336). During the comment period, NMFS received comments from the Marine Mammal Commission (Commission), the North Slope Borough (NSB) Office of the Mayor, and the Alaska Eskimo Whaling Commission (AEWC). The public comments can be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The following are their comments, and NMFS's responses.

Comment 1: The Commission recommends that NMFS approve the requested IHA, provided NMFS ascertain who will be responsible for operating the Canadian vessel and the airguns and other instruments deployed from the *St. Laurent* and issue an IHA for these activities only if a U.S. agency or U.S. citizen(s) will be conducting those operations.

Response: USGS's EA has clarified the roles and responsibilities of the Canadian vessel *St. Laurent* while operating within and outside U.S. waters:

"The activity that the USGS is funding and undertaking in both the U.S. waters (maritime zones) and the high seas is to collect multi-beam, associated chirp sub-bottom data, and possibly sediment and rock samples both within and outside the 370.4 km (200 nmi) limit, as well as to break ice for the *St. Laurent* during operations in ice-covered area. The *St. Laurent* is a vessel entitled to sovereign immunity under international law, operated by the CCG with a seismic system owned and operated by Natural Resources Canada, and therefore not under the jurisdiction of U.S. laws or regulations outside the U.S. maritime zones where the U.S. has exclusive rights and jurisdiction. The USGS is acting as the responsible agency for MMPA, ESA, and NEPA for the *St. Laurent* while the *St. Laurent* is collecting seismic data within the U.S. EEZ. The operators of the seismic equipment on the *St. Laurent* have written a Categorical Declaration that, for operations in U.S. waters (*i.e.,* within the U.S. EEZ), they will comply with any and all environmental mitigation measures required by NMFS and/or the U.S. Fish and Wildlife Service (USFWS) (see Appendix C of the EA). There are no U.S. Federal funds that are supporting the costs of operating *St. Laurent,* or its seismic gear" (*see* p. 2 to 3 of the EA).

The GSC is collecting seismic data in U.S. waters at the request of the U.S. and would not otherwise be operating in U.S. waters. Dr. Jonathan Childs, USGS liaison aboard the *St. Laurent,* will be responsible for establishing the start and end points of the lines within U.S. waters and for compliance with conditions of the IHA. The Categorical Declaration from Natural Resources Canada, United Nations Convention on the Law of the Sea (UNCLOS) Program (*see* p. 116 in Appendix C of the EA) further states:

"While in U.S. waters (*i.e.,* the U.S. EEZ), the GSC operators will comply with any and all environmental mitigation measures required by the NMFS and/or USFWS. A NMFS approved PSO and a U.S. liaison aboard the *St. Laurent* will be responsible for ensuring that all mitigation measures required by NMFS and/or USFWS are implemented while the *St. Laurent* operates in U.S. waters."

"While operating in U.S. waters, the GSC operators of the seismic profiling system categorically consent to comply with all applicable U.S. laws, including the MMPA and the ESA, as well as any terms and conditions that may be required under an IHA issued by NMFS and any measures that may arise from

ESA consultations with NMFS and/or USFWS. Operation of the seismic profiling system includes conditions under which the system will be turned on and operation continued or ceased in the presence of marine mammals (including polar bears), and the diversion of scientific tracklines for avoidance of observed wildlife. This declaration should in no way be constructed to influence or alter the safe operation of the vessel which is at the sole discretion of the CCG and its Commanding Officer."

Comment 2: The Commission recommends that NMFS approve the requested IHA, provided NMFS work with the applicant to re-estimate exposures for ice-breaking activities based upon the total area that may be exposed to sound levels greater than or equal to 120 dB re 1 μPa (rms).

Response: The Commission's concerns are that the USGS application states that an area of water 4,109 km² (1,586.5 mi²) will be exposed to sound levels ≥120 dB re 1 μPa (rms) but that the marine mammal "takes" are estimated using a larger number of 5,137 km² (1,983.4 mi²) to allow for turns, repetition of certain tracklines because of poor data quality or minor changes in survey design (this larger number represents an uncertainty estimate of approximately 20 percent). A critical clarification is that the 4,109 km² and 5,137 km² numbers are for estimating the area of takes within U.S. waters based on seismic operations, using a radius of approximately 2,500 m (8,202 ft) (*see* page 69 of the EA) for the ≥160 dB re 1 μPa (rms) isopleths, and not on the area ensonified by continuous noise of icebreaking at ≥120 dB re 1 μPa (rms). This approach was taken because the area of take for the seismic source ≥160 dB re 1 μPa (rms), estimated at approximately a 2,500 m (8,202 ft) radius was greater than that estimated for ≥120 dB re 1 μPa (rms) of continuous sound from icebreaking, estimated at 1,750 m (5,741.5 ft) radius (*see* page 213 of the EA). The estimated area ensonified for icebreaking outside of U.S. waters is 11,802 km² (4,556.8 mi²) (*see* p. 213 of the EA).

A point of confusion in this clarification is that the original request from NMFS was to estimate takes from icebreaking, rather than the total area exposed to sound levels ≥120 dB re 1 μPa (rms). The addendum on icebreaking (*see* Appendix J of the EA) only estimated takes for the *Healy* breaking ice outside of U.S. waters because there would be no additional takes for the sound of icebreaking within U.S. waters beyond those estimated for the seismic source.

One can calculate the area of potential icebreaking within U.S. waters by using the estimated track length (approximately 806 km [500.8 mi], page 69 of the EA) and the ≥120 dB μPa (rms) radius, estimated at 1,750 m (5,741.5 ft) (see page 213 of the EA), to get an ensonified area of 2,821 km² (1,089.2 mi²), which, with an additional uncertainty estimate of 20 percent totals 3,385 km² (1,307 mi²). This number is still smaller than either the 4,109 km² or 5,137 km² numbers cited in the comments from the Commission.

It is important to also clarify that (a) the USGS estimated icebreaking assuming that maximum noise of icebreaking would occur along the total length of tracklines. The preferred strategy operating in the ice is to follow leads whenever possible, which reduces the total icebreaking effort. Canadian and U.S. ice observers and analysts are aboard both vessels to select paths through the ice to minimize icebreaking; (b) for some part of the cruise, depending on ice conditions, the *St. Laurent* will be leading *Healy* so that high-quality multi-beam data can be collected, further reducing the amount of icebreaking the *Healy* will be doing (and therefore reducing the area of ensonfication for ≥120 dB re 1 μPa [rms]). The estimates of the area of ensonification in the EA and IHA do not include a correction for this type of data acquisition. Hence the area of ensonification is likely to be overestimated; (c) the tracklines are laid out to enable flexibility in where the ship may navigate through the ice, maximizing the opportunities to follow leads and reduce the requirement for icebreaking and therefore minimize the noise of icebreaking. Under international law as reflected in Article 76 of UNCLOS, the ECS outer limit points are to be no more than 111.1 km (60 nmi) apart. The cruise tracks are planned 92.6 km (50 nmi) apart or less so that the vessels can deviate approximately 18.5 km (10 nmi) either side of the track to follow leads; and (d) based on the latest ice imagery for August 3, 2010, there will probably be no need to break ice within U.S. waters.

As of August 3, 2010, *http://arctic.atmos.uiuc.edu/cryosphere/NEWIMAGES/arctic.seaice.color.000.png* shows the ice extent in the area north of the Alaska coast to be mostly open water. The PSOs aboard the *Healy* will be monitoring actual takes from icebreaking during the cruise, which can be compared with takes estimated and authorized in the IHA.

Comment 3: The Commission recommends that NMFS approve the requested IHA, provided NMFS advise the applicant to consult with the USFWS regarding the need for a separate incidental taking authorization for walruses and polar bears.

Response: On May 7, 2010, USGS requested that the USFWS review the operations for the summer 2010 Arctic Ocean geophysical experiment for potential impacts on Pacific walruses and polar bears. Given the USFWS's understanding of polar bear and walrus distribution, the planned travel routes and locations of the activity, the USFWS believe that it is unlikely the proposed studies will result in any major disturbances or impacts to individual polar bears or walruses. Considering the relatively low likelihood of encountering polar bears or walruses, along with the limited impact and anticipated responses of affected animals that would likely ensue from an encounter with either or both vessels, the USFWS has determined that an incidental take authorization is not necessary for this project. *See* the USFWS's informal ESA Section 7 consultation letter regarding walruses and polar bears in Appendix E of the EA (p. 128 to 132).

Comment 4: The Commission recommends that NMFS approve the requested IHA, provided NMFS provide additional justification for its preliminary determination that the planned monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified exclusion zones (EZs). At a minimum, such justification should (1) identify those species that it believes can be detected with a high degree of confidence using visual monitoring only, (2) describe detection probability as a function of distance from the vessel, (3) describe changes in detection probability under various sea state and weather conditions and at night, and (4) explain how close to the vessel marine mammals must be for observer to achieve the anticipated high nighttime detection rate.

Response: NMFS believes that the planned monitoring program will be sufficient to visually detect, with reasonable certainty, most marine mammals within or entering identified EZs. This monitoring, along with the required mitigation measures, will help ensure the authorized taking effects the least practicable adverse impact on the affected species or stocks and will have a negligible impact on the affected species or stocks.

Until proven technological advances are made, nighttime mitigation measures during operations include combinations of the use of PSOs and

night vision devices (NVDs). Should the airgun array be powered-down, it is believed that the operation of a single airgun continues to serve as a sound source deterrent to marine mammals. In the event of a complete shut-down of the airgun array, for mitigation or repairs, airgun operations are suspended until nautical twilight-dawn (when PSOs are able to clear the EZ). Airgun operations do not begin until the entire EZ radius is visible for at least 30 minutes. In all likelihood there will be no nighttime start-ups for the time that the seismic data are collected in U.S. waters (mid-August), when 24 hour daylight is still occurring.

Comment 5: The Commission recommends that NMFS approve the requested IHA, provided NMFS clarify the meaning of the qualifiers "when practical," "if practical," and "when feasible" to indicate how often and under what specific conditions the applicant expects to use (1) two Protected Species Observer (PSOs) to monitor the EZ for marine mammals during daytime operations and nighttime start-ups of the airguns, (2) crew members to assist PSOs in detecting marine mammals and implementing mitigation requirements, and (3) PSOs during daytime periods to compare sighting rates and animal behavior during times when seismic airguns are and are not operating.

Response: The *St. Laurent* and *Healy* will carry trained, NMFS-qualified and experienced PSOs for the seismic study involving the use of airguns and icebreaking for the upcoming proposed project. PSOs are appointed by USGS with NMFS concurrence. USGS will utilize vessel-based PSOs to watch for and monitor marine mammals near the icebreaking and seismic source vessels during all daytime airgun operations and before and during start-ups of the airguns day or night. PSOs will have access to reticle binoculars and NVDs to scan the area around each vessel. PSOs will alternate between binoculars and the naked eye to avoid eye fatigue. During all monitoring periods, PSOs will be on duty from observation locations that allow for optimal monitoring capabilities. During meal times and restroom breaks it is sometime difficult to have the full complement of PSOs on effort, but at least one PSO will be on watch during those brief times. The complement of PSOs rotates shifts, with duty shift lasting generally one to four hours.

Regarding the Commission's sub-comment (1), the intention and requirement is for two PSOs to stand watch during all seismic operations in U.S. waters, including cold start and ramp-ups. Only one PSO is on watch during daylight non-seismic operations. Two U.S. PSOs will join the *St. Laurent* before seismic operations begin in U.S. waters so that there will be five PSOs aboard the *St. Laurent* for all seismic data collected in U.S. waters. The restriction on the U.S. PSOs not standing watch for more than four hours at a time and the as yet unknown schedules of the Canadian watches makes actual schedules at this time unknown, hence the qualifiers "when practical," etc., are used to account for this uncertainty. There may also be short periods of time, for example during mandatory fire and boat safety drills, when the PSOs on watch must leave their observing stations. It is the responsibility of the U.S. liaison aboard the *St. Laurent* working with the Canadian counterparts to develop a watch schedule consistent with the requirements of the IHA, especially for the ramp-ups, whether during the day or night. In all likelihood there will be no nighttime start-ups for the time that the seismic data are collected in U.S. waters (mid-August), when 24 hour daylight is still occurring.

Canada will follow its own permitting requirements for watches and start-ups when operating outside of U.S. waters. The two U.S. PSOs aboard the *St. Laurent* during the time the *St. Laurent* is in U.S. waters will return to the *Healy* after the U.S. waters portion of the survey is completed and stand watch on the *Healy* to aid in sighting marine mammals and alert the PSOs aboard the *St. Laurent* of their sightings during the two ships' operations.

Regarding the Commission's sub-comment (2), the qualifiers to this condition refer to the situations in which (a) other members of the ship's or scientific crew on either vessel notice a marine mammal near the vessel and report it to the bridge or the PSOs; (b) the bridge watch can assist in marine mammal observations during the night when the PSO is not required to be on the bridge; or (c) the bridge watch aboard the *Healy* (in the steering station above the bridge, which is the highest and best vantage point for making observations) sees marine mammals. It is impossible to predict the frequency that these situations will occur, only that many more eyes are available to spot marine mammals than those of the PSOs, and that these additional eyes should be used whenever possible, practical, or feasible. It is not the intention in any of these situations for the crew or the bridge to implement mitigation requirements because that authority is with the PSOs. However, the bridge often acts as a central point of communication among science crew, ship's crew, and PSOs, and therefore plays a vital role in ensuring that the PSOs can implement appropriate mitigation procedures at the appropriate times.

Regarding the Commission's sub-comment (3), the U.S. PSOs aboard the *Healy* (or when aboard the *St. Laurent*) will be on watch collecting marine mammal observation data whether the airguns are operating or not. When the *Healy* is operating independently of the *St. Laurent* (e.g., steaming north from Dutch Harbor or for operations at the beginning of the survey when in open water—and therefore independently surveying), the data collected by the PSOs is baseline data. For the seismic survey within U.S. waters, the *St. Laurent* will be steaming to the start of the tracks from the east and will have the U.S. PSOs aboard to record baseline observations during the steaming time. Both U.S. and Canadian observers will be recording baseline information for at least 30 min on site prior to initial start-up and ramp-ups of the airgun operations during the survey. If the *St. Laurent* is operating independently in either international or Canadian waters, it is the responsibility of the Canadian Chief Scientist, using the conditions set forth in the Canadian permits to determine whether the Canadian observers will stand watch to collect baseline information. When the ships are operating together in international or Canadian waters, the PSOs aboard the *Healy* will be making observations either in front of the *St. Laurent* (during seismic operations) or behind the *St. Laurent* (during multi-beam operations). It is neither practical nor economical to pre-survey all tracks for the presence of marine mammals (and baseline behavior) prior to conducting seismic operations because of the huge area covered by the joint expedition, so the most likely baseline information to be collected will be at breaks in lines for repair or maintenance of the seismic gear and at the start of the survey. Using the experience of 2008 and 2009, halts in seismic acquisition for equipment maintenance generally occurred every 48 to 72 hours and lasted from 6 to 48 hours. Marine mammal observations made aboard the *Healy* cruise will allow the PSOs to collect baseline information whenever the seismic equipment is not operating.

Comment 6: The Commission recommends that NMFS approve the requested IHA, provided NMFS propose to USGS that it revise its study design to collect meaningful baseline data on sighting rates for marine mammals. Such information is essential for a

realistic assessment of impacts from the proposed activities and recovery from those impacts.

Response: NMFS is unclear about the Commission's recommendation regarding the revision of USGS's "study design." Please clarify if you are referring to USGS overall study design or more specifically to the monitoring plan required under the MMPA. The purpose of the USGS's project is for marine geophysical research, not to conduct a dedicated marine mammal research survey. Extending the survey is not practicable from an operational standpoint for the applicant. Due to the remote location of the survey and the length of time needed to conduct the requested science experiment, there may be little time left for the vessel to operate without the need for refueling and servicing.

During the cruise, there will be significant amounts of transit time pre- and post-survey during which PSOs will be on watch (*e.g.,* prior to and after the seismic portions of the survey). The collection of this observational data by PSOs may provide meaningful baseline data for marine mammals, but it is unlikely that the information would result in any statistically robust conclusions for this particular seismic survey. See NMFS responses to comments above.

To augment detection and baseline observations, the U.S. liaison aboard the *St. Laurent* will request that prior to the start of seismic activities in U.S. waters, the GSC operators deploy a sonobuoy that can be monitored through an audio channel for the presence of whales for at least the 30 min time period that the vessel is on site before commencing seismic operations. Detected vocalizations can be used to augment visual observations. The sonobuoy audio information is only intended to be used to identify the presence or absence of animals because the relative direction and distance to vocalizing animals cannot be determined from these sounds. The sonobuoy information is not intended to be used for mitigation purposes. As stated in the IHA, seismic operations will not begin if any bowhead whales are seen or heard. Use of sonobuoys is contingent upon concurrence by GSC operators, who are generally supportive of collecting additional data in support of marine mammal observations.

In addition, USGS proposes that the sonobuoy data from the refraction part of the experiment will be made available to an appropriate biologist or acoustician for analysis for the presence of marine mammals. The data is recorded continuously for approximately eight hours, and the sonobuoy records sounds not only from the airguns, but ambient noise and any other sounds long after the vessel has left the area. Although no noise trains that might be interpreted as marine mammal sounds have been definitively identified on the sonobuoys examined during 2008 and 2009 joint expeditions (Chian, pers. comm.), the sonobuoys are a source of information available for closer scrutiny.

Comment 7: The Commission recommends that NMFS approve the requested IHA, provided NMFS require the applicant to collect information to evaluate the assumption that 160 dB re 1 μPa (rms) is the appropriate threshold at which harassment occurs for all marine mammals in the survey area. This assumption can and should be tested using in-situ measurements of sound propagation concurrent with observations of the responses of marine mammals exposed to such sounds. Such tests should be conducted using species-specific data, and test results should be used to inform decision makers regarding the applicability of the 160 dB re 1 μPa (rms) threshold for specific species and to improve future mitigation measures.

Response: Behavioral responses to sound are context specific and can vary by species and other factors. However, there are not currently enough species-specific data showing how marine mammals respond to sound to support the development of separate harassment thresholds for every species. Therefore, NMFS uses the best available applicable data, which includes studies of several different species, to predict at what levels marine mammals are likely to be harassed and NMFS believes that the 160 dB re 1 μPa (rms) threshold remains appropriate for the species in this project area.

Regarding testing these behavioral harassment assumption, NMFS primarily relies on scientific research advances, and applicable monitoring results (where appropriate) to inform them. Behavioral response field studies that are able to definitively track what an animal is doing for some period of time (a baseline), expose it to a known received sound level, and record its behavior afterwards until it goes back to baseline are expensive and challenging to execute and while a few are currently underway, relatively few have been completed. Separately, in required monitoring measures, PSOs are required to make behavioral observations during seismic activities, however, while they can very effectively detect a marine mammal, identify it, and record its behavior at the surface for the moments that it is within view of the moving vessel—this information is typically not enough to support the development of a harassment threshold. Alternatively, there has been one longer-term (*i.e.,* associated with a five year rulemaking) monitoring study that has generated numerous data of a robust and measureable nature through the deployment of an extensive hydrophone array.

Regarding bowhead whales specifically, some published articles indicate that they may avoid seismic vessels at levels below 160 dB (rms), NMFS does not believe that these responses rise to the level of a take. Miller *et al.* (1999) indicated that some bowhead whales may have started to be deflected from their migratory path at 35 km (21.7 mi) from the seismic vessel, during migration, however, as described in MMS' 2006 Final Programmatic Environmental Assessment (PEA), this response has not been seen at other times of the year and during other activities. To show the contextual nature of this minor behavioral modification, recent monitoring studies of Canadian seismic operations indicated that feeding, non-migratory bowhead whales do not move away from a noise source at an SPL of 160 dB. NMFS therefore continues to estimate "takings" under the MMPA from impulse noises, such as seismic, as occurring at 160 dB (re 1 μPa [rms]).

Comment 8: The Commission recommends that NMFS approve the requested IHA, provided NMFS require the applicant to make observations during all ramp-up procedures to gather the data needed to analyze and report on their effectiveness as mitigation. As it has noted in past correspondence, the Commission would be pleased to discuss with NMFS the collection and analysis of such data and the design of such experiments to promote a better understanding of the utility and shortcomings of ramp-up as a mitigation measure.

Response: The IHA requires that PSOs on the *St. Laurent* and *Healy* make observations for 30 min prior to ramp-up, during all ramp-ups, and during all daytime seismic operations and record the following information when a marine mammal is sighted:

(i) Species group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

(ii) Time, location, heading, speed activity of the vessel (including number of airguns operating and whether in state of ramp-up or power-down), Beaufort wind force and sea state, visibility, and sun glare.

One of the primary purposes of monitoring is to result in "increased knowledge of the species" and the effectiveness of monitoring and mitigation measures; marine mammal reactions to ramp-up would be useful information in this regard. NMFS has asked USGS to gather all data that could potentially provide information regarding the effectiveness of ramp-ups as a mitigation measure. However, considering the low numbers of marine mammal sightings and low number of ramp-ups, it is unlikely that the information will result in any statistically robust conclusions for this particular seismic survey. Over the long term, these requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided animals are detected during ramp-up.

A study investigating the efficacy of ramp-up has been jointly funded by the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) and the Joint Industry Programme (JIP). Post-cruise monitoring reports for numerous seismic surveys are currently available on the NMFS MMPA Incidental Take Program Web site should there be interest in further analysis of this data by the public.

Comment 9: The NSB and its residents as well as the AEWC are concerned about potential health impacts to the environment associated with offshore development (i.e., industrial and commercial activities) on the North Slope. Activities allowed by the proposed authorization pose direct, indirect, and cumulative impacts on species (especially marine mammals) that are critical to the subsistence harvesting villages the AEWC represents and the NSB people's subsistence harvest.

Response: NMFS is unclear about the specific meaning of the term "health impacts" as used in the public comments. The USGS and NMFS are making every effort to minimize the direct, indirect, and cumulative impacts through the federal NEPA, MMPA, and ESA process, as well as consulting with the Native communities. Cumulative impact assessments are USGS and NMFS responsibility under NEPA. The revised EA has addressed concerns about potential impacts using the best available science. In evaluating the severity of the impacts, it is important to realize that the proposed seismic activity within the U.S. EEZ is more than 100 km (54 nmi) offshore in a region well away from the main migration routes of the bowhead whale and will occur at a time prior to the bowhead whales beginning their fall migration from the Canadian Beaufort. Although a single individual bowhead whale has been identified in this region from tagging, there is little evidence to suggest that the location or timing of the survey overlaps with or interferes with bowhead whaling activities. As noted in the EA, "available information * * * does not indicate that marine and seismic surveys for oil and gas exploration activities has had detectable long-term adverse population-level effects on the overall health, current status, or recovery of marine mammal species and populations in the Arctic region. For example, data indicated that the Bering-Chukchi-Beaufort (BCB) bowhead whale population has continued to increase over the timeframe that oil and gas activities have occurred. There is no long-term displacement from habitat (although studies have not specifically focused on addressing this issue) * * * monitoring studies indicate that most fall migrating whales avoid an area with a radius of about 20 to 30 km (12.4 to 18.6 mi) around a seismic vessel operating in nearshore waters (Miller *et al.,* 2002). USGS is not aware of data, however that indicate that such avoidance is long-lasting after cessation of the activity" (EA, p. 81 to 82). Seismic survey activities in the Canadian and Russian Arctic occur in different geographical areas, therefore, they are not analyzed.

NMFS does not allow activities in the Arctic, NMFS only authorizes the take of marine mammals incidental to an otherwise legal specified activity in a specified geographic area.

Comment 10: The NSB is concerned that NSB communities are being overwhelmed by multiple planning processes both because of the constraints on time and expertise of communities and individuals and because of the seeming inability to meaningfully influence the decisions being made.

Response: It is unfortunate that the NSB communities feel overwhelmed by the multiple planning processes, time constraints, and other issues. Because of the statutory timelines associated with the MMPA IHA process (which include the 30-day public review period), NMFS is also forced to work within challenging time constraints. However, NMFS has encouraged Arctic applicants to apply earlier than required by the regulations, which allows NMFS, NSB, BOEMRE, and the affected communities time to review the applications prior to meeting in Spring at the Open Water Meeting to discuss the applications. If the NSB has process recommendations that could make things easier for the communities while still allowing NMFS to meet our regulatory requirements, NMFS would be glad to discuss them. Separately, NMFS makes every effort to incorporate input from the NSB communities, where appropriate given our regulatory requirements.

USGS included a statement about environmental justice in the EA, "the proposed action complies with EO 12898, Federal Actions to Address Environmental Justice in Minority and Low-income Populations and EO 13045, Protection of Children from Environmental Health Risks and Safety Risks. USGS solicited public comment on their Draft EA and published a Notice of Availability in the **Federal Register** on June 11, 2010 (75 FR 33326). NMFS published a Notice of Receipt of the USGS application and proposed IHA in the **Federal Register** on July 8, 2010 (75 FR 39336). The public comments were considered by USGS in developing the EA and by NMFS in developing the IHA. "As part of its Plan of Cooperation, USGS is hiring an Alaska native to be a member of the science crew, serve as an observer, and provide communication with the subsistence communities."

Comment 11: The NSB and AEWC recognize the efforts made by the USGS to meet with representatives of their communities and to provide information on the proposed seismic survey work planned for this summer. The AEWC appreciate the opportunity to receive information directly from the Federal agency planning the activities, and those efforts have helped to provide the AEWC with a better understanding of the proposed seismic surveys. The AEWC looks forward to further dialogue in the future should the Federal government continue with similar work in the Arctic, AEWC wishes to emphasize that, given the willingness of the USGS to work with the AEWC. The NSB and AEWC do no object to the issuance of an IHA for these operations, despite the serious process concerns raised in their public comments.

Response: NMFS has issued an IHA to USGS for conducting a marine seismic survey in the Arctic Ocean from August to September, 2010, which includes the mitigation, monitoring, and reporting requirements described below.

Comment 12: The NSB and AEWC objects to the ongoing flawed public process employed by the NMFS Office of Protected Resources (OPR), in which it purports to accept and consider

public comment (from local communities in regulating activities in the Arctic) on requests for Incidental Harassment Authorizations and in regulating activities in the Arctic. The AEWC strenuously objects to a public comment process that fails to provide an opportunity for meaningful input before the activities are scheduled to occur. Congress intended that the local impacted communities have an opportunity to provide substantive feedback to the Federal government before decisions are made and before any harassment takes place. The AEWC states that the people on the North Slope feel like they have no opportunity to influence government decisionmaking and therefore do not feel like NMFS' decisions reflect the interests or input of the local whaling captains, who have invaluable observations and direct experience, developed over hundreds of generations, to offer.

This particular case provides a stark example of how and why OPR's process is flawed to the point of being irrelevant for the local impacted communities on the North Slope and must be wholly reformulated. The AEWC states that these issues have plagued OPR's program for years, and despite many lessons learned in the offshore context over the past several years, nothing at OPR has changed for the better. The AEWC welcomes the opportunity to work with OPR leadership to improve upon this important regulatory program if NMFS and OPR are willing to make substantive changes to ensure adequate public participation and adequate protection of their local communities and the marine mammals upon which they depend.

Response: In order to issue an authorization pursuant to Section 101(a)(5)(D) of the MMPA, NMFS must determine that the taking by harassment of small numbers of marine mammals species or stocks will have a negligible impact on affected species or stocks, and will not have an unmitigable adverse impact on the availability of affected species or stocks for taking for subsistence uses. If NMFS is able to make these findings, the Secretary is required to issue an IHA. As required by the MMPA and its implementing regulations, NMFS published a Notice of Receipt of the USGS application and proposed IHA in the **Federal Register** on July 8, 2010 (75 FR 39336). All substantive public comments were considered by NMFS in developing the IHA and responses to those public comments can be found here in this notice. NMFS determined that it was able to make the required MMPA findings.

For many years, NMFS has conducted the Arctic Open Water Meeting, which brings together the Federal agencies, the oil and gas industry, and affected Alaska Native organizations to discuss the proposed activities and monitoring plans. Local and traditional knowledge is considered at these times, and it is not too late for that knowledge to serve a useful purpose. These communities are also afforded an opportunity to submit comments on the IHA application and proposed IHA notice, which are then considered by NMFS before making a final determination on whether or not to issue an IHA.

Comment 13: The AEWC states that in implementing the MMPA, NMFS has done everything in its power to gut Congress' expressed intent to provide meaningful public participation. The way in which NMFS sequences the IHA applications and the public notices renders the public comment process ineffective and irrelevant for NMFS's decision-making process.

The NSB and AEWC state that in this action the proposed seismic activities were scheduled to begin at least two days before the public comment period closed. NMFS requested that comments be received by August 9, 2010, and the agency then supposedly has 45 days within which to analyze the comments and issue a final IHA. In the **Federal Register** notice, however, NMFS clarifies that USGS's two ships intend to rendezvous in the survey area on August 7, 2010. The obvious problem is that the ships have been deployed, the crews have been informed of their operational restrictions, and seismic activities have likely commenced before NMFS receives public comment or issues the final IHA. As a result, the AEWC cannot possibly provide meaningful input into the operations or how they should be regulated. While the AEWC are being forced to write detailed comments on a lengthy IHA application and **Federal Register** notice, the ships are already out in the water adding noise to the marine environment and transiting the Chukchi Sea. The AEWC states that it is absolutely insulting for the activities to commence before the public comment deadline has even been closed.

The AEWC states that it is readily apparent from this sequencing that NMFS is actually allowing the USGS to operate without an IHA (or simply looking the other way) during a significant portion of the planned activities. Based on past experiences, it has taken NMFS several weeks to review public comments and issue a final IHA. Here, USGS plans to operate during August and September, and yet the public comment period did not close until August 9. It's very likely in this situation that USGS will therefore complete a majority of its planned operations before even receiving from NMFS the actual IHA, which spells out specific mitigation requirements such as monitoring of EZs and shut-down and ramp-up procedures. In its responses to comments, the AEWC requests explicit clarification from NMFS on whether and to what extent NMFS knew of or allowed USGS to conduct seismic activities before the IHA was issued. The AEWC also requests explicit clarification on whether USGS or NMFS was in violation of any provisions of the MMPA as a result.

Response: NMFS received a revised IHA application from USGS that was deemed adequate and complete on June 1, 2010. NMFS published a Notice of Receipt of the USGS application and proposed IHA in the **Federal Register** on July 8, 2010 (75 FR 39336), but due to the close of the 30 day public comment period falling on a weekend, the closing date was calculated as August 9, 2010 in the **Federal Register.** USGS was notified of the delayed closing date by NMFS. While it usually takes several weeks to address public comments, NMFS worked especially diligently to review and consider the comments in a timely manner such that NMFS could make a final decision in a time frame that would allow USGS and GSC to conduct the proposed seismic operations if NMFS did issue an IHA. NMFS does not authorize USGS to conduct seismic activities, NMFS authorizes the take of marine mammals incidental to an otherwise legal specific activity in a specified geographic area.

While beginning seismic work in the U.S. EEZ on approximately August 7, 2010, was the optimum plan for the two-icebreaker experiment, experiments this large always have contingency plans for unexpected conditions (such as weather, ice conditions, equipment maintenance, ship maintenance, other emergencies, etc.). In the case of this experiment, the *St. Laurent* had approximately 10 days of work planned inside the Canadian EEZ after the two-icebreaker experiment ended. This Canadian survey work was started to account for the delay in obtaining the IHA. Likewise, the *Healy* had contingency multi-beam survey work planned on the Beaufort margin that could be conducted independently of the *St. Laurent* in case open water would allow the vessels to operate independently. The *Healy* began this work and continued doing this survey

work until the *St. Laurent* entered the ice on her way north. The *Healy* and *St. Laurent* did not begin any activities that NMFS believes would result in the potential take of marine mammals until after they received the IHA on August 11, 2010.

Below is the sequence of dates and events of interactions between NMFS, USGS, and the GSC regarding the IHA and seismic survey:

- August 2, 2010—*Healy* departed Dutch Harbor, Alaska.
- August 6, 2010—*St. Laurent* underway from Kugluktuk, Nunavut, Canada.
- August 8, 2010—*Healy* commenced hydrographic survey of U.S./Canada disputed zone.
- August 9, 2010—*Healy* finished hydrographic survey of U.S./Canada disputed zone.
- August 10, 2010—*Healy* and *St. Laurent* rendezvous, transfer personnel, and proceed in convoy toward U.S. EEZ.
- August 11, 2010—*Healy* proceeds alone within U.S. EEZ for sampling program. IHA received via email and MSR received to conduct science operations in U.S. EEZ.
- August 12, 2010—*St. Laurent* begins seismic operations (line 6) in the U.S. EEZ.
- August 13, 2010—*Healy* joins the *St. Laurent* for seismic operations (line 7).

While USGS has yet to submit its draft 90 day monitoring report, NMFS is not aware of any incidences of non-compliance or violations of the MMPA.

Comment 14: The AEWC states that the authorization itself must prescribe certain requirements such as "permissible methods for taking by harassment," "means of effecting the least practicable impact on such species," measures to "ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence use," requirements pertaining to "monitoring and reporting," and for "independent peer review" of such monitoring and reporting if the taking may affect subsistence use. Indeed, NMFS' regulations further provide that "any preliminary finding of 'negligible impact' and 'no unmitigable adverse impact' shall be proposed for public comment along with the proposed IHA." Without understanding exactly how the IHA incorporates these requirements through specific language, the public is foreclosed from providing input on how the activities will be regulated.

Response: The July 8, 2010, proposed IHA notice (75 FR 39336) contained all the relevant information needed by the public to provide comments on the proposed authorization itself. The notice contained the permissible methods of taking by harassment, means of effecting the least practicable impact on such species or stocks (i.e., mitigation), information that ensures no unmitigable adverse impact on the availability of the species or stock for taking for subsistence use, and requirements pertaining to the monitoring and reporting of such taking. The notice provided detail on all of these points and, in NMFS view, allowed the public to comment on the proposed authorization and inform NMFS' final decision. Additionally, the notice contained NMFS' preliminary findings of small numbers, negligible impact, and no unmitigable adverse impact.

NMFS' implementing regulations at 50 CFR 216.108(d) state that an independent peer review of a monitoring plan is required if the activity may affect the availability of a species or stock of marine mammals for taking for subsistence purposes. The independent peer review of monitoring plans for ITA applications is not required for activities that occur outside of Arctic waters or in Arctic waters if it is determined that the activity will not affect the availability of a species or stock of marine mammals for taking for subsistence purposes. The USGS provided NMFS with a draft IHA application in early March, 2010, which included information on the timing and location of its proposed seismic lines. The USGS application stated that the proposed survey will begin inside the U.S. EEZ and then move further and further offshore and eventually outside the U.S. EEZ for the majority of the survey. The lines inside U.S. waters were approximately 96.6 km (60 mi) from Barrow and will be surveyed for five days, planned for mid-August. If equipment or weather malfunctions cause some delays, the USGS had indicated to NMFS that they will be outside of the U.S. EEZ by August 25, which has been the typical shut-down date in the Beaufort Sea so that villages could begin to prepare for the fall bowhead hunt. This whaling shut-down date especially applies to activities occurring near Kaktovik and Cross Island. This survey will be occurring west of those two communities' hunts.

Based on this information, NMFS preliminarily determined that the proposed USGS seismic survey would not affect the availability of bowhead whales for taking for subsistence purposes. Belugas are not hunted at this time of the year in this particular part of the Arctic. Additionally, while seal hunting can occur year round in the Beaufort Sea, it most commonly occurs from October until June (outside of the time frame of the USGS's activity). Moreover, most seal hunting does not occur this far offshore.

Therefore, since NMFS preliminarily determined (based on the information contained in the draft IHA application) that the USGS's activity would not affect the availability of a species or stock of marine mammals for taking for subsistence purposes, NMFS determined that their activity did not trigger the requirement for independent peer review of the monitoring plan. The trigger for needing an independent peer review of the monitoring plan is slightly different than the "no unmitigable adverse impact" determination that NMFS must make prior to the issuance of an IHA. If the AEWC or other interested parties wish to have the opportunity to make comments on the monitoring proposed by the USGS for its seismic survey, comments may be provided to NMFS for consideration during the 30-day public comment period for the proposed IHA announced in the **Federal Register** notice.

Comment 15: The Conflict Avoidance Agreement (CAA) contains protective measures that should have been applied to USGS's operations to ensure effective communication between the ships and AEWC whaling captains and to ensure that those ships adhere to travel routes through the Chukchi that AEWC whaling captains have designated. The AEWC is particularly concerned because the **Federal Register** notice and the IHA application make clear that the USGS intends to transit the *Healy* through the Bering Strait, across the Chukchi Sea, and into the survey area in the Beaufort Sea during the first week of August, 2010. The NSB and AEWC states that vessel transit across the Chukchi, a major issue of concern for their whaling community and a focus of the Open Water Season CAA, was to begin even earlier. The NSB and AEWC also reiterates that NMFS should be imposing the mitigation measures developed in the CAA to ensure that regulated activities do not have an unmitigable adverse impact on subsistence activities. In this case, the USGS plans to transit the Chukchi Sea in early August and the CAA speaks directly to this issue, with those provisions having been developed by whaling captains and offshore operators over several seasons. Neither USGS nor NMFS discusses in the IHA application or the **Federal Register** notice the potential impacts resulting from vessel transit or the protective measures developed by the AEWC, which have been approved by the local whaling

captains. The AEWC asks for clarification from NMFS as to whether it views the USGS's vessel transit as an activity that potentially results in take of marine mammals or adverse impacts to subsistence activities. The AEWC is concerned that NMFS failed to consider at all the potential impacts of vessel traffic to and from the survey area. A simple and straightforward manner to address these issues would be to adopt the provisions of the CAA or simply require the USGS the CAA as a basis for making the statutorily required findings of no unmitigable adverse impacts to subsistence activities. The AEWC states that it is extremely unfortunate that the AEWC are only being given an opportunity to comment on these activities as they are already occurring or have already occurred.

Response: USGS, in the comments matrix of the EA, responded to the overall concern about complying with the CAA as follows "the CAA is intended primarily for oil and gas activities in the nearshore (see scope statement, p. 4 of CAA, industry funding of communication centers p. 14 of CAA, etc.)." To the extent the proposed activity of this EA is to conduct work greater than 100 km (62.1 mi) offshore, primarily for scientific research, the CAA is not directly applicable.

However, USGS is following the spirit of the CAA through their Plan of Cooperation. Through discussions with the NSB and AEWC about conducting the seismic lines within the U.S. EEZ, i.e., the lines closest to the locations of the potential migration pathway of the bowhead whale and subsistence hunting activities, USGS has agreed to conduct these tracks at the beginning of the survey (early to mid August) when it should pose no interference or potential to interfere with the Nuiqsut, Kaktovik, or Barrow whaling seasons.

Part of the Plan of Cooperation is for the *Healy* to also carry as part of the science party an Alaska Native community observer to ensure that communications with the subsistence community are maintained. Both the *Healy* and *St. Laurent* will have PSOs as part of the proposed strategy for monitoring and mitigation.

With regards to the concern about the *Healy* in the Chukchi Sea, the *Healy* was on transit through the Chukchi Sea to begin work in the Beaufort Sea. The CAA requests that transiting vessels "should remain as far offshore as weather and ice conditions allow and at all times at least 8 km (5 mi) during transit." During transit, the *Healy* remained more than 48.3 km (30 mi) offshore during its transit through the Chukchi Sea. USGS also has hired a member of the Alaska Native community as an observer and communicator aboard the *Healy.* Therefore, although USGS has not specifically mentioned the CAA in the EA (and the CAA, which focuses on industry activities, is not directly relevant to the proposed USGS activity), USGS is following the spirit of the agreement. Location of the *Healy's* transit track through the Chukchi Sea, as monitored by the sailwx.info organization can be found online at: *http://www.sailwx.info/shiptrack/shipposition.phtml?call=NEPP.*

The signing of a CAA is not a requirement to obtain an IHA. The CAA is a document that is negotiated between and signed by the industry participant, AEWC, and the Village Whaling Captains' Associations. NMFS has no role in the development or execution of this agreement. Although the contents of a CAA may inform NMFS' no unmitigable adverse impact determination for bowhead and beluga whales and ice seals, the signing of it is not a requirement. Despite the lack of a signed CAA for USGS activities, NMFS is confident that USGS's survey and the measures contained in the IHA will ensure no unmitigable adverse impact to subsistence users.

Comment 16: The NSB and AEWC reiterates earlier comments they have made with respect to previous IHA applications and proposed IHAs for this open water season, namely that OPR lacks an adequate scientific and legal basis for issuing the proposed IHAs. As an example, OPR continues to operate under flawed monitoring and mitigation measures that fail to provide adequate protections against takes for Level A harassment and do not adhere to the best available science. And, OPR similarly fails entirely to consider the impacts of this project in the context of all other oil and gas activities planned for the Arctic Ocean. As opposed to restating those comments, the NSB and AEWC incorporates them by reference and asks that NMFS give serious consideration to the concerns set forth in those earlier documents.

Response: NMFS has addressed the NSB's and AEWC's comments submitted regarding earlier proposed IHAs for this open water season, see NMFS' responses in the Notice of Issuance of IHAs for Shell Offshore, Inc. (75 FR 49710) and Statoil USA E&P (75 FR 49760), published in the **Federal Register.** NMFS believes that USGS' monitoring and mitigation measures are adequate (see Mitigation and Monitoring and Reporting sections below), and NMFS has determined that USGS' activities will not result in Level A harassment (injury) or mortality of marine mammals, and no injury or mortality is authorized under the IHA.

A number of public comments about the accuracy of data were raised in the EA and are addressed in the comment matrix (p. 228 to 232). USGS's final EA and Finding of No Significant Impact can be found online at: *http://pubs.usgs.gov/of/2010/1117/.* Included in the comment matrix are a response to questions about associations between seismic activity and to Level A harassment, strandings and mortality. USGS agrees that more data are required, but "nearly all cases have shown clear evidence of harm or cause of death by something other than underwater sounds." The EA also expanded the section on cumulative impacts to address similar concerns raised in comments on the draft EA.

Comment 17: The AEWC reiterates how this proposed project demonstrates the flawed nature of NMFS' mitigation measures as they relate to EZs. As plain logic and the best available science tell us, EZs are only as effective as the people who monitor those areas for marine mammals. NMFS has stated that the PSO will not be on duty during nighttime operations and yet seismic operations will be allowed to continue 24 hours per day (75 FR 39369). USGS survey crews will encounter as much as 8.5 hours of darkness per day during the survey operations. During those times, NMFS states that bridge personnel will keep watch for marine mammals "insofar as practical." This requirement is meaningless, as anyone who has spent time on the water will tell you that no bridge personnel can identify marine mammals at night in Arctic conditions. It is absolutely unacceptable for NMFS to simply look the other way while vessels shoot seismic in the Arctic without any monitoring at all to prevent take by Level A harassment. Given the fact that the proposed operations will emit sounds well in excess of 190 dB (rms), and the fact that USGS will be operating without any observers for much of the time, AEWC fails to see how NMFS could possibly rule out the potential for take by Level A harassment. This determination simply has no basis in science or law.

Response: It will be continuous daylight during most of the survey, which will accommodate 24 hour/day monitoring by PSOs during most of the survey. The IHA, which authorizes Level B harassment, is only valid for the *St. Laurent* and *Healy's* activities associated with seismic survey operations within the EEZ of the U.S. and the *Healy's* icebreaking operations

in international waters. The GSC has written a Categorical Declaration stating that "while in U.S. waters, the GSC operators will comply with any and all environmental mitigation measures required by NMFS." The two icebreakers work cooperatively in U.S. waters for only a small portion (approximately 5 days) of the seismic survey. NMFS has determined that USGS' activities will not result in injury or mortality of marine mammals, and no injury or mortality is authorized under the IHA.

Comment 18: Because the AEWC is responsible for protecting their bowhead subsistence hunt, that is the cornerstone of their subsistence livelihood and way of life, they take very seriously the changes and impacts the AEWC are seeing in their waters and the need for vigilant Federal regulatory oversight of potential impacts. The AEWC hope that NMFS and NOAA will take seriously the lessons being learned at the Department of the Interior regarding the costs of lax regulatory oversight, in the wake of the Deep Water Horizon disaster. Similarly, the AEWC hopes that these agencies will take seriously the legal risk their communities face in the context of an increasingly irrational process at the International Whaling Commission.

Response: USGS and NMFS conducted a thorough analysis of the potential impacts of this proposed activity (with a focus on sound from geophysical surveys and icebreaking) on marine mammals; a cumulative impact analysis was also done under NEPA. Multiple studies and research have been cited that support NMFS' MMPA and NEPA determinations that the localized and short-term disturbance from seismic surveys, with strict mitigation and monitoring measures implemented, is likely to result in negligible impacts to marine mammals and no significant impact to the human environment, respectively. NMFS does not have any direct role in issuing permits for offshore drilling other than evaluating impacts of leasing and other activities under the MMPA and ESA. NOAA has been in communication with the BOEMRE regarding activities on the outer continental shelf.

Comment 19: The AEWC states that they are forced to write comments to NMFS expressing their concerns about impacts to their marine mammal species from operations that are supposedly regulated by NMFS that are already occurring out in the water. Rather than consult with the directly affected communities, as it has agreed to do, NMFS ignores the AEWC, allowing applicants to commence operations before reviewing their public comments submitted as part of the general public process, before responding to their comments, or even before the IHA has been issued. AEWC states that this is no more than a simple exercise in paper shuffling without any substantive and meaningful opportunity for input from the local community.

Response: NMFS does not authorize operations in Arctic waters; NMFS authorizes the take of marine mammals incidental to an otherwise legal specific activity in a specified geographic area. NMFS disagrees with the AEWC's statement regarding ignoring the review of their public comments submitted as part of the general public process. The AEWC submitted comments on the USGS IHA application and proposed IHA to NMFS OPR via email after the close of business on August 11, 2010 and were reviewed by NMFS OPR on August 12, 2010. The public comment period for the USGS proposed IHA closed on August 9, 2010, and the IHA was issued to USGS on August 11, 2010, after reviewing and responding to substantive comments from the Commission and NSB. *See* other NMFS responses to comments in this notice regarding opportunities for substantive and meaningful input from the local community.

Comment 20: AEWC states that NMFS is in plain violation of the MMPA by failing to provide to the public a "proposed IHA." Instead of providing a draft of the authorization itself, NMFS publishes a **Federal Register** notice that describes the application and the basis for the agency's proposed statutory findings. Because the IHA is the specific authorization that governs the harassing activities, it is imperative that the AEWC be allowed input into the actual draft authorization and not simply be given a description of the mitigation measures and proposed findings. In a functional governmental system, NMFS would publish a draft authorization and take public comment on that document well in advance so that AEWC whaling captains could provide meaningful input. In the alternative and in the event of a timing issue, NMFS would consult directly with AEWC under the NMFS/NOAA–AEWC Cooperative Agreement. Because the ships have already been deployed, it would be impossible for NMFS to consult with us or review the AEWC comments and, for instance, require USGS to implement more rigorous monitoring protocols. That is now impossible or impractical because the ships have already left port. This is but one example of NMFS disregard of its regulatory responsibilities and its utter lack of concern for the local impacts it is charged with preventing.

Response: The July 8, 2010, proposed IHA notice (75 FR 39336) contained all the relevant information needed by the public to provide comments on the proposed authorization itself. The notice contained the permissible methods of taking by harassment, means of effecting the least practicable impact on such species or stocks (*i.e.,* mitigation), information that ensures no unmitigable adverse impact on the availability of the species or stock for taking for subsistence use, and requirements pertaining to the monitoring and reporting of such taking. The notice provided detail on all of these points and, in NMFS view, allowed the public to comment on the proposed authorization and inform NMFS' final decision.

Also, for many years, NMFS has conducted the Arctic Open Water Meeting, which brings together the Federal agencies, the oil and gas industry, and affected Alaska Native organizations to discuss the proposed activities and monitoring plans. Local knowledge is considered at these times, and it is not too late for that knowledge to serve a useful purpose. These communities are also afforded the opportunity to submit comments on the application and proposed IHA notice, which are then considered by NMFS before making a final determination on whether or not to issue an IHA.

NOAA and the AEWC co-manage bowhead whales pursuant to a cooperative agreement. This agreement has allowed the AEWC to play a significant role in the management of a valuable resource by affording Alaska Natives the opportunity to protect bowhead whales and the Eskimo culture and to promote scientific investigation, among other purposes. NMFS works closely with Alaska Natives when considering whether to permit the take of marine mammals incidental to operations in the Arctic. NMFS has met repeatedly over the years with Alaska Native representatives to discuss concerns related to NMFS' MMPA program in the Arctic, and has also taken into account recommended monitoring and mitigation measures to reduce the impact of operations on marine mammals and to ensure the availability of marine mammals for taking for subsistence uses. NMFS has participated in Alaska Native community meetings in the past and will continue to do so.

Comment 21: The AEWC states that NMFS has a long track record of publishing its response to AEWC public comments many weeks and months after the IHA has been issued and after the activities have commenced (and in

many times concluded). This issue again convinces us that the AEWC comments are not given serious consideration by the agency before its decision has been made. If the agency cannot articulate a rationale response to public comments, it should not grant the requested authorization. Moreover, if activities are going to commence in AEWC waters, potentially interfering with subsistence activities or the migration of the AEWC's marine mammals, the government owes us a reasoned response to their concerns before allowing the activities to proceed. Again, as the AEWC writes their comments, they know that the boats are already in the water, the activities will begin in a matter of days, and NMFS will not bother to respond to the AEWC's concerns until well after the harmful activities have taken place. This is little more than an exercise in paper shuffling with the agency already having made up its mind or simply turning a blind eye to activities that will occur without coverage from a valid IHA.

The AEWC states that NMFS' public process is fundamentally broken and must be reformulated. NMFS should not allow USGS to commence operations until the AEWC has had the statutorily required opportunity to comment on the draft authorization and NMFS has published responses to those comments. Time and again, NMFS has requested input from the AEWC and other stakeholders into how the agency can better respond to the AEWC's concerns. At bare minimum, the AEWC asks that NMFS reformulate its public participation process to provide meaningful opportunities for the local community. As it stands now, the agency has given every indication that it does not give serious consideration to the AEWC's concerns.

Response: NMFS does not agree with AEWC's statement that NMFS' failure to release its response to comments until after an IHA has been issued or activities have commenced casts doubt on the validity of NMFS' public involvement process, or the underlying analysis of impacts to subsistence activities and marine mammals. All substantive public comments received during the 30 day comment period on proposed IHAs are seriously considered before NMFS' decides whether to issue IHAs. The decision to issue an IHA to USGS for its proposed marine surveys in the Arctic Ocean is based in large part on NMFS' definitions of "negligible impact" and "unmitigable adverse impact," the proposed mitigation and monitoring measures, the scope of activities proposed to be conducted, including time of year, location, and presence of marine mammals in the project area, extensive research and studies on potential impacts of anthropogenic sounds to marine mammals, marine mammal behavior, distribution, and movements in the vicinity of USGS's proposed project area, USGS's Plan of Cooperation, and on public comments received during the commenting period. The reason that NMFS was not able to publish its response to comments on proposed IHA activities for USGS's until the end of the survey activities was largely due to travel and workload issues. NMFS will continue to ensure that all public comments are considered in full and strive to publish responses at the time IHAs or LOAs are issued.

Description of Marine Mammals in the Activity Area

Regarding marine mammals, a total of nine cetacean species, including four odontocete species (dolphins, porpoises, and small- and large-toothed whales), five mysticete species (baleen whales), and five pinniped species (seals, sea lions, and walrus) and the polar bear are known to occur in the area affected by the specified activities associated with the proposed Arctic Ocean marine seismic survey (*see* Table 3 of USGS's application). Cetaceans and pinnipeds, which are the subject of this IHA application, are protected by the MMPA and managed by NMFS in accordance with its requirements. In the U.S., the walrus and polar bear are managed under the jurisdiction of the USFWS and are not considered further in this analysis. Information on the occurrence, distribution, population size, and conservation status for each of the 14 marine mammal species that may occur in the proposed project area is presented in the Table 4 of USGS's application as well as here in the table below (Table 4). Several marine mammal species that may be affected by the proposed IHA are listed as Endangered or Threatened under Section 4 of the ESA, including the bowhead, fin and humpback whale, and polar bear. The bowhead whale is common in the Arctic, but unlikely in the survey area. Based on a small number of sightings in the Chukchi Sea, the fin whale is unlikely to be encountered along the planned trackline in the Arctic Ocean. Humpback whales are uncommon in the Chukchi Sea and normally do not occur in the Beaufort Sea. Several humpback sightings were recorded during vessel-based surveys in the Chukchi Sea in 2007 (three sightings) and 2008 (one sighting; Haley *et al.,* 2009). The only known occurrence of humpback whale in the Beaufort Sea was a single sighting of a cow and calf reported and photographed in 2007 (Green *et al.,* 2007). Based on the low number of sightings in the Chukchi and Beaufort seas, humpback whales would be unlikely to occur in the vicinity of the proposed geophysical activities.

The marine mammal species under NMFS jurisdiction most likely to occur in the seismic survey area include two cetacean species (beluga and bowhead whales), and two pinniped species (ringed and bearded seals). These species however, will likely occur in low numbers and most sightings will likely occur in locations within 100 km (62 mi) of shore where no seismic work is planned. The marine mammal most likely to be encountered throughout the cruise is the ringed seal.

Five additional cetacean species—narwhal, killer whale, harbor porpoise, gray whale, and minke whale—could occur in the project area. Gray whales occur regularly in continental shelf waters along the Chukchi Sea coast in summer and to a lesser extent along the Beaufort Sea coast. Recent evidence from monitoring activities in the Chukchi and Beaufort seas during industry seismic surveys suggests that harbor porpoise and minke whales, which have been considered uncommon or rare in the Chukchi and Beaufort seas, may be increasing in numbers in these areas (Funk *et al.,* 2009). Small numbers of killer whales have also been recorded during these industry surveys, along with a few sightings of fin and humpback whales. The narwhal occurs in Canadian waters and occasionally in the Beaufort Sea, but is rare there and not expected to be encountered. Each of these species is uncommon or rare in the Chukchi and Beaufort seas, and relatively few if any encounters with these species are expected during the seismic program.

Additional pinniped species that could be encountered during the proposed seismic survey include spotted and ribbon seals, and Pacific walrus. Spotted seals are more abundant in the Chukchi Sea and occur in small numbers in the Beaufort Sea. The ribbon seal is uncommon in the Chukchi Sea and there are few sightings in the Beaufort Sea. The Pacific walrus is common in the Chukchi Sea, but uncommon in the Beaufort Sea and not likely to occur in the deep waters of the proposed survey area. None of these species would likely be encountered during the proposed cruise other than perhaps transit periods to and from the survey area.

Table 4 below outlines the marine mammal species, their habitat and

abundance in the proposed project area, their conservation status, and density. Additional information regarding the distribution of these species expected to be found in the project area and how the estimated densities were calculated may be found in USGS's IHA application and was included in the notice of the proposed IHA (75 FR 39336, July 8, 2010).

TABLE 4—THE HABITAT, REGIONAL ABUNDANCE, CONSERVATION STATUS, AND BEST AND MAXIMUM DENSITY ESTIMATES OF MARINE MAMMALS THAT COULD OCCUR IN OR NEAR THE SEISMIC SURVEY AREA IN THE ARCTIC OCEAN. *See* TABLE 4 AND 5 IN USGS'S APPLICATION FOR FURTHER DETAIL

Species	Habitat	Abundance/regional population size	ESA [a]	MMPA [o]	Best [b] density (#/km^2) open water, ice margin, polar pack	Max [c] density (#/km^2) open water, ice margin, polar pack
Odontocetes:						
Beluga whale (*Delphinapterus leucas*).	Offshore, coastal, ice edges.	3,710 [d] 39,257 [e]	NL	NC D—Cook Inlet	0.0354 0.0354 0.0035	0.0709 0.0709 0.0071
Narwhal (*Monodon monocerus*).	Offshore, ice edge	Rare [f]	NL	N.A.	0.0000 0.0000 0.0000	0.0001 0.0002 0.0001
Killer whale (*Orcinus orca*).	Widely distributed	Rare	NL	NC D—AT1 Transient Population, Southern Resident Population.	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Harbor porpoise (*Phocoena phocoena*).	Coastal, inland waters, shallow offshore waters.	Common (Chukchi) Uncommon (Beaufort)	NL	NC	0.0000 0.0000 0.0001	0.0001 0.0001 0.0001
Mysticetes:						
Bowhead whale (*Balaena mysticetus*).	Pack ice and coastal	10,545 [g]	EN	D	N.A.	N.A.
Eastern Pacific gray whale (*Eschrichtius robustus*).	Coastal, lagoons	488 [h] 17,500 [i]	NL	NC D—Western North Pacific Population.	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Minke whale (*Balaenoptera acutorostrata*).	Shelf, coastal	Small numbers	NL	NC	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Fin whale (*Balaenoptera physalus*).	Slope, mostly pelagic	Rare (Chukchi)	E	D	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Humpback whale (*Megaptera novaeangliae*).	Shelf, coastal	Rare	EN	D	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Pinnipeds:						
Bearded seal (*Erignathus barbatus*).	Pack ice, open water	300,000—450,000 [j]	C	NC	0.0096 0.0128 0.0013	0.0384 0.0512 0.0051
Spotted seal (*Phoca largha*).	Pack ice, open water, coastal haul-outs.	59,214 [k]	P–T	NC	0.0001 0.0001 0.0000	0.0004 0.0004 0.0000
Ringed seal (*Phoca hispida*).	Landfast and pack ice, open water.	18,000 [l] 208,000–252,000 [m]	C	NC	0.1883 0.2510 0.0251	0.7530 1.0040 0.1004
Ribbon seal (*Histriophoca fasciata*).	Pack ice, open water	90,000–100,000 [n]	NL	NC	N.A.	N.A.
Pacific walrus (*Odobenus rosmarus divergens*).	Ice, coastal	N.A.	NL	S—Pacific	N.A.	N.A.
Carnivores: Polar bear (*Ursus maritimus marinus*)	Ice, coastal	N.A.	T	S—Chukchi/Bearing Sea.	N.A.	N.A.

N.A.—Data not available or species status was not assessed.
[a] U.S. Endangered Species Act: EN = Endangered, T = Threatened, C = Candidate, P = Proposed, NL = Not listed.
[b] Best estimate as listed in Table 5 and Add-3 of the application.
[c] Maximum estimate as listed in Table 5 and Add-3 of the application.
[d] Eastern Chukchi Sea stock based on 1989 to 1991 surveys with a correction factor (Angliss and Allen, 2009)
[e] Beaufort Sea stock based on surveys in 1992 (Angliss and Allen, 2009)
[f] DFO (2004) states the population in Baffin Bay and the Canadian Arctic archipelago is approximately 60,000; very few of these enter the Beaufort Sea.
[g] Abundance of bowhead whales surveyed near Barrow, as of 2001 (George *et al.,* 2004). Revised to 10,545 by Zeh and Punt (2005).
[h] Southern Chukchi Sea and northern Bering Sea (Clarks and Moore, 2002)

[i] Eastern North Pacific gray whale population (Rugh *et al.,* 2008)
[j] Based on earlier estimates, no current population estimate available (Angliss and Allen, 2009)
[k] Alaska stock based on aerial surveys in 1992 (Angliss and Allen, 2009)
[l] Beaufort Sea minimum estimate with no correction factor based on aerial surveys in 1996 to 1999 (Frost *et al.,* 2002 in Angliss and Allen, 2009)
[m] Eastern Chukchi Sea population (Bengston *et al.,* 2005)
[n] Bering Sea population (Burns, 1981a in Angliss and Allen, 2009)
[o] U.S. Marine Mammal Protection Act: NC = Not Classified, D = Depleted, S = Strategic.

Within the latitudes of the proposed survey when the *Healy* will be breaking ice outside of U.S. waters, no cetaceans were observed by PSOs along approximately 21,322 km (13,248.9 mi) of effort during projects in 2005, 2006, 2008, and 2009 (Haley and Ireland, 2006; Haley, 2006; Jackson and DesRoches, 2008; Mosher *et al.,* 2009). The estimated maximum amount of icebreaking outside of U.S. waters for this project, i.e., 3,372 line km (2,095.3 mi), is considerably less than the combined trackline for the aforementioned projects. At least one PSO will stand watch at all times while the *Healy* is breaking ice for the *St. Laurent.* USGS does not expect that PSOs will observe any cetaceans during the proposed survey. Seals were reported by PSOs during the 2005, 2006, 2008, and 2009 effort within the latitudes of the proposed survey.

TABLE 5—NUMBER OF PINNIPEDS REPORTED DURING 2005, 2006, 2008, AND 2009 PROJECTS WITHIN THE LATITUDES WHERE THE *Healy* WILL BE BREAKING ICE OUTSIDE OF U.S. WATERS FOR THE PROPOSED ARCTIC OCEAN SURVEY (HALEY AND IRELAND, 2006; HALEY, 2006, GSC UNPUBLISHED DATA, 2008; MOSHER ET AL., 2009)

Pinniped species	Number of sightings	Number of individuals
Ringed seal	116	125
Bearded seal	24	26
Unidentified seal	128	140
Totals	268	291

Potential Effects on Marine Mammals

Potential Effects of Airgun Sounds

The effects of sounds from airguns might result in one or more of the following: tolerance, masking of natural sounds, behavioral disturbances, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but this would be localized and short-term.

The notice of the proposed IHA (75 FR 39336, July 8, 2010) included a discussion of the effects of sound from airguns on mysticetes, odontocetes, and pinnipeds, including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. Additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels can be found in USGS's application and associated EA.

The notice of the proposed IHA also included a discussion of the potential effects of the multi-beam echosounders (MBES), sub-bottom profilers (SBP), acoustic Doppler current profilers (ADCP), and icebreaking activities. Because of the shape of the beams of these sources (i.e., MBES, SBP, and ADCP), NMFS believes it unlikely that marine mammals will be exposed to sound levels at or above those likely to cause Level B harassment.

Estimated Take of Marine Mammals by Incidental Harassment

The notice of the proposed IHA (75 FR 39336, July 8, 2010) included an in-depth discussion of the methods used to calculate the densities of the marine mammals in the area of the seismic survey and the take estimates. Additional information was included in USGS's application. A summary is included here.

All anticipated takes would be "takes by Level B harassment," involving temporary changes in behavior. The proposed monitoring and mitigation measures are expected to minimize the possibility of injurious takes or mortality. However, as noted earlier, there is no specific information demonstrating that injurious "takes" or mortality would occur even in the absence of the planned monitoring and mitigation measures. NMFS believes, therefore, that injurious take or mortality to the affected species marine mammals is extremely unlikely to occur as a result of the specified activities within the specified geographic area for which USGS seeks the IHA. The sections below describe methods to estimate "take by harassment," and present estimates of the numbers of marine mammals that could be affected during the seismic study in the Arctic Ocean. The estimates of "take by harassment" are based on data obtained during marine mammal surveys in and near the Arctic Ocean by Stirling *et al.* (1982), Kingsley (1986), Moore *et al.* (2000b), Haley and Ireland (2006), Haley (2006), GSC unpublished data (2008), and Mosher *et al.* (2009), Bowhead Whale Aerial Survey Program (BWASP), and on estimates of the sizes of the areas where effects could potentially occur. In some cases these estimates were made from data collected from regions and habitats that differed from the proposed project area.

Detectability bias, quantified in part by $f(0)$, is associated with diminishing sightability with increasing lateral distance from the trackline. Availability bias ($g[0]$) refers to the fact that there is less than 100 percent probability of sighting an animal that is present along the survey trackline. Some sources of densities used below included these correction factors in their reported densities. In other cases the best densities used below included these

correction factors in their reported densities. In other cases the best available correction factors were applied to reported results when they had not been included in the reported data (Moore *et al.,* 2000b). Adjustments to reported population or density estimates were made on a case by case basis to take into account differences between the source data and the general information on the distribution and abundance of the species in the proposed project area.

Although several systematic surveys of marine mammals have been conducted in the southern Beaufort Sea, few data (systematic or otherwise) are available on the distribution and numbers of marine mammals in the northern Beaufort Sea or offshore water of the Arctic Ocean. The main sources of distributional and numerical data used in deriving the estimates are described in the next subsection. Both "maximum estimates" as well as "best estimates" of marine mammal densities (*see* Table 5 of the IHA application) and the numbers of marine mammals potentially exposed to underwater sound (*see* Table 6 of the IHA application) were calculated as described below. The best (or average) estimate is based on available distribution and abundance data and represents the most likely number of animals that may be encountered during the survey, assuming no avoidance of the airguns or vessel. The maximum estimate is either the highest estimate from applicable distribution and abundance data or the average estimate increased by a multiplier intended to produce a very conservative (over) estimate of the number of animals that may be present in the survey area. There is some uncertainty about how representative the available data are and the assumptions used below to estimate the potential "take by harassment." However, the approach used here is accepted by NMFS as the best available at this time.

USGS has calculated exposures to marine mammals within U.S. waters only. After the *St. Laurent* (a Canadian icebreaker) exits U.S. waters, their activities no longer fall under the jurisdiction of the U.S. or the MMPA.

The following estimates are based on a consideration of the number of marine mammals that might be disturbed appreciably over the approximately 806 line km (501 mi) of seismic surveys within U.S. waters across the Arctic Ocean. An assumed total of 1,007.5 km (626 mi) of trackline includes a 25 percent allowance over and above the planned approximately 806 km to allow for turns, lines that might have to be repeated because of poor data quality, or for minor changes to the survey design.

The anticipated radii of influence of the lower energy sound sources including Chirp echosounder (on the *St. Laurent*) and bathymetric echosounder (on the *Healy*) are less than that for the airgun configuration. It is assumed that during simultaneous operation of the airgun array and echosounder, any marine mammals close enough to be affected by the MBES, SBP, and ADCP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sound sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES, SBP, and ADCP sounder given its characteristics (e.g., narrow downward-directed beam) and other considerations described in the IHA application. Similar responses are expected from marine mammals exposed to the *Healy*'s bathymetric profiler. Such reactions are not considered to constitute "taking" as defined by NMFS (NMFS, 2001). Therefore, no additional allowance is included for animals that might be exposed to sound sources other than the airguns and icebreaking.

Marine Mammal Density Estimates

Numbers of marine mammals that might be present and potentially disturbed are estimated based on available data about marine mammal distribution and densities in the Arctic Ocean study area during the summer. "Take by harassment" is calculated by multiplying expected densities of marine mammals likely to occur in the survey area by the area of water potentially ensonified to sound levels ≥160 dB re 1 μPa (rms) for the airgun operations and ≥120 dB re 1 μPa (rms) for icebreaking activities. Estimates for icebreaking are based on a consideration of the number of marine mammals that might be disturbed appreciably over the approximately 3,102 to 3,372 line km (1,927.5 to 2,095.3 mi) of icebreaking that may occur during the proposed project. This section provides descriptions of the estimated densities of marine mammals that may occur in the proposed survey area. The area of water that may be ensonified to the indicated sound level is described further below. There is no evidence that avoidance at received sound levels ≥160 dB would have significant effects on individual animals or that the subtle changes in behavior or movements would rise to the level of taking according to guidance by NMFS (NMFS, 2001).

Some surveys of marine mammals have been conducted near the southern end of the proposed project area, but few data are available on the species and abundance of marine mammals in the northern Beaufort Sea and the Arctic Ocean. No published densities of marine mammals are available for the region of the proposed survey (including between 74° and 84° North where the *Healy* will be breaking ice outside U.S. waters), although vessel-based surveys through the general area in 2005, 2006, 2008, and 2009 encountered few marine mammals. A total of two polar bears, 36 seals, and a single beluga whale sighting(s) were recorded along approximately 2,299 km (1,429 mi) of monitored trackline between 71° North and 74° North (Haley and Ireland, 2006; Haley, 2006; GSC unpublished data, 2008; Mosher *et al.,* 2009). PSOs recorded 268 sightings of 291 individual seals along approximately 21,322 km (13,248.9 mi) of monitored trackline between 74° and 84° North (Haley and Ireland, 2006; Haley, 2006; GSC unpublished data, 2008; Mosher *et al.,* 2009). No cetaceans were observed during the surveys between 74° and 84° North. Given the few sightings of marine mammals along the 21,322 km (13,248.9 mi) vessel trackline in previous years, USGS estimate that the densities of marine mammals encountered while breaking ice will be 1/10 of the estimated densities of marine mammals encountered within the ice margin habitat described in the original application.

Given that the survey lines within U.S. waters extend from latitudes 71° to 74° North, it is likely that seismic operations will be conducted in both open-water and sea-ice conditions. Because densities of marine mammals often differ between open-water and pack-ice areas, the likely extent of the pack-ice at the time of the survey was estimated. Images of average monthly sea ice concentration for August from 2005 through 2009, available from the National Snow and Ice Data Center (NSIDC), were used to identify 74° North latitude as a reasonable ice-edge boundary applicable to the proposed study period and location. Based on these satellite data, the majority of the survey in U.S. waters will be conducted in open water and unconsolidated pack ice, in the southern latitudes of the survey area. This region will include the ice margin where the highest densities of cetaceans and pinnipeds are likely to be encountered. The proposed survey lines within U.S. waters reach approximately 74.10° North, extending

within the estimated ice-edge boundary for August, 2010 by approximately 19 km (10 nmi). This comprises less than 3 percent of the total trackline within U.S. waters. USGS has divided the survey effort between the two habitat zones of open water and ice margin based on the 2005 to 2009 NSIDC satellite data described above and the planed location of the tracklines. NSIDC data from 2005 to 2009 suggests little ice will be present south of 74° North, although data from the 2009 cruise (Mosher *et al.,* 2009) shows that inter-annual variability could result in a greater amount of ice being encountered than expected. As a conservative measure, USGS estimated that, within U.S. waters, 80 percent of the survey tracklines will occur in open water and 20 percent of the tracklines will occur within the ice margin.

The NSIDC (2009) reported that more Arctic sea ice cover in 2009 remained after the summer than in the record-setting low years of 2007 and 2008. USGS expects that sea ice density and extent in 2010 will be closer to the density and extent of sea ice in 2009 rather than the record-setting low years of 2007 and 2008. All animals observed during the 2009 survey (Mosher *et al.,* 2009) were north of the proposed seismic survey area, *i.e.,* north of 74° North.

Cetaceans—Average and maximum densities for each cetacean species or species group reported to occur in U.S. waters of the Arctic Ocean, within the study area, are presented in Table 5 of the IHA application. Densities were calculated based on the sightings and effort data from available survey reports. No cetaceans were observed during surveys near the proposed study area in August/September, 2005 (Haley and Ireland, 2006), August, 2006 (Haley, 2006), August/September, 2008 (GSC unpublished data, 2008) or August/September, 2009 (Mosher *et al.,* 2009).

Seasonal (summer and fall) differences in cetacean densities along the north coast of Alaska have been documented by Moore *et al.* (2000b). The proposed survey will be conducted in U.S. waters from approximately August 6 to 12, 2010, and is considered to occur during the summer season.

The summer beluga density (*see* Table 5 of the IHA application) was based on 41 sightings along 9,022 km (5,606 mi) of on-transect effort that occurred over water greater than 2,000 m (6,561.7 ft) during the summer in the Beaufort Sea (Moore *et al.,* 2000b; *see* Table 2 of the IHA application). A mean group size of 2.8 derived from BWASP data of August beluga sightings in the Beaufort Sea in water depths greater than 2,000 m was used in the density calculation. A $f(0)$ value of 2.326 from Innes *et al.* (1996) and a g(0) value of 0.419 from Innes *et al.* (1996) and Harwood *et al.* (1996) were also used in the density computation. The CV associated with group size was used to select an inflation factor of 2 to estimate the maximum density that may occur in the proposed study area within U.S. waters. Most Moore *et al.* (2000b) sightings were south of the proposed seismic survey. However, Moore *et al.* (2000b) found that beluga whales were associated with both light (1 to 10 percent) and heavy (70 to 100 percent) ice cover. Five of 23 beluga whales that Suydam *et al.* (2005) tagged in Kaseglauk Lagoon (northeast Chukchi Sea) traveled to 79 to 80° North into the pack ice and within the region of the proposed survey. These and other tagged whales moved into areas as far as 1,100 km (594 nmi) offshore between Barrow and the Mackenzie River delta, spending time in water with 90 percent ice coverage. Therefore, we applied the observed density calculated from the Moore *et al.* (2000b) sightings as the average density for both "open water" and "ice margin" habitats. Because no beluga whales were sighted during surveys in the proposed survey area (Harwood *et al.,* 2005; Haley and Ireland, 2006; Haley, 2006; GSC unpublished data, 2008; and Mosher *et al.,* 2009) the densities in Table 5 of the IHA application are probably higher than densities likely to be encountered.

By the time the survey begins in early August, most bowhead whales have typically traveled east of the proposed project area to summer in the eastern Beaufort Sea and Amundsen Gulf. Industry aerial surveys of the continental shelf near Camden Bay in 2008 recorded eastward migrating bowhead whales until July 12 (Lyons and Christie, 2009). No bowhead sightings were recorded again despite continued flights until August 19, 2010. A summer bowhead whale density was derived from 9,022 km (5,606 mi) of summer (July/August) aerial survey effort reported by Moore *et al.* (2000b) in the Alaska Beaufort Sea during which six sightings of bowhead whales were documented in water greater than 2,000 m (6,561.7 ft). A mean group size of bowhead whale sightings in September, in waters greater than 2,000 m deep, was calculated to be 1.14 (CV = 0.4) from BWASP data. A $f(0)$ value of 2.33 and g(0) value of 0.073, both from Thomas *et al.* (2002) were used to estimate a summer density for bowhead whales of 0.0122 whales/km^2. This density falls within the range of densities, *i.e.,* 0.0099 to 0.0717 whales/km^2, reported by Lyons and Christie (2009) based on data from three July, 2008 surveys.

Treacy *et al.* (2006) reported that in years of heavy ice conditions, bowhead whales occur farther offshore than in years of light to moderate ice. NSIDC (2009) reported that September, 2009 had the third lowest sea ice extent since the start of their satellite records in 1979. The extent of sea ice at the end of the 2009 Arctic summer, however, was greater than in 2007 or 2008. USGS does not expect 2010 to be a heavy ice year during which bowhead whales might occur farther offshore in the area of the proposed survey. During the lowest ice-cover year on record (2007), BWASP reported no bowhead whale sightings in the greater than 2,000 m depth waters far offshore. Because few bowhead whales have been documented in the deep offshore waters of the proposed survey area, half of the bowhead whale density estimate from size and standard error reported in Thomas *et al.* (2002) for $f(0)$ and g(0) correction factors suggest that an inflation factor of two is appropriate for estimating the maximum density from the average density. NSIDC did not forecast that 2010 would be a heavy ice year and USGS anticipates that bowheads will remain relatively close to shore, and in areas of light ice coverage. Therefore, USGS has applied the same density for bowheads to the open-water and ice-margin categories. Bowhead whales were not sighted during recent surveys in the Arctic Ocean (Haley and Ireland, 2006; Haley, 2006; GSC unpublished data, 2008; Mosher *et al.,* 2009), suggesting that the bowhead whale densities shown in Table 5 are likely higher than actual densities in the survey area.

For other cetacean species that may be encountered in the Beaufort Sea, densities are likely to be very low in the summer when the survey is scheduled. Fin and humpback whales are unlikely to occur in the Beaufort Sea. No gray whales were observed in the Beaufort Sea by Moore *et al.* (2000b) during summer aerial surveys in water greater than 2,000 m. Gray whales were not recorded in water greater than 2,000 m by the BWASP during August in 29 years of survey operation. Harbor porpoises are not expected to be present in large numbers in the Beaufort Sea during the fall although small numbers may be encountered during the summer. Neither gray whales nor harbor porpoises are likely to occur in the far-offshore waters of the proposed survey area (Table 5 of the IHA application). Narwhals are not expected to be encountered within the survey area

although a few individuals could be present if ice is nearby. Because these species occur so infrequently in the Beaufort Sea, little to no data are available for the calculation of densities. Minimal cetacean densities have therefore been assigned to these three species for calculation purposes and to allow for chance encounters (*see* Table 5 of the IHA application). Those densities include "0" for the average and 0.0001 individuals/km^2 for the maximum.

Pinnipeds—Extensive surveys of ringed and bearded seals have been conducted in the Beaufort Sea, but most surveys were conducted over the landfast ice during aerial surveys, and few seal surveys have occurred in open water or in the pack ice. Kingsley (1986) conducted ringed seal surveys of the offshore pack ice in the central and eastern Beaufort Sea during the late spring (late June). These surveys provide the most relevant information on densities of ringed seals in the ice margin zone of the Beaufort Sea. The density estimate in Kingsley (1986) was used as the average density of ringed seals that may be encountered in the ice-margin area of the proposed survey (*see* Table 5 of the IHA application). The average density was multiplied by four to estimate maximum density, as was done for all seal species likely to occur within the survey area. Ringed seals are closely associated with sea ice therefore the ice-margin densities were multiplied by a factor of 0.75 to estimate a summer open-water ringed-seal density for locations with water depth greater than 2,000 m (6,561.7 ft).

Densities of bearded seals were estimated by multiplying the ringed seal densities by 0.051 based on the proportion of bearded seals to ringed seals reported in Stirling *et al.,* (1982; *see* Table 6–3 of IHA application). Because bearded seals are associated with the pack ice edge and shallow water, their estimated summer ice-margin density was also multiplied by a factor of 0.75 for the open-water density estimate. Minimal values were used to estimate spotted seal densities because they are uncommon offshore in the Beaufort Sea and are not likely to be encountered.

Numbers of marine mammals that might be present and potentially disturbed are estimated below based on available data about marine mammal distribution and densities in the three different habitats during the summer as described in Table 5 of the IHA application.

The number of individuals of each species potentially exposed to received levels greater than or equal to 160 dB re 1 μPa (rms) (for seismic airgun operations) or 120 dB re 1 μPa (rms) (for icebreaking) was estimated by multiplying:

- The anticipated area to be ensonified to the specified sound level in both open water, the ice margin, and polar pack by
- The expected species density.

Some of the animals estimated to be exposed to sound levels greater than or equal to 160 dB re 1 μPa (rms) or 120 dB re 1 μPa (rms), particularly migrating bowhead whales, might show avoidance reactions before actual exposure to this sound level (*see* Appendix D of the IHA application). Thus, these calculations actually estimate the number of individuals potentially exposed to greater than or equal to 160 dB (rms) or 120 dB re 1 μPa (rms) that would occur if there were no avoidance of the area ensonified to that level.

Estimated Area Exposed to ≥160 dB (rms)

The area of water potentially exposed to received levels greater than or equal to 160 dB by the proposed operations was calculated by multiplying the planned trackline distance within U.S. waters by the cross-track distance of the sound propagation. The airgun array of two 500 in^3 and one 150 in^3 G-airguns that will be used for the proposed 2010 survey within U.S. waters was measured during a 2009 project in the Arctic Ocean. The propagation experiment took place at 74°50.4′ North; 156°34.31′ West, in 3,863 m (12,674 ft) of water. The location was near the northern end of the two proposed survey lines in U.S. waters. USGS expects the sound propagation by the airgun array in the planned 2010 survey will be the same as that measured in 2009, because of the similar water depths and relative locations of the test site and proposed survey area. The greater than or equal to 160 dB (rms) sound level radius was estimated to be approximately 2,500 m (8,202.1 ft) based on modeling of the 0 to peak energy of the airgun array (Roth and Schmidt, 2010). The 0 to peak values were corrected to rms by subtracting 10 dB.

Closely spaced survey lines and large cross-track distances of the greater than or equal to 160 dB radii can result in repeated exposure of the same area of water. Excessive amounts of repeated exposure can lead to overestimation of the number of animals potentially exposed through double counting. The trackline for the proposed USGS survey in U.S. waters, however, covers a large geographic area without adjacent tracklines and the potential for multiple or repeated exposure is unlikely to be a concern.

The USGS 2010 geophysical survey is planned to occur approximately 108 km (67.1 mi) offshore, along approximately 806 km (501 mi) of survey lines in U.S. waters, during the first half of August exposing a total of approximately 4,109 km^2 (1,586.5 mi^2) of water to sound levels of greater than or equal to 160 dB (rms). USGS included an additional 25 percent allowance over and above the planned tracklines within U.S. waters to allow for turns, lines that might have to be repeated because of poor data quality, or for minor changes to the survey design. The resulting estimate of 5,136.5 km^2 (1,983.2 mi^2) was used to estimate the numbers of marine mammals exposed to underwater sound levels greater than or equal to 160 dB (rms).

Based on the operational plans and marine mammal densities described in Table 5 of the IHA application, the estimates of marine mammals potentially exposed to sounds greater than or equal to 160 dB (rms) in the proposed survey area within U.S. waters are presented in Table 6 of the IHA application. For the common species, the requested numbers are calculated as described above and based on the average densities from the data reported in the different studies mentioned above. For less common species, estimates were set to minimal values to allow for chance encounters. Discussion of the number of potential exposures is summarized by species in the following subsections.

Cetaceans—Based on density estimates and area ensonified, one endangered cetacean species (bowhead whale) is expected by USGS to be exposed to received levels greater than or equal to 160 dB, unless bowheads avoid the survey vessel before the received levels reach 160 dB. Migrating bowheads are likely to do so, though many of the bowheads engaged in other activities, particularly feeding and socializing may not. The USGS estimated the number of bowhead whales potentially exposed to sound levels ≥160 dB (rms) in the portion of the survey area in U.S. waters to be between 31 and 63 (*see* Table 6 of the IHA application). NMFS subsequently did an analysis and found that bowhead whales are unlikely to be exposed to sound levels ≥160 dB (rms). Although take was calculated based on density estimates in the proposed action area, the proposed seismic survey will be conducted during the fall migration for bowhead whales, but at locations starting at greater than 185.2 km (100 nmi) offshore, well north of the known

bowhead migration corridor and well beyond distances (20 to 30 km [12.4 to 18.6], Miller *et al.,* 1999; Richardson *et al.,* 1999) known to potentially affect this species. Other endangered cetacean species that may be encountered in the area are fin and humpback whales; both are unlikely to be exposed given their minimal density in the area.

The only other cetacean species likely to occur in the proposed survey area is the beluga whale. Average (best) and maximum estimates of the number of exposures of belugas to sound levels greater than or equal to 160 dB (rms) are 182 and 364, respectively. Estimates for other cetacean species are minimal (*see* Table 6 of the IHA application).

Pinnipeds—The ringed seal is the most widespread and abundant pinniped in ice-covered arctic waters, and there is a great deal of annual variation in abundance and distribution of these marine mammals. Ringed seals account for the vast majority of marine mammals expected to be encountered, and hence exposed to airgun sounds with received levels greater than or equal to 160 dB (rms) during the proposed marine seismic survey. The average (best and maximum number of exposures of ringed seals to sound levels greater than or equal to 160 dB (rms) were estimated to be 1,031 and 4,126, respectively.

Two additional pinniped species (other than the Pacific walrus) are likely to occur in the proposed project area. The average and maximum numbers of exposures of bearded seals to sound levels greater than or equal to 160 dB (rms) were estimated to be 53 and 210, respectively. The ribbon seal is unlikely to be encountered in the survey area, but a chance encounter could occur.

Estimated Area Exposed to ≥120 dB (rms)

The area potentially exposed to received levels greater than or equal to 120 dB (rms) due to icebreaking operations was estimated by multiplying the anticipated trackline distance breaking ice by the estimated cross-track distance to received levels of 120 dB caused by icebreaking.

In 2008, acousticians from Scripps Institution of Oceanography Marine Physical Laboratory and University of New Hampshire Center for Coastal and Ocean Mapping conducted measurements of SPLs of *Healy* icebreaking under various conditions (Roth and Schmidt, 2010). The results indicated that the highest mean SPL (185 dB [rms]) was measured at survey speeds of 4 to 4.5 knots in conditions of 5/10 ice and greater. Mean SPL under conditions where the ship was breaking heavy ice by backing and ramming was actually lower (180 dB). In addition, when backing and ramming, the vessel is essentially stationary, so the ensonified area is limited for a short period (on the order of minutes to tens of minutes) to the immediate vicinity of the boat until the ship breaks free and once again makes headway.

Although the report by Roth and Schmidt has not yet been reviewed externally nor peer-reviewed for publication, the SPL results reported are consistent with previous studies (Thiele, 1981, 1988; LGL and Greenridge, 1986; Richardson *et al.,* 1995).

The existing threshold for Level B harassment for continuous sounds is a received sound level of 120 dB SPL. Using a spherical spreading model, a source level of 185 dB decays to 120 dB in about 1,750 m (5,741.5 ft). This model is corroborated by Roth and Schmidt (2010). Therefore, as the ship travels through the ice, a swath 3,500 m (11,483 ft) wide would be subjected to sound levels greater than or equal to 120 dB (rms). This results in the potential exposure of 11,802 km^2 (4,557.8 mi^2) to sounds greater than or equal to 120 dB (rms) from icebreaking.

Based on the operational plans and marine mammal densities described above, the estimates of marine mammals exposed to sounds greater than or equal to 120 dB (rms) during the maximum estimation of icebreaking outside of U.S. waters (3,372 km [2,095.3 mi]) are presented in Table Add-4 of the IHA application. For the common marine mammal species, the requested numbers are calculated as described above and based on the average densities from the data reported in the different studies mentioned above. For less common species, estimates were set to minimal values to allow for chance encounters.

Based on models, bowhead whales likely would respond to the sound of the icebreakers at distances of 2 to 25 km (1.2 to 15.5 mi) from the icebreakers (Miles *et al.,* 1987). This study predicts that roughly half of the bowhead whales show avoidance responses to an icebreaker underway in open water at a range of 2 to 12 km (1.3 to 7.5 mi) when the sound-to-noise ratio is 30 dB (rms). The study also predicts that roughly half of the bowhead whales would show avoidance response to an icebreaker pushing ice at a range of 4.6 to 6.2 km (2.9 to 12.4 mi) when the sound-to-noise ratio is 30 dB.

Richardson *et al.* (1995b) found that bowheads migrating in the nearshore lead during the spring migration often tolerated exposure to playbacks of recorded icebreaker sounds at received levels up to 20 dB or more above the natural ambient noise levels at corresponding frequencies. The source level of an actual icebreaker is much higher than that of the projectors (projecting the recorded sound) used in this study (median difference 34 dB over the frequency range 40 Hz to 6.3 kHz). Over the two-season period (1991 and 1994) when icebreaker playbacks were attempted, an estimated 93 bowheads (80 groups) were seen near the ice camp when the projectors were transmitting icebreaker sounds into the water, and approximately 158 bowheads (116 groups) were seen near there during quiet periods. Some bowheads diverted from their course when exposed to levels of projected icebreaker sound greater than 20 dB above the natural ambient noise level in the 1/3 octave band of the strongest icebreaker noise. However, not all bowheads diverted at that sound-to-noise ratio, and a minority of whales apparently diverted at a lower sound-to-noise ratio. The study concluded that exposure to a single playback of variable icebreaker sounds can cause statistically, but probably not biologically significant effects on movements and behavior of migrating whales in the lead system during the spring migration east of Point Barrow, Alaska. The study indicated the predicted response distances for bowheads around an actual icebreaker would be highly variable; however, for typical traveling bowheads, detectable effects on movements and behavior are predicted to extend commonly out to radii of 10 to 30 km (6.2 to 18.6 mi). Predicting the distance a whale would respond to an icebreaker like the *Healy* is difficult because of propagation conditions and because ambient noise varies with time and with location. However, because the closest survey activities and icebreaking are approximately 116 km (72.1 mi) away and are of limited duration (5 days), and the next closest survey activities are 397 km (246.7 mi) away to the north and west in the Arctic ocean, NMFS does not anticipate that icebreaking activities would have biologically significant effects on the movements and behavior of bowhead whales.

Table 6 (see below) outlines the species, estimated stock population (minimum and best), and estimated percentage of the regional population or stock exposed to seismic pulses and icebreaking activities in the project area. Additional information regarding the status, abundance, and distribution of the marine mammals in the action area and how densities were calculated was included in Table 4 (*see* above), the

notice of the proposed IHA (75 FR 39337, July 8, 2010) and may be found in USGS's application.

TABLE 6—THE ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 120 dB (RMS) (FOR ICEBREAKING) OR 160 dB (RMS) (FOR SEISMIC AIRGUN OPERATIONS) DURING USGS'S PROPOSED SEISMIC SURVEY IN U.S. WATERS IN THE NORTHERN BEAUFORT SEA AND ARCTIC OCEAN, IN AUGUST 2010. RECEIVED LEVELS ARE EXPRESSED IN dB RE 1 μPA (RMS) (AVERAGED OVER PULSE DURATION), CONSISTENT WITH NMFS' PRACTICE. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, BUT SOME MAY ALTER THEIR BEHAVIOR WHEN LEVELS ARE LOWER (SEE TEXT). SEE TABLES 4 TO 5 AND ADD-3 AND ADD-4 IN USGS'S APPLICATION FOR FURTHER DETAIL.

Species	# of individuals exposed (best) [1] open water, ice margin, polar pack	# of individuals exposed (max) [2] open water, ice margin, polar pack	Total (best)	Approx. percent of regional population (best) [2]
Odontocetes:				
Beluga whale (*Delphinapterus leucas*)	146	291	224	0.57
	36	73	.....	.....
	42	84	.....	.....
Narwhal (*Monodon monocerus*)	0	1	0	0
	0	1	.....	.....
	0	1	.....	.....
Killer whale (*Orcinus orca*)	0	0	0	0
	0	0	.....	.....
	0	1	.....	.....
Harbor porpoise (*Phocoena phocoena*)	0	0	0	0
	0	0	.....	.....
	0	1	.....	.....
Mysticetes:				
Bowhead whale (*Balaena mysticetus*)	N.A.	N.A.	N.A.	N.A.
Eastern Pacific gray whale (*Eschrichtius robustus*)	0	0	0	0
	0	0	.....	.....
	0	1	.....	.....
Minke whale (*Balaenoptera acutorostrata*)	0	0	0	0
	0	0	.....	.....
	0	1	.....	.....
Fin whale (*Balaenoptera physalus*)	0	0	0	0
	0	0	.....	.....
	0	1	.....	.....
Humpback whale (*Megaptera novaeangliae*)	0	0	0	0
	0	0	.....	.....
	0	0	.....	.....
Pinnipeds:				
Bearded seal (*Erignathus barbatus*)	39	158	67	0.02
	13	53	.....	.....
	15	60	.....	.....
Spotted seal (*Phoca largha*)	0	2	0	0
	0	0	.....	.....
	0	0	.....	.....
Ringed seal (*Phoca hispida*)	774	3,094	1,328	7.38
	258	1,031	.....	.....
	296	1,185	.....	.....
Ribbon seal (*Histriophoca fasciata*)	N.A.	N.A.	N.A.	N.A.
Pacific walrus (*Odobenus rosmarus divergens*)	N.A.	N.A.	N.A.	N.A.
Carnivores:				
Polar bear (*Ursus maritimus marinus*)	N.A.	N.A.	N.A.	N.A.

N.A.—Data not available or species status was not assessed.
[1] Best estimate and maximum density estimates are from Table 5 and Table Add-3 of USGS's application.
[2] Regional population size estimates are from Table 4.

Conclusions—Bowhead whales are considered by NMFS to be disturbed after exposure to underwater sound levels greater than or equal to 160 dB (rms) for impulse sources and 120 dB (rms) for continuous sources. The relatively small airgun array proposed for use in this survey limits the size of the 160 dB (rms) EZ around the vessel and is not expected to result in any bowhead whale exposures to underwater sound levels sufficient to reach the disturbance criterion as defined by NMFS.

Odontocete reactions to seismic energy pulses are usually assumed to be limited to lesser distances from the airgun(s) than are those of mysticetes, probably in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. However, at least when in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 10 to 20 km (6.2 to 12.4 mi) of seismic vessels during aerial surveys (Miller *et al.,*

2005). Belugas will likely occur in small numbers in the project area within U.S. waters during the survey period. Most belugas will likely avoid the vicinity of the survey activities and few will likely be affected.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the population sizes in the Bering-Chukchi-Beaufort Seas.

Based on the ≥160 dB disturbance criterion, the best estimates of the numbers of cetacean exposures to sounds ≥160 dB re 1 μPa (rms) represent less than one percent of the populations of each species in the Chukchi Sea and adjacent waters. For species listed as Endangered under the ESA, USGS estimates suggest it is unlikely that fin whales, or humpback whales will be exposed to received levels ≥160 dB and/or ≥120 dB, but that approximately 38 bowheads (0.36 percent of the regional population) may be exposed at this level. The latter is less than one percent of the Bering-Chukchi-Beaufort population of greater than 14,247 animals assuming 3.4 percent population growth from the 2001 estimate of greater than 10,545 animals (Zeh and Punt, 2005). NMFS subsequently did an analysis, and found that bowheads are unlikely to be exposed to sound levels ≥160 dB (rms) from airgun operations and/or ≥120 dB (rms) from icebreaking activities. NMFS does not anticipate bowhead whales to be potentially affected by the proposed survey activities due to its location far offshore of the bowhead fall migration pathway.

Some monodontids may be exposed to sounds produced by the airgun arrays during the proposed survey, and the numbers potentially affected are small relative to the population sizes (*see* Table 6 of the IHA application). The best estimate of the number of belugas (224 animals) that might be exposed to ≥160 dB and/or ≥120 dB represents less than one percent (0.57 percent) of their regional population.

The many reported cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Monitoring and mitigation measures such as controlled vessel speed, dedicated PSOs, non-pursuit, shut-downs or power-downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Several pinniped species may be encountered in the study area, but the ringed seal is by far the most abundant marine mammal species in the survey area. The best (average) estimates of the numbers of individual seals exposed to airgun sounds at received levels ≥160 dB re 1 μPa (rms) and/or ≥120 dB re 1 μPa (rms) for icebreaking during the marine survey are as follows: Ringed seals (1,328 animals; 7.4 percent of the regional population), bearded seals (67 animals; 0.02 percent of the regional population), and spotted seals (0 animals, 0 percent of the regional population), representing less than a few percent of the Bering-Chukchi-Beaufort populations for each species. It is probable that only a small percentage of the pinnipeds exposed to sound level ≥160 dB (rms) or 120 dB (rms) would actually be disturbed. The short-term exposures of pinnipeds to airgun sounds are not expected to result in any long-term negative consequences for the individuals or their populations.

Potential Effects on Habitat

The proposed USGS seismic survey will not result in any permanent impact on habitats used by marine mammals, including the food sources they use. The proposed activities will be of short duration in any particular area at any given time; thus any effects would be localized and short-term. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as described above.

Icebreaking could alter ice conditions in the immediate area around the vessels. However, ice conditions at this time of year are typically highly variable and relatively unstable in most locations the survey will take place. Although there is the potential for the destruction of ringed seal lairs or polar bear dens due to icebreaking, these animals will not be using lairs or dens at the time of the planned survey.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that, unlike explosives, they do not result in any appreciable fish kill. However, the existing body of information relating to the impacts of seismic on marine fish and invertebrate species, the primary food sources of pinnipeds and belugas, is very limited.

In water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure, and (2) the time required for the pressure to rise and decay (Hubbs and Rechnitzer, 1952; Wardle *et al.,* 2001). Generally, the higher the received pressure and less time required for the pressure to rise and decay, the greater the chance of acute pathological effects. Considering the peak pressure and rise/decay time characteristics of seismic airgun arrays used today, the pathological zone for fish and invertebrates would be expected to be within a few meters of the seismic source (Buchanan *et al.,* 2004). For the proposed survey, any injurious effects on fish would be limited to very short distances from the sound source and well away from the nearshore waters where most subsistence fishing activities occur.

The survey off of northern Alaska will occur in an area designated as Essential Fish Habitat (EFH) for Arctic cod (*Arctogadus glacialis*) (NPFMC, 2009). The approximately 806 km (435 nmi) of seismic survey lines that will be conducted in U.S. waters represents the maximum possible extent of potential EFH that would be ensonified during the project; the border of the U.S. EEZ defines the potential Arctic cod EFH boundary for Arctic cod. Effects on managed EFH species (Arctic cod) by the seismic operations assessed here would be temporary and minor. The main effect would be short-term disturbance that might lead to temporary and localized relocation of the EFH species or their food. The actual physical and chemical properties of the EFH will not be impacted. The only other designated Essential Fish Habitat (EFH) species that may occur in the area of the project during the seismic survey are salmon (adult), and their occurrence in waters north of the Alaska coast is limited. Adult fish near seismic operations are likely to avoid the immediate vicinity of the source, thereby avoiding injury (see Appendix E of the IHA application). No EFH species will be present as very early life stages when they would be unable to avoid seismic exposure that could otherwise result in minimal mortality.

Studies have been conducted on the effects of seismic activities on fish larvae and a few other invertebrate animals. Generally, seismic was found to only have potential harmful effects to larvae and invertebrates that are in direct proximity (a few meters) of an active airgun array (*see* Appendix E and F of the IHA application). The proposed Arctic Sea seismic program for 2010 is

predicted to have negligible to low physical effects on the various life stages of fish and invertebrates. Therefore, physical effects of the proposed program on fish and invertebrates would not be significant.

The *Healy* is designed for continuous passage at 5.6 km (3 knots) through ice 1.4 m (4.6 ft) thick. During this project the *Healy* will typically encounter first- or second-year ice while avoiding thick ice floes, particularly large intact multi-year ice, whenever possible. In addition, the icebreaker will follow leads when possible while following the survey route. As the icebreaker passes through the ice, the ship causes the ice to part and travel alongside the hull. This ice typically returns to fill the wake as the ship passes. The effects are transitory, i.e., hours at most, and localized, i.e., constrained to a relatively narrow swath perhaps 10 m (32.8 ft) to each side of the vessel.

The *Healy*'s maximum beam is 25 m (82 ft). Applying the maximum estimated amount of icebreaking, i.e., 3,372 km (2,095.3 mi), to the corridor opened by the ship, USGS anticipates that a maximum of approximately 152 km^2 (58.7 mi^2) of ice may be disturbed. This encompasses an insignificant amount (less than 0.005 percent) of the total Arctic ice extent in August and September of 2008 and 2009 which ranged from 3.24 million to 4.1 million km^2 (1,235,527 to 1,583,019 mi^2).

Potential Effects on Marine Mammal Habitat

A detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates was included in the proposed IHA (75 FR 39336, July 8, 2010). Based on the discussion in the proposed IHA notice and the nature of the activities (limited duration), the authorized operations are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations or stocks. Similarly, any effects to food sources are expected to be negligible.

The airgun operations will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the activities will be temporarily elevated noise levels and the associated direct effects on marine mammals, as well as the potential effects of icebreaking, as described above. The potential effects of icebreaking include locally altered ice conditions which may temporarily alter the haul-out pattern of seals in the immediate vicinity of the vessel. The destruction of ringed seal lairs or polar bear dens is not expected to be a concern at this time of year.

Mitigation

In order to issue an Incidental Take Authorization (ITA) for small numbers of marine mammals under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. For the proposed seismic survey in the Arctic Ocean, USGS will deploy an airgun array of three G-airguns. The source will be relatively small in size and source level, relative to airgun arrays typically used for industry seismic surveys. Important mitigation factors built into the design of the survey include the following:

- In deep offshore waters (where the survey will occur), sound from the airguns is expected to attenuate relatively rapidly as compared with attenuation in shallower waters;
- The airguns comprising the array will be clustered with only limited horizontal separation (*see* Appendix B of the IHA application), so the arrays will be less directional than is typically the case with larger airgun arrays. This will result in less downward directivity than is often present during seismic surveys, and more horizontal propagation of sound; and
- Airgun operations will be limited to offshore waters, far from areas where there is subsistence hunting or fishing, and in waters where marine mammal densities are generally low.

In addition to the mitigation measures that are built into the general project design, several specific mitigation measures will be implemented to avoid or minimize effects on marine mammals encountered along the tracklines. These include ramping-up the airguns at the beginning of operations, and power-downs or shut-downs when marine mammals are detected within specified distances from the source. The GSC has written a Categorical Declaration (*see* Appendix C of the IHA application) stating that: "While in U.S. waters (*i.e.,* the U.S. 200 mile EEZ), the GSC operators will comply with any and all environmental mitigation measures required by the U.S. National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (USFWS)."

Received sound fields were measured for the airgun configuration, in relation to distance and direction from the airgun(s). The proposed radii around the airgun(s) where received levels would be 180 and 190 dB (rms) are shown in Table 2 of the IHA application. The 180 and 190 dB (rms) levels are used to initiate a power-down or, if necessary, shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000).

Vessel-based PSOs will watch for marine mammals near the airgun(s) when they are in use. Mitigation and monitoring measures proposed to be implemented for the seismic survey have been developed and refined in cooperation with NMFS during previous seismic studies in the Arctic and described in associated EAs, IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of the procedures required by past IHAs for Arctic projects.

Some cetacean species (such as bowhead whales) may be feeding or migrating in the Beaufort Sea during August and September. However, most of the proposed geophysical activities will occur north of the main migration corridor and the number of individual animals expected to closely approach the vicinity of the proposed activity will be small in relation to regional population sizes. With the monitoring, ramp-up, power-down, and shut-down provisions (see below), any effects on individuals are expected to be limited to behavioral disturbance. The following subsections provide more detailed information about the mitigation measures that are an integral part of the planned activity.

Exclusion Zones (EZ)

Mosher *et al.* (2009) collected received sound level data for the airgun configuration that will be used in the proposed survey in similar water depths, i.e., greater than 2,000 m (6,561.7 ft). The empirical data were plotted in relation to distance and direction from the three airguns by Roth and Schmidt (2010; *see* Figure B–3). Based on model fit to the measured received levels and source modeling estimates from Gundalf, the 180 and 190 dB (rms) EZ are estimated to be 216 m (708.7 ft) and 68 m (223.1 ft), respectively. As a conservative measure for the proposed EZ, the sound-level EZ indicated by the empirical data have been increased to 500 m (1,640.4 ft) for the 180 dB isopleths and to 100 m (328 ft) for the 190 dB isopleths (*see* Table 2

of the IHA application). The 180 and 190 dB levels are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish the EZs. If the PSO detects marine mammal(s) within or about to enter the appropriate EZ, the airguns will be powered-down (or shut-down if necessary) immediately (see below).

Detailed recommendations for new science-based noise exposure criteria were published in early 2008 (Southall *et al.,* 2007). USGS will be prepared to revise its procedures for estimating numbers of mammals "taken," EZs, etc., as may be required by any new guidelines that result. As yet, NMFS has not specified a new procedure for determining EZs. Such procedures, if applicable would be implemented through a modification to the IHA if issued.

In addition to monitoring, mitigation measures that will be adopted during the Arctic Ocean survey include:

(1) Speed or course alteration, provided that doing so will not comprise operational safety requirements;

(2) Power-down procedures;

(3) Shut-down procedures; and

(4) Ramp-up procedures.

No start-up of airgun operations would be permitted unless the full 180 dB (rms) EZ is visible for at least 30 min during day or night. Other proposed provisions associated with operations at night or in periods of poor visibility include the following:

- During foggy conditions or darkness (which may be encountered starting in late August), the full 180 dB (rms) EZ may not be visible. In that case, the airguns could not start-up after a full shut-down until the entire 180 dB (rms) radius was visible.
- During any nighttime operations, if the entire 180 dB (rms) EZ is visible using vessel lights, then start-up of the airgun array may occur following a 30 min period of observation without sighting marine mammals in the EZ.
- If one or more airguns have been operational before nightfall, they can remain operational throughout the night, even though the entire EZ may not be visible.

Speed or Course Alteration—If a marine mammal (in water) is detected outside the EZ and, based on its position and relative motion, is likely to enter the EZ, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect on the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the EZ. If the mammal appears likely to enter the EZ, further mitigative actions will be taken, i.e., either further course alterations or power-down or shut-down of the airgun(s).

Power-down Procedures—A power-down involves reducing the number of airguns in use such that the radius of the 180 dB or 190 dB (rms) EZ are decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, one airgun (or some other number of airguns less than the full airgun array) will be operated. The continued operation of one airgun is intended to alert (1) marine mammals to the presence of the seismic vessel in the area, and (2) retain the option of initiating a ramp-up to full operations under poor visibility conditions. In contrast, a shut-down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the EZ but is likely to enter the EZ, and if the vessel's speed and/or course cannot be changed to avoid having the marine mammal enter the EZ, the airguns (as an alternative to a complete shut-down) will be powered-down to a single airgun before the animal is within the EZ. Likewise, if a mammal is already within the EZ when first detected, the airguns will be powered-down immediately if this is a reasonable alternative to a complete shut-down. During a power-down of the airgun array, the number of operating airguns will be reduced to a single 150 in^3 G-airgun. The 180 dB (rms) EZ for the power-down sound source has been estimated to be 62 m (203 ft); the proposed distance for use by PSOs is 75 m (246 ft). If a marine mammal is detected within or near the smaller EZ around that single 150 in^3 airgun (see Table 2 of USGS's application and Table 2 above), all airguns will be shut-down (see next subsection).

Following a power-down, operation of the full airgun array will not resume until the marine mammal is outside the EZ for the full array. The animal will be considered to have cleared the EZ if it:

(1) Is visually observed to have left the EZ, or

(2) Has not been seen within the EZ for 15 minutes in the case for species with shorter dive durations (*e.g.,* small odontocetes and pinnipeds); or

(3) Has not been seen within the EZ for 30 minutes in the case for species with longer dive durations (*e.g.,* mysticetes and large odontocetes, including killer whales).

During airgun operations following a power-down (or shut-down) whose duration has exceeded the limits specified above and subsequent animal departures, the airgun array will be ramped-up gradually. Ramp-up procedures are described below.

Shut-down Procedures—The operating airguns(s) will be shut-down if a marine mammal is detected within or approaching the EZ for a single airgun source (*i.e.,* a power-down is not practical or adequate to reduce exposure to less than 190 or 180 dB (rms), as appropriate). Shut-downs will be implemented (1) if an animal approaches or enters the EZ of the single airgun after a power-down has been initiated, or (2) if an animal is initially seen within the EZ of a single airgun when more than one airgun (typically the full array) is operating. Airgun activity will not resume until the marine mammal has cleared the EZ, or until the PSO is confident that the animal has left the vicinity of the vessel (or the PSO not observing the animal[s] within the EZ for 15 or 30 min depending upon the species). Criteria for judging that the animal has cleared the EZ will be as described in the preceding subsection. Ramp-up procedures will be followed during resumption of full seismic operations after a shut-down of the airgun array.

Ramp-up Procedures—A ramp-up procedure will be followed when the airgun array begins operating after a specified period without airgun operations or when a power-down (or reduced airgun operations) has exceeded that specified duration period. The specified period depends on the speed of the source vessel, the size of the airgun array that is being used, and the size of the EZ, but is often about 10 min. NMFS normally requires that, once ramp-up commences, the rate of ramp-up be no more than 6 dB per 5 min period. Ramp-up will begin with a single airgun (the smallest airgun in the array). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5 min period over a total duration of approximately 10 minutes. During ramp-up, the PSOs will monitor the EZ, and if marine mammals are sighted, a power-down or shut-down will be implemented as though the full array were operational.

If the complete 180 dB (rms) EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp-up will not commence unless at least one airgun (150 in^3 or similar) has been operating

during the interruption of seismic survey operations. Given these provisions, it is likely that the three G-airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the EZ for that array will not be visible during those conditions. If the entire EZ is visible using vessel lights, then start-up of the airguns from a complete shut-down may occur at night. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Given the responsiveness of bowhead and beluga whales to airgun sounds, it can be assumed that those species in particular will move away during a ramp-up. Ramp-up of the airguns will not be initiated during the day or at night if a marine mammal is sighted within or near the applicable EZ during the previous 15 or 30 min, as applicable.

Helicopter Flights—The use of a helicopter to conduct ice reconnaissance flights and vessel-to-vessel personnel transfers is likely to occur during survey activities in U.S. waters. However, collection of spot bathymetry data or on-ice landings, both of which required low altitude flight patterns, will not occur in U.S. waters.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) require that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

USGS will sponsor marine mammal monitoring during the proposed project, in order to implement the mitigation measures that require real-time monitoring, to satisfy the anticipated monitoring requirements of the IHA, and to meet any monitoring requirements agreed to as part of the Plan of Cooperation. USGS's Monitoring Plan is described below as well as in their IHA application.

The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. USGS is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-based Visual Monitoring

Vessel-based Protected Species Observers (PSOs) will monitor for marine mammals near the seismic source vessel during all daytime airgun operations and during any nighttime start-ups of the airguns. The survey area within U.S. waters is located within high latitudes (approximately 72° to 74° North) and the project will take place during the summer when little darkness will be encountered (see Table 9 of the IHA application). Some periods of darkness will be encountered towards the end of the survey when there will be several hours between sunset and sunrise.

The PSO's observations will provide the real-time data needed to implement the key mitigation measures. Airgun operations will be powered-down or (if necessary) shut-down when marine mammals are observed within, or about to enter, a designated EZ where there is a possibility of effects on hearing or other physical effects. Vessel-based PSOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the planned start of airgun operations after an extended shut-down of the airgun. When feasible, observations will also be made during daytime periods without seismic operations (*e.g.,* during transits).

TABLE 7—THE DAYLIGHT TIMES AND PERIODS WITHIN THE PROPOSED PROJECT AREA FROM BEGINNING (AUGUST 7, 2010) TO END (SEPTEMBER 3, 2010) OF THE PLANNED SURVEY ACTIVITIES WITHIN LATITUDES OF THE PLANNED SURVEY WITHIN U.S. WATERS. TIME IS IN ALASKA DAYLIGHT TIME (AKDT)

	72° North		74° North	
Date	August 7	September 3	August 7	September 3
Sunrise	09:29	12:14	—	12:00
Sunset	06:42	03:45	—	03:59
Period of daylight (hours)	21:13	15:31	24:00	15:59

- During daylight, vessel-based PSOs will watch for marine mammals near the seismic vessel during all periods of airgun activity and for a minimum of 30 min prior to the planned start of airgun operations after an extended shut-down.
- Although there will be only a brief period during the survey when darkness will be encountered in U.S. waters, USGS proposes to conduct nighttime as well as daytime operations. PSOs dedicated to protected species observations are proposed not to be on duty during ongoing seismic operations at night, given the very limited effectiveness of visual observation at night. At night, bridge personnel will watch for marine mammals (insofar as practical at night) and will call for the airguns to be shut-down if marine mammals are observed in or about to enter the EZ.

PSOs will be stationed aboard both the seismic source vessel (*St. Laurent*) and *Healy* during the proposed survey. The vessels will typically work together in tandem while making way through heavy ice with the *Healy* in the lead breaking ice and collecting multi-beam data. The *St. Laurent* will follow collecting seismic reflection and refraction data. In light ice conditions, the vessels will separate to maximize data collection. "Real-time" communication between the two vessels regarding marine mammal detections will be available through VHF radio.

During operations in U.S. EEZ waters, a complement of five PSOs will work on the source vessel, the *St. Laurent,* and two will be stationed on the *Healy.* Three trained PSOs will board the *St. Laurent* in Kagluktuk, Nunavut, Canada. Three experienced PSOs and one Alaska Native community observer will be aboard the *Healy* at the outset of the project. Before survey operations begin in U.S. waters, two of the PSOs on the *Healy* will transfer to the *St. Laurent* to provide additional observers during airgun operations. When not surveying in U.S. waters, the distribution of PSOs

will return to three on the *St. Laurent* and four on the *Healy.*

PSOs on the *St. Laurent* will monitor for marine mammals during all daylight airgun operations. Airgun operations will be shut-down when marine mammals are observed within, or about to enter, a designated EZ (see below) where there may be a possibility of significant effects on hearing or other physical effects. PSOs on both the source vessel and the *Healy* will also watch for marine mammals within or near the EZ for at least 30 min prior to the planned start of airgun operations after an extended shut-down of the airgun array. When feasible, observations will also be made during periods without seismic operations (*e.g.,* during transits). Environmental conditions will be recorded every half hour during PSO watch.

The PSOs aboard the *Healy* will also watch for marine mammals during daylight seismic activities conducted in both U.S. and international waters. They will maximize their time on watch but will not watch continuously, as will those on the *St. Laurent,* because they will not have mitigation duties and there will be only two PSOs aboard the *Healy.* The *Healy* PSOs will report sightings to the PSOs on the *St. Laurent* to alert them of possible needs for mitigation.

In U.S. waters, at least one observer, and when practical two observers, will monitor for marine mammals from the *St. Laurent* during ongoing daytime operations and nighttime start-ups (when darkness is encountered). Use of two simultaneous observers will increase the proportion of the animals present near the source vessel that are detected. PSOs will normally be on duty in shifts of no longer than four hours duration although more than one hour shift may be worked per day with a maximum of 12 hours of daily watch time. During seismic operations in international waters, PSOs aboard the *St. Laurent* will conduct eight hour watches. This schedule accommodates 24 hour/day monitoring by three PSOs which will be necessary during most of the survey when daylight will be continuous. *Healy* PSOs will limit watches to four hours in U.S. waters.

The *St. Laurent* crew will be instructed to assist in detecting marine mammals and implementing required mitigation (if practical). The crew will be given instruction on mitigation requirements and procedures for implementation of mitigation prior to the start of the seismic survey. Members of the *Healy* crew will be trained to monitor for marine mammals and asked to contact the *Healy* observers for sightings that occur while the PSOs are off-watch.

The *St. Laurent* and *Healy* are suitable platforms for observations for marine mammals. When stationed on the flying bridge, eye level will be approximately 15.4 m (51 ft) above sea level on the *St. Laurent* and approximately 24 m (78.7 ft) above sea level on the *Healy.* On both vessels the PSO will have an unobstructed view around the entire vessel from the flying bridge. If surveying from the bridge of the *St. Laurent* or the *Healy* the PSO's eye level will be approximately 12.1 m (40 ft) above sea level or 21.2 m (69 ft) above sea level, respectively. The PSO(s) will scan the area around the vessel systematically with laser range finding binoculars and with the unaided eye.

The survey will be conducted at high latitudes and continuous daylight will persist through much of the proposed survey area through the month of August. Day length will decrease to approximately 18 hours in the northern portion of the survey area by about early September. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation; this equipment is useful in training observers to estimate distances visually, but is generally not useful in measuring distances to animals directly.

When marine mammals are detected within or about to enter the designated EZ, the airgun(s) will be powered-down or shut-down immediately. The distinction between power-downs and shut-downs is described above and in the IHA application. Channels of communication between the PSOs and the airgun technicians will be established to assure prompt implementation of shut-downs when necessary as has been done in other recent seismic survey operations in the Arctic (*e.g.,* Haley, 2006). During power-downs and shut-downs, PSOs will continue to maintain watch to determine when the animal(s) are outside the EZ. Airgun operations will not resume until the animal is outside the EZ. The animal will be considered to have cleared the EZ if it is visually observed to have left the EZ. Alternatively, in U.S. waters the EZ will be considered clear if the animal has not been seen within the EZ for 15 min for small odontocetes and pinnipeds or 30 min for mysticetes. Within international waters the PSOs will apply a 30 min period for all species.

PSO Data and Documentation

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the seismic source when a marine mammal is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, and age/size/sex categories (if determinable); behavior when first sighted and after initial sighting; heading (if consistent), bearing, and distance from seismic vessel; sighting cue; apparent reaction to the seismic source or vessel (*e.g.,* none, avoidance, approach, paralleling, etc.); and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) above will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding seismic source power-downs and shut-downs, will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results for the vessel-based observations will provide:

(1) The basis for real-time mitigation (airgun power-down or shut-down).

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS per terms of MMPA authorizations or regulations.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report on USGS activities and on the relevant monitoring and mitigation

results will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all acoustic characterization work and vessel-based monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The number and circumstances of ramp-ups, power-downs, shut-downs, and other mitigation measures will be reported. Sample size permitting, the report will also include estimates of the amount and nature of potential "take" of marine mammals.

All injured or dead marine mammals (regardless of cause) will be reported to NMFS as soon as practicable. The report will include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

Encouraging and Coordinating Research

USGS will coordinate the planned marine mammal monitoring program associated with the seismic survey in the Arctic Ocean with other parties that may have an interest in this area and/or be conducting marine mammal studies in the same region during operations. No other marine mammal studies are expected to occur in the main (northern) parts of the study area at the proposed time. However, other industry-funded seismic surveys may be occurring in the northeast Chukchi and/or western Beaufort Sea closer to shore, and those projects are likely to involve marine mammal monitoring. USGS has coordinated, and will continue to coordinate, with other applicable Federal, State and Borough agencies, and will comply with their requirements.

Negligible Impact and Small Numbers of Marine Mammals Analysis and Determination

The Secretary, in accordance with paragraph 101(a)(5)(D) of the MMPA, shall authorize the take of small numbers of marine mammals incidental to specified activities other than commercial fishing within a specific geographic region if, among other things, he determines that the authorized incidental take will have a "negligible impact" on species or stocks affected by the authorization. NMFS implementing regulations codified at 50 CFR 216.103 states that a "negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Based on the analysis contained herein, of the likely effects of the specified activity on marine mammals and their habitat within the specific area of study for the Arctic Ocean marine geophysical survey, and taking into consideration the implementation of the mitigation and monitoring measures NMFS, on behalf of the Secretary, found that USGS's proposed activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the proposed seismic survey would have a negligible impact on the affected species or stocks of marine mammals. As a basis for its small numbers determination, NMFS evaluated the number of individuals taken by Level B harassment relative to the size of the stock or population.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (see Table 6 above) is estimated to be small, less than a few percent of any of the estimated population sizes based on the data disclosed in Tables 4 and 6 of this notice, and has been mitigated to the lowest level practicable through the incorporation of the monitoring and mitigation measures mentioned previously in this document. Tables 4 and 6 in this notice disclose the habitat regional abundance, conservation status, density, and the number of individuals exposed to sound levels greater than or equal to 120 dB (rms) (for icebreaking) or 160 dB (rms) (for seismic airgun operations). Also, there are no known important reproductive or feeding areas in the proposed action area.

For reasons stated previously in this document, the specified activities associated with the proposed survey are not likely to cause TTS, PTS or other non-auditory injury, serious injury, or death to affected marine mammals because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The fact that cetaceans and pinnipeds would have to be closer than 500 m (1,640.4 ft) and 30 m (98.4 ft), in deep water when the full array is in use at tow depth from the vessel to be exposed to levels of sound (180 dB and 190 dB, respectively) believed to have even a minimal chance of causing PTS;

(3) The fact that marine mammals would have to be closer than 2,500 m (8,202.1 ft) in deep water when the full array is in use at tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance of causing TTS; and

(4) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel.

As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed monitoring and mitigation measures.

In making a negligible impact determination NMFS evaluated factors such as: no anticipated injury, serious injury or mortality; the number, nature, intensity and duration of harassment (all relatively limited); the low probability that take will likely result in effects to annual rates of recruitment of survival; the context in which it occurs (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data); the status of stock or species of marine mammal (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population); impacts on habitat affecting rates of recruitment/survival; and the effectiveness of monitoring and mitigation measures.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There is subsistence hunting for marine mammals in the waters off of the coast of Alaska, in the Arctic Ocean, that implicates MMPA Section 101(a)(5)(D). Subsistence hunting and fishing continue to be prominent in the household economies and social welfare of some Alaska residents, particularly among those living in small, rural villages (Wolfe and Walker, 1987; Braund and Kruse, 2009). Subsistence remains the basis for Alaska Native culture and community. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities.

Subsistence Hunting

Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives; species hunted include bowhead and beluga whales; ringed, spotted, and bearded seals; walruses, and polar bears. The importance of each of the various species varies among the communities based largely on availability. Bowhead whales, belugas, and walruses are the marine mammal species primarily harvested during the time of the proposed seismic survey. Subsistence remains the basis for Alaska Native culture and community, and subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities.

Bowhead whale hunting is a key activity in the subsistence economies of Barrow and other Native communities along the Beaufort Sea coast. The whale harvests have a great influence on social relations by strengthening the sense of Inupiat culture and heritage in addition to reinforcing family and community ties.

An overall quota system for the hunting of bowhead whales was established by the International Whaling Commission in 1977. The quota is now regulated through an agreement between NMFS and the Alaska Eskimo Whaling Commission (AEWC) which extends to 2012 (NMFS, 2008b). The AEWC allocates the number of bowhead whales that each whaling community may harvest annually during five-year periods (USDI/BLM, 2005; NMFS, 2008).

The community of Barrow hunts bowhead whales in both the spring and fall during the whales' seasonal migration along the coast (see Figure 2 of the IHA application). Often the bulk of the Barrow bowhead harvest is taken during the spring hunt. However, with larger quotas in recent years, it is common for a substantial fraction of the annual Barrow quota to remain available for the fall hunt (see Table 7 of the IHA application). The communities of Nuiqsut and Kaktovik participate only in the fall bowhead harvest. The fall migration of bowhead whales that summer in the eastern Beaufort Sea typically begins in late August or September. Fall migration into Alaskan waters is primarily during September and October. However, in recent years a small number of bowheads have been seen or heard offshore from the Prudhoe Bay region during the last week of August (Treacy, 1993; LGL and Greenridge, 1996; Greene, 1997; Greene *et al.,* 1999; Blackwell *et al.,* 2004).

TABLE 8—NUMBER OF BOWHEAD WHALE LANDING BY YEAR AT BARROW, CROSS ISLAND (NUIQSUT), AND KAKTOVIK, 1993 TO 2008. BARROW NUMBERS INCLUDE THE TOTAL NUMBER OF WHALES LANDED FOR THE YEAR FOLLOWED BY THE NUMBERS LANDED DURING THE FALL HUNT IN PARENTHESES. CROSS ISLAND (NUIQSUT) AND KAKTOVIK LANDINGS ARE IN AUTUMN

Year	Point Hope	Wainwright	Barrow	Cross Island	Kaktovik
1993	2	5	23 (7)	3	3
1994	5	4	16 (1)	0	3
1995	1	5	19 (11)	4	4
1996	3	3	24 (19)	2	1
1997	4	3	30 (21)	3	4
1998	3	3	25 (16)	4	3
1999	2	5	24 (6)	3	3
2000	3	5	18 (13)	4	3
2001	4	6	27 (7)	3	4
2002	0	1	22 (17)	4	3
2003	4	5	16 (6)	4	3
2004	3	4	21 (14)	3	3
2005	7	4	29 (13)	1	3
2006	0	2	22 (19)	4	3
2007	3	4	20 (7)	3	3
2008	2	2	21 (12)	4	3

Sources: USDI/BLM and references therein; Burns *et al.,* 1993; Koski *et al.,* 2005; Suydam *et al.,* 2004, 2005, 2006, 2007, 2008, and 2009.

The spring hunt at Barrow occurs after leads open due to the deterioration of pack ice; the spring hunt typically occurs from early April until the first week of June. The location of the fall subsistence hunt depends on ice conditions and (in some years) industrial activities that influence the bowheads as they move west (Brower, 1996). In the fall, subsistence hunters use aluminum or fiberglass boats with outboards. Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 80 km (49.7 mi). The fall hunts begin in late August or early September in Kaktovik and at Cross Island. At Barrow the fall hunt usually begins in mid-September, and mainly occurs in the waters east and northeast of Point Barrow in the Chukchi Sea (Suydam *et al.,* 2008). The whales have usually left the Beaufort Sea by late October (Treacey, 2002a, b).

The scheduling of this seismic survey has been discussed with representatives of those concerned with the subsistence bowhead hunt, most notably the AEWC, the Barrow Whaling Captains' Association, and the North Slope Borough (NSB) Department of Wildlife Management. The timing of the proposed seismic survey in early to mid-August will affect neither the spring nor the fall bowhead hunt. The *Healy* is planning to change crew after the completion of the seismic survey through Barrow via helicopter or boat. That crew change is scheduled for approximately September 4 to 5, 2010, well before the fall bowhead whaling which typically begins late September or early October. All of the proposed geophysical activities will occur offshore between 71° and 84° North latitude well north of Beaufort Sea whaling activities.

Beluga whales are available to subsistence hunters at Barrow in the spring when pack-ice conditions deteriorate and leads open up. Belugas may remain in the area through June and sometimes into July and August in ice-free waters. Hunters usually wait until after the spring bowhead whale

hunt is finished before turning their attention to hunting belugas. The average annual harvest of beluga whales taken by Barrow for 1962 to 1982 was five (MMS, 1996). The Alaska Beluga Whale Committee recorded that 23 beluga whales had been harvested by Barrow hunters from 1987 to 2002, ranging from zero in 1987, 1988 and 1995 to the high of eight in 1997 (Fuller and George, 1997; Alaska Beluga Whale Committee, 2002 in USDI/BLM, 2005). The proposed seismic survey is unlikely to overlap with the beluga harvest, and the survey initiates well outside the area where impacts to beluga hunting by Barrow villagers could occur.

Ringed seals are hunted mainly from October through June. Hunting for these smaller mammals is concentrated during winter because bowhead whales, bearded seals, and caribou are available through other seasons. In winter, leads and cracks in the ice off points of land and along barrier islands are used for hunting ringed seals. The average annual ringed seal harvest by the community of Barrow from the 1960s through much of the 1980s has been estimated as 394 (*see* Table 8 of the IHA application). More recently Bacon *et al.* (2009) estimated that 586, 287, and 413 ringed seals were harvest by villagers at Barrow in 2000, 2001, and 2003, respectively. Although ringed seals are available year-round, the seismic survey will not occur during the primary period when these seals are typically harvested. Also, the seismic survey will be largely in offshore waters where the activities will not influence ringed seals in the nearshore areas where they are hunted.

The spotted seal subsistence hunt peaks in July and August, as indicated by data from 1987 to 1990, but involves few animals. Spotted seals typically migrate south by October to overwinter in the Bering Sea, Admiralty Bay, less than 60 km (37.3 mi) to the east of Barrow, is a location where spotted seals are harvested. Spotted seals are also occasionally hunted in the area off Point Barrow and along the barrier islands of Elson Lagoon to the east (USDI/BLM, 2005). The average annual spotted seal harvest by the community of Barrow from 1987 to 1990 was one animal (Braund *et al.,* 1993; see Table 7 of the IHA application). More recently however, Bacon *et al.* (2009) estimated that 32, 7, and 12 spotted seals were harvested by villagers at Barrow in 2000, 2001, and 2003, respectively. Spotted seals become less abundant at Nuiqsut and Kaktovik and few if any spotted seal are harvested at these villages. The seismic survey will commence at least 115 km (71.5 mi) offshore from the preferred nearshore harvest area of these seals.

Bearded seals, although not favored for their meat, are important to subsistence activities in Barrow because of their skins. Six to nine bearded seal hides are used by whalers to cover each of the skin-covered boats traditionally used for spring whaling. Because of their valuable hides and large size, bearded seals are specifically sought. Bearded seals are harvested during the summer months in the Beaufort Sea (USDI/BLM, 2005). The animals inhabit the environment around the ice floes in the drifting ice pack, so hunting usually occurs from boats in the drift ice. Braund *et al.* (1993) estimated that 174 bearded seals were harvested annually at Barrow from 1987 to 1990 (*see* Table 8 of the IHA application). More recently Bacon *et al.* (2009) estimated that 728, 327, and 776 bearded seals were harvested by villagers at Barrow in 2000, 2001, and 2003, respectively. Braund *et al.* (1993) mapped the majority of bearded seal harvest sites from 1987 to 1990 as being within approximately 24 km (14.9 mi) of Point Barrow, well inshore of the proposed survey which is to start approximately 115 km (71.5 mi) offshore and terminate greater than 200 km (124.3 mi) offshore. The average annual take of bearded seals by the Barrow community from 1987 to 1990 was 174 (*see* Table 8 of the IHA application).

TABLE 9—AVERAGE ANNUAL TAKE OF MARINE MAMMALS OTHER THAN BOWHEAD WHALES HARVEST BY THE COMMUNITY OF BARROW (COMPILED BY LGL ALASKA RESEARCH ASSOCIATES, 2004)

Beluga whales	Ringed seals	Bearded seals	Spotted seals
** 5	* 394	* 174	* 1

* Average annual harvest for years 1987 to 1990 (Braund *et al.,* 1993).

** Average annual harvest for years 1962 to 1982 (MMS, 1996).

Plan of Cooperation

The USGS has communicated with community authorities and residents of Barrow to foster understanding of the proposed survey. There are elements of the proposed survey, intrinsic to the project that significantly limit the potential conflict with subsistence users. Operations will be conducted during early August before bowhead whale hunting typically occurs off Barrow and approximately 108 km (67.1 mi) offshore, farther offshore than traditional subsistence hunting grounds. USGS continues to work with the people of Barrow to identify and avoid areas of potential conflict.

- The USGS initiated contact with NSB scientists and the chair of the AEWC in mid-December, 2010 via an emailed description of the proposed survey that included components intended to minimize potential subsistence conflict.
- Invitations were extended December 31, 2009 to members of the NSB, AEWC, and North Slope Communities to attend a teleconference arranged for January 11, 2010. The teleconference served as a venue to promote understanding of the project and discuss shareholder concerns. Participants in the teleconference included Harry Brower, chair of the AEWC, and NSB wildlife biologist Dr. Robert Suydam.
- To further promote cooperation between the project researchers and the community, Dr. Deborah Hutchinson with USGS presented the proposed survey at a meeting of the AEWC in Barrow on February 11, 2010. Survey plans were explained to local hunters and whaling captains, including NSB Department of Wildlife Management biologists, Craig George and Dr. Robert Suydam. Dr. Hutchinson consulted with stakeholders about their concerns and discussed the aspects of the survey designed to mitigate impacts.
- Dr. Deborah Hutchinson of the USGS emailed a summary of the topics discussed during the teleconference and the AEWC meeting in Barrow to representatives of the NSB, AEWC, and North Slope communities. These included:
  - Surveying within U.S. waters is scheduled early (approximately August 11 to 19) to avoid conflict with hunters.
  - The EA and IHA application have been distributed as early as possible to NSB and AEWC.
  - A community observer will be present aboard the *Healy* during the project.
  - Mitigation of the one crew transfer near Barrow in early September will be arranged—probably through Barrow Volunteer Search and Rescue.
- Representatives of the USGS attended the Arctic Open-water Meeting in Anchorage, March 22 to 24, 2010.
  - Dr. Deborah Hutchinson presented information regarding the proposed survey to the public during the Open-water meeting.
  - Dr. Jonathan Childs and Dr. Deborah Hutchinson also met with stakeholders and agency representatives while at the meeting.

Subsequent meetings with whaling captains, other community representatives, the AEWC, NSB, and

any other parties to the plan will be held if necessary to coordinate the planned seismic survey operation with subsistence hunting activity. The USGS has informed the chairman of the Alaska Eskimo Whaling Committee (AEWC), Harry Brower, Jr., of its survey plan.

As noted above and in the IHA application, in the unlikely event that subsistence hunting or fishing is occurring within 5 km (3 mi) of the project vessel tracklines, or where potential impacts could occur, the airgun operations will be suspended until the vessel is greater than 5 km away and otherwise not interfering with subsistence activities.

Endangered Species Act (ESA)

On May 21, 2010, USGS initiated informal consultation, under Section 7 of the ESA, with the NMFS, Office of Protected Resources, Endangered Species Division, on this seismic survey. Based on the information provided by USGS, NMFS concurred with their determination that the activities conducted during the proposed seismic survey are not likely to adversely affect endangered whales in the study area. No designated critical habitat occurs within the action area for this experiment, therefore, no critical habitat will be affected by the proposed bathymetric and seismic surveys and other associated activities.

National Environmental Policy Act (NEPA)

USGS provided NMFS an Environmental Assessment (EA) analyzing the direct, indirect and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL Environmental Research Associated (LGL) on behalf of USGS, is titled "Environmental Assessment of a Marine Geophysical Survey of Parts of the Arctic Ocean, August—September 2010 (EA)". NMFS has adopted the USGS's EA and issued a Finding of No Significant Impact (FONSI) for the issuance of the IHA.

Determinations

NMFS has determined that the impact of conducting the specific marine seismic survey activities described in this notice and the IHA request in the specific geographic region within the U.S. EEZ and within the Arctic Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. No take by injury (Level A harassment), serious injury, or mortality is anticipated, and take by harassment will be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. NMFS has determined that this proposed activity will not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses. USGS will coordinate with local communities on implementation of the Plan of Cooperation.

As a result of these determinations, NMFS issued an IHA to USGS for conducting a marine seismic survey in the Arctic Ocean from August to September 2010, including the previously mentioned mitigation, monitoring, and reporting requirements. The duration of the IHA does not exceed one year from the date of its issuance.

Dated: September 22, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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September 29, 2010

Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline; Notice

AGENCY: State Justice Institute.

ACTION: Grant Guideline for FY 2011.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2011 State Justice Institute grants, cooperative agreements, and contracts.

DATES: September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684– 6100 Ext. 210, *jonathan.mattiello@sji.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.,* as amended, SJI is authorized to award grants, cooperative agreements, and contracts to state and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the state courts of the United States.

Final appropriations legislation for fiscal year (FY) 2011 is still pending. The House, Commerce, Justice and Science (CJS) Subcommittee Mark of the FY 2011 CJS Appropriations Bill provides $6,273,000 for SJI in FY 2011; the Senate Appropriations Committee CJS Mark provides $6,300,000.

Regardless of the final amount provided to SJI for FY 2011, SJI's Board of Directors intends to solicit grant applications for the range of grant programs available.

The following Grant Guideline is adopted by the State Justice Institute for FY 2011.

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I. The Mission of the State Justice Institute

SJI was established by State Justice Institute Authorization Act of 1984 (42 U.S.C. 10701 *et seq.*) to improve the administration of justice in the state courts of the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, SJI is charged, by statute, with the responsibility to:

- Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;
- Foster coordination and cooperation with the federal judiciary;
- Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and
- Encourage education for judges and support personnel of state court systems through national and state organizations.

To accomplish these broad objectives, SJI is authorized to provide funding to state courts, national organizations which support and are supported by state courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the state courts. SJI is supervised by a Board of Directors appointed by the President, with the advice and consent of the Senate. The Board is statutorily composed of six judges; a state court administrator; and four members of the public, no more than two can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, SJI is authorized to perform the following activities:

A. Support technical assistance, demonstrations, special projects, research and training to improve the administration of justice in the state courts;

B. Provide for the preparation, publication, and dissemination of information regarding state judicial systems;

C. Participate in joint projects with federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the state courts;

E. Encourage and assist in furthering judicial education; and,

F. Encourage, assist, and serve in a consulting capacity to state and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services.

II. Eligibility for Award

SJI is authorized by Congress to award grants, cooperative agreements, and contracts to the following entities and types of organizations:

A. *State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)).*

B. *National nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of state governments (42 U.S.C. 10705(b)(1)(B)).*

C. *National nonprofit organizations for the education and training of judges and support personnel of the judicial branch of state governments (42 U.S.C. 10705(b)(1)(C)).* An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if:

1. The principal purpose or activity of the applicant is to provide education and training to state and local judges and court personnel; and

2. The applicant demonstrates a record of substantial experience in the field of judicial education and training.

D. *Other eligible grant recipients (42 U.S.C. 10705(b)(2)(A)–(D)).*

1. Provided that the objectives of the project can be served better, the Institute is also authorized to make awards to:

a. Nonprofit organizations with expertise in judicial administration;

b. Institutions of higher education;

c. Individuals, partnerships, firms, corporations (for-profit organizations must waive their fees); and

d. Private agencies with expertise in judicial administration.

2. SJI may also make awards to state or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements (42 U.S.C. 10705(b)(3)).

E. *Inter-agency Agreements.* SJI may enter into inter-agency agreements with federal agencies (42 U.S.C. 10705(b)(4)) and private funders to support projects consistent with the purposes of the State Justice Institute Act.

III. Scope of the Program

SJI is offering six types of grants in FY 2011: Project Grants, Technical Assistance (TA) Grants, Curriculum Adaptation and Training (CAT) Grants, Partner Grants, Strategic Initiative Grants and Scholarships.

A. Project Grants

Project Grants are intended to support innovative education and training,

research and evaluation, demonstration, and technical assistance projects that can improve the administration of justice in state courts locally or nationwide. Project Grants may ordinarily not exceed $300,000. Grant periods for Project Grants ordinarily may not exceed 36 months.

Applicants for Project Grants will be required to contribute a cash match of not less than 50 percent of the total cost of the proposed project. In other words, grant awards by SJI must be matched at least dollar for dollar by grant applicants. Applicants may contribute the required cash match directly or in cooperation with third parties. Prospective applicants should carefully review Section VI.8. (matching requirements) and Section VI.16.a. (non-supplantation) of the Guideline prior to beginning the application process. If questions arise, applicants are strongly encouraged to consult SJI.

A temporary reduced cash match process is available for state courts submitting Project Grant applications. The use of this cash match reduction authority is intended to help the state courts in this climate of severe budget reductions. The process requires the state court to formally request a reduced cash match, and that the request be certified by the chief justice of that state. The state court must explain in detail how it is facing budgetary cutbacks that will result in significant reductions in other services, and why it will be unable to undertake the project without a cash match reduction. This must be described in detail in the application and verified by the chief justice of that state. Only state courts may apply for a cash match reduction.

Applicants should examine their projected project costs closely, and if they are unable to cover half the costs of the project, they may apply for a reduction in cash match. Applicants are strongly encouraged to provide as much cash match as possible in their application, as some cash match contribution is still required.

Applicants are also encouraged to provide the percentage of budget reductions in their court(s), and the measures that have been taken by the jurisdiction/state to handle the budget shortfalls in FY 2010 and FY 2011. This may include staff reductions, as well as reductions in services and programs. Some cash contribution is still required for Project Grants, and should be reflected in the budget proposal for the project. For example, if the total cost of the proposed project is $100,000, the normal cash match would be $50,000. However, if the applicant is unable to provide $50,000 for the activities, but is able to contribute $25,000, the budget should show the request to SJI totaling $75,000, with the cash match of $25,000. This is a temporary program only available to the state courts, and it will be re-evaluated at the end of FY 2011.

As set forth in Section I., SJI is authorized to fund projects addressing a broad range of program areas. However, the Board is likely to favor Project Grant applications focused on the Special Interest program categories described below. Potential applicants are also encouraged to bring to the attention of SJI innovative projects outside those categories. Funding will not be made available for the ordinary, routine operations of court systems.

1. Special Interest Program Criteria and Categories

SJI is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. SJI is especially interested in funding projects that:

- Formulate new procedures and techniques, or creatively enhance existing procedures and techniques;
- Address aspects of the state judicial systems that are in special need of serious attention;
- Have national significance by developing products, services, and techniques that may be used in other states; and
- Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in state and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other states and local jurisdictions.

Projects do not have to be in the Special Interest Categories given below, however, these topics are of special interest and such applications get extra points in the review process. It should be noted, however, that all projects impacting the court system will be considered. A project will be identified as a Special Interest project if it meets the four criteria set forth above and it falls within the scope of the Board-designated Special Interest program categories listed below. The order of listing does not imply any ranking of priorities among the categories.

a. Immigration Issues in the State Courts

Recent immigration growth is having a significant impact on state and local courts. Courts along the Southwest Border, and other areas of the United States with large immigrant populations, are contending with issues such as how to provide culturally appropriate services; increases in gang-crime cases involving immigrants; and the impact of federal and state immigration policies on court operations. SJI is interested in projects that highlight the issues state and local courts face in addressing the demands of increased immigration, and potential solutions to those issues. SJI is also interested in judicial education or other programs that prepare judges and court officials to address immigration issues in their courts, and the development of plans of action to improve service delivery, build community coalitions, and accommodate federal and state immigration policies.

b. Courts and the Media

Recent repeated public attacks on courts have gone largely unanswered, because judges were unwilling and/or courts were unable to respond effectively. No one is better prepared than a judge to describe decision-making on the bench within the law and the Constitution. SJI is interested in projects that explore the role of judge as public commentator within ethical and professional bounds. SJI is also interested in judicial education or other programs that prepare judges and court officials to serve as spokesmen in short notice, high profile circumstances, especially in situations where courts lack dedicated press secretaries. Finally, SJI is interested in promoting initiatives that improve relations between the judiciary and the media, since much of the recent rancor between the two seems based on unfamiliarity with one another's duties, responsibilities, and limitations. In particular, SJI is interested in proposals that focus on cultivating trust and open communication between the state courts and the media on a day-to-day basis.

c. Elder Issues

This category includes research, demonstration, evaluation, and education projects designed to improve management of guardianship, probate, fraud, Americans With Disabilities Act, and other types of elder-related cases. SJI is particularly interested in projects that would develop and evaluate judicial branch education programs addressing elder law and related issues.

d. Court Budgeting and Reengineering

Recent economic downturns have caused major budgetary issues for many states and the state courts. These shortfalls have proven very disruptive to court staffing, services, technology investment, and professional education and development. SJI is interested in pursuing "how to" projects that focus on

"best practices" regarding budget structure and formulation, sources of revenue, inter-branch relations and other methods that contribute to stabilizing court budgets and improving their long-term financial prospects.

B. Technical Assistance (TA) Grants

TA Grants are intended to provide state or local courts, or regional court associations, with sufficient support to obtain expert assistance to diagnose a problem, develop a response to that problem, and implement any needed changes. TA Grants may not exceed $50,000, and shall only cover the cost of obtaining the services of expert consultants. Examples of expenses not covered by TA Grants include the salaries, benefits, or travel of full-or part-time court employees. Grant periods for TA Grants ordinarily may not exceed 24 months. In calculating project duration, applicants are cautioned to fully consider the time required to issue a request for proposals, negotiate a contract with the selected provider, and execute the project.

Applicants for TA Grants will be required to contribute a total match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $50,000 TA grant must provide a $25,000 match, of which up to $20,000 can be in-kind and not less than $5,000 must be cash. TA Grant application procedures can be found in section IV.B.

C. Curriculum Adaptation and Training (CAT) Grants

CAT Grants are intended to: (1) Enable courts and regional or national court associations to modify and adapt model curricula, course modules, or conference programs to meet states' or local jurisdictions' educational needs; train instructors to present portions or all of the curricula; and pilot-test them to determine their appropriateness, quality, and effectiveness, or (2) conduct judicial branch education and training programs, led by either expert or in-house personnel, designed to prepare judges and court personnel for innovations, reforms, and/or new technologies recently adopted by grantee courts. CAT Grants may not exceed $30,000. Grant periods for CAT Grants ordinarily may not exceed 12 months.

Applicants for CAT Grants will be required to contribute a match of not less than 50 percent of the grant amount requested, of which 20 percent must be cash. In other words, an applicant seeking a $30,000 CAT grant must provide a $15,000 match, of which up to $12,000 can be in-kind and not less than $3,000 must be cash. CAT Grant application procedures can be found in section IV.C.

D. Partner Grants

Partner Grants are intended to allow SJI and federal, state, or local agencies or foundations, trusts, or other private entities to combine financial resources in pursuit of common interests. Though many, if not most, Partner Grants will fall under the Special Interest program categories cited in section III.A., proposals addressing other emerging or high priority court-related problems will be considered on a case-by-case basis. SJI and its financial partners may set any level for Partner Grants, subject to the entire amount of the grant being available at the time of the award; applicants for Partner Grants may request any amount of funding. Grant periods for Partner Grants ordinarily may not exceed 36 months.

Partner Grants are subject to the same cash match requirement as Project Grants. In other words, grant awards by SJI must be matched at least dollar-for-dollar. Applicants may contribute the required cash match directly or in cooperation with third parties. Partner Grants are coordinated by the funding organizations. Partner Grant application procedures can be found in section IV.E.

E. Strategic Initiatives Grants

The Strategic Initiatives Grants (SIG) program provides SJI with the flexibility to address national court issues as they occur, and develop solutions to those problems. This is an innovative approach where SJI uses its expertise and the expertise and knowledge of its grantees to address key issues facing state courts across the United States.

The funding is used for grants or contractual services, and any remaining balance not used for the SIG program will become available for SJI's other grant programs. The program is handled at the discretion of the SJI Board of Directors and staff outside the normal grant application process (*i.e.,* SJI will initiate the project) and there is no cash match requirement.

F. Scholarships for Judges and Court Managers

Scholarships are intended to enhance the skills, knowledge, and abilities of state court judges and court managers by enabling them to attend out-of-state, or to enroll in online, educational and training programs sponsored by national and state providers that they could not otherwise attend or take online because of limited state, local, and personal budgets. Scholarships may not exceed $1,500. Scholarship application procedures can be found in section IV.D.

IV. Applications

A. Project Grants

An application for a Project Grant must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances (*see* below). See Appendix B for the Project Grant application forms.

1. Forms

a. Application Form (Form A).

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from SJI. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (Form B)

An application from a state or local court must include a copy of Form B signed by the state's chief justice or state court administrator. The signature denotes that the proposed project has been approved by the state's highest court or the agency or council it has designated. It denotes further that, if applicable, a cash match reduction has been requested, and that if SJI approves funding for the project, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Form (Form C)

Applicants must submit a Form C. In addition, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category (*see* subsection A.4. below).

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (Form D)

This form lists the statutory, regulatory, and policy requirements

with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities

Applicants other than units of state or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts (*see* section VI.A.7.).

2. Project Abstract

The abstract should highlight the purposes, goals, methods, and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives

The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (*e.g.,* to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (*e.g.,* provide training for 32 judges and court managers, or review data from 300 cases).

b. Program Areas To Be Covered

The applicant should note the Special Interest criteria and category addressed by the proposed project when appropriate (*see* section III.A.), although it is not necessary for a project to be in a specific Special Interest Category.

c. Need for the Project

If the project is to be conducted in any specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. Tasks, Methods and Evaluations

(1) Tasks and Methods. The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) *For research and evaluation projects,* the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and protecting others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) *For education and training projects,* the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) *For demonstration projects,* the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) *For technical assistance projects,* the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; the type of assistance determined; how suitable providers would be selected and briefed; and how reports would be reviewed.

(2) Evaluation. Projects should include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. The evaluation plan should be appropriate to the type of project proposed.

e. Project Management

The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (*i.e.,* no later than January 30, April 30, July 30, and October 30), per section VI.A.13.

Applicants should be aware that SJI is unlikely to approve a limited extension of the grant period without strong justification. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. Products

The program narrative in the application should contain a description of the product(s) to be developed (*e.g.,* training curricula and materials, Web sites or other electronic multimedia, articles, guidelines, manuals, reports, handbooks, benchbooks, or books), including when they would be submitted to SJI. The budget should include the cost of producing and

disseminating the product to the state chief justice, state court administrator, and other appropriate judges or court personnel. If final products involve electronic formats, the applicant should indicate how the product would be made available to other courts. Discussion of this dissemination process should occur between the grantee and SJI prior to the final selection of the dissemination process to be used.

(1) Dissemination Plan. The application must explain how and to whom the products would be disseminated; describe how they would benefit the state courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the court community and the public at large (*i.e.,* whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product) (see section VI.A.11.b.). Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

Applicants proposing to develop Web-based products should provide for sending a notice and description of the document to the appropriate audiences to alert them to the availability of the Web site or electronic product (*i.e.,* a written report with a reference to the Web site).

Three (3) copies of all project products should be submitted to SJI, along with an electronic version in HTML or PDF format. Discussions of final product dissemination should be conducted with SJI prior to the end of the grant period.

(2) Types of Products and Press Releases. The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period (*see* section VI.A.14.a.).

The curricula and other products developed through education and training projects should be designed for use by others and again by the original participants in the course of their duties.

(3) SJI Review. Applicants must submit a final draft of all written grant products to SJI for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in Web site or multimedia format, applicants must provide for SJI review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of SJI (*see* section VI.A.11.f.).

(4) Acknowledgment, Disclaimer, and Logo. Applicants must also include in all project products a prominent acknowledgment that support was received from SJI and a disclaimer paragraph based on the example provided in section VI.A.11.a.2. in the Grant Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a Web site or other multimedia product, unless SJI approves another placement. The SJI logo can be downloaded from SJI's Web site: *http://www.sji.gov.*

g. Applicant Status

An applicant that is not a state or local court and has not received a grant from SJI within the past three years should indicate whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of state governments, or a national non-profit organization for the education and training of state court judges and support personnel (*see* section II). If the applicant is a non-judicial unit of federal, state, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. Staff Capability

The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for managing and reporting on the financial aspects of the proposed project.

i. Organizational Capacity

Applicants that have not received a grant from SJI within the past three years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from SJI within the past three years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the present calendar year.

If a current audit report is not available, SJI will require the organization to complete a financial capability questionnaire, which must be signed by a certified public accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. Statement of Lobbying Activities

Non-governmental applicants must submit SJI's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts (*see* Appendix A).

k. Letters of Cooperation or Support

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover.

4. Budget Narrative

In addition to Project Grant applications, the following section also applies to Technical Assistance and Curriculum Adaptation and Training grant applications.

The budget narrative should provide the basis for the computation of all

project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background information or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Grant Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. No grant funds or cash match may be used to pay the salary and related costs for a current or new employee of a court or other unit of government because such funds would constitute a supplantation of state or local funds in violation of 42 U.S.C. 10706(d)(1); this includes new employees hired specifically for the project. The salary and any related costs for a current or new employee of a court or other unit of government may only be accepted as in-kind match.

b. Fringe Benefit Computation

For non-governmental entities, the applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria

The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (*e.g.,* the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section VII.I.2.c. Prior written SJI approval is required for any consultant rate in excess of $800 per day; SJI funds may not be used to pay a consultant more than $1,100 per day. Honorarium payments must be justified in the same manner as consultant payments.

d. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the federal government. The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment

Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. In other words, grant funds cannot be used strictly for the purpose of purchasing equipment. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases of automated data processing equipment must comply with section VII.I.2.b.

f. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction

Construction expenses are prohibited except for the limited purposes set forth in section VI.A.16.b. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. Postage

Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. Printing/Photocopying

Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. Recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs, i.e. salaries plus fringe benefits (*see* section VII.I.4.).

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (*e.g.,* a percentage of the time of senior managers to supervise project activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section VII.I.4. If the applicant has an indirect cost rate or allocation plan approved by any federal granting agency, a copy of the approved rate agreement must be attached to the application.

5. Submission Requirements

a. Every applicant must submit an original and three copies of the application package consisting of Form A; Form B, if the application is from a state or local court, or a Disclosure of Lobbying Form (Form E), if the applicant is not a unit of state or local government; Form C; the Application Abstract; the Program Narrative; the Budget Narrative; and any necessary appendices.

Letters of application may be submitted at any time. However, applicants are encouraged to review the grant deadlines available on the SJI Web site. Receipt of each application will be acknowledged by letter or e-mail.

b. Applicants submitting more than one application may include material

that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of the application.

B. Technical Assistance (TA) Grants

1. Application Procedures

Applicants for TA Grants may submit an original and three copies of a detailed letter describing the proposed project, as well as a Form A, "State Justice Institute Application" (*see* Appendix B) and Form B, Certificate of State Approval from the State Supreme Court, or its designated agency and Form C, "Project Budget in Tabular Format." Letters from regional court associations must be signed by the president of the association.

2. Application Format

Although there is no prescribed form for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. Need for Funding. What is the critical need facing the applicant? How would the proposed technical assistance help the applicant meet this critical need? Why are state or local resources not sufficient to fully support the costs of the required consultant services?

b. Project Description. What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant (applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services)? What specific tasks would the consultant(s) and court staff undertake? What is the schedule for completion of each required task and the entire project? How would the applicant oversee the project and provide guidance to the consultant, and who at the court or regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and SJI upon completion of the technical assistance.

c. Likelihood of Implementation. What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

Applicants must follow the same guidelines provided under Section IV.A.4. A completed Form C "Project Budget, Tabular Format" and budget narrative must be included with the letter requesting technical assistance.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $800 per day must be approved in advance by SJI, and that no consultant will be paid more than $1,100 per day from SJI funds. In addition, the budget should provide for submission of two copies of the consultant's final report to the SJI.

Recipients of TA Grants do not have to submit an audit report but must maintain appropriate documentation to support expenditures (see section VI.A.3.).

4. Submission Requirements

Letters of application should be submitted according to the grant deadlines provided on the SJI Web site.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Institute's Board of Directors, letters sent under separate cover should be received by the same date as the technical assistance request being supported.

C. Curriculum Adaptation and Training (CAT) Grants

1. Application Procedures

In lieu of formal applications, applicants should submit an original and three photocopies of a detailed letter as well as a Form A, "State Justice Institute Application;" Form B, "Certificate of State Approval;" and Form C, "Project Budget, Tabular Format" (*see* Appendices).

2. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information.

a. For adaptation of a curriculum:

(1) Project Description. What is the title of the model curriculum to be adapted and who originally developed it? Why is this education program needed at the present time? What are the project's goals? What are the learning objectives of the adapted curriculum? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (*e.g.,* from a single local jurisdiction, from across the state, from a multi-state region, from across the nation)?

(2) Need for Funding. Why are sufficient state or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the adapted curriculum in the future using state or local funds, once it has been successfully adapted and tested?

(3) Likelihood of Implementation. What is the proposed timeline, including the project start and end dates? On what date(s) would the judicial branch education program be presented? What process would be used to modify and present the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the program? Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.

(4) Expressions of Interest by Judges and/or Court Personnel. Does the

proposed program have the support of the court system or association leadership, and of judges, court managers, and judicial branch education personnel who are expected to attend? Applicants may demonstrate this by attaching letters of support.

b. For training assistance:

(1) Need for Funding. What is the court reform or initiative prompting the need for training? How would the proposed training help the applicant implement planned changes at the court? Why are state or local resources not sufficient to fully support the costs of the required training?

(2) Project Description. What tasks would the trainer(s) be expected to perform? Which organization or individual would be hired, if in-house personnel are not the trainers, to provide the training, and how was the trainer selected? If a trainer has not yet been identified, what procedures and criteria would be used to select the trainer? What specific tasks would the trainer and court staff or regional court association members undertake? What presentation methods will be used? What is the schedule for completion of each required task and the entire project? How will the applicant oversee the project and provide guidance to the trainer, and who at the court or affiliated with the regional court association would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the trainer has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the trainer's ability to complete the assignment within the proposed time frame and for the proposed cost.

(3) Likelihood of Implementation. What steps have been or will be taken to coordinate the implementation of the new reform, initiative, and the training to support the same? For example, if the support or cooperation of specific court or regional court association officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the reform and initiate the training proposed, how would they be involved in the review of the recommendations and development of the implementation plan?

3. Budget and Matching State Contribution

Applicants must also follow the same guidelines provided under Section IV.A.4. Applicants should attach a copy of budget Form C and a budget narrative (*see* subsection A.4. above) that describes the basis for the computation of all project-related costs and the source of the match offered.

4. Submission Requirements

For curriculum adaptation requests, applicants should allow at least 90 days between the Board meeting and the date of the proposed program to allow sufficient time for needed planning. Applicants are encouraged to call SJI to discuss concerns about timing of submissions.

D. Partner Grants

SJI and its funding partners may meld, pick and choose, or waive their application procedures, grant cycles, or grant requirements to expedite the award of jointly-funded grants targeted at emerging or high priority problems confronting state and local courts. SJI may solicit brief proposals from potential grantees to fellow financial partners as a first step. Should SJI be chosen as the lead grant manager, Project Grant application procedures will apply to the proposed Partner Grant. As with Project Grants, Partner Grants will be targeted at initiatives likely to have a significant national impact.

E. Scholarships

1. Limitations

Applicants may not receive more than one scholarship in a two-year period unless the course specifically assumes multi-year participation, or the course is part of a graduate degree program in judicial studies in which the applicant is currently enrolled (neither exception should be taken as a commitment on the part of the Institute's Board of Directors to approve serial scholarships). Attendance at annual or mid-year meetings or conferences of a state or national organization does not qualify as an out-of-state educational program for scholarship purposes, even though it may include workshops or other training sessions.

Scholarship funds may be used only to cover the costs of tuition, transportation, and reasonable lodging expenses (not to exceed the GSA approved lodging rate for the location of the program, excluding taxes). Transportation expenses may include round-trip coach airfare or train fare. Scholarship recipients are strongly encouraged to take advantage of excursion or other special airfares (*e.g.*, reductions offered when a ticket is purchased 21 days in advance of the travel date) when making their travel arrangements. Recipients who drive to a program site may receive the accepted GSA rate for mileage up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition, transportation, and lodging expenses in excess of $1,500 and other costs of attending the program—such as meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or borne by the scholarship recipient. Furthermore, lodging costs for non-training days must be borne by the scholarship recipient, with the exception of the day prior to the beginning of the training and the last day of training. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible. A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless the applicant's request to attend a different course that meets the eligibility requirements is approved in writing by SJI.

2. Eligibility Requirements

a. Recipients. Scholarships can be awarded only to full-time judges of state or local trial and appellate courts; full-time professional, state, or local court personnel with management and supervisory responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. Courses. A scholarship can be awarded only for: (1) A course presented in a state other than the one in which the applicant resides or works, or (2) an online course. The course must be designed to enhance the skills of new or experienced judges and court managers; or be offered by a recognized graduate program for judges or court managers.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend. The Institute does not submit the names of scholarship recipients to educational organizations, nor provide the funds to the educational organization. Scholarship funds are provided as reimbursements to the scholarship recipient.

3. Forms

a. Scholarship Application—Form S1 (Appendix B). The Scholarship Application requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues. The Scholarship Application must bear the original signature of the applicant. Faxed or photocopied signatures will not be accepted. Please be sure to indicate whether the state will be providing funds for the project and, if so, how much. The Institute will not supplant state funds for these scholarships: it can only provide funding above the amount to be covered by the state.

b. Scholarship Application Concurrence—Form S2 (Appendix B). Judges and court managers applying for scholarships must submit the original written concurrence of the chief justice of the state's supreme court (or the chief justice's designee) on SJI's Judicial Education Scholarship Concurrence form (*see* Appendix B). The signature of the presiding judge of the applicant's court may not be substituted for that of the state's chief justice or the chief justice's designee. The chief justice or state court administrator must notify SJI of the designees within the state for scholarship purposes.

4. Submission Requirements

Scholarship applications may be submitted at any time but will be reviewed on a quarterly basis. This means scholarships will be awarded on a "first-come, first-considered" basis. The dates for applications to be received by the Institute for consideration in FY 2011 are November 1, February 1, May 1, and August 1. These are not mailing deadlines. The applications must be received SJI on or before each of these dates. No exceptions or extensions will be granted. All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item sent will be used in determining the review date. All applications should be sent by mail or courier (not fax or e-mail).

V. Application Review Procedures

A. Preliminary Inquiries

SJI staff will answer inquiries concerning application procedures.

B. Selection Criteria

1. Project Grant Applications

a. Project Grant applications will be rated on the basis of the criteria set forth below. SJI will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) If applicable, the key findings and recommendations of the most recent evaluation and the proposed responses to those findings and recommendations;

(5) The applicant's management plan and organizational capabilities;

(6) The qualifications of the project's staff;

(7) The products and benefits resulting from the project, including the extent to which the project will have long-term benefits for state courts across the nation;

(8) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions;

(9) The reasonableness of the proposed budget; and

(10) The demonstration of cooperation and support of other agencies that may be affected by the project.

(11) The proposed project's relationship to one of the Special Interest Criteria and Categories set forth in section III.A.

b. In determining which projects to support, SJI will also consider whether the applicant is a state court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under SJI's enabling legislation (*see* section II.); the availability of financial assistance from other sources for the project; the amount of the applicant's match; the extent to which the proposed project would also benefit the federal courts or help state courts enforce federal constitutional and legislative requirements; and the level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance (TA) Grant Applications

TA Grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the applicant;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired or the specific criteria that will be used to select the consultant(s);

d. The commitment of the court or association to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

SJI also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to SJI in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation and Training (CAT) Grant Applications

CAT Grant applications will be rated on the basis of the following criteria:

a. For curriculum adaptation projects:

(1) The goals and objectives of the proposed project;

(2) The need for outside funding to support the program;

(3) The appropriateness of the approach in achieving the project's educational objectives;

(4) The likelihood of effective implementation and integration of the modified curriculum into ongoing educational programming; and

(5) Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

b. For training assistance:

(1) Whether the training would address a critical need of the court or association;

(2) The soundness of the training approach to the problem;

(3) The qualifications of the trainer(s) to be hired or the specific criteria that will be used to select the trainer(s);

(4) The commitment of the court or association to the training program; and

(5) The reasonableness of the proposed budget. SJI will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Partner Grants

The selection criteria for Partner Grants will be driven by the collective priorities of SJI and other organizations and their collective assessments regarding the needs and capabilities of court and court-related organizations. Having settled on priorities, SJI and its financial partners will likely contact the courts or court-related organizations most acceptable as pilots, laboratories, consultants, or the like.

5. Scholarships

Scholarships will be approved only for programs that either: (1) Enhance the skills of judges and court managers; or (2) are part of a graduate degree program for judges or court personnel. Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were sent ("first-come, first-considered");

b. The unavailability of state or local funds or scholarship funds from another source to cover the costs of attending the program, or participating online;

c. The absence of educational programs in the applicant's state addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational providers and programs;

f. The balance of scholarships among the types of courts and court personnel (trial judge, appellate judge, trial court administrator) represented; and

g. The level of appropriations available to SJI in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent.

C. Review and Approval Process

1. Project Grant Applications

SJI's Board of Directors will review the applications competitively. SJI staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion. Staff will present the narrative summaries and rating sheets to the Board for its review. The Board will review all application summaries and decide which projects it will fund. The decision to fund a project is solely that of the Board of Directors.

The Chairman of the Board will sign approved awards on behalf of the SJI.

2. Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grant Applications

Staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. The Board will review the applications competitively.

The Chairman of the Board will sign approved awards on behalf of SJI.

3. Scholarships

A committee of the Board of Directors will review scholarship applications quarterly. The Board of Directors has delegated its authority to approve scholarships to the committee established for the program. The committee will review the applications competitively. In the event of a tie vote, the Chairman will serve as the tie-breaker. The Chairman of the Board will sign approved awards on behalf of SJI.

4. Partner Grants

The Institute's internal process for the review and approval of Partner Grants will depend upon negotiations with fellow financiers. The Institute may use its procedures, a partner's procedures, a mix of both, or entirely unique procedures. All Partner Grants will be approved by the Board of Directors on whatever schedule makes sense at the time.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that SJI records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

SJI will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all applications (except scholarships), if requested SJI will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle.

F. Response to Notification of Approval

With the exception of those approved for scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to SJI within 30 days after notification, the approval may be rescinded and the application presented to the Board for reconsideration. In the event an issue will only be resolved after award, such as the selection of a consultant, the final award document will include a Special Condition that will require additional grantee reporting and SJI review and approval. Special Conditions, in the form of incentives or sanctions, may also be used in situations where past poor performance by a grantee necessitates increased grant oversight.

VI. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by SJI. The Board of Directors has approved additional policies governing the use of SJI grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by SJI may be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to SJI. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds (*see* section VIII.A.7.).

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and its financial operations are in accordance with generally accepted accounting principles (see section VII.K. for the requirements of such audits). Scholarship recipients, Curriculum Adaptation and Training Grants, and Technical Assistance Grants are not required to submit an audit, but they must maintain appropriate documentation to support all expenditures (*see* section VIII.K.).

4. Budget Revisions

Budget revisions among direct cost categories that: (a) Transfer grant funds to an unbudgeted cost category, or (b) individually or cumulatively exceed five percent of the approved original budget or the most recently approved revised budget require prior SJI approval (*see* section VIII.A.1.).

5. Conflict of Interest

Personnel and other officials connected with SJI-funded programs

must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which SJI funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

b. In the use of SJI project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

6. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of SJI-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and SJI on disposition of such items, SJI shall determine whether protection of the invention or discovery shall be sought. SJI will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

7. Lobbying

a. Funds awarded to recipients by SJI shall not be used, indirectly or directly, to influence Executive Orders or similar promulgations by federal, state or local agencies, or to influence the passage or defeat of any legislation by federal, state or local legislative bodies (42 U.S.C. 10706(a)).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

8. Matching Requirements

All grantees other than scholarship recipients are required to provide a match. A match is the portion of project costs not borne by the Institute. Match includes both cash and in-kind contributions. Cash match is the direct outlay of funds by the grantee or a third party to support the project. In-kind match consists of contributions of time and/or services of current staff members, new employees, space, supplies, etc., made to the project by the grantee or others (*e.g.,* advisory board members) working directly on the project or that portion of the grantee's federally-approved indirect cost rate that exceeds the Guideline's limit of permitted charges (75 percent of salaries and benefits).

Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of SJI, match may be incurred from the date of the Board of Directors' approval of an award. The amount and nature of required match depends on the type of grant (*see* section III.).

The grantee is responsible for ensuring that the total amount of match proposed is actually contributed. If a proposed contribution is not fully met, SJI may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VII.E.1.). Match should be expended at the same rate as SJI funding.

The Board of Directors looks favorably upon any unrequired match contributed by applicants when making grant decisions. The match requirement may be waived in exceptionally rare circumstances upon the request of the chief justice of the highest court in the state or the highest ranking official in the requesting organization and approval by the Board of Directors (42 U.S.C. 10705(d)). The Board of Directors encourages all applicants to provide the maximum amount of cash and in-kind match possible, even if a waiver is approved. The amount and nature of match are criteria in the grant selection process (*see* section V.B.1.b.).

9. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds. Recipients of SJI funds must immediately take any measures necessary to effectuate this provision.

10. Political Activities

No recipient may contribute or make available SJI funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify SJI or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office (42 U.S.C. 10706(a)).

11. Products

a. Acknowledgment, Logo, and Disclaimer

(1) Recipients of SJI funds must acknowledge prominently on all products developed with grant funds that support was received from the SJI. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a multimedia product, unless another placement is approved in writing by SJI. This includes final products printed or otherwise reproduced during the grant period, as well as re-printings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available on SJI's Web site: *http://www.sji.gov/forms.*

(2) Recipients also must display the following disclaimer on all grant products: "This [document, film, videotape, etc.] was developed under [grant/cooperative agreement] number SJI-[insert number] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official

position or policies of the State Justice Institute."

b. Charges for Grant-Related Products/ Recovery of Costs

(1) When SJI funds fully cover the cost of developing, producing, and disseminating a product (*e.g.,* a report, curriculum, videotape, or software), the product should be distributed to the field without charge. When SJI funds only partially cover the development, production, or dissemination costs, the grantee may, with SJI's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by SJI funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in the application. Grantees must obtain the written prior approval of SJI of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either SJI grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of SJI-funded project or other purposes consistent with the State Justice Institute Act that have been approved by SJI (*see* section VII.G.).

c. Copyrights

Except as otherwise provided in the terms and conditions of a SJI award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of a SJI-supported project, but SJI shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Due Date

All products and, for TA and CAT grants, consultant and/or trainer reports (see section VI.B.1 & 2) are to be completed and distributed (see below) not later than the end of the award period, not the 90-day close out period. The latter is only intended for grantee final reporting and to liquidate obligations (*see* section VII.L.).

e. Distribution

In addition to the distribution specified in the grant application, grantees shall send:

(1) Three (3) copies of each final product developed with grant funds to SJI, unless the product was developed under either a Technical Assistance or a Curriculum Adaptation and Training Grant, in which case submission of 2 copies is required; and

(2) An electronic version of the product in HTML or PDF format to SJI.

f. Institute Approval

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of SJI. Grantees shall submit a final draft of each written product to SJI for review and approval. The draft must be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit SJI review and incorporation of any appropriate changes required by SJI. Grantees must provide for timely reviews by the SJI of Web site or other multimedia products at the treatment, script, rough cut, and final stages of development or their equivalents.

g. Original Material

All products prepared as the result of SJI-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

12. Prohibition Against Litigation Support

No funds made available by SJI may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

13. Reporting Requirements

a. Recipients of SJI funds other than scholarships must submit Quarterly Progress and Financial Status Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period. Failure to comply with the requirements of this provision could result in the termination of a grantee's award.

b. The quarterly Financial Status Report must be submitted in accordance with section VII.H.2. of this Guideline. A final project Progress Report and Financial Status Report shall be submitted within 90 days after the end of the grant period in accordance with section VII.L.1. of this Guideline.

14. Research

a. Availability of Research Data for Secondary Analysis

Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under a SJI grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information

Except as provided by federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection

Human subjects are defined as individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data

collection technique. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

15. State and Local Court Applications

Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council. The supreme court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application (42 U.S.C. 10705(b)(4)). *See* section VII.C.2.

16. Supplantation and Construction

To ensure that SJI funds are used to supplement and improve the operation of state courts, rather than to support basic court services, SJI funds shall not be used for the following purposes:

a. To supplant state or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

17. Suspension or Termination of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, SJI may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award (42 U.S.C. 10708(a)).

18. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with SJI funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by SJI that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or SJI disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in SJI, which will direct the disposition of the property.

B. Recipients of Technical Assistance (TA) and Curriculum Adaptation and Training (CAT) Grants

Recipients of TA and CAT Grants must comply with the requirements listed in section VI.A. (except the requirements pertaining to audits in subsection A.3. above and product dissemination and approval in subsection A.11.e. and f. above) and the reporting requirements below:

1. Technical Assistance (TA) Grant Reporting Requirements

Recipients of TA Grants must submit to SJI one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as two copies of the consultant's written report.

2. Curriculum Adaptation and Training (CAT) Grant Reporting Requirements

Recipients of CAT Grants must submit one copy of the agenda or schedule, outline of presentations and/or relevant instructor's notes, copies of overhead transparencies, power point presentations, or other visual aids, exercises, case studies and other background materials, hypotheticals, quizzes, and other materials involving the participants, manuals, handbooks, conference packets, evaluation forms, and suggestions for replicating the program, including possible faculty or the preferred qualifications or experience of those selected as faculty, developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the educational program in the future, as well as two copies of the consultant's or trainer's report.

C. Scholarship Recipients

1. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally and, if possible, throughout the state

Recipients also must submit to SJI a certificate of attendance at the program and a copy of the notice of any scholarship funds received from other sources. A state or local jurisdiction may impose additional requirements on scholarship recipients.

2. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Request/ Financial Report (Form S3) together with a tuition statement from the program sponsor, a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program), and a lodging receipt.

Scholarship Payment Requests must be submitted within 90 days after the end of the course, which the recipient attended.

3. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under federal and state law.

D. Partner Grants

The compliance requirements for Partner Grant recipients will depend upon the agreements struck between the grant financiers and between lead financiers and grantees. Should SJI be the lead, the compliance requirements for Project Grants will apply, unless specific arrangements are determined by the Partners.

VII. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, sub-grantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. Complying with regulatory requirements of SJI for the financial management and disposition of funds;

3. Generating financial data to be used in planning, managing, and controlling projects; and

4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Grant Guideline, the following circulars are applicable to SJI grants and cooperative agreements under the same terms and conditions that apply to federal grantees. The circulars supplement the requirements of this section for accounting systems and financial

record-keeping and provide additional guidance on how these requirements may be satisfied (circulars may be obtained on the OMB Web site at *http://www.whitehouse.gov/omb*).

1. *Office of Management and Budget (OMB) Circular A–21,* Cost Principles for Educational Institutions.
2. *Office of Management and Budget (OMB) Circular A–87,* Cost Principles for State and Local Governments.
3. *Office of Management and Budget (OMB) Circular A–102,* Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.
4. *Office of Management and Budget (OMB) Circular A–110,* Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.
5. *Office of Management and Budget (OMB) Circular A–122,* Cost Principles for Non-profit Organizations.
6. *Office of Management and Budget (OMB) Circular A–133,* Audits of States, Local Governments and Non-profit Organizations.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from SJI are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of the State Supreme Court

a. Each application for funding from a state or local court must be approved, consistent with state law, by the state supreme court, or its designated agency or council.

b. The state supreme court or its designee shall receive all SJI funds awarded to such courts; be responsible for assuring proper administration of SJI funds; and be responsible for all aspects of the project, including proper accounting and financial record-keeping by the subgrantee. These responsibilities include:

(1) Reviewing Financial Operations. The state supreme court or its designee should be familiar with, and periodically monitor, its sub-grantee's financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) Recording Financial Activities. The sub-grantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the state supreme court or its designee in summary form. Sub-grantee expenditures should be recorded on the books of the state supreme court or evidenced by report forms duly filed by the sub-grantee. Matching contributions provided by sub-grantees should likewise be recorded, as should any project income resulting from program operations.

(3) Budgeting and Budget Review. The state supreme court or its designee should ensure that each sub-grantee prepares an adequate budget as the basis for its award commitment. The state supreme court should maintain the details of each project budget on file.

(4) Accounting for Match. The state supreme court or its designee will ensure that sub-grantees comply with the match requirements specified in this Grant Guideline (*see* section VI.A.8.).

(5) Audit Requirement. The state supreme court or its designee is required to ensure that sub-grantees meet the necessary audit requirements set forth by SJI (*see* sections K. below and VI.A.3.).

(6) Reporting Irregularities. The state supreme court, its designees, and its sub-grantees are responsible for promptly reporting to SJI the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls and for ensuring that an adequate system exists for each of its sub-grantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);
2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;
3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;
4. Provides cost and property controls to assure optimal use of grant funds;
5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;
6. Meets the prescribed requirements for periodic financial reporting of operations; and
7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by SJI must be structured and executed on a "Total Project Cost" basis. That is, total project costs, including SJI funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions should be applied at the same time of the obligation of SJI funds. Ordinarily, the full matching share must be obligated during the award period; however, with the written permission of SJI, contributions made following approval of the grant by the Board of Directors, but before the beginning of the grant, may be counted as match. If a proposed cash or in-kind match is not fully met, SJI may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records that clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does SJI funds and required matching shares. For all grants made to state and local courts, the state supreme court has primary responsibility for grantee/sub-grantee compliance with the requirements of this section (*see* subsection C.2. above).

F. Maintenance and Retention of Records

All financial records, including supporting documents, statistical records, and all other information pertinent to grants, sub-grants, cooperative agreements, or contracts under grants, must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State supreme courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and sub-grant awards, applications, and required grantee/sub-grantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, sub-grant or contract, whether they are employed full-time or part-time. Time and effort reports are required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report.

3. Maintenance

Grantees and sub-grantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and sub-grantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/sub-grantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and sub-grantees must give any authorized representative of SJI access to and the right to examine all records, books, papers, and documents related to a SJI grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to SJI (see subsection H.2. below). The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A state and any agency or instrumentality of a state, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to sub-grantees through a state, the sub-grantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/sub-grantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees may be considered as cash match with the prior written approval from SJI. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income from the Sale of Grant Products

If the sale of products occurs during the project period, the income may be treated as cash match with the prior written approval from SJI. The costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the application or reported to SJI in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section VI.A.11.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all SJI grant funds and grantees.

a. Request for Reimbursement of Funds Grantees will receive funds on a U.S. Treasury "check-issued" or electronic funds transfer (EFT) basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by SJI, payment will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Reimbursement Form R), along with the instructions for its preparation, and the SF 3881 Automated Clearing House (ACH/Miscellaneous Payment Enrollment Form for EFT) are available on the Institute's Web site: *http://www.sji.gov/forms.php.*

b. Termination Reimbursement Funding. When a grantee organization receiving cash advances from SJI:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or is unable to adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of sub-grants or contracts; or

(3) Is unable to submit reliable and/or timely reports; SJI may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by U.S. Treasury check or EFT to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, SJI may suspend reimbursement payments until the deficiencies are corrected. In extreme cases, grants may be terminated.

c. Principle of Minimum Cash on Hand. Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days.

2. Financial Reporting

a. General Requirements. To obtain financial information concerning the use of funds, the Institute requires that grantees/sub-grantees submit timely reports for review.

b. Due Dates and Contents. A Financial Status Report is required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to SJI funds, state and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, are provided on the SJI Web site. If a grantee requests substantial payments for a project prior to the completion of a given quarter, SJI may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in OMB Circulars A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; *A–87,* Cost Principles for State and Local Governments; and *A–122,* Cost Principles for Non-profit Organizations.

No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained on the OMB Web site at *http://www.whitehouse.gov/omb.*

2. Costs Requiring Prior Approval

a. Pre-agreement Costs. The written prior approval of the Institute is required for costs considered necessary but which occur prior to the start date of the project period.

b. Equipment. Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. Consultants. The written prior approval from SJI is required when the rate of compensation to be paid a consultant exceeds $800 a day. SJI funds may not be used to pay a consultant more than $1,100 per day.

d. Budget Revisions. Budget revisions among direct cost categories that (i) transfer grant funds to an unbudgeted cost category or (ii) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget require prior SJI approval (*see* section VIII.A.1.).

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the federal government. SJI funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting, or conference of that organization.

4. Indirect Costs

Indirect costs are only applicable to organizations that are not state courts or government agencies. These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. Although SJI's policy requires all costs to be budgeted directly, it will accept indirect costs if a grantee has an indirect cost rate approved by a federal agency as set forth below. However, recoverable indirect costs are limited to no more than 75 percent of a grantee's direct personnel costs (salaries plus fringe benefits).

a. Approved Plan Available. (1) A copy of an indirect cost rate agreement or allocation plan approved for a grantee during the preceding two years by any federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars must be submitted to SJI.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

b. Establishment of Indirect Cost Rates. To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to SJI within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. No Approved Plan. If an indirect cost proposal for recovery of indirect costs is not submitted to SJI within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For state and local governments, SJI has adopted the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* apply to all SJI grantees and sub-grantees except as provided in section VI.A.18. All grantees/sub-grantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a Project Grant must provide for an annual fiscal audit. This requirement also applies to a state or local court receiving a sub-grant from the state supreme court. The audit may be of the entire grantee or sub-grantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–133,* will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a state or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a federal agency and satisfy audit requirements of the cognizant federal agency must submit two copies of the audit report prepared for that federal agency to SJI in order to satisfy the provisions of this section.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: (1) Follow-up, (2) maintaining a record of the actions taken on recommendations and time schedules, (3) responding to and acting on audit recommendations, and (4) submitting periodic reports to SJI on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, SJI will not make a subsequent grant award to an applicant that has an unresolved audit report involving SJI awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active SJI grants to that organization.

L. Close-Out of Grants

1. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (*see* subsection L.2. below), the following documents must be submitted to SJI by grantees (other than scholarship recipients):

a. Financial Status Report. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by SJI. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no instance should any unused funds remain with the grantee beyond the submission date of the final Financial Status Report.

b. Final Progress Report. This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of every grant other than a scholarship.

2. Extension of Close-Out Period

Upon the written request of the grantee, SJI may extend the close-out period to assure completion of the grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

VIII. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted by the project director in a timely manner (ordinarily 30 days prior to the implementation of the adjustment being requested). All requests for changes from the approved application will be carefully reviewed for both consistency with this Grant Guideline and the enhancement of grant goals and objectives. Failure to submit adjustments in a timely manner may result in the termination of a grantee's award.

A. Grant Adjustments Requiring Prior Written Approval

The following grant adjustments require the prior written approval of SJI:

1. Budget revisions among direct cost categories that (a) transfer grant funds to an unbudgeted cost category or (b) individually or cumulatively exceed five percent (5%) of the approved original budget or the most recently approved revised budget (see section VII.I.2.d.).
2. A change in the scope of work to be performed or the objectives of the project (see subsection D. below).
3. A change in the project site.
4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (*see* subsection E. below).
5. Satisfaction of special conditions, if required.
6. A change in or temporary absence of the project director (*see* subsections F. and G. below).
7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (*see* section VI.A.2.).
8. A change in or temporary absence of the person responsible for managing and reporting on the grant's finances.
9. A change in the name of the grantee organization.
10. A transfer or contracting out of grant-supported activities (see subsection H. below).
11. A transfer of the grant to another recipient.
12. Pre-agreement costs (*see* section VII.I.2.a.).
13. The purchase of automated data processing equipment and software (*see* section VII.I.2.b.).
14. Consultant rates (*see* section VII.I.2.c.).
15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees must promptly notify SJI, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help SJI's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the SJI Executive Director. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by SJI. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification to SJI.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for an extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (*see* section VII.L.2.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/sub-grantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by SJI.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, SJI must be notified immediately. In such cases, if the grantee/sub-grantee wishes to terminate the project, SJI will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to SJI for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by SJI. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of SJI at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to SJI.

State Justice Institute Board of Directors

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Jonathan D. Mattiello, Executive Director (ex officio)

Dated: September 22, 2010.

Jonathan D. Mattiello,

Executive Director.

STATE JUSTICE INSTITUTE APPLICATION

1. APPLICANT
a. Organization Name _____
b. Street/P.O. Box _____
c. City _____
d. State _____ e. Zip Code _____
f. Phone Number _____
g. Fax Number _____
h. Web Site Address _____
i. Name & Phone Number of Contact Person _____
j. Title _____
k. E-Mail Address _____

2. TYPE OF APPLICANT (Check appropriate box)
□ State Court
□ National organization operating in conjunction with State court
□ National State court support organization
□ College or university
□ Other non-profit organization or agency
□ Individual
□ Corporation or partnership
□ Other unit of government
□ Other _____
(Specify) _____

3. PROPOSED START DATE _____

4. PROJECT DURATION (months) _____

5. APPLICANT FINANCIAL CONTACT
a. Organization Name _____
b. Street/P.O. Box _____
c. City _____
d. State _____ e. Zip Code _____
f. Phone Number _____
g. Fax Number _____
h. Web Site Address _____
i. Name & Phone Number of Contact Person _____
j. Title _____
k. E-Mail Address _____

6. IF THIS APPLICATION HAS BEEN SUBMITTED TO OTHER FUNDING SOURCES, PLEASE PROVIDE THE FOLLOWING INFORMATION:
Source _____
Date Submitted _____
Amount Requested _____
Disposition (if any) or Current Status _____

7. a. AMOUNT REQUESTED FROM SJI $ _____
b. AMOUNT OF MATCH
Cash match $ _____
Non-cash Match $ _____
c. TOTAL MATCH $ _____
d. OTHER CASH $ _____
e. TOTAL PROJECT COST $ _____

8. TITLE OF PROPOSED PROJECT

9. CONGRESSIONAL DISTRICT OF: _____ _____
Name of Representative; District Number — Project location (if different from applicant location): Name of Representative; District Number

10. CERTIFICATION
On behalf of the applicant, I hereby certify that to the best of my knowledge the information in this application is true and complete. I have read the attached assurances (Form D) and understand that if this application is approved for funding, the award will be subject to those assurances. I certify that the applicant will comply with the assurances if the application is approved, and that I am lawfully authorized to make these representations on the behalf of the applicant.

_____ _____ _____
SIGNATURE OF RESPONSIBLE OFFICIAL — TITLE — DATE
(For applications from State and local courts, Form B - Certificate of State Approval, must be attached)

Form A 08/07

STATE JUSTICE INSTITUTE

INSTRUCTIONS FOR APPLICATION FORM A

1. Legal **name of applicant** (court, entity or individual); **name of the organizational unit,** if any, that will conduct the project; complete **address** of the applicant, including phone and fax numbers and Web site addresses; and name, phone number, title, and e-mail address of a **contact person** who can provide further information about this application.

2. Type of Applicant:

a. **State court** includes all appellate, general jurisdiction, limited jurisdiction, and special jurisdiction courts, as well as all offices that are supervised by, or report for, administrative purposes to the chief or presiding justice or judge, or his or her designee.

b. **National organizations operating in conjunction with a state court** include national non-profit organization controlled by, operating in conjunction with, and serving state courts.

c. **National state court support organization** include national non-profit organizations with primary mission of supporting, serving, or educating judges and other personnel of the judicial branch of state government.

d. **College or university** includes all institutions of higher education.

e. **Other non-profit organization or agency** includes those non-profit organizations and private agencies not included in sub-paragraphs (b)-(d).

f. **Individual** means a person not applying in conjunction with or on behalf of an entity identified in one of the other categories.

g. **Corporation or partnership** includes for-profit and not-for-profit entities not falling within one of the other categories.

h. **Other unit of government** includes any governmental agency, office, or organization that is not a state or local court.

3. The **proposed start date** of the project should be the earliest feasible date on which applicant will be able to begin project activities following

the date of award (example: 08/01/2007).

4. **Project duration** refers to the number of months the applicant estimates will be needed to complete all project tasks after the proposed start date.
5. The **applicant financial contact** is the court or organization employee that will administer and account for any funding awarded.
6. If this application, or an application requesting support for the same project or a similar project, has been previously submitted to another funding source (federal or private), enter the name of the **source,** the **date** of submission, the **amount** of funding sought, and the **disposition** (if any) or current status.
7. Requested funding:
   a. Insert the **amount requested** from the State Justice Institute to conduct the project.
   b. The **amount of match** is the amount, if any, to be contributed to the project by the applicant, a unit of state or local government, or private sources. See 42 U.S.C. 10705 (d).

   Cash match refers to funds directly contributed by the applicant, a unit of State or local government, or private sources to support the project.

   Non-cash match refers to in-kind contributions by the applicant, a unit of State or local government or private sources to support the project.

   c. **Total match** refers to the sum of the cash and in-kind contributions to the project.
   d. **Other cash** refers to other funds that may not serve as a match but can be used for a project.
   e. **Total project cost** represents the sum of the amount requested from SJI and all other contributions to the project.
8. The **title of the proposed project** should reflect the objectives of the activities to be conducted.
9. Enter the name of the applicant's Congressional Representative and the number of the applicant's **Congressional district,** along with the number of the Congressional district(s) in which most of the project activities will take place and the name(s) of the Representative(s) from those districts. If the project activities are not site-specific (for example, a series of training workshops that will bring together participants from around the state, the country, or from a particular region), enter *statewide*, *national*, or *regional*, as appropriate, in the space provided.
10. **Signature** and title of a duly authorized representative of the applicant and the **date** the application was signed. For applications from state and local courts, Form B, Certificate of State Approval, must be attached.

STATE JUSTICE INSTITUTE

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council

has reviewed the application entitled

_____

prepared by _____
Name of Applicant

approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by SJI pursuant to the application;

[ ] hereby requests consideration of a reduction in cash match as requested by the applicant **(NOTE: only applicable to Project Grant applications);**

[ ] designates

_____
Name of Trial or Appellate Court or Agency

as the entity to receive, administer, and be accountable for all funds awarded by SJI pursuant to the application.

_____
Signature

_____
Name

_____
Title

_____
Date

Form B 09/09

INSTRUCTIONS

The *State Justice Institute Act* requires that:

Each application for funding by a state or local court shall be approved, consistent with state law, by the state's supreme court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by SJI to such courts (42 U.S.C. 10705(b)(4)).

FORM B should be signed by the chief judge or chief justice of the state supreme court, or by the director of the designated agency or chair of the designated council.

The term "state supreme court" refers to the court of last resort of a state. "Designated agency or council" refers to the office or judicial body which is authorized under state law, or by delegation from the state supreme court, to approve applications for grant funding and to receive, administer, and be accountable for that funding.

Form B 09/09

STATE JUSTICE INSTITUTE

PROJECT BUDGET

(TABULAR FORMAT)

Applicant:
Project Title:
For Project Activity from/to:
Total Amount Requested for Project from SJI:

ITEM	SJI FUNDS	STATE FUNDS	FEDERAL FUNDS	APPLICANT FUNDS	OTHER FUNDS	IN-KIND FUNDS	TOTAL
Direct Costs							
Personnel							$ -
Fringe Benefits							$ -
Consultant / Contractual							$ -
Travel							$ -
Equipment							$ -
Supplies							$ -
Telephone							$ -
Postage							$ -
Printing / Photocopying							$ -
Audit							$ -
Other (specify)							$ -
Subtotal, Direct Costs	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Subtotal, Indirect Costs							$ -
Grand Total	$ -	$ -	$ -	$ -	$ -	$ -	$ -

Remarks:

Application Budget Instructions

If the proposed project period is for more than 12 months, separate totals should be submitted for each succeeding twelve-month period or portion thereof beyond 12 months. However, a grand total project budget must also be included for multi-year projects. In addition to Form C, applicants must provide a detailed budget narrative that explains the basis for the estimates in each budget category. If the applicant is requesting indirect costs and has an indirect cost rate that has been approved by a federal agency, the basis for that rate, together with a copy of the letter or other official document stating that it has been approved, should be attached. Recoverable indirect costs are limited to no more than 75 percent of personnel and fringe benefit costs. If matching funds from other sources are being sought, the source, current status of the request, and anticipated decision date must be provided.

STATE JUSTICE INSTITUTE ASSURANCES

The applicant hereby assures and certifies that it possesses legal authority to apply for the grant, and that if funds are awarded by the State Justice Institute pursuant to this application, it will comply with all applicable provisions of law and the regulations, policies, guidelines and requirements of SJI as they relate to the acceptance and use of SJI funds pursuant to this application. The applicant further assures and certifies with respect to this application, that:

1. No person will, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by SJI funds, and that the applicant will immediately take any measures necessary to effectuate this assurance.

2. In accordance with 42 U.S.C. 10706(a), funds awarded to the applicant by SJI will not be used, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by federal, state or local agencies, or to influence the passage or defeat of any legislation or constitutional amendment by any federal, state or local legislative body.

3. In accordance with 42 U.S.C. 10706(a) and 10707(c):

a. It will not contribute or make available SJI funds, project personnel, or equipment to any political party or association, to the campaign of any candidate for public or party office, or to influence the passage or defeat of any ballot measure, initiative, or referendum;

b. No officer or employee of the applicant will intentionally identify SJI or applicant with any partisan or nonpartisan political activity or the campaign of any candidate for public or party office; and,

c. No officer or employee of the applicant will engage in partisan political activity while engaged in work supported in whole or in part by the SJI.

4. In accordance with 42 U.S.C. 10706(b), no funds awarded by SJI will be used to support or conduct training programs for the purpose of advocating particular non-judicial public policies or encouraging non-judicial political activities.

5. In accordance with 42 U.S.C. 10706(d), no funds awarded by SJI will be used to supplant state or local funds supporting a program or activity; to construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or to solely purchase equipment for a court system.

6. It will provide for an annual fiscal audit of the project.

7. It will give SJI, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award.

8. In accordance with 42 U.S.C. 10708(b) (as amended), research or statistical information that is furnished during the course of the project and that is identifiable to any specific individual, shall not be used or revealed for any

purpose other than the purpose for which it was obtained. Such information and copies thereof shall be immune from legal process, and shall not be offered as evidence or used for any purpose in any action suit, or other judicial, legislative, or administrative proceeding without the consent of the person who furnished the information.

9. All research involving human subjects will be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, SJI must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

10. All products prepared as the result of the project will be originally-developed material unless otherwise specifically provided for in the award documents, and that material not originally developed that is included in such projects must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. No funds will be obligated for publication or reproduction of a final product developed with Institute funds without the written approval of SJI. The recipient will submit a final draft of each such product to SJI for review and approval prior to submitting that product for publication or reproduction.

12. The following statement will be prominently displayed on all products prepared as a result of the project: "This [document, Web site, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. Points of view expressed herein are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

13. The "SJI" logo will appear on the front cover of a written product or in the opening frames of a video production produced with SJI funds, unless another placement is approved in writing by SJI.

14. Except as otherwise provided in the terms and conditions of a SJI award, the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of a SJI-supported project, but SJI shall reserve a royalty-free, non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

15. It will submit quarterly progress and financial reports within 30 days of the close of each calendar quarter during the funding period (that is, no later than January 30, April 30, July 30, and October 30); that progress reports will include a narrative description of the project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period,; and that financial reports will contain the information required.

16. At the conclusion of the project, title to all expendable and non-expendable personal property purchased with SJI funds shall vest in the court, organization, or individual that purchased the property if certification is made to SJI that the property will continue to be used for the authorized purposes of a SJI-funded project or other purposes consistent with the State Justice Institute Act, as approved by SJI. If such certification is not made or SJI disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in SJI, which will direct the disposition of the property.

17. The person signing the application is authorized to do so on behalf of the applicant, and to obligate the applicant to comply with the assurances enumerated above.

Form D 10/08

DISCLOSURE OF LOBBYING ACTIVITIES

The State Justice Institute Act prohibits grantees from using funds awarded by SJI to directly or indirectly influence the passage or defeat of any legislation by Federal, state of local legislative bodies (42 U.S.C. 10706 (a)). It also is the policy of SJI to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner.

Consistent with this policy and the provisions of 42 U.S.C. 10706 (a), SJI will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application. As a means of implementing that prohibition, SJI requires organizations submitting applications to SJI to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. This form must be submitted with your application.

Name of Applicant: _____

_____

Title of Application: _____

_____

☐ Yes ☐ No Has the applicant (or an entity that is part of the same organization as the applicant) directly or indirectly advocated a position before Congress on any issue within the past five years?

SPECIFIC SUBJECTS OF LOBBYING EFFORTS

If you answered YES above, please list the specific subjects on which your organization (or another entity that is part of your organization) has directly or indirectly advocated a position before Congress within the past five years. If necessary, you may continue on the back of this form or on an attached sheet.

Subject	Year

STATEMENT OF VERIFICATION

I declare under penalty of perjury that the information contained in this disclosure statement is correct and that I am authorized to make this verification on behalf of the applicant.

Signature _____

Name _____

Title _____

Date _____

Form E 10/07

BILLING CODE P

Print Form

Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

APPLICANT INFORMATION:

1. Applicant Name: _____
(Last) (First) (M.I.)

2. Position: _____

3. Name of Court: _____

4. Address: _____
Street/P.O. Box

_____
City State Zip Code

5. Telephone No. _____

6. Email Address: _____

7. Congressional District: _____

PROGRAM INFORMATION:

☐ **On-site** ☐ **Online**

8. Course Name: _____

9. Course Dates: _____

10. Course Provider: _____

11. Location Offered: _____

ESTIMATED EXPENSES:

Please note: Scholarships are limited to tuition (excluding the conference fee), reasonable lodging up to $150 per night (including taxes), and transportation expenses to and from the site of the course, up to a maximum of $1,500.

Tuition: $ _____ Transportation: $ _____
(Airfare, train fare, or, if you plan to drive, an amount equal to the approximate distance and mileage rate.)

Lodging: $ _____ Total Amount Requested: $ _____

Are you seeking/have you received a scholarship for this course from another source? ☐ Yes ☐ No

If yes, please specify the source(s) and amount(s), and status (received or pending) _____

_____

Are State or local funds available to support your attendance at the proposed course? ☐ Yes ☐ No

If yes, what amount(s) will be provided? _____

Form S1 (05/09)

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally and, if possible, statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

Signature **Date**

Please return this form and Form S-2 to:
Scholarship Coordinator
State Justice Institute
1650 King Street
Suite 600
Alexandria, VA 22314

Scholarship Application

Concurrence

I, _____,

Name of Chief Justice of the State Supreme Court (or Chief Justice's Designee)

have reviewed the application for a scholarship to attend the program entitled: _____

_____.

prepared by _____,
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State. The applicant's absence to attend the program would not present an undue hardship to the court.

Check box that applies:

☐ 1. Public funds **are not** available to enable the applicant to attend this course, and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

☐ 2. Public funds **are** available to support the applicant, but are insufficient to cover total costs. Therefore funding from the Institute is requested.

Signature

Name

Title

Date

Form S2 (05/09)

[FR Doc. 2010–24271 Filed 9–28–10; 8:45 am]
BILLING CODE C

Federal Register

Wednesday,
September 29, 2010

Part IV

Environmental Protection Agency

40 CFR Part 180

Acephate, Cacodylic Acid, Dicamba, Dicloran, et al.; Tolerance Actions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0262; FRL–8842–1]

Acephate, Cacodylic Acid, Dicamba, Dicloran, et al.; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances for the fungicides dicloran and thiophanate-methyl; the herbicides EPTC, hexazinone, picloram, and propazine; the defoliant and herbicide cacodylic acid; the plant growth regulator and herbicide diquat, the insecticides disulfoton, methamidophos, methomyl, phosmet, piperonyl butoxide, pyrethrins, and thiodicarb; the fumigant antimicrobial and insecticide methyl bromide, and the nematicides/insecticides ethoprop and fenamiphos, and the tolerance exemptions for the insecticide/miticide pyrethrum and insecticide synergist *N*-octyl bicycloheptene dicarboximide. However, EPA will not revoke specific malathion tolerances at this time. In addition, EPA is removing certain expired tolerances for disulfoton, fenamiphos, and thiophanate-methyl. Also, EPA is modifying certain tolerances for the fungicide thiophanate-methyl, herbicides dicamba, EPTC, hexazinone and picloram, and insecticide synergist *N*-octyl bicycloheptene dicarboximide. In addition, EPA is establishing new tolerances for the fungicide thiophanate-methyl and the herbicides EPTC, hexazinone, and picloram. Also, EPA is reinstating specific tolerances for methamidophos residues as a result of the application of the insecticide acephate. The regulatory actions finalized in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA), section 408(q).

DATES: This regulation is effective September 29, 2010. Objections and requests for hearings must be received on or before November 29, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0262. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010– 0262 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 29, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010– 0262, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of May 19, 2010 (75 FR 28155) (FRL–8821–3), EPA

issued a proposal to revoke, modify, and establish specific tolerances for residues of the fungicides dicloran and thiophanate-methyl; the herbicides dicamba, EPTC, hexazinone, picloram, and propazine; the defoliant and herbicide cacodylic acid; the plant growth regulator and herbicide diquat, the insecticides disulfoton, malathion, methamidophos, methomyl, phosmet, piperonyl butoxide, pyrethrins, and thiodicarb; the fumigant, antimicrobial, and insecticide, methyl bromide, and the nematicides/insecticides, ethoprop and fenamiphos, and the tolerance exemptions for the insecticide/miticide pyrethrum and insecticide synergist *N*-octyl bicycloheptene dicarboximide. In addition, EPA proposed to remove certain expired tolerances for disulfoton, fenamiphos, and thiophanate-methyl, and to reinstate specific tolerances for methamidophos residues as a result of the application of the insecticide acephate. Also, the proposal of May 19, 2010 (75 FR 28155) provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under FFDCA standards.

In this final rule, EPA is revoking, modifying, and establishing specific tolerances/tolerance exemptions for residues of cacodylic acid, dicamba, dicloran, diquat, disulfoton, EPTC, ethoprop, fenamiphos, hexazinone, methamidophos, methomyl, methyl bromide, *N*-octyl bicycloheptene dicarboximide, phosmet, picloram, piperonyl butoxide, propazine, pyrethrins, pyrethrum, thiodicarb, and thiophanate-methyl in or on commodities listed in the regulatory text of this document. Also, EPA is removing certain expired tolerances for disulfoton, fenamiphos, and thiophanate-methyl, and reinstating specific tolerances for methamidophos residues as a result of the application of the insecticide acephate.

EPA is finalizing these tolerance actions in order to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of FFDCA. The safety finding determination of "reasonable certainty of no harm" is discussed in detail in each Reregistration Eligibility Decision (RED) and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications, to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone number: 1–800–490–9198; fax number: 1–513–489–8695; Internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161; telephone number: 1–800–553–6847 or (703) 605–6000; Internet at *http://www.ntis.gov*. Electronic copies of REDs and TREDs are available on the Internet at *http://www.regulations.gov* and *http:// www.epa.gov/pesticides/reregistration/status.htm*.

In this final rule, EPA is revoking certain tolerances and/or tolerance exemptions because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA in the United States. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide active ingredient. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or legally treated domestic commodities.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

• Prior to EPA's issuance of a FFDCA section 408(f) order requesting additional data or issuance of a FFDCA section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

• EPA independently verifies that the tolerance is no longer needed.

• The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In response to the proposal published in the **Federal Register** of May 19, 2010 (75 FR 28155), EPA received comments during the 60–day public comment period, as follows:

1. *Disulfoton— comment by Bayer CropScience*. The commenter requested that the Agency delay revocation of the disulfoton tolerances proposed in the **Federal Register** of May 19, 2010 (75 FR 28155) because of communications received from trade channels and growers who claim that they will not exhaust their existing stocks for disulfoton use on those crops by EPA's proposed revocation dates. Therefore, Bayer CropScience requested that the Agency delay tolerance revocation by an additional 5 years.

Agency response. In a follow-up communication with the Agency, Bayer CropScience provided disulfoton sales information over a recent period of years. The Agency has considered the information that Bayer provided together with the Agency's data on disulfoton production, sales, inventory, and use, and determined that there is a need for more time to exhaust existing stocks. The Agency believes that extending tolerance revocation by 1 additional year for lima and succulent snap beans, broccoli, Brussels sprouts, cabbage, cauliflower, cotton, coffee green beans, and asparagus, and by 2 additional years for head and leaf lettuce would allow sufficient time to exhaust existing stocks. Therefore, EPA is revoking the tolerances in 40 CFR 180.183(a) on bean, lima; bean, snap, succulent; broccoli; Brussels sprouts; cabbage; cauliflower; and cotton, undelinted seed with expiration/revocation dates of December 31, 2013, the tolerances in 40 CFR 180.183(a) on lettuce, head and lettuce, leaf with expiration/revocation dates of December 31, 2014, the tolerance in 40 CFR 180.183(a) on coffee, green bean with an expiration/revocation date of June 30, 2014, and the tolerance in 40 CFR 180.183(c) on asparagus with an expiration/revocation date of December 31, 2013.

In addition, EPA is finalizing all other amendments proposed concerning disulfoton in the **Federal Register** of May 19, 2010 (75 FR 28155).

2. *EPTC—comment by Gowan Company*. The commenter from Gowan requested that EPA delay revocation of

the EPTC tolerance on vegetable, root at 0.1 ppm until the Agency has reviewed residue data on carrots, which it had earlier submitted to the California Department of Pesticide Regulation (CDPR) to support a Special Local Need (SLN) in California. The commenter stated that CDPR had reviewed the carrot data and granted the SLN in 2008, and that the company would submit the residue data for EPTC on carrots to the Agency by July 30, 2010.

Agency response. Recently, the Agency received magnitude of residue data for EPTC in/on carrots from Gowan Company. The Agency will consider the data for carrots and therefore, will not take any action on the vegetable, root tolerance in 40 CFR 180.117(a) at this time. Also, the Agency will not establish any of the proposed individual tolerances for beet, garden, roots; beet, sugar, roots; potato; and sweet potato, roots at this time. However, EPA is finalizing all other amendments proposed concerning EPTC in the **Federal Register** of May 19, 2010 (75 FR 28155).

3. *Ethoprop—comment by Bayer CropScience*. The commenter requested that the Agency not revoke the tolerance for ethoprop on pineapple. The commenter stated that there is still a need for the tolerance to cover pineapples imported into the United States. Bayer CropScience is also prepared to support an import tolerance where necessary.

Agency response. Because Bayer CropScience has stated a continued need for the tolerance on pineapple in 40 CFR 180.262(a), the Agency will not take any action on the tolerance at this time with a footnote to denote that there are no registrations on pineapple in the United States as of July 23, 2009, except for existing stocks bearing old labeling whose sale, distribution, and use is allowed, provided it is consistent with the terms of the cancellation order of July 9, 2009. The proposed revocation, with a proposed effective date of January 9, 2011, had been based on the Agency's belief that pineapple treated with existing stocks of ethoprop bearing old labeling whose sale, distribution, and use is allowed, provided it is consistent with the terms of the cancellation order of July 9, 2009, would have cleared the channels of trade by that time, about 1 year after the registrant was last permitted to sell and distribute stocks of the amended registration (concerning pineapple use deletion). Under that amended registration, the Agency will continue to allow the registrant to sell and distribute existing stocks of products bearing the old labeling for 18 months after July 9, 2009; i.e., until January 9, 2011. Also, the Agency will continue to allow persons other than the registrant to sell and distribute those existing stocks of products bearing the old labeling and use of them until exhaustion, consistent with the terms of the cancellation order of July 9, 2009.

However, EPA is revoking the tolerances for ethoprop in 40 CFR 180.262(a) on corn, pop, grain and corn, pop, stover and revising the introductory text containing the tolerance expression in 40 CFR 180.262(a).

4. *Malathion*—i. *comment by Cheminova, Inc.*. The commenter from Cheminova requested that the Agency not revoke any existing tolerance in 40 CFR 180.111 for malathion until the Agency can establish a tolerance for inadvertent residues to cover critical uses including public health mosquito and fly control, exotic/imported pest suppression and eradication programs, grasshopper/mormon cricket suppression programs, and other quarantine programs administered or directed by the United States Department of Agriculture and Individual states. In addition to its general concerns, Cheminova requested that animal tolerances for malathion in 40 CFR 180.111 be retained since the Agency's human health risk assessment did not have a health-related concern that necessitated revocation of animal tolerances and to avoid trade irritant issues that may arise from mistaken views about use of malathion on animal feed products. Also, the commenter requested that the tolerances on non-medicated cattle feed concentrate blocks (residues resulting from malathion application to paper used in packaging) and citrus, dried pulp (residues resulting from malathion application to bagged citrus pulp during storage) in 40 CFR 180.111 not be revoked to avoid trade barriers concerning pre-harvest use of malathion related to any animal feed commodity, and cited orange processing data that showed a need for the establishment of a citrus, dried pulp tolerance as a result of foliar application of malathion to citrus.

ii. *Comments by American Mosquito Control Association (AMCA), the Texas Boll Weevil Eradication Foundation, Inc., and the National Cotton Council of America (NCC)*. The commenters requested that the Agency not revoke existing tolerances in 40 CFR 180.111 for malathion because of boll weevil and public health mosquito control use of malathion in the vicinity of crop commodities, including cotton, and the potential for inadvertent deposition of malathion residues on adjacent crops.

iii. *Comment by the United States Department of Agriculture's Animal and Public Health Inspection Service*. The commenter requested that the Agency not revoke existing tolerances for bagged citrus pulp and peanut, hay in 40 CFR 180.111 for malathion because of pest control use of malathion in citrus groves and areas adjoining cotton and peanut fields; and the potential for inadvertent deposition of malathion residues on adjacent crops.

Agency response. Malathion tolerances for animal commodities were originally based on use patterns involving direct animal treatments with malathion. Subsequently, direct animal treatment uses were not supported for reregistration, eliminating this exposure pathway. In the malathion Reregistration Eligibility Decision (RED), tolerances on livestock commodities were recommended to be revoked based on no active registrations for direct animal treatment and available ruminant and poultry metabolism data at exaggerated feeding rates of malathion-treated livestock feeds, from which EPA concluded that no residues of malathion or malaoxon occur in eggs, milk, and animal tissues as a result of dietary exposure to these animals. However, the Agency intends to reevaluate its decision on whether livestock commodity tolerances may be needed based on pending and recently reviewed livestock feed item residue data that were not available at the time of the RED. Therefore, the Agency will defer its decision of whether to revoke the livestock commodity tolerances until all required livestock feed residue data have been received and reviewed.

Also, the Agency is not finalizing tolerance actions at this time on plant commodity tolerances in 40 CFR 180.111 which had been proposed for revocation in the **Federal Register** on May 19, 2010 (75 FR 28155). However, the Agency is revising the commodity terminology for "bean, dry seed" to "bean, dry, seed."

5. *Methamidophos—comment by Bayer CropScience*. The commenter requested that the Agency delay revocation of the methamidophos tolerances on cotton, potato, and tomato because of communications received from trade channels and growers who claim that they will not exhaust their existing stocks for methamidophos use on those crops by EPA's proposed revocation dates. Therefore, Bayer CropScience requested that the Agency delay tolerance revocation for the three crop commodities from December 31, 2012 by an additional 3 years.

Agency response. In a follow-up communication with the Agency, Bayer

CropScience agreed that 1 additional year for methamidophos use would allow sufficient time to exhaust existing stocks; i.e., tolerance revocation on December 31, 2013. Because there is a need for more time to exhaust existing stocks of methamidophos for use on cotton, potato, and tomato, EPA is extending the time by 1 year and revoking the tolerances in 40 CFR 180.315 on cotton, undelinted seed, potato, and tomato with expiration/revocation dates of December 31, 2013. Also, EPA is redesignating 40 CFR 180.315(b) as 40 CFR 180.315(c), removing the tolerance on tomato from 40 CFR 180.315(a) and transferring it to newly designated and revised 40 CFR 180.315(c), and increasing the tolerance on tomato to 2.0 ppm.

In addition, EPA is finalizing all other amendments proposed concerning methamidophos in the **Federal Register** of May 19, 2010 (75 FR 28155).

6. *Methomyl—comment by DuPont Crop Protection*. Regarding the proposed revocation of the methomyl tolerance on leeks at 3.0 ppm, a commenter asked if in the future, DuPont submits an action to add leeks to the methomyl labels whether that use on leeks would be covered per 40 CFR 180.1(g) by the existing tolerance of 3 ppm on onion, green in 40 CFR 180.253.

Agency response. There have been no active food-use registrations for use of methomyl on leeks in the United States for more than 10 years, and therefore the tolerance is no longer needed. Therefore, EPA is revoking the tolerance in 40 CFR 180.253(a) on leeks. If in future, DuPont submits an action to add leeks to methomyl labels, the Agency would consider if data are needed, and whether a tolerance level of 3 ppm for onion, green in 40 CFR 180.253 is appropriate per 40 CFR 180.1(g) to cover use on leeks or a new tolerance should be established separately on leeks.

Also, EPA is revoking the tolerances for methomyl in 40 CFR 180.253(a) on strawberry and watercress.

The Agency did not receive any specific comments, during the 60–day comment period, on the following pesticide active ingredients: Acephate, cacodylic acid, dicamba, dicloran (DCNA), diquat, fenamiphos, hexazinone, methyl bromide, *N*-octyl bicycloheptene dicarboximide (MGK-264), phosmet, picloram, piperonyl butoxide, propazine, pyrethrins, pyrethrum, thiodicarb, and thiophanate-methyl. Therefore, EPA is finalizing the amendments proposed concerning these pesticide active ingredients in the **Federal Register** of May 19, 2010 (75 FR 28155). For a detailed discussion of the Agency's rationale for the establishments, revocations, and modifications to the tolerances/tolerance exemptions, refer to the proposed rule of May 19, 2010 (75 FR 28155).

B. What is the Agency's Authority for Taking this Action?

EPA may issue a regulation establishing, modifying, or revoking a tolerance under FFDCA section 408(e). In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under FFDCA. The safety finding determination is found in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued REDs for acephate, cacodylic acid, dicamba, dicloran (DCNA), diquat, disulfoton, EPTC, ethoprop, malathion, methamidophos, methomyl, methyl bromide, *N*-octyl bicycloheptene dicarboximide, phosmet, picloram, piperonyl butoxide, pyrethrins, pyrethrum (see pyrethrins), thiodicarb, and thiophanate-methyl, and TREDs for hexazinone, methyl bromide, and propazine. REDs and TREDs contain the Agency's evaluation of the database for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses, and REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of "reasonable certainty of no harm." However, tolerance revocations recommended in REDs and TREDs that are made final in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 180.6 (c)).

C. When Do These Actions Become Effective?

With the exception of certain tolerances for cacodylic acid, dicloran, disulfoton, methamidophos, and methyl bromide for which EPA is revoking with specific expiration/revocation dates, the Agency is revoking, modifying, and establishing specific tolerances, and revising specific tolerance nomenclatures effective on the date of publication of this final rule in the **Federal Register**. With the exception of the revocation of specific tolerances for cacodylic acid, dicloran, disulfoton, methamidophos, and methyl bromide, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the revoked tolerances have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. EPA is revoking the cacodylic acid tolerance on cotton, undelinted seed with an expiration date of January 1, 2012; dicloran tolerance on carrot, roots, postharvest with an expiration/revocation date of November 2, 2011;

disulfoton tolerances on bean, lima; bean, snap, succulent; broccoli; Brussels sprouts; cabbage; cauliflower; cotton, undelinted seed; and asparagus with expiration dates of December 31, 2013; disulfoton tolerances on lettuce, head and lettuce, leaf wtih expiration/revocation dates of December 31, 2014; disulfoton tolerance on coffee, green bean with an expiration/revocation date of June 30, 2014; methamidophos tolerances on broccoli and cabbage with expiration/revocation dates of December 31, 2012 and cotton, undelinted seed; tomato; and potato with expiration/revocation dates of December 31, 2013; methyl bromide tolerance on timothy, hay, postharvest with an expiration/revocation date of October 19, 2010; and methyl bromide tolerances on alfalfa, hay, postharvest and cotton, undelinted seed with expiration/revocation dates of October 31, 2011. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for passage of treated commodities through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for cacodylic acid, dicamba, EPTC, hexazinone, *N*-octyl bicycloheptene dicarboximide, picloram, propazine, pyrethrum, thiodicarb, and thiophanate-methyl, or MRL in or on corn, pop, grain; corn, pop, stover; or pineapple for ethoprop; or MRL in or on citrus, dried pulp; citrus, oil; fruit, citrus, group 10; or garlic for fenamiphos; or MRL for citrus, dried pulp; cranberry; peanut, hay; peanut, postharvest; raisins; safflower, seed; safflower, refined oil; sunflower, seed, postharvest; fat, meat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; egg; milk, fat; or nonmedicated cattle feed concentrate blocks for malathion; or MRL in or on alfalfa, hay, postharvest; cotton, undelinted seed; mango, postharvest; papaya, postharvest; or timothy, hay, postharvest for bromide ion or methyl bromide; or MRL in or on leek; strawberry; or watercress for methomyl; or MRL in or on broccoli; Brussels sprouts; cabbage; lettuce; or tomato for methamidophos.

The Codex has established MRLs for dicloran in or on commodities including carrot, postharvest at 15 mg/kg. This MRL is different than the current tolerance established for dicloran at 10 ppm in the United States, which EPA is revoking in this final rule. The tolerance was reassessed in the RED at 10 ppm and was harmonized with Codex at that time.

The Codex has established MRLs for diquat in or on commodities including sorghum at 2 mg/kg and soya bean (dry) at 0.2 mg/kg. These MRLs are the same as the current tolerances for diquat in or on sorghum, grain, grain and soybean, seed in the United States, which EPA is revoking in this final rule.

The Codex has established MRLs for disulfoton in or on commodities including asparagus at 0.02 mg/kg; cotton seed at 0.1 mg/kg. These MRLs are different than the current tolerances established for disulfoton in or on asparagus at 0.1 ppm and cotton, undelinted seed at 0.75 ppm in the United States, both of which EPA is revoking in this final rule. The tolerances were reassessed in the RED and were not harmonized with Codex levels because of differences in good agricultural practices. The Codex MRL for disulfoton in or on coffee beans is the same as the current tolerance for disulfoton in or on coffee, green bean, which EPA is revoking in this final rule.

The Codex has established MRLs for methamidophos in or on commodities including cauliflower at 0.5 mg/kg; cotton seed at 0.2 mg/kg; chili peppers at 2 mg/kg; sweet peppers at 1 mg/kg; and potato at 0.05 mg/kg. These MRLs are different than the current tolerances established for methamidophos from methamidophos application in or on cauliflower at 1.0 ppm; cotton, undelinted seed at 0.1 ppm; pepper at 1.0 ppm; and potato at 0.1 ppm in the United States, all of which EPA is revoking in this final rule. The tolerances were reassessed in the RED and were not harmonized with the Codex levels because of differences in good agricultural practices. While methamidophos is a metabolite of acephate and EPA is re-instating certain methamidophos tolerances as a result of the application of acephate, Codex has established MRLs for acephate but for compliance purposes has defined them as only acephate residues.

The Codex has established MRLs for phosmet in or on commodities including cotton seed at 0.05 mg/kg. This MRL is different than the current tolerance established for phosmet in or on cotton, undelinted seed at 0.1 ppm in the United States, which EPA is revoking in this final rule. The tolerance was reassessed in the RED and was not harmonized with the Codex level because of differences in good agricultural practices and tolerance expression where total residues for U.S. tolerances included phosmet's oxygen analog.

IV. Statutory and Executive Order Reviews

In this final rule, EPA establishes tolerances under FFDCA section 408(e), and also modifies and revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any

enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of the proposed rule, as mentioned in Unit II.A.). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA 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." "Policies that have federalism implications" is defined in the Executive order 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." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 10, 2010.

Steven Bradbury,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.108 is amended as follows:

■

■ a. Revise the introductory text to paragraph (a)(1).

■ b. Revise footnote 1 to the table in paragraph (a)(1).

■ c. Revise paragraph (a)(2).

■ d. Add paragraph (a)(3).

■ e. Revise paragraph (c).

■ The revised and added text reads as follows:

§ 180.108 Acephate; tolerances for residues.

(a) * * * (1) Tolerances are established for residues of acephate, *O,S*-dimethyl acetyl phosphoramidothioate, including its metabolites and degradates other than methamidophos, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only acephate, *O,S*-dimethyl acetyl phosphoramidothioate, in or on the commodity.

Commodity[1]	Parts per million
* * * *	*

[1] Where there is a direct use of methamidophos on the commodity, residues of methamidophos resulting from methamidophos application are regulated under 40 CFR 180.315.

(2) A tolerance of 0.02 ppm is established for residues of acephate, *O,S*-dimethyl acetyl phosphoramidothioate, including its metabolites and degradates other than methamidophos, in or on all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food handling establishments where food and food products are held, processed, prepared and served, including food service, manufacturing and processing establishments, such as restaurants, cafeterias, supermarkets, bakeries, breweries, dairies, meat slaughtering and packing plants, and canneries, where application of acephate shall be limited solely to spot and/or crack and crevice treatment (a coarse, low-pressure spray shall be used to avoid atomization or splashing of the spray for spot treatments; equipment capable of delivering a pin-stream of insecticide shall be used for crack and crevice treatments). Spray concentration shall be limited to a maximum of 1.0 percent active ingredient. Contamination of food or food-contact surfaces shall be avoided. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only acephate, *O,S*-dimethyl acetyl phosphoramidothioate, in or on the commodity.

(3) Tolerances are established for residues of methamidophos, *O,S*-dimethyl phosphoramidothioate, including its metabolites and degradates, in or on the commodities in the following table as a result of the application of acephate. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only methamidophos, *O,S*-dimethyl phosphoramidothioate, in or on the commodity.

Commodity	Parts per million
Bean, dry, seed	1
Bean, succulent	1
Brussels sprouts	0.5
Cauliflower	0.5
Celery	1
Cranberry	0.1
Lettuce, head	1
Pepper	1
Peppermint, tops	1
Spearmint, tops	1

* * * * *

(c) *Tolerances with regional registrations.* A tolerance with a regional registration is established for residues of acephate, *O,S*-dimethyl acetyl phosphoramidothioate, including its metabolites and degradates other than methamidophos, in or on the commodity in the following table. Compliance with the tolerance level specified in this paragraph is to be determined by measuring only acephate, *O,S*-dimethyl acetyl phosphoramidothioate, in or on the commodity.

Commodity[1]	Parts per million
Nut, macadamia	0.05

[1] Where there is a direct use of methamidophos on the commodity, residues of methamidophos resulting from methamidophos application are regulated under 40 CFR 180.315.

* * * * *

■ 3. In § 180.111 revise the table in paragraph (a)(1) to read as follows:

§ 180.111 Malathion; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
Alfalfa, forage	135
Alfalfa, hay	135
Almond, hulls	50
Almond, postharvest	8
Apple	8
Apricot	8
Asparagus	8
Avocado	8
Barley, grain, postharvest	8
Bean, dry, seed	8
Bean, succulent	8
Beet, garden, roots	8
Beet, garden, tops	8
Beet, sugar, roots	1
Beet, sugar, tops	8
Blackberry	8
Blueberry	8
Boysenberry	8
Carrot, roots	8
Chayote, fruit	8
Chayote, roots	8
Cherry	8
Chestnut	1
Clover, forage	135
Clover, hay	135
Corn, field, forage	8
Corn, field, grain, postharvest	8
Corn, pop, grain, postharvest	8
Corn, sweet, forage	8
Corn, sweet, kernel plus cob with husks removed	2
Cowpea, forage	135
Cowpea, hay	135
Cranberry	8
Cucumber	8
Currant	8
Date, dried fruit	8
Dewberry	8
Eggplant	8
Fig	8
Flax, seed	0.1
Garlic, bulb	8
Gooseberry	8
Grape	8
Grapefruit	8
Guava	8
Hazelnut	1
Hop, dried cones	1
Horseradish	8
Kumquat	8
Leek	8
Lemon	8
Lentil, seed	8
Lespedeza, hay	135
Lime	8
Loganberry	8
Lupin, seed	8
Mango	8
Melon	8
Mushroom	8
Nectarine	8
Nut, macadamia	1
Oat, grain, postharvest	8
Okra	8
Onion, bulb	8
Onion, green	8
Orange	8
Papaya	1
Parsnip	8
Passionfruit	8
Pea	8
Pea, field, hay	8
Pea, field, vines	8
Peach	8
Peanut, hay	135
Peanut, postharvest	8
Pear	8
Pecan	8
Pepper	8
Peppermint, tops	8
Pineapple	8
Plum	8
Plum, prune	8
Potato	8
Pumpkin	8
Quince	8
Radish	8
Raspberry	8
Rice, grain, postharvest	8
Rice, wild	8
Rutabaga	8
Rye, grain, postharvest	8
Safflower, seed	0.2
Salsify, roots	8
Salsify, tops	8
Shallot, bulb	8
Sorghum, grain, forage	8
Sorghum, grain, grain, postharvest	8
Soybean, forage	135
Soybean, hay	135
Soybean, seed	8
Soybean, vegetable, succulent	8
Spearmint, tops	8
Squash, summer	8
Squash, winter	8
Strawberry	8
Sunflower, seed, postharvest	8
Sweet potato, roots	1
Tangerine	8
Tomato	8
Trefoil, forage	135
Trefoil, hay	135
Turnip, greens	8
Turnip, roots	8
Vegetable, brassica, leafy, group 5	8
Vegetable, leafy, except brassica, group 4	8

Commodity	Parts per million
Vetch, hay	135
Walnut	8
Wheat, grain, postharvest	8

* * * * *

■ 4. Revise § 180.117 to read as follows:

§ 180.117 *S*-Ethyl dipropylthiocarbamate; tolerances for residues.

(a) *General*. Tolerances are established for residues of the herbicide *S*-ethyl dipropylthiocarbamate, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of *S*-ethyl dipropylthiocarbamate, *S*-ethyl (2-hydroxypropyl)propylcarbamothioate, *S*-(2-hydroxyethyl) dipropylcarbamothioate, and *S*-ethyl (3-hydroxypropyl)propylcarbamothioate, calculated as the stoichiometric equivalent of *S*-ethyl dipropylthiocarbamate, in or on the commodity.

Commodity	Parts per million
Alfalfa, forage	0.2
Alfalfa, hay	0.6
Almond	0.08
Almond, hulls	0.08
Bean, dry, seed	0.08
Bean, succulent	0.08
Beet, garden, tops	0.5
Beet, sugar, molasses	0.4
Beet, sugar, tops	0.5
Clover, forage	0.1
Clover, hay	0.1
Corn, field, forage	0.08
Corn, field, grain	0.08
Corn, field, stover	0.08
Corn, pop, grain	0.08
Corn, pop, stover	0.08
Corn, sweet, forage	0.08
Corn, sweet, kernel plus cob with husks removed	0.08
Corn, sweet, stover	0.08
Cotton, gin byproducts	0.20
Cotton, undelinted seed	0.08
Fruit, citrus, group 10	0.1
Lespedeza, forage	0.1
Lespedeza, hay	0.1
Pea, succulent	0.08
Safflower, seed	0.08
Sunflower, seed	0.08
Tomato	0.08
Trefoil, forage	0.1
Trefoil, hay	0.1
Vegetable, root	0.1
Walnut	0.08

(b) *Section 18 emergency exemptions*. [Reserved]

(c) *Tolerances with regional registrations*. [Reserved]

(d) *Indirect or inadvertent residues*. [Reserved]

■ 5. In § 180.123 revise the table in paragraph (a)(1) to read as follows:

§ 180.123 Inorganic bromide residues resulting from fumigation with methyl bromide; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million	Expiration/Revocation Date
Alfalfa, hay, postharvest	50.0	10/31/11
Almond, postharvest	200.0	None
Apple, postharvest	5.0	None
Apricot, postharvest	20.0	None
Artichoke, jerusalem, postharvest	30.0	None
Asparagus, postharvest	100.0	None
Avocado, postharvest	75.0	None
Barley, grain, postharvest	50.0	None
Bean, lima, postharvest	50.0	None
Bean, postharvest	50.0	None
Bean, snap, succulent, postharvest	50.0	None
Bean, succulent, postharvest	50.0	None
Beet, garden, roots, postharvest	30.0	None
Beet, sugar, roots, postharvest	30.0	None
Blueberry, postharvest	20.0	None
Butternut, postharvest	200.0	None
Cabbage, postharvest	50.0	None
Cacao bean, roasted bean, postharvest	50.0	None
Cantaloupe, postharvest	20.0	None
Carrot, roots, postharvest	30.0	None
Cashew, postharvest	200.0	None
Cherry, sweet, postharvest	20.0	None
Cherry, tart, postharvest	20	None
Chestnut, postharvest	200.0	None
Cippolini, bulb, postharvest	50.0	None
Citron, citrus, postharvest	30.0	None
Coconut, copra, postharvest	100.0	None
Coffee, bean, green, postharvest	75.0	None
Corn, field, grain, postharvest	50.0	None
Corn, pop, postharvest	240.0	None
Corn, sweet, kernel plus cob with husks removed, postharvest	50.0	None
Cotton, undelinted seed, postharvest	200.0	10/31/11
Cucumber, postharvest	30.0	None
Cumin, seed, postharvest	100.0	None
Eggplant, postharvest	20.0	None
Garlic, postharvest	50.0	None
Ginger, postharvest	100.0	None
Grape, postharvest	20.0	None
Grapefruit, postharvest	30.0	None
Hazelnut, postharvest	200.0	None
Horseradish, postharvest	30.0	None
Kumquat, postharvest	30.0	None
Lemon, postharvest	30.0	None
Lime, postharvest	30.0	None

Commodity	Parts per million	Expiration/Revocation Date
Melon, honeydew, postharvest	20.0	None
Muskmelon, postharvest	20.0	None
Nectarine, postharvest	20.0	None
Nut, brazil, postharvest	200.0	None
Nut, hickory, postharvest	200.0	None
Nut, macadamia, postharvest	200.0	None
Oat, postharvest	50.0	None
Okra, postharvest	30.0	None
Onion, bulb, postharvest	20.0	None
Onion, green, postharvest	20.0	None
Orange, postharvest	30.0	None
Parsnip, roots, postharvest	30.0	None
Peach, postharvest	20.0	None
Peanut, postharvest	200.0	None
Pear, postharvest	5.0	None
Pea, blackeyed, postharvest	50.0	None
Pea, postharvest	50.0	None
Pecan, postharvest	200.0	None
Pepper, postharvest	30.0	None
Pimento, postharvest	30.0	None
Pineapple, postharvest	20.0	None
Pistachio, postharvest	200.0	None
Plum, postharvest	20.0	None
Pomegranate, postharvest	100.0	None
Potato, postharvest	75.0	None
Pumpkin, postharvest	20.0	None
Quince, postharvest	5.0	None
Radish, postharvest	30.0	None
Rice, grain, postharvest	50.0	None
Rutabaga, roots, postharvest	30.0	None
Rutabaga, tops, postharvest	30.0	None
Rye, grain, postharvest	50.0	None
Salsify, roots, postharvest	30.0	None
Sorghum, grain, grain, postharvest	50.0	None
Soybean, postharvest	200.0	None
Squash, summer, postharvest	30.0	None
Squash, winter, postharvest	20.0	None
Squash, zucchini, postharvest	20.0	None
Strawberry, postharvest	60.0	None
Sweet potato, postharvest	75.0	None
Tangerine, postharvest	30.0	None
Timothy, hay, postharvest	50.0	10/19/10
Tomato, postharvest	20.0	None
Turnip, roots, postharvest	30.0	None
Walnut, postharvest	200.0	None
Watermelon, postharvest	20.0	None
Wheat	50.0	None

* * * * *

■ 6. In § 180.183 revising the section heading, and paragraphs (a) and (c) to read as follows:

§ 180.183 Disulfoton; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide disulfoton, *O,O*-diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of disulfoton, *O,O*-diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate, and its metabolites demeton-*S*, *O,O*-diethyl *S*-(2-(ethylthio) ethyl) phosphorothioate; disulfoton sulfoxide, *O,O*-diethyl *S*-(2-(ethyl sulfinyl)ethyl) phosphorodithioate; disulfoton oxygen analog sulfoxide, *O,O*-diethyl *S*-(2-(ethylsulfinyl)ethyl) phosphorothioate, disulfoton sulfone, *O,O*-diethyl *S*-(2-(ethylsulfonyl)ethyl) phosphorodithioate; and disulfoton oxygen analog sulfone, *O,O*-diethyl *S*-(2-(ethylsulfonyl)ethyl) phosphorothioate; calculated as the stoichiometric equivalent of disulfoton, in or on the commodity.

Commodity	Parts per million	Expiration/Revocation Date
Bean, lima	0.75	12/31/13
Bean, snap, succulent	0.75	12/31/13
Broccoli	0.75	12/31/13
Brussels sprouts	0.75	12/31/13
Cabbage	0.75	12/31/13
Cauliflower	0.75	12/31/13
Coffee, green bean	0.2	6/30/14
Cotton, undelinted seed	0.75	12/31/13

Commodity	Parts per million	Expiration/Revocation Date
Lettuce, head	0.75	12/31/14
Lettuce, leaf	2	12/31/14

* * * * *

(c) *Tolerances with regional registrations.* A tolerance with regional registration is established for residues of the insecticide disulfoton, *O,O*-diethyl *S*-(2-(ethylthio)ethyl) phosphoro dithioate, including its metabolites and degradates, in or on the commodity in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of disulfoton, *O,O*-diethyl *S*-(2-(ethylthio)ethyl) phosphorodithioate, and its metabolites demeton-*S*, *O,O*-diethyl *S*-(2-(ethylthio) ethyl) phosphorothioate; disulfoton sulfoxide, *O,O*-diethyl *S*-(2-(ethylsulfinyl)ethyl) phosphorodithioate; disulfoton oxygen analog sulfoxide, *O,O*-diethyl *S*-(2-(ethylsulfinyl)ethyl) phosphorothioate, disulfoton sulfone, *O,O*-diethyl *S*-(2-(ethylsulfonyl)ethyl) phosphoro dithioate; and disulfoton oxygen analog sulfone, *O,O*-diethyl *S*-(2-(ethyl sulfonyl)ethyl) phosphorothioate; calculated as the stoichiometric equivalent of disulfoton, in or on the commodity.

Commodity	Parts per million	Expiration/ Revocation Date
Asparagus	0.1	12/31/13

* * * * *

■ 7. In § 180.200 revise paragraph (a)(1) to read as follows:

§ 180.200 Dicloran; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide dicloran, 2,6-dichloro-4-nitroaniline, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only dicloran, 2,6-dichloro-4-nitroaniline, in or on the commodity. Unless otherwise specified, the tolerances prescribed in this paragraph provide for residues from preharvest application only.

Commodity	Parts per million	Expiration/Revocation Date
Apricot, postharvest	20	None
Bean, snap, succulent	20	None
Carrot, roots, postharvest	10	11/2/11
Celery	15	None
Cherry, sweet, postharvest	20	None
Cucumber	5	None
Endive	10	None
Garlic	5	None
Grape	10	None
Lettuce	10	None
Nectarine, postharvest	20	None
Onion	10	None
Peach, postharvest	20	None
Plum, prune, fresh, postharvest	15	None
Potato	0.25	None
Rhubarb	10	None
Sweet potato, postharvest	10	None
Tomato	5	None

* * * * *

§ 180.226 [Amended]

■ 8. In § 180.226 remove the entries for "sorghum, grain, grain" and "soybean, seed" from the table in paragraph (a)(1).

■ 9. In § 180.227 revise paragraph (a)(1), and the introductory text in paragraphs (a)(2) and (a)(3) to read as follows:

§ 180.227 Dicamba; tolerances for residues.

(a) * * * (1) Tolerances are established for residues of the herbicide dicamba, 3,6-dichloro-*o*-anisic acid, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of dicamba, 3,6-dichloro-*o*-anisic acid, and its metabolite, 3,6-dichloro-5-hydroxy-*o*-anisic acid, calculated as the stoichiometric equivalent of dicamba, in or on the commodity.

Commodity	Parts per million
Barley, grain	6.0
Barley, hay	2.0
Barley, straw	15.0
Corn, field, forage	3.0
Corn, field, grain	0.1
Corn, field, stover	3.0
Corn, pop, grain	0.1
Corn, pop, stover	3.0
Corn, sweet, forage	0.50
Corn, sweet, kernel plus cob with husks removed	0.04
Corn, sweet, stover	0.50
Cotton, undelinted seed	0.2
Grass, forage, fodder and hay, group 17, forage	125.0
Grass, forage, fodder and hay, group 17, hay	200.0
Millet, proso, forage	90.0
Millet, proso, grain	2.0
Millet, proso, hay	40.0
Millet, proso, straw	30.0
Oat, forage	90.0
Oat, grain	2.0
Oat, hay	40.0
Oat, straw	30.0
Rye, forage	90.0
Rye, grain	2.0
Rye, straw	30.0
Sorghum, grain, forage	3.0
Sorghum, grain, grain	4.0
Sorghum, grain, stover	10.0
Sugarcane, cane	0.3
Sugarcane, molasses	5.0
Wheat, forage	90.0
Wheat, grain	2.0
Wheat, hay	40.0

Commodity	Parts per million
Wheat, straw	30.0

(2) Tolerances are established for residues of the herbicide dicamba, 3,6-dichloro-*o*-anisic acid, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of dicamba, 3,6-dichloro-*o*-anisic acid, and its metabolite, 3,6-dichloro-2-hydroxybenzoic acid, calculated as the stoichiometric equivalent of dicamba, in or on the commodity.

* * * * *

(3) Tolerances are established for residues of the herbicide dicamba, 3,6-dichloro-*o*-anisic acid, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of dicamba, 3,6-dichloro-*o*-anisic acid, and its metabolites, 3,6-dichloro-5-hydroxy-*o*-anisic acid, and 3,6-dichloro-2-hydroxybenzoic acid, calculated as the stoichiometric equivalent of dicamba, in or on the commodity.

* * * * *

■ 10. Revise § 180.243 to read as follows:

§ 180.243 Propazine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide propazine, 2-chloro-4,6-bis(isopropylamino)-*s*-triazine, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of propazine, 2-chloro-4,6-bis(isopropylamino)-*s*-triazine, and its two chlorinated degradates, 2-amino-4-chloro-6-isopropylamino-*s*-triazine and 2,4-diamino-6-chloro-*s*-triazine, calculated as the stoichiometric equivalent of propazine, in or on the commodity.

Commodity	Parts per million
Sorghum, grain, forage	0.25
Sorghum, grain, grain	0.25
Sorghum, grain, stover	0.25

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.253 [Amended]

■ 11. In § 180.253 remove the entries for "leek," "strawberry," and "watercress" from the table in paragraph (a).

■ 12. In § 180.261 revise the section heading, paragraph (a) and paragraph (c) to read as follows:

§ 180.261 Phosmet; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide phosmet, *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate), including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of phosmet, *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate), and its oxygen analog, *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorothioate, calculated as the stoichiometric equivalent of phosmet, in or on the commodity.

Commodity	Parts per million
Alfalfa, forage	20
Alfalfa, hay	40
Almond, hulls	10
Apple	10
Apricot	5
Blueberry	10
Cattle, fat	0.2
Cattle, meat	0.1
Cattle, meat byproducts	0.1
Cherry	10
Cranberry	10
Fruit, citrus, group 10	5
Goat, fat	0.1
Goat, meat	0.1
Goat, meat byproducts	0.1
Grape	10
Hog, fat	0.2
Hog, meat	0.04
Hog, meat byproducts	0.04
Horse, fat	0.1
Horse, meat	0.1
Horse, meat byproducts	0.1
Kiwifruit	25
Milk	0.1
Nectarine	5
Nut, tree, group 14	0.1
Pea, dry, seed	0.5
Pea, field, hay	20
Pea, field, vines	10
Pea, succulent	1
Peach	10
Pear	10
Plum, prune, fresh	5
Potato	0.1
Sheep, fat	0.1
Sheep, meat	0.1
Sheep, meat byproducts	0.1
Sweet potato, roots	12

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration are established for residues of the insecticide phosmet, *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate), including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of phosmet, *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate), and its oxygen analog, *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorothioate, calculated as the stoichiometric equivalent of phosmet, in or on the commodity.

Commodity	Parts per million
Crabapple	20
Pistachio	0.1

* * * * *

■ 13. In § 180.262 revise paragraph (a) and add a footnote under the table to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

(a) *General.* Tolerances are established for residues of the nematocide and insecticide ethoprop, *O*-ethyl *S,S*-dipropyl phosphoro dithioate, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only ethoprop, *O*-ethyl *S,S*-dipropyl phosphorodithioate, in or on the commodity.

Commodity	Parts per million
Banana	0.02
Bean, lima	0.02
Bean, snap, succulent	0.02
Cabbage	0.02
Corn, field, forage	0.02
Corn, field, grain	0.02
Corn, field, stover	0.02
Corn, sweet, forage	0.02
Corn, sweet, kernel plus cob with husks removed	0.02
Corn, sweet, stover	0.02
Cucumber	0.02
Hop, dried cones	0.02
Peppermint, tops	0.02
Pineapple[1]	0.02
Potato	0.02
Spearmint, tops	0.02
Sugarcane, cane	0.02

Commodity	Parts per million
Sweet potato, roots	0.02

[1] There are no U.S. registrations as of July 23, 2009, except for existing stocks bearing old labeling whose sale, distribution, and use is allowed, provided it is consistent with the terms of the cancellation order of July 9, 2009; i.e., the EPA will allow the technical registrant to continue to sell and distribute existing stocks of the amended registered product bearing old labeling for use on pineapple for 18 months (until January 9, 2011) and persons other than the registrant may continue to sell and/or use existing stocks of product bearing the old labeling until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the modified product.

* * * * *

■ 14. In § 180.292 revise paragraph (a) to read as follows:

§ 180.292 Picloram; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide picloram, 4-amino-3,5,6-trichloro picolinic acid, including its metabolites and degradates, in or on the commodities in the following table from its application in the acid form or in the form of its salts. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only picloram, 4-amino-3,5,6-trichloropicolinic acid, in or on the commodity.

Commodity	Parts per million
Barley, grain	0.5
Barley, pearled barley	3.0
Barley, straw	1.0
Cattle, fat	0.4
Cattle, meat	0.4
Cattle, meat byproducts	15
Egg	0.05
Goat, fat	0.4
Goat, meat	0.4
Goat, meat byproducts	15
Grain, aspirated fractions	4.0
Grass, forage	400
Grass, hay	225
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.05
Horse, fat	0.4
Horse, meat	0.4
Horse, meat byproducts	15
Milk	0.25
Oat, forage	1.0
Oat, grain	0.5
Oat, groats/rolled oats	3.0
Oat, straw	1.0
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, meat byproducts	0.05
Sheep, fat	0.4
Sheep, meat	0.4
Sheep, meat byproducts	15
Wheat, bran	3.0
Wheat, forage	1.0
Wheat, germ	3.0
Wheat, grain	0.5
Wheat, middlings	3.0
Wheat, shorts	3.0
Wheat, straw	1.0

* * * * *

■ 15. In § 180.311 revise paragraph (a) to read as follows:

§ 180.311 Cacodylic acid; tolerances for residues.

(a) *General.* A tolerance is established for residues of the defoliant cacodylic acid, dimethylarsinic acid, including its metabolites and degradates, in or on the commodity in the following table. Compliance with the tolerance level specified in this paragraph is to be determined by measuring only those cacodylic acid residues convertible to As_2O3, expressed as the stoichiometric equivalent of cacodylic acid, in or on the commodity.

Commodity	Parts per million	Expiration/ Revocation Date
Cotton, undelinted seed	2.8	1/1/12

* * * * *

■ 16. Revise § 180.315 to read as follows:

§ 180.315 Methamidophos; tolerances for residues.

(a) *General.* Tolerances are established for residues of methamidophos, *O,S*-dimethyl phosphoramidothioate, including its metabolites and degradates, in or on the commodities in the following table as a result of the application of methamidophos. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only methamidophos, *O,S*-dimethyl phosphoramidothioate, in or on the commodity.

Commodity	Parts per million	Expiration/ Revocation Date
Broccoli[1]	1.0	12/31/12
Cabbage[2]	1.0	12/31/12
Cotton, undelinted seed	0.1	12/31/13
Potato	0.1	12/31/13

[1] There are no U.S. registrations since 1989.
[2] There are no U.S. registrations since 2001.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* A tolerance with a regional registration is established for residues of methamidophos, *O,S*-dimethyl phosphoramidothioate, including its metabolites and degradates, in or on the commodity in the following table as a result of the application of methamidophos. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only methamidophos, *O,S*-dimethyl phosphoramidothioate, in or on the commodity.

Commodity	Parts per million	Expiration/ Revocation Date
Tomato	2.0	12/31/13

(d) *Indirect or inadvertent residues.* [Reserved]

■ 17. In § 180.349 revise paragraph (a) and paragraph (c) to read as follows:

§ 180.349 Fenamiphos; tolerances for residues.

(a) *General.* Tolerances are established for residues of the nematicide/insecticide fenamiphos, ethyl 3-methyl-4-(methylthio)phenyl 1-(methylethyl)phosphoramidate, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of fenamiphos, ethyl 3-methyl-4-(methylthio)phenyl 1-(methylethyl)phosphoramidate, and its cholinesterase inhibiting metabolites ethyl 3-methyl-4-(methylsulfinyl)phenyl 1-(methylethyl)phosphoramidate and ethyl 3-methyl-4-(methyl sulfonyl)phenyl 1-(methylethyl)phos phoramidate, calculated as the stoichiometric equivalent of fenamiphos, in or on the commodity.

Commodity	Parts per million
Banana[1]	0.1
Grape[1]	0.1
Grape, raisin[1]	0.3
Pineapple[1]	0.3

[1] There are no U.S. registrations as of May 31, 2007.

* * * * *

(c) *Tolerances with regional registrations.* [Reserved]

* * * * *

■ 18. In § 180.367 revise paragraph (a) to read as follows:

§ 180.367 *N*-octyl bicycloheptene dicarboximide; tolerances for residues.

(a) *General.* A tolerance of 5 parts per million is established for residues of the

insecticide synergist *N*-octyl bicycloheptene dicarboximide, including its metabolites and degradates, in or on all food items in food handling establishments where food and food products are held, processed, prepared and/or served, provided that the food is removed or covered prior to such use, except for bagged food in warehouse storage which need not be removed or covered prior to applications of formulations containing *N*-octyl bicycloheptene dicarboximide. Compliance with the tolerance level specified in this paragraph is to be determined by measuring only *N*-octyl bicycloheptene dicarboximide, in or on the commodity.

* * * * *

■ 19. Revise § 180.371 to read as follows:

§ 180.371 Thiophanate-methyl; tolerances for residues.

(a) *General*. Tolerances are established for residues of thiophanate-methyl, dimethyl ((1,2-phenylene) bis (iminocarbonothioyl)) bis(carbamate), including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of thiophanate-methyl, dimethyl ((1,2-phenylene) bis (iminocarbonothioyl)) bis(carbamate), and its metabolite, methyl 2-benzimidazoyl carbamate (MBC), calculated as the stoichiometric equivalent of thiophanate-methyl, in or on the commodity.

Commodity	Parts per million
Almond	0.1
Almond, hulls	0.5
Apple	2.0
Apricot	15.0
Banana	2.0
Bean, dry, seed	0.2
Bean, snap, succulent	2.0
Beet, sugar, roots	0.2
Cherry, sweet	20.0
Cherry, tart	20.0
Grain, aspirated fractions	12
Grape	5.0
Onion, bulb	0.5
Onion, green	3.0
Peach	3.0
Peanut	0.1
Peanut, hay	5.0
Pear	3.0
Pecan	0.1
Pistachio	0.1
Plum	0.5
Potato	0.1
Soybean, hulls	1.5
Soybean, seed	0.2
Strawberry	7.0
Vegetable, cucurbit, group 9	1.0
Wheat, forage	1.1
Wheat, grain	0.1
Wheat, hay	0.1
Wheat, straw	0.1

(b) *Section 18 emergency exemptions*. [Reserved]

(c) *Tolerances with regional registrations*. A tolerance with a regional registration is established for residues of thiophanate-methyl, dimethyl ((1,2-phenylene) bis(iminocarbonothioyl)) bis(carbamate), including its metabolites and degradates, in or on the commodity in the following table. Compliance with the tolerance level specified in this paragraph is to be determined by measuring only the sum of thiophanate-methyl, dimethyl ((1,2-phenylene) bis (iminocarbonothioyl)) bis(carbamate), and its metabolite, methyl 2-benzimidazoyl carbamate (MBC), calculated as the stoichiometric equivalent of thiophanate-methyl, in or on the commodity.

Commodity	Parts per million
Canola, seed	0.1

(d) *Indirect or inadvertent residues*. [Reserved]

■ 20. In § 180.396 revise paragraph (a) and paragraph (c) to read as follows:

§ 180.396 Hexazinone; tolerances for residues.

(a) *General*. (1) Tolerances are established for residues of the herbicide hexazinone, 3-cyclohexyl-6-(dimethyl amino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of hexazinone, 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, and its plant metabolites: metabolite A, 3-(4-hydroxycyclohexyl)-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, metabolite B, 3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, metabolite C, 3-(4-hydroxy cyclohexyl)-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, metabolite D, 3-cyclohexyl-1-methyl-1,3,5-triazine-2,4,6-(1*H*, 3*H*, 5*H*)-trione, and metabolite E, 3-(4-hydroxy cyclohexyl)-1-methyl-1,3,5-triazine-2,4,6-(1*H*, 3*H*, 5*H*)-trione, calculated as the stoichiometric equivalent of hexazinone, in or on the commodity.

Commodity	Parts per million
Alfalfa, forage	2.0
Alfalfa, hay	4.0
Alfalfa, seed	2.0
Blueberry	0.6
Grass, forage	250
Grass, hay	230
Pineapple	0.6
Sugarcane, cane	0.6
Sugarcane, molasses	4.0

(2) Tolerances are established for residues of the herbicide hexazinone, 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in this paragraph is to be determined by measuring only the sum of hexazinone, 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, and its animal tissue metabolites: metabolite B, 3-cyclohexyl-6-(methyl amino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, and metabolite F, 3-cy clohexyl-6-amino-1-methyl-1,3,5-tri azine-2,4-(1*H*, 3*H*)-dione, calculated as the stoichiometric equivalent of hexazinone, in or on the commodity.

Commodity	Parts per million
Cattle, fat	0.1
Cattle, meat	0.5
Cattle, meat byproducts	4.0
Goat, fat	0.1
Goat, meat	0.5
Goat, meat byproducts	4.0
Hog, fat	0.1
Hog, meat	0.5
Hog, meat byproducts	4.0
Horse, fat	0.1
Horse, meat	0.5
Horse, meat byproducts	4.0
Sheep, fat	0.1
Sheep, meat	0.5
Sheep, meat byproducts	4.0

(3) A tolerance is established for residues of the herbicide hexazinone, 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, including its metabolites and degradates, in or on the commodity in the following table. Compliance with the tolerance level specified in this paragraph is to be determined by measuring only the sum of hexazinone, 3-cyclohexyl-6-(dimethylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, and its metabolites: metabolite B, 3-cyclohexyl-6-(methylamino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, metabolite C, 3-(4-hydroxycyclohexyl)-6-(methylamino)-1-methyl-1,3,5-tri azine-2,4-(1*H*, 3*H*)-dione, metabolite C-2, 3-(3-hydroxycyclohexyl)-6-(methyl

amino)-1-methyl-1,3,5-triazine-2,4-(1*H*, 3*H*)-dione, and metabolite F, 3-cy clohexyl-6-amino-1-methyl-1,3,5-tri azine-2,4-(1*H*, 3*H*)-dione, calculated as the stoichiometric equivalent of hexazinone, in or on the commodity.

Commodity	Parts per million
Milk	11

* * * * *

(c) *Tolerances with regional registrations.* [Reserved]

* * * * *

§ 180.407 [Amended]

■ 21. In § 180.407 remove the entry for "cotton, hulls" from the table in paragraph (a).

■ 22. Revise § 180.905 to read as follows:

§ 180.905 Pesticide chemicals; exemptions from the requirement of a tolerance.

(a) When applied to growing crops, in accordance with good agricultural practice, the following pesticide chemicals are exempt from the requirement of a tolerance:

(1) Petroleum oils.

(2) Piperonyl butoxide.

(3) Pyrethrins.

(4) Rotenone or derris or cube roots.

(5) Sabadilla.

(b) These pesticides are not exempted from the requirement of a tolerance when applied to a crop at the time of or after harvest.

[FR Doc. 2010–24153 Filed 9–28–10; 8:45 am]

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Federal Register

Wednesday,
September 29, 2010

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, 4, 8, et al.
Federal Acquisition Regulations; Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0076, Sequence 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–46; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–46. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–46 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–46

Item	Subject	FAR Case	Analyst
I	Equal Opportunity for Veterans (Interim)	2009–007	Woodson
II	Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (Interim).	2010–012	Davis
III	Termination for Default Reporting	2008–016	Parnell
IV	Award-Fee Language Revision	2008–008	Chambers
V	Offering a Construction Requirement–8(a) Program	2009–020	Morgan
VI	Encouraging Contractor Policies to Ban Text Messaging While Driving (Interim)	2009–028	Clark
VII	Buy American Exemption for Commercial Information Technology—Construction Material (Interim).	2009–039	Davis

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–46 amends the FAR as specified below:

Item I—Equal Opportunity for Veterans (FAR Case 2009–007) (Interim)

This interim rule with request for comments implements the Department of Labor's (DoL) Office of Federal Contract Compliance Programs (OFCCP) final rule published in the **Federal Register** at 72 FR 44393 on August 8, 2007, that implements amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA), as amended by the Jobs for Veterans Act (JVA). The rule re-titles FAR subpart 22.13 from "Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" to "Equal Opportunity for Veterans." Accordingly, FAR clause 52.222–35 is also renamed "Equal Opportunity for Veterans" and incorporates the new categories and definitions of protected veterans as established by DoL. In addition, the FAR clause at 52.222–37, "Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" is renamed "Employment Reports on Veterans" and the new DoL requirements for using the VETS–100A report are incorporated. Lastly, the FAR provision at 52.222–38, "Compliance with Veterans' Employment Reporting Requirements," is revised to incorporate new title references for FAR 52.222–37 and the new report form VETS–100A.

Item II—Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (FAR Case 2010–012) (Interim)

This interim rule amends the FAR by enhancing efforts to enforce sanctions with Iran. The rule implements requirements imposed by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), specifically sections 102 and 106. To implement section 102, the FAR will require certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act. This rule also partially implements section 106 of Public Law 111–195, which imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of Section 106 in FAR Case 2010–018. This rule will have little effect on United States small business concerns, because such dealings with Iran are already prohibited in the United States.

Item III—Termination for Default Reporting (FAR Case 2008–016)

This final rule amends the FAR to revise the contractor performance information process. The FAR revisions include changes to FAR parts 8, 12, 15, 42, and 49. The purpose of the rule is to establish procedures for contracting officers to provide contractor information into the Federal Awardee Performance & Integrity Information System (FAPIIS) module of Past Performance Information System (PPIRS). This case sets forth requirements for reporting defective cost or pricing data and terminations for cause or default and any amendments. Evaluation of past performance information, especially terminations, manages risks associated with timely, effective and cost efficient completion of contracts, a key objective of the President's March 4, 2009, Memorandum on Government Contracting.

Item IV—Award-Fee Language Revision (FAR Case 2008–008)

This final rule converts the interim rule published in the **Federal Register** at

74 FR 52856 on October 14, 2009, to a final rule with minor changes.

This final rule amends the FAR to implement section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 and section 867 of the Duncan Hunter 2009 National Defense Authorization Act for Fiscal Year 2009. This rule requires agencies to—

(1) Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;

(2) Clarify that a base fee amount greater than zero may be included in a cost-plus-award-fee type contract at the discretion of the contracting officer;

(3) Prescribe narrative ratings that will be utilized in award-fee evaluations;

(4) Prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;

(5) Conduct a risk and cost-benefit analysis and consider the results of the analysis when determining whether to use an incentive-fee type contract or not;

(6) Include specific content in the award-fee plans; and

(7) Prohibit the rolling over of unearned award fees to subsequent rating periods.

This FAR change will integrate where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

Item V—Offering a Construction Requirement—8(a) Program (FAR Case 2009–020)

This final rule amends the FAR to revise FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), specifically FAR 19.804–2(b) to conform to the Small Business Administration (SBA) regulations. The SBA regulation 13 CFR 124.502(b)(2) requires that the offering letter for an open construction requirement be submitted to the SBA District Office for the geographical area where the work is to be performed. The SBA regulation 13 CFR 124.502(b)(3) requires that the offering letter for a construction requirement offered on behalf of a specific participant be submitted to the SBA District Office servicing that concern. This rule revises FAR 19.804–2 accordingly.

Item VI—Encouraging Contractor Policies To Ban Text Messaging While Driving (FAR Case 2009–028) (Interim)

This interim rule amends the FAR to implement Executive Order 13513, entitled "Federal Leadership on Reducing Text Messaging while Driving," which was issued on October 1, 2009 (74 FR 51225, October 6, 2009). Section 4 of the Executive order requires each Federal agency, in procurement contracts, entered into after the date of the order, to encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Section 4 also requires Federal agencies to encourage contractors to conduct initiatives such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts. Contracting officers are encouraged to modify existing contracts to include the FAR clause.

Item VII—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009–039) (Interim)

This interim rule implements section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–24217 Filed 9–28–10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2005–46; FAR Case 2009–007; Item I; Docket 2010–0101, Sequence 1]

RIN 9000–AL67

Federal Acquisition Regulation; Equal Opportunity for Veterans

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Department of Labor (DoL) regulations on equal opportunity provisions for various categories of military veterans. This rule sets forth revised coverage and definitions of veterans covered under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA) and includes new reporting requirements established under the VEVRAA and the Jobs for Veterans Act (JVA).

DATES: *Effective Date:* September 29, 2010.

Applicability date: Contracting officers may modify existing contracts of $100,000 or more that were awarded or modified on or after December 1, 2003, to require the use of the new VETS–100A form starting with the report filed September 30, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–46, FAR Case 2009–007, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–007" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2009–007." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–007" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–46, FAR Case 2009–007, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr.

Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–46, FAR Case 2009–007.

SUPPLEMENTARY INFORMATION:

A. Background

The DoL Office of Federal Contract Compliance Programs (OFCCP) published a final rule in the **Federal Register** at 72 FR 44393 on August 8, 2007, that implements amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA) as amended by the Jobs for Veterans Act (JVA), Public Law 107–288. This final DoL rule changed the categories of veterans protected by these laws for covered Government contracts entered into or modified on or after December 1, 2003. These changes were published in 41 CFR part 60–300 and specifically modified the equal opportunity clause to be included in each covered Government contract or subcontract.

The JVA amendments eliminated listing employment openings solely with America's Job Bank as an option for complying with the mandatory job listing requirement. The final DoL rule provides that listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list job openings with the appropriate employment service delivery system.

The categories of veterans covered by the equal opportunity provisions changed to include: Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans. The JVA eliminated the separate coverage category of Vietnam-era veterans; however, DoL in its rule explained that many people in this category may be covered under the other categories. The JVA expanded the coverage of veterans with disabilities to all veterans who were discharged or released from active duty because of a service-connected disability.

In addition, the DoL Veterans' Employment and Training Service (VETS) published a final rule in the **Federal Register** at 73 FR 28710 on May 19, 2008, that further implements the requirements under the VEVRAA and the JVA that Government contractors track and annually report the number of veteran employees in their workforces. This final DoL rule adopted a new Federal Contractor Veterans' Employment Report, VETS–100A form, to be used for reporting the revised categories of veterans that contractors are to track and report. These reporting requirements are published in 41 CFR part 61–300 and require each covered contract or subcontract contain the clause for reporting using the new VETS–100A form for contracts entered into or modified on or after December 1, 2003. The new VETS–100A form was required to be used for the report to be filed by September 30, 2009.

This interim FAR rule re-titles FAR subpart 22.13 from "Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" to "Equal Opportunity for Veterans." Accordingly, FAR clause 52.222–35 is also renamed "Equal Opportunity for Veterans" and incorporates the new categories and definitions of protected veterans as established by DoL. In addition, the FAR clause at 52.222–37, "Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans," is renamed "Employment Reports on Veterans" and the new DoL requirements for using the VETS–100A report are incorporated. Lastly, the FAR provision at 52.222–38, "Compliance with Veterans' Employment Reporting Requirements," is revised to incorporate new title references for FAR 52.222–37 and the new report form VETS–100A.

The interim rule also makes conforming changes to the lists of FAR clauses in 52.212–5, 52.213–4, and 52.244–6.

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because contractors are already required to annually track and report their veteran workforces on the VETS–100 form in accordance with VEVRAA. This rule implements a new form, VETS–100A, that simply includes the revised categories of veterans for reporting purposes. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–46, FAR Case 2009–007) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 1293–0005 and 1215–0072.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the Department of Labor (DoL) final rule on Veterans' Employment and Training Service (VETS) published in the **Federal Register** at 73 FR 28710 on May 19, 2008, and a DoL final rule, published in the **Federal Register** on August 8, 2007, that implements amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA), as amended by the Jobs for Veterans Act (JVA). However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 22, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106, in the table following the introductory text, by removing from FAR segment 22.13 OMB

Control Number "1215–0072" and adding "1293–0005 and 1215–0072" in its place; and adding, in numerical sequence, FAR segment "52.222–37" and its corresponding OMB Control Number "1293–0005".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

■ 3. Revise the heading of subpart 22.13 to read as follows:

Subpart 22.13—Equal Opportunity for Veterans

■ 4. Revise sections 22.1300, 22.1301, and 22.1302 to read as follows:

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the following:

(a) The Vietnam Era Veterans' Readjustment Assistance Act of 1972 (38 U.S.C. 4211 and 4212) (the Act).

(b) The Veterans Employment Opportunities Act of 1998, Public Law 105–339.

(c) The Jobs for Veterans Act, Public Law 107–288.

(d) Executive Order 11701, January 24, 1973 (3 CFR, 1971–1975 Comp., p. 752).

(e) The regulations of the Secretary of Labor (41 CFR part 60–250, part 61–250, part 60–300, and part 61–300).

22.1301 Definitions.

As used in this subpart—

Armed Forces service medal veteran means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

Disabled veteran means—

(1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Other protected veteran means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

Qualified disabled veteran means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

Recently separated veteran means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.

United States, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

22.1302 Policy.

(a) Contractors and subcontractors, when entering into contracts or subcontracts subject to the Act, must—

(1) List all employment openings, with the appropriate employment service delivery system where the opening occurs, except for—

(i) Executive and senior management positions;

(ii) Positions to be filled from within the contractor's organization; and

(iii) Positions lasting three days or less.

(2) Take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, other protected veteran, and Armed Forces service medal veteran, in all employment practices.

(b) Except for contracts for commercial items or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted the required annual form VETS–100, Federal Contractor Veterans' Employment Report (VETS–100 Report and/or VETS–100A Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

22.1303 [Amended]

■ 5. Amend section 22.1303 by removing from paragraph (b) "Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible"; and removing from paragraph (c) "VETS–100 Report" and adding "VETS–100A Report" in its place.

■ 6. Amend section 22.1304 by revising the introductory text, and paragraph (a) to read as follows:

22.1304 Procedures.

To verify if a proposed contractor is current with its submission of the VETS–100 and/or the VETS–100A Report, the contracting officer may—

(a) Query the Department of Labor's VETS–100 Database via the Internet at *http://www.vets100.com/login.aspx.* Contracting officer organization, name, e-mail, telephone, and password information are required on the Contracting Officer Registration page to register for system use.

* * * * *

■ 7. Amend section 22.1305 by revising the introductory text of paragraph (a) to read as follows:

22.1305 Waivers.

(a) The Director, Office of Federal Contract Compliance Programs, Department of Labor, may waive any or all of the terms of the clause at 52.222–35, Equal Opportunity for Veterans, for—

* * * * *

■ 8. Revise section 22.1306 to read as follows:

22.1306 Department of Labor notices and reports.

(a) The contracting officer must furnish to the contractor appropriate notices for posting when they are prescribed by the Deputy Assistant Secretary of Labor (see *http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.*

(b) The Act requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans, unless all of the terms of the clause at 52.222–35, Equal Opportunity for Veterans, have been waived (*see* 22.1305). The contractor and subcontractor must use form VETS–100A, Federal Contractor Veterans' Employment Report, to submit the required reports (see *https://vets100.vets.dol.gov*).

22.1307 [Amended]

■ 9. Amend section 22.1307 by removing the words "Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible".

■ 10. Revise section 22.1308 to read as follows:

22.1308 Complaint procedures.

Following agency procedures, the contracting office must forward any complaints received about the administration of the Act to the Veterans' Employment and Training

Service of the Department of Labor, or to the Director, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Washington, DC 20210, or to any OFCCP regional, district, or area office or through the local Veterans' Employment Representative or designee, at the local State employment office. The Director, Office of Federal Contract Compliance Programs, is responsible for investigating complaints.

■ 11. Amend section 22.1309 by revising the introductory text, and paragraph (a) to read as follows:

22.1309 Actions because of noncompliance.

The contracting officer must take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222–35, Equal Opportunity for Veterans. These sanctions (see 41 CFR 60–300.66) may include—

(a) Withholding progress payments;

* * * * *

■ 12. Amend section 22.1310 by revising paragraphs (a) and (b) to read as follows:

22.1310 Solicitation provision and contract clauses.

(a)(1) Insert the clause at 52.222–35, Equal Opportunity for Veterans, in solicitations and contracts if the expected value is $100,000 or more, except when—

(i) Work is performed outside the United States by employees recruited outside the United States; or

(ii) The Director, Office of Federal Contract Compliance Programs, has waived, in accordance with 22.1305(a) or the head of the agency has waived, in accordance with 22.1305(b) all of the terms of the clause.

(2) If the Director, Office of Federal Contract Compliance Programs, or the head of the agency waives one or more (but not all) of the terms of the clause, use the basic clause with its Alternate I.

(b) Insert the clause at 52.222–37, Employment Reports on Veterans, in solicitations and contracts containing the clause at 52.222–35, Equal Opportunity for Veterans.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 13. Amend section 52.212–5 by revising the date of the clause, paragraphs (b)(24), (b)(26), and (e)(1)(v); and the date of Alternate II and paragraph (e)(1)(ii)(E) of Alternate II to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SEP 2010)

* * * * *

(b) * * *

__(24) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).

* * * * *

__(26) 52.222–37, Employment Reports on Veterans (SEP 2010) (38 U.S.C. 4212).

* * * * *

(e)(1) * * *

(v) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).

* * * * *

Alternate II (SEP 2010). * * *

* * * * *

(e)(1) * * *

(ii) * * *

(E) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212).

* * * * *

■ 14. Amend section 52.213–4 by revising the date of the clause, and paragraphs (a)(2)(vii), (b)(1)(iii) and (b)(1)(v) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (SEP 2010)

(a) * * *

(2) * * *

(vii) 52.244–6, Subcontracts for Commercial Items (SEP 2010).

* * * * *

(b) * * *

(1) * * *

(iii) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212) (applies to contracts of $100,000 or more).

* * * * *

(v) 52.222–37, Employment Reports on Veterans (SEP 2010) (38 U.S.C. 4212) (applies to contracts of $100,000 or more).

* * * * *

■ 15. Revise section 52.222–35 to read as follows:

52.222–35 Equal Opportunity for Veterans.

As prescribed in 22.1310(a)(1), insert the following clause:

EQUAL OPPORTUNITY FOR VETERANS (SEP 2010)

(a) *Definitions.* As used in this clause—

All employment openings means all positions except executive and senior management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

Armed Forces service medal veteran means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

Disabled veteran means—

(1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Executive and senior management means—(1) Any employee—

(i) Compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;

(ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(iii) Who customarily and regularly directs the work of two or more other employees; and

(iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or

(2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

Other protected veteran means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an

employer decides to consider applicants outside of its organization.

Qualified disabled veteran means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

Recently separated veteran means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(b) *General.* (1) The Contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:

(i) Recruitment, advertising, and job application procedures.

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.

(iii) Rate of pay or any other form of compensation and changes in compensation.

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

(v) Leaves of absence, sick leave, or any other leave.

(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor.

(vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.

(viii) Activities sponsored by the Contractor including social or recreational programs.

(ix) Any other term, condition, or privilege of employment.

(2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(3) The Department of Labor's regulations require contractors with 50 or more employees and a contract of $100,000 or more to have an affirmative action program for veterans. *See* 41 CFR part 60–300, subpart C.

(c) *Listing openings.* (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate employment service delivery system where the opening occurs. Listing employment openings with the State workforce agency job bank or with the local employment service delivery system where the opening occurs shall satisfy the requirement to list jobs with the appropriate employment service delivery system.

(2) The Contractor shall make the listing of employment openings with the appropriate employment service delivery system at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(e) *Postings.* (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and

(ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are disabled veterans are informed of the contents of the notice (*e.g.,* the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor. This includes implementing any sanctions imposed on a contractor by the Department of Labor for violations of this clause (52.222–35, Equal Opportunity for Veterans). These sanctions (see 41 CFR 60–300.66) may include—

(1) Withholding progress payments;

(2) Termination or suspension of the contract; or

(3) Debarment of the contractor.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (Dec 2001). As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

Notice: The following term(s) of this clause are waived for this contract: _____ [*List term(s)*].

16. Revise section 52.222–37 to read as follows:

52.222–37 Employment Reports on Veterans.

As prescribed in 22.1310(b), insert the following clause:

EMPLOYMENT REPORTS ON VETERANS (SEP 2010)

(a) *Definitions.* As used in this clause, "Armed Forces service medal veteran," "disabled veteran," "other protected veteran," and "recently separated veteran," have the meanings given in the Equal Opportunity for Veterans clause 52.222–35.

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor's workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS–100A,

entitled "Federal Contractor Veterans' Employment Report (VETS–100A Report)."

(d) The Contractor shall submit VETS–100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS–100A. The contractor's knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60–300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under 38 U.S.C. 4212.

(g) The Contractor shall insert the terms of this clause in subcontracts of $100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

■ 17. Amend section 52.222–38 by revising the date of the provision and the provision to read as follows:

52.222–38 Compliance with Veterans' Employment Reporting Requirements.

* * * * *

COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS (SEP 2010)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.,* if it has any contract containing Federal Acquisition Regulation clause 52.222–37, Employment Reports on Veterans), it has submitted the most recent VETS–100A Report required by that clause.

(End of provision)

■ 18. Amend section 52.244–6 by revising the date of the clause and paragraph (c)(1)(v) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (SEP 2010)

* * * * *

(c)(1) * * *

(v) 52.222–35, Equal Opportunity for Veterans (SEP 2010) (38 U.S.C. 4212(a));

* * * * *

[FR Doc. 2010–24218 Filed 9–28–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 25 and 52

[FAC 2005–46; FAR Case 2010–012; Item II; Docket 2010–0102, Sequence 1]

RIN 9000–AL71

Federal Acquisition Regulation; Certification Requirement and Procurement Prohibition Relating to Iran Sanctions

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 102 and partially implements section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010. Section 102 requires certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996, as amended (the Iran Sanctions Act). Section 106 imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of section 106 in FAR Case 2010–018.

DATES: *Effective Date:* September 29, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–46, FAR Case 2010–012, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010–012" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010–012." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010–012" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, *Attn:* Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–46, FAR Case 2010–012, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–46, FAR Case 2010–012.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements section 102 and partially implements section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), enacted July 1, 2010. Section 102, entitled "Expansion of Sanctions under the Iran Sanctions Act of 1996," requires that, not later than 90 days after the date of the enactment of Public Law 111–195, the FAR shall be revised to require a certification from each person that is a prospective contractor that the person, and any person owned or controlled by the person, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

This interim rule has added in FAR subpart 25.7 a new section 25.703, Prohibition on contracting with entities that engage in certain activities relating to Iran. This section provides a definition of "person" at FAR 25.703–1, which is applicable to both of the following subsections.

FAR 25.703–2 implements section 102 of Public Law 111–195. It explains the certification requirement at FAR 25.703–2(a) and provides a summary of the activities for which sanctions may be imposed, which are described in

more detail in section 5 of the Iran Sanctions Act.

Remedies are located at FAR 25.703–2(b). If the head of an executive agency determines that a person has submitted a false certification, the agency shall take one or more of the following actions:

(1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in FAR subpart 9.4.

(3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

Section 102 also provides that the remedies set forth shall not apply with respect to the procurement of eligible products, as defined in section 308(4) of the Trade Agreements Act of 1974 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)). The Councils interpreted this provision to mean that in acquisitions that are subject to trade agreements, eligible products from designated countries are not subject to the certification requirement (FAR 25.703–2(c)) or the remedies.

This interim rule establishes a waiver procedure at FAR 25.703–2(d), as authorized by the statute. The President may waive the requirement of subsection 25.703–2(a) on a case-by-case basis, if the President determines and certifies in writing to the appropriate congressional committees (Committee on Armed Services of the Senate, Committee on Finance of the Senate, Committee on Banking, Housing, and Urban Affairs of the Senate, Committee on Foreign Relations of the Senate, Committee on Armed Services of the House of Representatives, Committee on Ways and Means of the House of Representatives, Committee on Financial Services of the House of Representatives, and Committee on Foreign Affairs of the House of Representatives) that it is in the national interest to do so. "Appropriate congressional committees" is defined in section 101 of Public Law 111–195, which refers to section 14 of the Iran Sanctions Act, as amended by section 102 paragraph (f) of Public Law 111–195. In addition, section 102 amended section 6 of the Iran Sanctions Act to require certification in writing to the Committee on Armed Services of the Senate and Committee on Armed Services of the House of Representatives, in addition to the "appropriate congressional committees," as defined in section 14 of the Iran Sanctions Act. The President may delegate this authority.

The statutory certification requirement is communicated to offerors through a new provision at FAR 52.225–25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification. This requirement is also applied to acquisition of commercial items at FAR 52.212–3, paragraph (o) (*see* Section B, Determinations). Offerors will also be able to make an annual certification through the Online Representations and Certifications Application (ORCA), if the offeror is registered in the Central Contractor Registration. Therefore, conforming changes have been made to FAR part 4 and the FAR clause at 52.204–8, Annual Representations and Certifications.

Section 106 of Public Law 111–195 (22 U.S.C. 8515) is partially implemented in new FAR subsection 25.703–3. Agencies are prohibited from entering into or extending a contract for the procurement of goods or services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System. There will be further implementation of section 106 in FAR Case 2010–018.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Determinations

The Federal Acquisition Regulatory (FAR) Council has made the following determinations with respect to the rule's applicability of section 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), to contracts in amounts not greater than the simplified acquisition threshold (SAT), contracts for the acquisition of commercial items, and contracts for the acquisition of commercially available off-the-shelf (COTS) items.

1. Applicability to Contracts at or Below the Simplified Acquisition Threshold

Section 4101 of Pub. L. 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 429), governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to them. FASA provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. Therefore, given that the requirements of sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 were enacted to widen the sanctions against Iran, the FAR Council has determined that it is in the best interest of the Federal Government to apply this rule to all acquisitions including contracts at or below the SAT, as defined at FAR 2.101. An exception for acquisitions at or below the SAT would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

2. Applicability to Contracts for the Acquisition of Commercial Items

Section 8003 of Public Law 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 430), governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items.

FASA provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Therefore, given that the requirements of sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 were enacted to widen the sanctions against Iran, the FAR Council has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial items would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

3. Applicability to Contracts for the Acquisition of (COTS) Items

Section 4203 of Public Law 104–106, the Clinger-Cohen Act of 1996 (41 U.S.C. 431), governs the applicability of laws to contracts for the acquisition of COTS items, and is intended to limit the applicability of laws to them. Clinger-Cohen provides that if a provision of law contains criminal or civil penalties, or if the Administrator for Federal Procurement Policy makes a written

determination that it is not in the best interest of the Federal Government to exempt contracts for the acquisition of COTS items, the provision of law will apply. Therefore, given that the requirements of sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 were enacted to widen the sanctions against Iran, the Administrator for Federal Procurement Policy has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of COTS items, as defined at FAR 2.101. An exception for contracts for the acquisition of COTS items would exclude a significant portion of Federal contracting and the contractors who provide these products and services, thereby undermining the overarching public policy purpose of the law.

C. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule will only have significant impact on an offeror that is engaging in an activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act or that is exporting sensitive technology to Iran. Domestic entities generally do not engage in activity that would cause them to be subject to the procurement bans described in this rule due to current restrictions on trade with Iran (*see, e.g.,* Department of the Treasury Office of Foreign Assets Control regulations at 31 CFR 560). Accordingly, it is expected that the number of domestic entities significantly impacted by this rule will be minimal, if any. The Regulatory Flexibility Act is for the protection of United States small entities, not foreign entities. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–46, FAR Case 2010–012) in all correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the rule implements sections 102 and 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), which was signed on July 1, 2010. Section 102 must be implemented within 90 days (*i.e.,* September 29, 2010). Section 106 was effective upon enactment banning activity that takes place on or after the date that is 90 days after enactment. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 4, 25, and 52

Government procurement.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Amend section 4.1202 by redesignating paragraphs (bb), (cc), and (dd) as paragraphs (cc), (dd), and (ee), respectively, and adding a new paragraph (bb) to read as follows:

4.1202 Solicitation provision and contract clause.

* * * * *

(bb) 52.225–25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification.

* * * * *

PART 25—FOREIGN ACQUISITION

■ 3. Revise section 25.700 to read as follows:

25.700 Scope of subpart.

This subpart implements—

(a) Economic sanctions administered by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury prohibiting transactions involving certain countries, entities, and individuals;

(b) The Sudan Accountability and Divestment Act of 2007 (Pub. L. 110–174);

(c) The Iran Sanctions Act of 1996 (Iran Sanctions Act) (Pub. L. 104–172; 50 U.S.C. 1701 note), including amendments by the Iran Freedom Support Act (Pub. L. 109–293) and section 102 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195); and

(d) Section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8515).

■ 4. Amend section 25.701 by revising the section heading to read as follows:

25.701 Restrictions administered by the Department of the Treasury on acquisitions of supplies or services from prohibited sources.

* * * * *

■ 5. Add sections 25.703 through 25.703–3 to read as follows:

25.703 Prohibition on contracting with entities that engage in certain activities relating to Iran.

25.703–1 Definition.

Person—

(1) Means—

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

25.703–2 Iran Sanctions Act.

(a) *Certification.*

(1) As required by the Iran Sanctions Act, unless an exception applies or a waiver is granted in accordance with paragraph (c) or (d) of this subsection, each offeror must certify that the offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act.

(2) In general, the following activities, which are described in detail in section 5 of the Iran Sanctions Act, are activities for which sanctions may be imposed on or after July 1, 2010—

(i) Knowingly making an investment of $20,000,000 or more, or a combination of investments of $5,000,000 or more that equal or exceed $20,000,000 in a 12-month period, that directly and significantly contribute to the enhancement of Iran's ability to develop petroleum resources.

(ii) Knowingly selling, leasing or providing to Iran goods, services, technology, information, or support with a fair market value of $1,000,000 or more, or during a 12-month period with an aggregate fair market value of $5,000,000 or more, that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products, including any direct and significant assistance with respect to the construction, modernization, or repair of petroleum refineries.

(iii) Knowingly selling or providing to Iran refined petroleum products with a fair market value of $1,000,000 or more, or during a 12-month period with an aggregate fair market value of $5,000,000 or more.

(iv) Knowingly selling, leasing, or providing to Iran goods, services, technology, information, or support with a fair market value of $1,000,000 or more, or during a 12-month period with an aggregate fair market value of $5,000,000 or more, that could directly and significantly contribute to the enhancement of Iran's ability to import refined petroleum products, including—

(A) Certain insurance or reinsurance, underwriting, financing, or brokering for the sale, lease, or provision of such items, or

(B) Providing ships or shipping services to deliver refined petroleum products to Iran.

(v) Exporting, transferring, or otherwise providing to Iran any goods, services, technology or other items knowing that it would contribute materially to the ability of Iran to acquire or develop chemical, biological, or nuclear weapons or related technologies, or acquire or develop destabilizing numbers and types of advanced conventional weapons.

(b) *Remedies.* Upon the determination of a false certification under paragraph (a) of this subsection, the agency shall take one or more of the following actions:

(1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in subpart 9.4.

(3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.

(c) *Exception for trade agreements.* The certification requirements of paragraph (a) of this subsection do not apply with respect to the procurement of eligible products, as defined in section 308(4) of the Trade Agreements Act of 1974 (19 U.S.C. 2518(4)), of any foreign country or instrumentality designated under section 301(b) of that Act (19 U.S.C. 2511(b)) (*see* subpart 25.4).

(d) *Waiver.* (1) The President may waive the requirement of subsection 25.703–2(a) on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees (Committee on Armed Services of the Senate, Committee on Finance of the Senate, Committee on Banking, Housing, and Urban Affairs of the Senate, Committee on Foreign Relations of the Senate, Committee on Armed Services of the House of Representatives, Committee on Ways and Means of the House of Representatives, Committee on Financial Services of the House of Representatives, and Committee on Foreign Affairs of the House of Representatives) that it is in the national interest to do so.

(2) An agency or contractor seeking a waiver of the requirement shall submit the request through the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP shall consult with the President's National Security Council, the Office of Terrorism and Financial Intelligence in the Department of the Treasury, and the Office of Terrorism Finance and Economic Sanctions Policy, Bureau of Economic, Energy, and Business Affairs in the State Department, allowing sufficient time for review and approval.

(3) In general, all waiver requests should include the following information:

(i) Agency name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(ii) Offeror's name, complete mailing address, and point of contact name, telephone number, and e-mail address.

(iii) Description/nature of product or service.

(iv) The total cost and length of the contract.

(v) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that conducts activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(vi) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System (including the Federal Awardee Performance Information and Integrity System at *http://www.ppirs.gov*) and any other relevant information).

(vii) Information regarding the offeror's relationship or connection with other firms that conduct activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(viii) The activities in which the offeror is engaged for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

25.703–3 Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, section 106.

The head of an executive agency may not enter into or extend a contract for the procurement of goods or services with a person that exports certain sensitive technology to Iran, as determined by the President and listed on the Excluded Parties List System at *https://www.epls.gov/.*

■ 6. Amend section 25.1103 by adding paragraph (e) to read as follows:

25.1103 Other provisions and clauses.

* * * * *

(e) The contracting officer shall include in each solicitation for the acquisition of products or services the provision at 52.225–25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.204–8 by—

■ a. Revising the date of the clause;

■ b. Adding a sentence to the end of paragraph (c)(1)(xviii); and

■ c. Redesignating paragraph (c)(1)(xix) as paragraph (c)(1)(xx), and adding a new paragraph (c)(1)(xix).

The revised and added text reads as follows:

52.204–8 Annual Representations and Certifications.

* * * * *

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (SEP 2010)

* * * * *

(c)(1) * * *

(xviii) * * * This provision applies to all solicitations.

(xix) 52.225–25, Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification. This provision applies to all solicitations.

* * * * *

■ 8. Amend section 52.212–3 by—

■ a. Revising the date of the clause;

■ b. Removing from the introductory text "through (m) of" and adding "through (o) of" in its place;

■ c. Removing from the first undesignated paragraph of (b)(2) "*through (n) of*" and adding "*through (o) of*" in its place; and

■ d. Adding paragraph (o).

The revised and added text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (SEP 2010)

* * * * *

(o) Sanctioned activities relating to Iran. (1) Unless a waiver is granted or an exception applies as provided in paragraph (o)(2) of this provision, by submission of its offer, the offeror certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996.

(2) The certification requirement of paragraph (o)(1) of this provision does not apply if—

(i) This solicitation includes a trade agreements certification (*e.g.,* 52.212–3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

* * * * *

■ 9. Add section 52.225–25 to read as follows:

52.225–25 Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification.

As prescribed at 25.1103(e), insert the following provision:

PROHIBITION ON ENGAGING IN SANCTIONED ACTIVITIES RELATING TO IRAN—CERTIFICATION (SEP 2010)

(a) *Definition.*

Person—

(1) Means—

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

(b) *Certification.* Except as provided in paragraph (c) of this provision or if a waiver has been granted in accordance with FAR 25.703–2(d), by submission of its offer, the offeror certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act of 1996. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons.

(c) *Exception for trade agreements.* The certification requirement of paragraph (b) of this provision does not apply if—

(1) This solicitation includes a trade agreements certification (*e.g.,* 52.225–4, 52.225–11 or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

[FR Doc. 2010–24165 Filed 9–28–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 12, 15, 42, and 49

[FAC 2005–46; FAR Case 2008–016; Item III; Docket 2009–0032, Sequence 1]

RIN 9000–AL45

Federal Acquisition Regulation; Termination for Default Reporting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to establish procedures for contracting officers to provide contractor information, such as terminations for cause or default and defective cost or pricing data, into the Past Performance Information System (PPIRS) and Federal Awardee Performance and Integrity Information System (FAPIIS) module within PPIRS. This information will assist the contracting officer in making an informed source selection and award decision. Instructions on access to the FAPIIS module and how to input data into the FAPIIS module will be available at *http://www.ppirs.gov/fapiis.html.*

DATES: *Effective Date:* October 29, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Jeritta Parnell, Procurement Analyst, at (202) 501–4082. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–46, FAR case 2008–016.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed on a final rule amending the FAR to revise the contractor performance information process. This case sets forth requirements for contracting officers to report defective cost or pricing data and terminations for cause or default into the FAPIIS module of the PPIRS. Evaluation of past performance information, especially terminations, manages risks associated with timely, effective, and cost efficient completion of contracts, a key objective of the President's March 4, 2009, Memorandum on Government Contracting.

The Councils published in the **Federal Register** at 74 FR 45394 on September 2, 2009, a proposed rule with request for comments. Four respondents submitted fifteen comments.

B. Discussion of Public Comments

The comments received were grouped under six general topics. A summary of these topics and a discussion of the comments and the changes made to the proposed rule as a result of those comments are provided below:

1. Certification Regarding Responsibility Matters

Comment: One respondent recommended deletion of the certification on terminations found in FAR clause 52.209–5, Certification Regarding Responsibility Matters, since the information concerning terminations will be available to contracting officers in PPIRS. The respondent further suggested that conforming deletions should also be made at FAR 52.204–8(c)(1)(v) and in the Online Representations and Certifications Application (ORCA) Web site.

Response: The Councils disagree. PPIRS is the repository for

determinations made by contracting officers. PPIRS is not a repository for certifications made by contractors when certifications are required. Executive order 12689 requires the inclusion of the certification at FAR 52.209–5. FAR 9.105–1 also requires contracting officers to consider contractor certifications in making a contractor determination of responsibility.

2. Contractor Rebuttal

Comment: Two of the four respondents submitted comments requesting that the contractor be given an opportunity to post rebutting statements and additional information into PPIRS and this information be retained as long as the fundamental information is retained in PPIRS.

Response: When termination records are posted in the FAPIIS module of PPIRS, contractors will have an opportunity to provide additional information as required by section 872 of the Duncan Hunter National Defense Authorization Act of 2009 (Pub. L. 110–417). This process should not be confused with the rebuttal process for past performance information as specified in FAR 42.1503(b).

3. Defective Pricing Information

Comment: One respondent submitted two separate comments suggesting that defective pricing information not be included in PPIRS.

Response: The Councils disagree. The Councils believe that defective cost or pricing data is relevant to other contractor performance information to be considered when evaluating contractor's performance for award of contracts. However, the Councils did clarify in FAR 15.407–1(d) and 42.1503(f) that the contracting officer shall report only the final determination.

4. Relevance and Currency

Comment: One respondent submitted two separate comments on relevance and currency. One comment stated that the FAR does not provide any guidance with respect to relevance when determining the relevance and currency of any termination for cause or default information in PPIRS. The second comment suggested that the rule explain how the contracting officer will evaluate defective pricing information recorded in PPIRS.

Response: The Councils disagree with revising the rule. Relevancy is specific to the instant contract and based on the circumstances of contract performance. Contracting officers are responsible for making a determination of the relevancy of the information. The Councils will work with the Federal Acquisition Institute and the Defense Acquisition University to develop guidance and training for contracting officials on the proper use of the reported information.

5. Removal of Detrimental Information

Comment: Two respondents submitted comments concerning removal of detrimental information from PPIRS. One comment suggested that the Government remove unfavorable information from PPIRS should it no longer be valid. For example, when terminations for cause or default are converted to termination for convenience or withdrawn the contracting officer should remove from PPIRS any reference to the termination for default. The respondent recommended changing the language at FAR 8.406–8 and 12.403.

Response: The Councils disagree that a change to the rule is necessary. The language at FAR 8.406–4(e), 12.403(c)(4), 15.407–1, and 49.402–8 states that the contracting officer shall report a subsequent withdrawal or a conversion to a termination for convenience in accordance with FAR 42.1503(f).

Comment: Another respondent suggested the Government should be held to the same high standard of record keeping as no system is infallible. Determination of malice and intent should be made before contract termination occurs. Follow-up systems should be in place to make sure that when an error occurs and is corrected that the Government does hold up its side of the bargain and remove detrimental information.

Response: Comment noted. Throughout the revised coverage, language was added that in the event a termination for cause is subsequently converted to a termination for convenience, or otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported in accordance with FAR 42.1503(f).

6. Timing of Posting of Defective Pricing Information

Five comments were received from two respondents regarding the timing and posting of defective pricing information.

Comment: The respondents believe that it is not clear that the intent of this language is to post this information before or after a defective pricing case has been resolved.

Response: The Councils agree. Language was clarified at FAR 15.407–1 to add the word "final" before determination in the coverage. In addition, a requirement was added to update PPIRS.

Comment: One respondent expressed concern that posting within 10 days is not likely to happen.

Response: The Councils disagree. There were no objections to the 10-day timeframe made by the agencies during the proposed rule comment period. The 10-day timeframe was changed to 3 working days to be synonymous with the requirements of FAPIIS.

Summary of Major Changes to the Proposed Rule

- New coverage at FAR 8.406–8 was moved to FAR 8.406–4(e).
- Language was clarified at FAR 15.407–1 to add "contracting officer's final" before "determination" in the coverage. A requirement was added to update PPIRS.
- In FAR 42.1503, the 10-day timeframe was changed to 3 working days to be synonymous with the requirements of FAPIIS. Language was clarified on what a "conversion" is. Language was added to address agency focal points.

This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on small entities. The collection and reporting of past performance information is an internal process to the Government. The rule merely puts into effect the internal requirement that contracting officers report defective cost or pricing data and terminations for cause or default into PPIRS.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 8, 12, 15, 42, and 49

Government procurement.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 8, 12, 15, 42, and 49 as set forth below:

■ 1. The authority citation for 48 CFR parts 8, 12, 15, 42, and 49 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

Part 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. Amend section 8.406–4 by adding paragraph (e) to read as follows:

8.406–4 Termination for cause.

* * * * *

(e) *Reporting.* An ordering activity contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are reported. In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported. All reporting shall be in accordance with 42.1503(f).

Part 12—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 12.403 by adding paragraph (c)(4) to read as follows:

12.403 Termination.

* * * * *

(c) * * *

(4) The contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are reported. In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported. All reporting shall be in accordance with 42.1503(f).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 4. Amend section 15.407–1 by revising paragraph (d) to read as follows:

15.407–1 Defective cost or pricing data.

* * * * *

(d) For each advisory audit received based on a postaward review that indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The contracting officer shall prepare a memorandum documenting both the determination and any corrective action taken as a result. The contracting officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). A copy of the memorandum or other notice of the contracting officer's determination shall be provided to the contractor. When the contracting officer determines that the contractor submitted defective cost or pricing data, the contracting officer, in accordance with agency procedures, shall ensure that information relating to the contracting officer's final determination is reported in accordance with 42.1503(f). Agencies shall ensure updated information that changes a contracting officer's prior final determination is reported into the FAPIIS module of PPIRS in the event of a—

(1) Contracting officer's decision in accordance with the Contract Disputes Act;

(2) Board of Contract Appeals decision; or

(3) Court decision.

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 5. Amend section 42.1502 by adding paragraph (i) to read as follows:

42.1502 Policy.

* * * * *

(i) Agencies shall promptly report other contractor information in accordance with 42.1503(f).

■ 6. Amend section 42.1503 by revising paragraph (a) and adding paragraph (f) to read as follows:

42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service. Agency procedures shall identify those responsible for preparing interim and final evaluations. Those individuals identified may obtain information for the evaluation of performance from the program office, administrative contracting office, audit office, end users of the product or service, and any other technical or business advisor, as appropriate. Interim evaluations shall be prepared as required, in accordance with agency procedures.

* * * * *

(f) *Other contractor information.* (1) Agencies shall ensure information is reported in the FAPIIS module of PPIRS within 3 working days after a contracting officer—

(i) Issues a final determination that a contractor has submitted defective cost or pricing data;

(ii) Makes a subsequent change to the final determination concerning defective cost or pricing data pursuant to 15.407–1(d);

(iii) Issues a final termination for cause or default notice; or

(iv) Makes a subsequent withdrawal or a conversion of a termination for default to a termination for convenience.

(2) Agencies shall establish focal points and register users to report data into the FAPIIS module of PPIRS (available at *http://www.cpars.csd.disa.mil,* then select FAPIIS). Instructions on reporting are available at *http://www.ppirs.gov* and at *http://www.ppirs.gov/fapiis.html.*

PART 49—TERMINATION OF CONTRACTS

■ 7. Add section 49.402–8 to read as follows:

49.402–8 Reporting information.

The contracting officer, in accordance with agency procedures, shall ensure that information relating to the termination for default notice and a subsequent withdrawal or a conversion to a termination for convenience is reported in accordance with 42.1503(f).

[FR Doc. 2010–24214 Filed 9–28–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAC 2005–46; FAR Case 2008–008; Item IV; Docket 2009–0036, Sequence 1]

RIN 9000–AL42

Federal Acquisition Regulation; Award-Fee Language Revision

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), and the Office of Federal Procurement Policy guidance memorandum dated December 4, 2007 entitled, Appropriate Use of Incentive Contracts.

DATES: *Effective Date:* October 29, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward Chambers, Procurement Analyst, at 202–501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–46, FAR Case 2008–008.

SUPPLEMENTARY INFORMATION:

A. Background

This rule implements the provisions of section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), and the Office of Federal Procurement Policy guidance memorandum dated December 4, 2007, entitled "Appropriate Use of Incentive Contracts," by amending and/or integrating where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

This final rule adopts the interim rule with one change for clarification. This clarification entails the addition of the phrase "in the aggregate" to FAR 16.401(e)(2), Table 16–1, and FAR 16.401(e)(3)(v), to make it clear that the objective is to consider the contractor's cost, schedule, and technical performance in the aggregate when performing award-fee assessments.

B. Discussion and Analysis

An interim rule with request for comments was published in the **Federal Register** on October 14, 2009 (74 FR 52856). The FAR Secretariat received seven responses to the interim rule. These responses included a total of 22 comments on 15 issues. Each issue is discussed in the following sections.

1. Change in DFARS Rule Required

Comment: One respondent wrote that this interim rule, without concurrent change to DFARS, particularly in allowing higher fixed fee, negates the value of this rule change.

Response: DoD is considering a possible DFARS case to address this concern. The Councils further note that the rationale for allowing a higher fixed fee is not clear in this comment. In reading the comment in total, a reasonable inference is that the respondent meant to address base fee and not fixed fee.

2. Clarification Regarding Award-Fee Rating Definitions

Comment: Two respondents commented on the need to clarify whether an unsatisfactory evaluation in one category (*e.g.,* cost) requires an overall unsatisfactory rating and thus no award fee in any category (*e.g.,* schedule and technical) for the evaluation period.

Response: The Council's intent with the use of "overall cost, schedule, and technical performance in the aggregate" is to avoid the situation where, for example, contractors would receive no award fee in an evaluation period if they were rated below satisfactory on one of the criteria (*e.g.,* in schedule performance) and above satisfactory in other criteria (*e.g.,* technical and cost performance). The Councils believe that this would not be equitable. In such a situation, the contractor could receive a reduced percentage of the award-fee amount to account for the below satisfactory schedule performance, but they would not receive 100 percent of the award-fee amount, nor would they receive zero award fee for that evaluation period. The final rule adds clarifying language of "in the aggregate" to FAR 16.401(e)(2), Table 16–1, and FAR 16.401(e)(3)(v), to make it clear that the objective is to consider overall cost, schedule, and technical performance in performing award-fee assessments.

3. Requested Clarification as to Whether Firm Fixed Price Award-Fee Contract Is an Incentive Fee Type Contract

Comment: One respondent recommended that the FAR be clarified as to whether a firm-fixed-price award-fee contract is an incentive-type contract citing that the language in FAR 16.404, FAR 16.202–1, and FAR 16.401(a) appears to be contradictory.

Response: The Councils take no position on this recommendation because it is outside the scope of this case, which was limited to the implementation of the section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), and the Office of Federal Procurement Policy guidance memorandum dated December 4, 2007, entitled "Appropriate Use of Incentive Contracts."

4. Permit Use of Rollover Within Certain Parameters

Comment: Three respondents recommended that the language prohibiting the use of rollover be revised to allow rollover under certain circumstances and at the discretion of the head of the contracting activity. Respondents contend that rollover can be an effective incentive tool if used properly.

Response: The Councils disagree with the respondents. Award fee is structured to incentivize contractors to perform throughout the contract. Therefore, rollover of unearned award fee provides a disincentive for contractors to perform throughout the entire period of performance. If a contractor did not perform adequately during an award-fee rating period and was rated appropriately and then allowed to recover that unearned award fee in a subsequent period, the incentive for the contractor to perform consistently throughout the entire contract would be reduced.

5. Interim Rule Presumes Award-Fee Determinations Represent Only Subjective Measures and Not Objective Measures as Well

Comment: One respondent recommended that the language in FAR 16.401(e)(1)(i) be revised to address the concept that in addition to subjective award-fee performance measures that we also include the use of objective performance measures.

Response: The Councils disagree with this recommendation. A key tenet in determining if an award-fee incentive is suitable for an acquisition is whether one can devise predetermined objective incentives applicable to cost, schedule, and technical performance. If one can, then an award-fee incentive is not appropriate and an incentive arrangement based on predetermined formula-type incentives should be utilized instead.

6. Eliminate Risk and Cost-Benefit Analysis

Comment: Two respondents recommended deleting the requirement to perform a risk and cost-benefit analysis stating that the content and methodology for this analysis is not specified.

Response: The Councils disagree with this recommendation. The FAR currently requires that no award-fee contract shall be awarded unless the contract amount, performance period, and expected benefits are sufficient to warrant the additional administrative effort. This requirement was reinforced in the Office of Federal Procurement Policy guidance memorandum dated December 4, 2007, entitled "Appropriate Use of Incentive Contracts." The Councils believe it is within the purview of each Federal agency to provide supplemental guidance on how to perform this analysis.

7. Contractor Should Be Allowed To Earn Award Fee Even if Performance Is Less Than Satisfactory

Comment: One respondent wrote that under an award-fee contract, even when performance is less than satisfactory, there should be some level of fee earnings but potentially at a significantly decreased rate of earnings since the Government received some benefit from the work accomplished. The respondent maintained that even under a fixed-fee contract, a contractor can still earn some amount of fee, even when performance is less than satisfactory. The respondent recommended that Table 16–1 include an additional rating category, entitled "less than satisfactory," with a percentage range from 2 percent–48 percent as well as changing "is below satisfactory" in FAR 16.401(e)(3)(v) to "fail to meet the basic requirements of the contract".

Response: The Councils disagree with this recommendation. Section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) and section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) were very clear that the FAR "shall ensure that no award fee may be paid for contractor performance that is judged to be below satisfactory performance". The Councils note that the regulations do allow the use of a base fee in an award-fee incentive arrangement.

8. Award-Fee Determination Being Unilateral Decision

Comment: One respondent recommended that the language in FAR 16.401(e)(2) regarding the award-fee determination being a unilateral decision by the Government be struck since the Courts have determined that such decisions are reviewable under the Contract Disputes Act.

Response: The Councils agree that award-fee determinations are reviewable under the Contract Disputes Act but the language in this section does not address that issue. This language in FAR 16.401(e)(2) was included to point out that while the award-fee determination may be subject to the Contract Disputes Act, it is still a unilateral decision by the Government.

9. Consider Different Language Relative to Adjectival Rating Descriptions

Comment: One respondent recommended replacing the word "supplement" with "tailor" in the FAR 16.401(e)(3)(iv) sentence, contracting officers may supplement the adjectival rating description.

Response: The Councils believe that these descriptions cannot be tailored but can be supplemented to fit the specific needs of the acquisition based upon the requirements in section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) and section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), which stated: The FAR "shall establish standards for determining the percentage of the available award fee, if any, which contractors should be paid for performance * * * ".

10. Clarification Regarding Adjectival Descriptions

Comment: One respondent wrote that the imprecise adjective modifiers in Table 16–1 could be problematic since what distinguishes "almost all of" from "many" or what establishes a "significant" criterion for "insignificant" criterion. A second respondent recommended revising Table 16–1 to delete the requirement to "exceed" significant award-fee criteria to earn a better than satisfactory rating.

Response: The Councils disagree and maintain that the term "exceeds" is a reasonable term to differentiate contractor performance between the various ratings. In addition, the adjectives used in the rating table adequately distinguish between the different rating levels and provide the contracting officer with the flexibility to supplement the descriptions as appropriate.

11. Published as Interim Rule

Comment: One respondent wrote that they were disappointed that this rule change was published as an interim rule and not a proposed rule and recommended that the Councils publish rules of this magnitude as proposed rules in the future.

Response: The Councils issued a statement of urgency which was published in the **Federal Register** notice with this interim rule.

12. Stringent Adjectival Ratings

Comment: One respondent wrote that since Table 16–1 adjectival rating descriptions and associated percentages are so stringent, the final rule should specify that the available award-fee pool must be at least 20 percent of estimated costs for complex development contracts.

Response: The Councils do not believe that a pre-established award-fee floor is appropriate since the contracting officer negotiates a fair and reasonable award-fee pool for each acquisition based upon the effort and risk associated with that acquisition.

13. Consider Different Rating Definitions

Comment: One respondent wrote that the final rule should include the rating definitions from the Office of the Under Secretary of Defense/Acquisition, Technology, and Logistics/Defense Procurement and Acquisition Policy memorandum dated April 24, 2007, since these ratings are based on meeting a higher percentage of award-fee criteria in order to earn higher ratings.

Response: The Councils disagree. The two rating scales are very similar but the FAR rating scale provides contracting officers with more latitude in assigning ratings against subjective criteria.

14. Utilization of Base Fee

Comment: Two respondents commented on the utilization of base fee. One respondent recommended that the final rule encourage contracting officers to award base fee on cost-plus-award-fee (CPAF) contracts subject only to the statutory restrictions on fee cited at FAR 15.404–4(c)(4)(i). A second respondent suggested that a minimum fee be referenced in the base amount of fee noted in FAR 16.405–2.

Response: The Councils believe that the contracting officer negotiates a fair and reasonable profit or fee for each acquisition based upon the effort and risk associated with that acquisition. Consequently, it would not be appropriate to encourage the use of or set a minimum base-fee rate, since the establishment of base fee is subject to negotiation and the specific circumstances of each acquisition.

15. Eliminate Requirement Relative to Completing a Determination and Finding

Comment: One respondent wrote that the requirement in the interim rule for a determination and finding (D&F) was redundant with other FAR requirements and increases the workload of overburdened contracting officers without providing any value added. The respondent recommended deleting this requirement in the final rule.

Response: The Councils appreciate the respondent's concern for the contracting officer's workload but disagree with eliminating this requirement from the final rule. The completion of the D&F and Head of Contracting Agency approval satisfy the requirements in section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) and section 867 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417) to establish the appropriate approval level for using award-fee contracts. They are also necessary to ensure that the suitability factors to use an award-fee contract are properly addressed and documented because of the large investment of resources required to administer an award-fee contract.

C. Regulatory Planning and Review

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1933. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule largely covers a broad range of aspects of award-fee contracting, whose upshot will be a more consistent use and administration of award fees Governmentwide which will provide a small benefit to all entities both large and small. In addition, the changes promulgated in this final rule do not directly affect the current business processes of Federal contractors. In the matter of the rule's prohibition on the rollover of unearned award fee, the Councils believe this will have a negligible impact on small businesses for the following reasons. First, award-fee contracts are largely the province of large businesses with large dollar contracts. Second, the ability to roll over unearned award fee may have caused evaluators in the past to be more conservative in their ratings because of their awareness that contractors may have a second opportunity to earn unearned award fees.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Accordingly, the interim rule published in the **Federal Register** at 74 FR 52856 on October 14, 2009, is adopted as a final rule with the following changes:

PART 16—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

16.401 [Amended]

■ 2. Amend section 16.401 by—

■ a. Removing from paragraph (e)(2) the words "performance is" and adding "performance in the aggregate is" in its place each time it appears (twice);

■ b. Removing from Table 16–1 that follows paragraph (e)(3)(iv) the words "contract as" and adding "contract in the aggregate as" in its place each time it appears (five times); and

■ c. Removing from paragraph (e)(3)(v) the words "performance is" and adding "performance in the aggregate is" in its place.

[FR Doc. 2010–24161 Filed 9–28–10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2005–46; FAR Case 2009–020; Item V; Docket 2010–0103, Sequence 1]

RIN 9000–AL68

Federal Acquisition Regulation; Offering a Construction Requirement—8(a) Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to revise FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), to conform to the Small Business Administration (SBA) regulations. The FAR Council did not publish this rule for comment because this change will not have a significant effect beyond the internal operating procedures of the Government and will not have a significant effect on contractors or offerors. Furthermore, this requirement has existed in the Small Business Administration Regulations since January 1, 2009, and the FAR is being updated to conform to these regulations. This revision changes the location for submitting offering letters to SBA for a construction requirement for which a specific offeror is nominated and impacts internal procedures that the contracting officer is now required to follow.

DATES: *Effective Date:* October 29, 2010

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–46, FAR case 2009–020.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the FAR to revise FAR 19.804–2(b) to conform to the SBA regulation 13 CFR 124.502(b)(3). The current FAR requires sole source offerings for construction

requirements be submitted to the SBA District Office for the geographical area where the work is to be performed. However, the SBA regulation requires the offering letters for sole source requirements offered on behalf of a specific participant be submitted to the SBA district office servicing that concern.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–3(a) and 41 U.S.C. 418b, and publication for public comments is not required.

The Councils will consider comments from small entities concerning the existing regulations in the part affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–46, FAR Case 2009–020) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 19.804–2 by—

■ a. Revising paragraph (b)(1); and

■ b. Redesignating paragraph (b)(2) as paragraph (b)(3); and adding a new paragraph (b)(2).

■ The revised and added text reads as follows:

19.804–2 Agency offering.

* * * * *

(b)(1) An agency offering a construction requirement for which no specific offeror is nominated should submit it to the SBA District Office for the geographical area where the work is to be performed.

(2) An agency offering a construction requirement on behalf of a specific offeror should submit it to the SBA District Office servicing that concern.

* * * * *

[FR Doc. 2010–24163 Filed 9–28–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 2005–46; FAR Case 2009–028; Item VI; Docket 2010–0097, Sequence 1]

RIN 9000–AL64

Federal Acquisition Regulation; Encouraging Contractor Policies To Ban Text Messaging While Driving

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order 13513, issued on October 1, 2009, entitled "Federal Leadership on Reducing Text Messaging while Driving." This Executive Order was issued to demonstrate Federal leadership in improving safety on the nation's roads and highways, and to enhance the efficiency of Federal contracting. The purpose of this policy is to prevent the unsafe practice of text messaging by Federal contractors while driving in connection with Government business. This policy further promotes economy and efficiency in Federal procurement, and seeks to prohibit the disruption of Government business and Federal procurement, as a result of unsafe text messaging practices.

DATES: *Effective Date:* September 29, 2010.

Applicability Date: The rule applies to solicitations issued and contracts awarded on or after September 29, 2010. However, contracting officers are encouraged to modify existing contracts, in accordance with FAR 1.108(d)(3), to include the FAR clause.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–46, FAR Case 2009–028, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–028" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2009–028." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–028" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, *Attn:* Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–46, FAR Case 2009–028, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. William Clark, Procurement Analyst, at (202) 219–1813. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–46, FAR Case 2009–028.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule revises the Federal Acquisition Regulation to implement Executive Order 13513, issued on October 1, 2009 (74 FR 51225, October 6, 2009), entitled "Federal Leadership on Reducing Text Messaging while Driving."

Text messaging while driving causes drivers to take their eyes off the road and at least one hand off the steering wheel, endangering both themselves and others. In order to implement the Executive order, this interim rule creates a new subpart in FAR part 23 and an associated clause to encourage Federal contractors and subcontractors to adopt and enforce policies that ban text messaging while driving—

• Company-owned or -rented vehicles or Government-owned vehicles; or

• Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

It also encourages Federal contractors, in connection with a Government contract, to conduct initiatives, commensurate with the size of the business, such as—

• Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

• Education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving.

The clause does not flow down to subcontracts below the micro-purchase level, because the FAR applies only a very few clauses to acquisitions below the micro-purchase threshold. According to FAR 13.201(d), micro-purchases do not require provisions or clauses except as provided in FAR 4.1104 (Central Contractor Registration) and FAR 32.1110 (Electronic Funds Transfer). Therefore, it is reasonable not to require flow down below the micro-purchase level. However, Federal Contractors are encouraged to comply with this requirement to prevent the unsafe practice of text messaging while driving in connection with Government business. This requirement applies to all solicitations and contracts. This requirement also applies to grants and cooperative agreements. Separate guidance may be issued by the Office of Federal Financial Management regarding grants and cooperative agreements.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule is not mandatory for contractors, including small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–46, FAR Case 2009–028) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," which had a required date for agency implementation of 90 days from the date of the order (October 1, 2009). An interim rule is necessary to improve safety on our roads and highways and to enhance the efficiency of Federal contracting. Specifically, this order requires agencies to encourage Federal contractors and subcontractors to adopt and enforce policies banning text messaging while driving company-owned or -rented vehicles or Government-owned vehicles, or while driving personally-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. The Councils believe an interim rule in the FAR will provide the Contracting Officer the relevant regulatory guidance needed when addressing requirements outlined in the Executive Order. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 23 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 23 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 2. Amend section 23.000 by revising the introductory text; removing from paragraph (e) the period and adding "; and" in its place; and adding paragraph (f) to read as follows:

23.000 Scope.

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace, for protecting and improving the quality of the environment, and encouraging the safe operation of vehicles by—

* * * * *

(f) Encouraging contractors to adopt and enforce policies that ban text messaging while driving.

■ 3. Add Subpart 23.11 to read as follows:

Subpart 23.11—Encouraging Contractor Policies to ban text messaging while driving

Sec.
23.1101 Purpose.
23.1102 Applicability.
23.1103 Definitions.
23.1104 Policy.
23.1105 Contract clause.

Subpart 23.11—Encouraging Contractor Policies to Ban Text Messaging While Driving

23.1101 Purpose.

This subpart implements the requirements of the Executive Order (E.O.) 13513, dated October 1, 2009 (74 FR 51225, October 6, 2009), Federal Leadership on Reducing Text Messaging while Driving.

23.1102 Applicability.

This subpart applies to all solicitations and contracts.

23.1103 Definitions.

As used in this subpart—

Driving—(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to

the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

23.1104 Policy.

Agencies shall encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving—

(a) Company-owned or –rented vehicles or Government-owned vehicles; or

(b) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

23.1105 Contract clause.

The contracting officer shall insert the clause at 52.223–18, Contractor Policy to Ban Text Messaging While Driving, in all solicitations and contracts.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.212–5 by revising the date of clause; redesignating paragraphs (b)(31) thru (b)(43) as paragraphs (b)(32) thru (b)(44); and adding a new paragraph (b)(31) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (Sep 2010)

* * * * *

(b) * * *

_____ (31) 52.223–18, Contractor Policy to Ban Text Messaging while Driving (SEP 2010) (E.O. 13513).

* * * * *

■ 5. Add section 52.223–18 to read as follows:

52.223–18 Contractor Policy to Ban Text Messaging While Driving.

As prescribed in 23.1105, insert the following clause:

CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (SEP 2010)

(a) *Definitions.* As used in this clause—

Driving—(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

Text messaging means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor should—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or –rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

(End of clause)

[FR Doc. 2010–24156 Filed 9–28–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 25 and 52

[FAC 2005–46; FAR Case 2009–039; Item VII; Docket 2010–0104, Sequence 1]

RIN 9000–AL62

Federal Acquisition Regulation; Buy American Exemption for Commercial Information Technology—Construction Material

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

DATES: *Effective Date:* September 29, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before November 29, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–46, FAR Case 2009–039, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–039" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2009–039." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–039" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–46, FAR Case 2009–039, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–46, FAR Case 2009–039.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR subparts 25.2 and 52.2 to implement section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

This same exemption has appeared every year since Fiscal Year 2004 (section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004 (Pub. L. 108–199)). The Fiscal Year 2004 exemption was implemented through deviations by the individual agencies. Subsequently, regulations were published to implement the exemption for supplies (71 FR 223, January 3, 2006). The exemption for construction material was not implemented until publication of this interim rule.

The interim rule is based on the probability that the exemption of commercial information technology is likely to continue. If the exception does not appear in a future appropriations act, a prompt change to the FAR will be made to limit applicability of the exemption to the fiscal years to which it applies.

"Information technology" and "Commercial item" are already defined in FAR part 2.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule simplifies the treatment of construction material that is also a commercial information technology item, which constitutes a small percentage of the overall construction material in a project. This interim rule does not affect small business set-asides to the prime contractor or the small business subcontracting goals. Construction contracts that exceed $7,804,000 and are subject to trade agreements already exempt designated country construction material from the Buy American Act. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in the FAR subparts 25 and 52 affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–46, FAR Case 2009–039) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply because the changes to the FAR will slightly reduce the information collection requirements currently approved by the Office of Management and Budget (OMB Control number 9000–0141, entitled Buy America Act—Construction—FAR Sections Affected: Subpart 25.2; 52.225–9; and 52.225–11) but we estimate that the impact will be negligible.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the changes resulting from the enactment of section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117), effective December 16, 2009. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 25 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

■ 2. Amend section 25.202 by revising the introductory text of paragraph (a), and by adding paragraph (a)(4) to read as follows:

25.202 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may allow the contractor to acquire foreign construction materials without regard to the restrictions of the Buy American Act:

* * * * *

(4) *Information technology that is a commercial item.* The restriction on purchasing foreign construction material does not apply to the acquisition of information technology that is a commercial item, when using Fiscal Year 2004 or subsequent fiscal year funds (Section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.225–9 by revising the date of the clause and paragraph (b)(2) to read as follows:

52.225–9 Buy American—Construction Materials.

* * * * *

BUY AMERICAN—CONSTRUCTION MATERIALS (SEP 2010)

* * * * *

(b) * * *

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

* * * * *

■ 4. Amend section 52.225–11 by revising the date of the clause and paragraph (b)(3) to read as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (SEP 2010)

* * * * *

(b) * * *

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[*Contracting Officer to list applicable excepted materials or indicate "none"*]

* * * * *

[FR Doc. 2010–24206 Filed 9–28–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0077, Sequence 8]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–46; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–46 which amend the FAR. Interested parties may obtain further information regarding these rules by referring to FAC 2005–46, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–46 and the specific FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–46

Item	Subject	FAR case	Analyst
I	Equal Opportunity for Veterans (Interim)	2009–007	Woodson.
II	Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (Interim)	2010–012	Davis.
III	Termination for Default Reporting	2008–016	Parnell.
IV	Award-Fee Language Revision	2008–008	Chambers.
V	Offering a Construction Requirement–8(a) Program	2009–020	Morgan.
VI	Encouraging Contractor Policies to Ban Text Messaging While Driving (Interim)	2009–028	Clark.
VII	Buy American Exemption for Commercial Information Technology—Construction Material (Interim)	2009–039	Davis.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–46 amends the FAR as specified below:

Item I—Equal Opportunity for Veterans (FAR Case 2009–007) (Interim)

This interim rule with request for comments implements the Department of Labor's (DoL) Office of Federal Contract Compliance Programs (OFCCP) final rule published in the **Federal Register** at 72 FR 44393 on August 8, 2007, that implements amendments to the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (VEVRAA), as amended by the Jobs for Veterans Act (JVA). The rule re-titles FAR subpart 22.13 from "Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" to "Equal Opportunity for Veterans." Accordingly, FAR clause 52.222–35 is also renamed "Equal Opportunity for Veterans" and incorporates the new categories and definitions of protected veterans as established by DoL. In addition, the FAR clause at 52.222–37, "Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" is renamed "Employment Reports on Veterans" and the new DoL requirements for using the VETS–100A report are incorporated. Lastly, the FAR provision at 52.222–38, "Compliance with Veterans' Employment Reporting Requirements," is revised to incorporate new title references for FAR 52.222–37 and the new report form VETS–100A.

Item II—Certification Requirement and Procurement Prohibition Relating to Iran Sanctions (FAR Case 2010–012) (Interim)

This interim rule amends the FAR by enhancing efforts to enforce sanctions with Iran. The rule implements requirements imposed by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), specifically sections 102 and 106. To implement section 102, the FAR will require certification that each offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be imposed under section 5 of the Iran Sanctions Act. This rule also partially implements section 106 of Public Law 111–195, which imposes a procurement prohibition relating to contracts with persons that export certain sensitive technology to Iran. There will be further implementation of Section 106 in FAR Case 2010–018. This rule will have little effect on United States small business concerns, because such dealings with Iran are already prohibited in the United States.

Item III—Termination for Default Reporting (FAR Case 2008–016)

This final rule amends the FAR to revise the contractor performance information process. The FAR revisions include changes to FAR parts 8, 12, 15, 42, and 49. The purpose of the rule is to establish procedures for contracting officers to provide contractor information into the Federal Awardee Performance & Integrity Information System (FAPIIS) module of Past

Performance Information System (PPIRS). This case sets forth requirements for reporting defective cost or pricing data and terminations for cause or default and any amendments. Evaluation of past performance information, especially terminations, manages risks associated with timely, effective and cost efficient completion of contracts, a key objective of the President's March 4, 2009, Memorandum on Government Contracting.

Item IV—Award-Fee Language Revision (FAR Case 2008–008)

This final rule converts the interim rule published in the **Federal Register** at 74 FR 52856 on October 14, 2009, to a final rule with minor changes.

This final rule amends the FAR to implement section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 and section 867 of the Duncan Hunter 2009 National Defense Authorization Act for Fiscal Year 2009. This rule requires agencies to—

(1) Link award fees to acquisition objectives in the areas of cost, schedule, and technical performance;

(2) Clarify that a base fee amount greater than zero may be included in a cost-plus-award-fee type contract at the discretion of the contracting officer;

(3) Prescribe narrative ratings that will be utilized in award-fee evaluations;

(4) Prohibit the issuance of award fees for a rating period if the contractor's performance is judged to be below satisfactory;

(5) Conduct a risk and cost-benefit analysis and consider the results of the analysis when determining whether to use an incentive-fee type contract or not;

(6) Include specific content in the award-fee plans; and

(7) Prohibit the rolling over of unearned award fees to subsequent rating periods.

This FAR change will integrate where appropriate, FAR part 7, Acquisition Planning, and FAR part 16, Contract Types, to improve agency use and decision making when using incentive contracts.

Item V—Offering a Construction Requirement—8(a) Program (FAR Case 2009–020)

This final rule amends the FAR to revise FAR subpart 19.8, Contracting with the Small Business Administration (The 8(a) Program), specifically FAR 19.804–2(b) to conform to the Small Business Administration (SBA) regulations. The SBA regulation 13 CFR 124.502(b)(2) requires that the offering letter for an open construction requirement be submitted to the SBA District Office for the geographical area where the work is to be performed. The SBA regulation 13 CFR 124.502(b)(3) requires that the offering letter for a construction requirement offered on behalf of a specific participant be submitted to the SBA District Office servicing that concern. This rule revises FAR 19.804–2 accordingly.

Item VI—Encouraging Contractor Policies To Ban Text Messaging While Driving (FAR Case 2009–028) (Interim)

This interim rule amends the FAR to implement Executive Order 13513, entitled "Federal Leadership on Reducing Text Messaging while Driving," which was issued on October 1, 2009 (74 FR 51225, October 6, 2009). Section 4 of the Executive order requires each Federal agency, in procurement contracts, entered into after the date of the order, to encourage contractors and subcontractors to adopt and enforce policies that ban text messaging while driving company-owned or -rented vehicles or Government-owned vehicles; or privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government. Section 4 also requires Federal agencies to encourage contractors to conduct initiatives such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach programs to inform employees about the safety risks associated with texting while driving. This requirement applies to all solicitations and contracts. Contracting officers are encouraged to modify existing contracts to include the FAR clause.

Item VII—Buy American Exemption for Commercial Information Technology—Construction Material (FAR Case 2009–039) (Interim)

This interim rule implements section 615 of Division C, Title VI, of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117). Section 615 authorizes exemption from the Buy American Act for acquisition of information technology that is a commercial item.

Dated: September 21, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–24193 Filed 9–28–10; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Wednesday,
September 29, 2010

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 740, 761, 773, et al. Technical Amendments 2010; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 740, 761, 773, 795, 816, 817, 840, 842, 870, and 884

RIN 1029–AC62

[Docket ID OSM–2010–0016]

Technical Amendments 2010

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are making technical revisions to our regulations to correct various errors in citations, cross-references, and other inadvertent errors in publication.

DATES: *Effective Date:* September 29, 2010.

FOR FURTHER INFORMATION CONTACT: Andy DeVito, Office of Surface Mining Reclamation and Enforcement, South Interior Building MS–252, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone (202) 208–2701; e-mail: *adevito@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion of Final Rule

We are making non-substantive revisions to our regulations to correct errors in citations, cross-references, and other inadvertent errors in drafting. OSM's regulations are located in title 30 of the Code of Federal Regulations (CFR). The regulations may be viewed on the Internet at: *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=fbd21e91edb535fd2b3baf6d4d181e1f&c=ecfr&tpl=/ecfrbrowse/Title30/30cfrv3_02.tpl.* Below is a section-by-section discussion of the revisions that we are making.

Section 740.11—Applicability

On January 31, 1997, at 62 FR 4836, we proposed a rule that would revise our Federal lands program regulations at 30 CFR 740.11. We intended to revise the introductory text to § 740.11(a). The amendatory language (instructions) for making those revisions and changing the CFR were published at 62 FR 4859 and correctly read as follows: In § 740.11, paragraph (a) introductory text is revised and paragraph (g) is added * * *. On December 17, 1999, at 64 FR 70766, we published the final rule revising the introductory text to § 740.11(a). However, there was an error in the amendatory language published at 64 FR 70831. The words "introductory text," which had been used in the proposed rule, were inadvertently dropped with the result that paragraphs (a)(1) and (a)(2) of § 740.11 were unintentionally deleted.[1] To correct that error, we are reinstating paragraphs (a)(1) and (a)(2). Paragraph (a) introductory text, which is currently in the CFR, and reinstated paragraphs (a)(1) and (a)(2) will reads as follows:

(a) Except as provided in paragraph (g) of this section, both this subchapter and the pertinent State or Federal regulatory program in subchapter T of this chapter apply to:

(1) Coal exploration operations on Federal lands not subject to 43 CFR parts 3400, and

(2) Surface coal mining and reclamation operations taking place on any Federal lands as defined in 30 CFR 700.5, and lands (except Indian lands) over leased or unleased Federal minerals.

Section 761.16—Submission and processing of requests for valid existing rights determinations

On December 19, 2000, at 65 FR 79582, 79663, we revised our regulations and redesignated § 773.13 as § 773.6. In paragraph (g) of § 761.16, we cross-reference § 773.13(d). Because of the redesignation published on December 19, 2000, the cross reference to § 773.13(d) should have been changed to § 773.6(d). To correct that error, we are changing the cross-reference in § 761.16(g) from § 773.13(d) to § 773.6(d).

Section 773.6—Public participation in permit processing

On December 17, 1999, at 64 FR 70766, we revised our regulations in 30 CFR Part 761. As a result of the revisions, certain cross-references changed. At the time of the 1999 revision, § 773.13(c)(4), later redesignated as § 773.6(c)(4), cross-referenced § 761.12(d). In the 1999 revision, the provisions in § 761.12(d) were revised and incorporated into § 761.14 at paragraph (c). Consequently, the cross-reference in § 773.13(c)(4) should have been changed from § 761.12(d) to § 761.14(c). To correct this error, we are changing the cross-reference in § 773.6(c)(4) from § 761.12(d) to § 761.14(c). In addition, two typographical errors are being corrected in § 773.6(c)(4). The word "conference" is being removed and the word "conferences" is being added in its place, and the word "accordances" is being removed and the word "accordance" is being added in its place.

Section 773.9—Review of applicant, operator, and ownership and control information

The section heading for § 773.9 currently reads as follows: Review of applicant, operator, and ownership and control information. On December 3, 2007, at 72 FR 68000, 68029, we published revisions to § 773.9. We intended to revise the section heading and paragraph (a) of § 773.9. The revised section heading was correctly printed in the **Federal Register** on December 3, 2007, and read as follows: Review of applicant and operator information. However, in the amendatory instructions, we failed to instruct the Office of the Federal Register to revise the section heading. Because of that omission, the section heading was never changed in the CFR. To correct that error, we are revising the section heading to read as follows: Review of applicant and operator information.

Section 773.22—Notice requirements for improvidently issued permits

On December 19, 2000, at 65 FR 79582, 79665, we revised § 773.22(a) and in two locations in that paragraph, we intended to use the phrase "proposed suspension or rescission." However, a typographical error occurred the second time the phrase was used and the phrase was worded as "proposed suspension of rescission." We are correcting the error by removing the word "of" and adding the word "or" so that the phrase will now read as follows: proposed suspension or rescission.

Section 795.4—Information collection

In § 795.4, we are revising the last sentence to reflect a change in the mailing address where comments may be sent concerning the information collection requirements found in the regulations in part 795.

Section 816.46—Hydrologic balance: Siltation structures

On December 12, 2008, at 73 FR 75814, we published a final rule that would have removed paragraph (b)(2) of §§ 816.46 and 817.46. Those paragraphs required that all surface drainage from the disturbed area be passed through a siltation structure before leaving the permit area. In essence, that paragraph prescribed siltation structures (sedimentation ponds and other treatment facilities) as the best technology currently available for sediment control. Previously, however, paragraph (b)(2) was struck down upon judicial review because the court found that the preamble to the rulemaking in which it was adopted did not articulate a sufficient basis for the rule under the

[1] The erroneous instructions read as follows: In § 740.11, paragraph (a) is revised and paragraph (g) is added to read as follows.

Administrative Procedure Act. The court stated that the preamble did not adequately discuss the benefits and drawbacks of siltation structures and alternative sediment control methods and did not enable the court "to discern the path taken by [the Secretary of the Interior] in responding to commenters' concerns" that siltation structures in the West are not the best technology currently available. *See In re Permanent Surface Mining Regulation Litigation,* 620 F. Supp. 1519, 1566–1568 (D.DC 1985).

On November 20, 1986, at 51 FR 41961, we suspended the rules struck down by the court. To avoid any confusion that might result from the continuing publication of those rules in the CFR, we proposed to remove paragraph (b)(2) of §§ 816.46 and 817.46 and redesignate the remaining paragraphs of those sections accordingly. 72 FR 48890, 48907 (August 24, 2007).

We received no comments opposing the proposal. Therefore, on December 12, 2008, at 73 FR 75883 and 75884, we published amendatory language with the intent to remove paragraph (b)(2) of §§ 816.46 and 817.46. In the amendatory language, however, we failed to use the words "lift the suspension" prior to directing the removal of paragraph (b)(2). Because a suspension must be lifted before any action may be taken on a suspended section or paragraph, the amendatory language that we used was insufficient to remove paragraph (b)(2) and redesignate paragraphs (b)(3) through (b)(6) as (b)(2) through (b)(5), respectively. In order to correct that error, we are publishing amendatory language that will lift the suspension and remove paragraph (b)(2) of §§ 816.46 and 817.46 and redesignate paragraphs (b)(3) through (b)(6) as (b)(2) through (b)(5), respectively.

Section 817.15—Casing and sealing of underground openings: Permanent

On September 18, 1978, at 43 FR 41662, 41900, we published a proposed rule which cross-referenced the regulations of the Mine Safety and Health Administration at 30 CFR 75.1711. When the final regulations were issued on March 13, 1979, at 44 FR 14902, 15423, a typographical error occurred and the citation was changed to 30 CFR 75.1771, which does not exist. In order to correct the error, we are revising 30 CFR 817.15 by removing "30 CFR 75.1771" and adding in its place "30 CFR 75.1711," which governs the sealing of mines.

Section 817.46—Hydrologic balance: Siltation structures

See the discussion above under the heading "Section 816.46—Hydrologic balance: Siltation structures."

Section 840.10—Information collection

In § 840.10, we are revising the last sentence to reflect a change in the mailing address where comments may be sent concerning the information collection requirements found in the regulations in part 840.

Section 840.13—Enforcement authority

Section 840.13(b) contains a cross-reference to § 843.23, which does not exist. On September 6, 1991, OSM had proposed to add a § 843.23, which would have provided for sanctions for knowing omissions or inaccuracies in ownership or control and violation information in permit applications. 56 FR 45780, 45804. However, in the final rule published on October 28, 1994, OSM chose not to adopt § 843.23. 59 FR 54329. The cross-reference, however, was not deleted from § 840.13(b), where it had been added in anticipation of the adoption of § 843.23. 59 FR 54312. Because § 843.23 has never been adopted, we are revising § 840.13(b) by removing the cross-reference to § 843.23.

Section 842.11—Federal inspections and monitoring

On July 14, 1988, at 53 FR 26728, we revised section § 842.11. Two typographical errors occurred. First, in paragraph (b)(1)(ii)(B)(*1*), we intended to cross-reference paragraph (b)(1)(iii) but mistakenly typed (b)(i)(iii), which does not exist. It is clear from the preamble discussion at 53 FR 26732 that the correct cross-reference should be (b)(1)(iii). Therefore, we are deleting the reference to (b)(i)(iii) and adding in its place (b)(1)(iii).

Second, a typographical error occurred in paragraph (b)(1)(ii)(*B*)(*4*)(*iv*) where we use the words "section 525(c) or 525(c)." As is clear from the preamble discussion at 53 FR 26735, we had intended to specify "section 525(c) or 526(c)." Therefore, we are removing the words "section 525(c) or 525(c)" and adding in their place the words "section 525(c) or 526(c)". Section 525(c) of SMCRA, 30 U.S.C. 1275(c), deals with the granting of temporary relief by the Secretary of the Interior, and section 526(c) of SMCRA, 30 U.S.C. 1276(c), deals with the granting of temporary relief by a court.

Section 870.20—How to calculate excess moisture in LOW-rank coals

In § 870.20, we are revising the sixth sentence of the introductory text to reflect a change in the OSM address where a copy of the ASTM standards, incorporated by reference, is available for inspection.

Section 884.13—Content of proposed State reclamation plan

Section 884.13 specifies what is required in a proposed State reclamation plan. In paragraph (b), we intended to require the submission of a legal opinion from the State Attorney General or the chief legal officer of the State agency stating that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the Act. When the final rule was published on June 30, 1982, at 47 FR 28574, 28600, a typographical error occurred and the word "on" was used instead of the word "or" with the result that the paragraph reads "opinion from the State Attorney General on the chief legal officer of the State agency." To correct that error, we are removing the word "on" and adding in its place the word "or". The authority for requiring the submission of a legal opinion is found in section 405(e) of SMCRA, 30 U.S.C. 1235(e).

II. Procedural Matters

Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. OSM has determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, OSM has determined that notice and comment is unnecessary for this rule because the rule is comprised of technical, non-substantive amendments. As discussed above, this rule corrects obvious errors in the CFR, and OSM's true intentions are readily ascertained in the relevant rulemaking documents. Finally, this rule does not impose any new regulatory requirements. For the same reasons, we find that good cause exists under 5 U.S.C. 553(d)(3) of the APA to have the regulation become effective on a date

that is less than 30 days after the date of publication in the **Federal Register**.

Executive Order 12866

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. As previously stated, this rule corrects errors in the CFR and does not impose any new regulatory requirements. For these reasons, we find that:

(1) This rule will not have an effect of $100 million or more on the economy. It 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.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency for the reasons stated above.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues for the reasons stated above.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As previously stated, the rule corrects errors in the CFR and does not impose any new regulatory requirements.

Small Business Regulatory Enforcement Fairness Act

For the reasons previously stated, this rule is not considered a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Will not have an annual effect on the economy of $100 million.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions because the rule does not impose new requirements on the coal mining industry or consumers.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. As previously stated, the rule corrects errors in the CFR and does not impose any new OSM regulatory requirements. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Federal Paperwork Reduction Act

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because the rule is covered by the categorical exclusion listed in the Department of the Interior regulations at 43 CFR 46.210(i). That categorical exclusion covers policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature. For the reasons discussed above, the amendments in this rule are administrative, technical, and/or procedural in nature, and, therefore, fall within the contours of the categorical exclusion. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act.

Executive Order 12988 on Civil Justice Reform

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is not considered significant under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the proposed revisions would not have substantial direct effects 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. As previously stated, this rule corrects errors in the CFR and does not impose any new regulatory requirements.

Executive Order 12630—Takings

Under the criteria in Executive Order 12630, this rule does not have significant takings implications; therefore, a takings implication assessment is not required. This determination is based on the fact that the rule corrects errors in the CFR and does not impose any new regulatory requirements.

Executive Order 13132—Federalism

This rule does not have Federalism implications. For the reasons previously stated, it will not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Effect in Federal Program States, Primacy States, and on Indian Lands

The rule will apply through cross-referencing to the following Federal program states: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule also applies through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR Part 750. Because the rule is comprised of

technical, non-substantive amendments and does not impose any new regulatory requirements, States with approved regulatory programs will not be required to amend their programs.

List of Subjects

30 CFR 740

Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Surface mining, Underground mining.

30 CFR 773

Administrative practice and procedure, Reporting and recordingkeeping requirements, Surface mining, Underground mining.

30 CFR 795

Grant programs-natural resources, Reporting and recordkeeping requirements, Small businesses, Surface Mining, Technical Assistance, Underground mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 840

Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 842

Law enforcement, Surface mining, Underground mining.

30 CFR Part 870

Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 884

Grant programs-natural resources, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: September 21, 2010.

Sylvia V. Baca,

Deputy Assistant Secretary, Land and Minerals Management.

■ For the reasons set forth in the preamble, we are amending 30 CFR Parts 740, 761, 773, 795, 816, 817, 840, 842, 870, and 884 as set forth below.

PART 740—GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

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

Authority: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

■ 2. In § 740.11, add paragraphs (a)(1) and (a)(2) to read as follows:

§ 740.11 Applicability.

(a) * * *

(1) Coal exploration operations on Federal lands not subject to 43 CFR part 3400, and

(2) Surface coal mining and reclamation operations taking place on any Federal lands as defined in § 700.5 of this chapter, and lands (except Indian lands) over leased or unleased Federal minerals.

* * * * *

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

■ 3. The authority citation for Part 761 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 761.16 [Amended]

■ 4. In paragraph (g) of § 761.16, remove the citation "§ 773.13(d)" and add in its place the citation "§ 773.6(d)".

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

■ 5. The authority citation for part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.,* 16 U.S.C. 470 *et seq.,* 16 U.S.C. 661 *et seq.,* 16 U.S.C. 703 *et seq.,* 16 U.S.C. 668a *et seq.,* 16 U.S.C. 469 *et seq.,* and 16 U.S.C. 1531 *et seq.*

■ 6. In § 773.6, revise paragraph (c)(4) to read as follows:

§ 773.6 Public participation in permit processing.

* * * * *

(c) * * *

(4) Informal conferences held in accordance with this section may be used by the regulatory authority as the public hearing required under § 761.14(c) of this chapter on proposed relocation or closing of public roads.

* * * * *

■ 7. In § 773.9, revise the section heading to read as follows:

§ 773.9 Review of applicant and operator information.

* * * * *

■ 8. In § 773.22, revise paragraph (a) introductory text to read as follows:

§ 773.22 Notice requirements for improvidently issued permits.

(a) We, the regulatory authority, must serve you, the permittee, with a written notice of proposed suspension or rescission, together with a statement of the reasons for the proposed suspension or rescission, if—

* * * * *

PART 795—PERMANENT REGULATORY PROGRAM—SMALL OPERATOR ASSISTANCE PROGRAM

■ 9. The authority citation for Part 795 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 10. In § 795.4, revise the last sentence to read as follows:

§ 795.4 Information collection.

* * * Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer (MS–202), 1951 Constitution Avenue, NW., Washington, DC 20240.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

■ 11. The authority citation for Part 816 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 816.46 [Amended]

■ 12. In § 816.46, lift the suspension of paragraph (b)(2), remove paragraph (b)(2), and redesignate paragraphs (b)(3) through (b)(6) as (b)(2) through (b)(5), respectively.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

■ 13. The authority citation for Part 817 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 817.15 [Amended]

■ 14. In § 817.15, remove the citation "30 CFR 75.1771" and add in its place the citation "30 CFR 75.1711".

§ 817.46 [Amended]

■ 15. In § 817.46, lift the suspension of paragraph (b)(2), remove paragraph (b)(2), and redesignate paragraphs (b)(3) through (b)(6) as (b)(2) through (b)(5), respectively.

PART 840—STATE REGULATORY AUTHORITY; INSPECTION AND ENFORCEMENT

■ 16. The authority citation for Part 840 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.,* unless otherwise noted.

■ 17. In § 840.10, revise the last sentence of paragraph (b) to read as follows:

§ 840.10 Information collection.

* * * * *

(b) * * * Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer (MS–202), 1951 Constitution Ave, NW., Washington, DC 20240.

■ 18. In § 840.13, revise paragraph (b) to read as follows:

§ 840.13 Enforcement authority.

* * * * *

(b) The enforcement provisions of each State program shall contain sanctions which are no less stringent than those set forth in section 521 of the Act and shall be consistent with §§ 843.11, 843.12, 843.13, and subchapters G and J of this chapter.

* * * * *

PART 842—FEDERAL INSPECTIONS AND MONITORING

■ 19. The authority citation for Part 842 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 842.11 [Amended]

■ 20. Amend § 842.11 as follows:

■ a. Amend paragraph (b)(1)(ii)(B)(1) by removing the reference "(b)(i)(iii)" and adding in its place "(b)(1)(iii)", and

■ b. Amend paragraph (b)(1)(ii)(B)(4) by indenting each subparagraph (i) through (iv) and capitalizing the first words of each, and in paragraph (b)(1)(ii)(B)(4)(iv) by removing the words "section 525(c) or 525(c)" and adding in their place the words "section 525(c) or 526(c)".

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

■ 21. The authority citation for Part 870 continues to read as follows:

Authority: 28 U.S.C. 1746, 30 U.S.C. 1201 *et seq.* and Pub. L. 105–277.

■ 22. In § 870.20, revise the sixth sentence of the introductory text to read as follows:

§ 870.20 How to calculate excess moisture in LOW-rank coals.

* * * A copy of the ASTM standards is available for inspection at the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). * * *

* * * * *

PART 884—STATE RECLAMATION PLANS

■ 23. The authority citation for Part 884 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 24. In § 884.13, revise paragraph (b) to read as follows:

§ 884.13 Content of proposed State reclamation plan.

* * * * *

(b) A legal opinion from the State Attorney General or the chief legal officer of the State agency that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the Act.

* * * * *

[FR Doc. 2010–24371 Filed 9–28–10; 8:45 am]

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Federal Register

Wednesday,
September 29, 2010

Part VII

The President

Proclamation 8567—National Hunting and Fishing Day, 2010

Proclamation 8568—National Public Lands Day, 2010

Proclamation 8569—Gold Star Mother's and Families' Day, 2010

Federal Register
Vol. 75, No. 188
Wednesday, September 29, 2010

Presidential Documents

Title 3—

The President

Proclamation 8567 of September 24, 2010

National Hunting and Fishing Day, 2010

By the President of the United States of America

A Proclamation

As Americans, the bond we have with our land is traceable to our earliest ancestors and etched into the character of our Nation. From the rocky shoals of New England to the rugged mountains of the West, the natural beauty and great diversity of our open spaces draw millions to the outdoors every year for sport, play, and relaxation. On National Hunting and Fishing Day, we recognize the Americans who engage in these timeless pursuits, and we reaffirm our commitment to conserving our native lands, waters, and wildlife for generations to come.

Like President Theodore Roosevelt—an enthusiastic hunter and a great conservationist—hunters and anglers value stewardship, often leading efforts to ensure the protection of our Nation's wildlife, habitats, and waterways. President Roosevelt understood that conservation was essential to preserving our hunting and fishing heritage, and during his Presidency established the first units of the National Wildlife Refuge System to sustain the outdoor traditions many Americans enjoy today. We recognize, as President Roosevelt did over a century ago, that we must champion the conservation of our lands, and those who know them well—the individuals who hunt and fish—must endeavor to be their consummate guardians.

Conservation takes on even greater importance today as our lands, waters, and wildlife face threats from global climate change, loss of habitats, and environmental disasters. The abundance of our wilderness is not limitless and needs protection and restoration. To ensure America's wild spaces remain healthy and accessible for all to enjoy, outdoorsmen and women can continue to participate in innovative programs such as the Federal Duck Stamp Program to protect and restore our natural legacy. This includes rebuilding and safeguarding our fragile Gulf ecosystem, where the unique and beautiful bounty of waterfowl, fish, and other game confront exceptional hardships.

Following in the footsteps of President Roosevelt and other conservationists, my Administration is dedicated to fostering a national conversation about 21st-century conservation that embraces a broad coalition of Americans, including hunters and anglers. Through my America's Great Outdoors Initiative, we have heard from sportsmen and women across our country about the value of hunting and fishing, the challenges to wildlife conservation, and how the Federal Government can be a better partner for conservation. My Administration established the Wildlife and Hunting Heritage Conservation Council to enlist the efforts of the sporting community, wildlife conservation organizations, States, and Native American tribes to uphold our Nation's wildlife heritage and to meet the conservation challenges of our time. We added over 4 million acres to the Conservation Reserve Program this year to provide important wildlife habitats, and we have taken specific steps to benefit gamebirds in this program. In addition, we are providing millions of dollars to the Voluntary Public Access and Habitat Incentive Program, a new effort to encourage hunting, fishing, and other recreational activities on privately owned land.

Our ability to enjoy our land and wildlife today is a tribute to the character of conservationists who have come before us. On National Hunting and Fishing Day, we celebrate the time-honored traditions of hunting and fishing, as well as the preservation of America's vast natural resources, as we seek to protect them for centuries to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 25, 2010, as National Hunting and Fishing Day. I call upon all Americans to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth 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. 2010–24644
Filed 9–28–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8568 of September 24, 2010

National Public Lands Day, 2010

By the President of the United States of America

A Proclamation

From majestic mountain ranges to beloved neighborhood parks, Americans enjoy the natural places our ancestors have celebrated and protected for centuries. Our public lands represent the American spirit and reflect our shared experience—our history, our culture, and our deep love for wild and beautiful places. Every September, thousands of Americans volunteer their time and talents to protect our parks, national forests, wildlife refuges, and other public lands. National Public Lands Day is an occasion to join together in honor of our Nation's unique natural treasures.

Every year, Americans take this opportunity to conserve and restore our public places. Last year, an estimated 150,000 dedicated volunteers removed litter and invasive plants; cleaned water resources; built and maintained trails; and planted trees, shrubs, and other native plants. This year, I encourage even more Americans to volunteer in local projects to have a greater impact on parks and public lands across our Nation.

Taking care of our public lands is and must continue to be a proud American tradition. In April, I hosted the White House Conference on America's Great Outdoors to address challenges and opportunities surrounding conservation today, and to identify new ways to work together to preserve our natural bounty. I also inaugurated the America's Great Outdoors Initiative to build a conservation agenda for the 21st century, and to reconnect Americans to our great outdoors. To do this, I instructed my Administration to participate in listening sessions around the country to hear Americans' concerns, and to learn about what citizens and communities are doing to safeguard our land, water, and wildlife, as well as places of historic and cultural significance. As a Nation, we must engage in a new conversation about the conservation of the cherished places that have helped define us.

On this day of service and celebration, I encourage all Americans to give their time and energy to care for—and to go out and enjoy—our public lands. Together, we can build upon our history of stewardship so our unique landscapes are preserved for countless generations to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 25, 2010, as National Public Lands Day. I invite all Americans to join me in a day of service for our public lands.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth 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. 2010–24646
Filed 9–28–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8569 of September 24, 2010

Gold Star Mother's and Families' Day, 2010

By the President of the United States of America

A Proclamation

In a long line of heroes stretching from the greens of Lexington and Concord to the mountains of Afghanistan, selfless patriots have defended our lives and liberties with valor and honor. They have been ordinary Americans who loved their country so profoundly that they were willing to give their lives to keep it safe and free. As we pay tribute to the valiant men and women in uniform lost in battle, we also recognize the deep loss and great strength of those who share in that ultimate sacrifice: America's Gold Star Mothers and Families.

For those in our Armed Forces who gave their last full measure of devotion, their loved ones know the high cost of our hard-won freedoms and security. An empty seat at the table and missed milestones leave a void that can never be filled, yet the legacy of our fallen heroes lives on in the people they loved. Their exceptional spirit of service dwells in the pride of Gold Star parents, who instilled the values that led these brave men and women to service. It grows in the hearts of their children, who know that, despite their absence, they gave their lives so others might be free. And, it echoes in the enduring love of their spouses—the backbone of our military families—who supported the person they cherished most in the world in serving our Nation. Though our Gold Star families have sacrificed more than most can ever imagine, they still find the courage and strength to comfort other families, support veterans, and give back to their communities.

It is from these examples of unwavering patriotism that we witness the values and ideals for which our country was founded, and for which America's sons and daughters have laid down their lives. As members of a grateful Nation, we owe a debt we can never repay, but hold this sacred obligation forever in our hearts, minds, and actions.

The Congress, by Senate Joint Resolution 115 of June 23, 1936 (49 Stat. 1895 as amended), has designated the last Sunday in September as "Gold Star Mother's Day."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Sunday, September 26, 2010, as Gold Star Mother's and Families' Day. I call upon all Government officials to display the flag of the United States over Government buildings on this special day. I also encourage the American people to display the flag and hold appropriate ceremonies as a public expression of our Nation's sympathy, support, and respect for our Gold Star Mothers and Families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth 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. 2010–24647
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H.R. 6102/P.L. 111–238
To amend the National Defense Authorization Act for Fiscal Year 2010 to extend the authority of the Secretary of the Navy to enter into multiyear contracts for F/A-18E, F/A-18F, and EA-18G aircraft. (Sept. 27, 2010; 124 Stat. 2500)

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