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DEPARTMENT OF HOMELAND SECURITY

2 CFR Part 3001

Federal Emergency Management Agency

44 CFR Part 17

[Docket No. DHS–2010–0028]

RIN 1601–AA62

Department of Homeland Security Implementation of OMB Guidance on Drug-Free Workplace Requirements

AGENCY: Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance codified at 2 CFR part 182. This new part is the Department's implementation of OMB's guidance and is consistent with OMB's initiative to streamline and consolidate all Federal regulations on drug-free workplace requirements for financial assistance into one title of the CFR. In doing so, the Department is also removing regulations implementing the Government-wide common rule on drug-free workplace requirements for financial assistance, currently located within Part 17 of Title 44 of the Code of Federal Regulations (CFR).

DATES: This final rule is effective on March 28, 2011 without further notice. Submit comments by March 28, 2011 on any unintended changes this action makes in DHS policies and procedures for drug-free workplaces. All comments or unintended changes will be considered and, if warranted, DHS will revise the rule.

ADDRESSES: You may submit comments, identified by the docket number to this rulemaking, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* [TBA], Department of Homeland Security, 245 Murray Lane, SW., Bldg. 410–Room 3514–11, Washington, DC 20528–0001.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Ms. Cara Whitehead, Office of the Chief Financial Officer, Financial Assistance Policy & Oversight, telephone 202–447–0338.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

These regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 44 CFR part 17. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (DHS–2010–0028), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means or mail at the address under **ADDRESSES**; but please submit your comment and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. We will consider all comments and material received during the comment period. We may change this rule in view of them.

B. Viewing Documents

To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (DHS–2010–0028) in the Search box, and click "Go>>." Individuals without internet access can make alternate arrangement for viewing comments and documents related to this rulemaking by contacting DHS at the **FOR FURTHER INFORMATION CONTACT** information above.

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I. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
FEMA Federal Emergency Management Agency
OMB Office of Management and Budget
U.S.C. United States Code

II. Background and Purpose

A. OMB Guidance for Drug-Free Workplace Requirements

The Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*) was enacted as a part of omnibus drug legislation on November 18, 1988. Federal agencies issued an interim final common rule to implement the act as it applied to grants (54 FR 4946, January 31, 1989). The rule was a subpart of the Government-wide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments (55 FR 21681, May 25, 1990).

The agencies proposed an update to the drug-free workplace common rule in 2002 (67 FR 3266, January 23, 2002) and

finalized it in 2003 (68 FR 66534, November 26, 2003). The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on nonprocurement suspension and debarment. Based on an amendment to the drug-free workplace requirements in 41 U.S.C. 702 (Pub. L. 105–85, div. A, title VIII, Sec. 809, Nov. 18, 1997, 111 Stat. 1838), the update also allowed multiple enforcement options from which agencies could select, rather than requiring use of a certification in all cases.

Like many other agencies, the Federal Emergency Management Agency (FEMA) adopted the common rule in 1990 (55 FR 21702, May 25, 1990). FEMA participated in the 2002 proposal to revise the drug-free workplace common rule; as a result of FEMA's transfer to the newly-established DHS in 2003; however, neither FEMA nor DHS participated in the 2003 multi-agency finalization of that revision. Since its creation in 2003, DHS has been using the FEMA common rule to administer drug-free workplace requirements.

When OMB established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements (69 FR 26276, May 11, 2004), OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing (70 FR 51863, August 31, 2005) and finalizing (71 FR 66431, November 15, 2006) Government-wide guidance on nonprocurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment (73 FR 55776, September 26, 2008) and finalized (74 FR 28149, June 15, 2009) Government-wide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements, which the agency previously issued in its own CFR title, with a brief regulation in Title 2 of the CFR adopting the Government-wide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it co-locates OMB's guidance and all of the agencies' implementing regulations in Title 2 of the CFR.

B. Regulatory History

Under 5 U.S.C. 553(a), agencies need not publish an NPRM in the **Federal Register** if the subject matter concerns grants, loans, benefits, or contracts. This rule concerns grants and cooperative agreements, and therefore does not require an NPRM.

In addition, DHS finds that good cause exists for not publishing an NPRM, because publication would be unnecessary. As described in the "Background" section of this preamble, the policies and procedures in this regulation have twice been proposed for comment—once by Federal agencies as a common rule in 2002, and a second time by OMB as guidance in 2008—and adopted each time after resolution of the comments received. In addition, this final rule is an administrative clarification that would make no substantive change to existing DHS policy for drug-free workplaces. For these reasons, under 5 U.S.C. 553(b)(B) we find that public notice and comment are unnecessary.

III. Discussion of the Rule

As the OMB guidance directs, DHS is taking two regulatory actions. First, we are removing the drug-free workplace common rule located at 44 CFR part 17. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 3001 to adopt the Government-wide policies and procedures found in the OMB guidance. As directed by the OMB guidance, this rule adds to the adopted guidance certain additional information specific to DHS.

A. Differences Between OMB Guidance and the Common Rule

This DHS adoption of the OMB guidance, with additional information provided in 2 CFR part 3001, replaces the existing drug-free workplace common rule located at 44 CFR part 17. Adopting the OMB guidance in place of the common rule will not substantively change the drug-free workplace requirements placed on award recipients.

The OMB guidance uses slightly different terminology and organization. For example, as compared to the common rule, OMB's text replaces most instances of the terms "grant" and "grantee" with the terms "award" and "recipient," respectively. The OMB guidance defines the new terms "award" and "grant" more narrowly to mean a type of award. The OMB guidance also defines "recipient" using language substantively similar to the common rule's definition of "person"; in the OMB guidance, "person" is no longer a defined term. The OMB guidance reorganizes the drug-free workplace requirements, separating and clearly labeling the requirements for recipients who are individuals, recipients other than individuals, and Federal agencies. Adopting these Government-wide terms and the new organizational structure will make DHS drug-free workplace requirements clearer and easier to use.

The most notable change from the common rule is the removal of procedures by which a recipient "certifies" to the agency that it will comply with drug-free workplace requirements. Recipients are still required to comply with drug-free workplace requirements, but the requirement appears in regulation and in the terms and conditions of the award, rather than in a separate certification. As a result of this change, the common rule's provisions regarding certification will not appear in this rule.

B. DHS Additions to the OMB Guidance

The OMB guidance directs agencies to state whether the agency has a central point to which recipients may send the notification of a conviction, and indicate which agency official is authorized to determine whether recipients have violated drug-free workplace requirements. Accordingly, in adopting the OMB guidance we have added language at 2 CFR 3001.225 and 3001.300 indicating that a recipient required to report a conviction for a criminal drug offense should notify the DHS Office of Inspector General and each DHS office from which the recipient currently has an award. Similarly, we have added language at §§ 3001.500 and 3001.505 indicating that the Secretary of Homeland Security or his or her official designee is authorized to determine that a recipient is in violation of the requirements of 2 CFR part 182 as implemented by this rule.

The OMB guidance at 2 CFR 182.510 discusses the consequences of a violation. We added 2 CFR 3001.510 to clarify that DHS will take one or more of the listed actions, and that any suspension or debarment of the recipient would occur under 2 CFR part 3000 as well as 2 CFR part 180.

IV. Regulatory Analyses

A. Regulatory Planning and Review

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This action will impose no additional costs. As explained in the Background and Purpose and

Discussion of the Rule, this final rule is an administrative clarification that will make no substantive change to existing DHS policy for drug-free workplaces. This rule merely transfers existing FEMA regulations with some minor non-substantive changes.

B. Small Entities

Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." A regulatory flexibility analysis is not required when a rule is exempt from notice and comment rulemaking provided for by 5 U.S.C. 553(b). DHS has determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(a)(2) and (b)(B); therefore, a regulatory flexibility analysis is not required for this rule.

C. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 (Pub. L. 104–4) requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian Tribal governments, or the private sector. Because this rule will not result in expenditures of this magnitude, a written statement is not required.

D. Paperwork Reduction Act

This rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Reporting and recordkeeping requirements in 2 CFR part 3001 are those required by the OMB Guidance for Drug-Free Workplace Requirements and have already been cleared by OMB.

E. Federalism

This rule will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Section 6 of Executive Order 13132, DHS has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Environmental Analysis

DHS has analyzed this rule under Department of Homeland Security Management Directive 023–01, which guides the Department in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and has made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under Categorical Exclusion A3, Table 1 of Appendix A, of the Directive.

List of Subjects

2 CFR Part 3001

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

44 CFR Part 17

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, under the authority of 5 U.S.C. 301 and 41 U.S.C. 701 *et seq.,* the Department of Homeland Security amends the Code of Federal Regulations, Title 2, Subtitle B, chapter XXX, and Title 44, chapter I, part 17, as follows:

TITLE 2—GRANTS AND AGREEMENTS

■ 1. Add part 3001 in Subtitle B, Chapter XXX, to read as follows:

PART 3001—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.
3001.10 What does this part do?
3001.20 Does this part apply to me?
3001.30 What policies and procedures must I follow?

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

3001.225 Who in DHS does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

3001.300 Who in DHS does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

3001.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

3001.500 Who in DHS determines that a recipient other than an individual violated the requirements of this part?
3001.505 Who in DHS determines that a recipient who is an individual violated the requirements of this part?
3001.510 What actions will the Federal Government take against a recipient determined to have violated this part?

Subpart F—Definitions

3001.605 Award.
3001.661 Reimbursable Agreement.

Authority: 5 U.S.C. 301; 41 U.S.C. 701–707; OMB Guidance for Drug-Free Workplace Requirements, codified at 2 CFR part 182.

§ 3001.10 What does this part do?

This part requires that the award and administration of Department of Homeland Security (DHS) grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as "the Act") that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance, as supplemented by this part (Subparts A through F of 2 CFR part 182) for DHS's grants and cooperative agreements; and

(b) Establishes DHS policies and procedures, as supplemented by this part, for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Government-wide implementing regulations.

§ 3001.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (*see* table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a DHS grant or cooperative agreement; or

(b) DHS awarding official.

§ 3001.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* This part supplements the OMB guidance in 2 CFR part 182 as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
2 CFR 182.225(a)	§ 3001.225	Who in DHS a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
2 CFR 182.300(b)	§ 3001.300	Who in DHS a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
2 CFR 182.400	§ 3001.400	What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance.
2 CFR 182.500	§ 3001.500	Who in DHS is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
2 CFR 182.505	§ 3001.505	Who in DHS is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
2 CFR 182.510	§ 3001.510	What actions the Federal Government will take against a recipient determined to have violated 2 CFR part 182, as implemented by this part.
2 CFR 182.605	§ 3001.605	What types of assistance are included in the definition of "award."
None	§ 3001.661	What types of assistance are included in the definition of "reimbursable agreement."

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, DHS policies and procedures are the same as those in the OMB guidance.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 3001.225 Who in DHS does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the DHS Office of Inspector General and each DHS office from which the recipient currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§ 3001.300 Who in DHS does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the DHS Office of Inspector General and each DHS office from which the recipient currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 3001.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 3001, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 3001.500 Who in DHS determines that a recipient other than an individual violated the requirements of this part?

The Secretary of Homeland Security, or his or her official designee, will make the determination that a recipient other than an individual violated the requirements of this part.

§ 3001.505 Who in DHS determines that a recipient who is an individual violated the requirements of this part?

The Secretary of Homeland Security, or his or her official designee, will make the determination that a recipient who is an individual violated the requirements of this part.

§ 3001.510 What actions will the Federal Government take against a recipient determined to have violated this part?

If a recipient is determined to have violated 2 CFR part 182, as implemented by this part, the agency will take one or more of the following actions—

(a) Suspension of payments under the award;

(b) Suspension or termination of the award; and

(c) Suspension or debarment of the recipient under 2 CFR part 180 and 2 CFR part 3000, for a period not to exceed five years.

Subpart F—Definitions

§ 3001.605 Award.

Award means an award of financial assistance by a Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant, cooperative agreement or reimbursable agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under 2 CFR part 182 and specifies uniform administrative requirements.

(b) The term "award" does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (*i.e.*, any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

(8) Other Transactional Authority Award.

§ 3001.661 Reimbursable Agreement.

Reimbursable Agreement means an award in which the recipient is reimbursed for expenditures only, and is not eligible for advance payments.

TITLE 44—EMERGENCY MANAGEMENT AND ASSISTANCE

CHAPTER I

PART 17—[REMOVED]

■ 2. Remove part 17.

Dated: February 4, 2011.

Lluana McCann,

Director, Division of Financial Assistance Policy and Oversight, Office of the Chief Financial Officer, Department of Homeland Security.

[FR Doc. 2011–3217 Filed 2–23–11; 8:45 am]

BILLING CODE 9110–9B–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 704

RIN 3133–AD80

Corporate Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement 11–02.

SUMMARY: The NCUA Board is issuing a final Interpretive Ruling and Policy Statement (IRPS) setting forth the requirements and process for chartering corporate Federal credit unions.

DATES: This IRPS is effective March 28, 2011.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel, at the address above or telephone: (703) 518–6540; or Dave Shetler, Deputy Director, Office of Corporate Credit Unions, at the address above or telephone: (703) 518–6640.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA recently finalized changes to its Corporate Credit Union Rule, 12 CFR part 704. 75 FR 64786 (October 20, 2010). These changes, as well as NCUA's other efforts to resolve the problems created by the legacy assets remaining in the corporate credit union (corporate) system, are likely to result in a fundamental restructuring of that system. As part of this restructuring, NCUA believes that some groups of natural person credit unions (NPCUs) may wish to form new corporates. Previous corporate chartering guidance had been withdrawn; accordingly, on September 24, 2010, the NCUA Board issued a proposed IRPS setting forth the requirements and process for chartering corporate Federal credit unions (FCUs). 75 FR 60651 (October 1, 2010).

The proposed IRPS set forth requirements for prospective new corporate FCUs and NCUA's standards for evaluating applications. It also included detailed timelines for processing charter applications.

The public comment period for the proposed IRPS closed on November 1, 2010. NCUA received six comment letters on the proposed IRPS. The commenters generally supported the IRPS but asked for clarification regarding certain provisions and/or suggested minor changes.

B. Comments

General Comments

One commenter observed that the Board has suggested the possibility of permitting special purpose corporates and asked whether the IRPS would apply to an entity organized as a special purpose corporate. The Board notes that any entity chartered as a "corporate credit union" would be subject to the IRPS.

Specific Comments

Section II—Subscribers

This section of the proposed IRPS provided that seven or more natural person representatives of natural person credit unions (NPCUs)—"the subscribers"—may charter a corporate FCU.

Two commenters stated that it was not clear whether each natural person subscriber must represent a different NPCU. They recommended a clarification requiring at least seven subscribers from at least seven different NPCUs but that there be some latitude, on a case-by-case basis, for the subscribers to represent fewer NPCUs. The Board believes it is important that, without exception, each natural person subscriber represent a different NPCU, and has clarified the final IRPS accordingly. This requirement furthers the goal of developing broad membership support for any potential new charter and is consistent with the requirement in § 704.14(a)(4) of the NCUA Regulations that no individual may serve on the board if any corporate member would have more than one representative on the board. 12 CFR 704.14(a)(4).

Section III—Economic Advisability; Subsection B—Proposed Management's Character and Fitness

This subsection of the proposal provided that NCUA would conduct background and credit investigations on prospective officials and employees to establish each applicant's character and ability to effectively handle financial matters. The proposal listed some factors that could lead to disapproval of a prospective official or employee, including criminal convictions, indictments, acts of fraud and dishonesty, serious or unresolved past due credit obligations, and bankruptcies. This subsection also noted that NCUA needs assurance that the management team would have the requisite skills—including leadership—to make the proposed corporate a success.

One commenter suggested that instead of providing factors NCUA *may* consider, the IRPS should state that these factors are the only ones NCUA will consider. The commenter further stated that an indictment alone should not be a factor, as an individual might not be convicted. The Board declines to change the list of factors or to make them exclusive. To help ensure that corporate officials and employees have the highest integrity, NCUA needs to have the flexibility to consider any and all matters that may bear on an applicant's character, including indictments and other factors that might not be listed. No one factor is necessarily dispositive, however, and depending on the circumstances, the fact that an applicant has been indicted might not lead to his or her disapproval.

One commenter stated that "leadership" should not be included as a factor, as the IRPS does not provide the criteria NCUA would use to assess leadership quality. The commenter pointed to § 701.14 of the NCUA Regulations, governing change in officials of newly-chartered or troubled condition credit unions. Paragraph (e) of that section allows NCUA to disapprove an individual's service based on his or her "competence, experience, character, or integrity." The commenter suggested that these criteria should be the focus of NCUA's evaluation of prospective corporate officials. The Board disagrees. As noted above, the IRPS already provides for NCUA consideration of a prospective official or employee's character and ability to handle financial matters. Leadership is an additional quality that includes the demonstrated ability to establish an organizational vision, prioritize activities, and lead the organization to successfully accomplish its goals.

Section III, Subsection C—Member Support

This subsection required that subscribers demonstrate a sufficient customer base for the proposed corporate in the form of membership applications, capital and share commitments, and commitments to use the corporate's services. Specifically, it stated that the capital plan must show how the corporate would keep its total capital at 4 percent or more of its moving daily average net assets (MDANA) at all times beginning when NCUA issues the charter.

Several commenters questioned how this could be calculated on the day the

charter is issued, given that MDANA is defined as "the average of daily average net assets for the month being measured and the previous 11 months." The Board agrees, and has clarified the IRPS to say that MDANA at the time of charter will be calculated as the corporate's net assets on the date of charter, and MDANA for successive months consists of the average of DANA for the month being measured and the previous months back to the date of charter.

Two commenters felt that a newly-chartered corporate should be given more time to reach 4 percent. The Board disagrees. It is imperative that a corporate be adequately capitalized from the date of charter. A corporate with inadequate capital presents a risk both to its members and to the corporate system as a whole.

Section III, Subsection C—Present and Future Market Conditions—Business Plan

This subsection requires subscribers to submit a business plan based on realistic and supportable projections and assumptions that address a number of specific elements.

One commenter stated that some elements of the required business plan were too specific and duplicative of other information. The commenter also expressed concern about NCUA keeping a charter application's business plan information confidential. The Board disagrees with these comments, believing that all of the information requested in the application is necessary and that NCUA has systems in place to keep application information confidential.

Another commenter expressed concern that NCUA would not be sufficiently vigorous in its review of any proposed new corporate FCU's business plan to ensure that the plan is founded upon realistic and supportable projections and assumptions. The Board has directed staff to closely scrutinize any new charter application to determine that a proposed corporate is economically viable.

Section VI—NCUA Review

This section of the proposal set out the process and timeline NCUA would follow in evaluating a charter application. Generally, NCUA's Office of Corporate Credit Unions (OCCU) field and central office staff would review an application and give it to the Board for the final decision. Two commenters argued that under the proposed timeline, it could take up to six months for the review and decision and that this was too long. While the Board believes it is important for NCUA to take time to fully evaluate all aspects of an application, it understands that there may be a situation in which corporate restructuring requires expedited consideration of an application. The Board pledges that NCUA will work diligently to ensure the needs of the corporate system are met.

The proposed review process contemplated that OCCU staff and subscribers would work together at every step to ensure a complete application package that could be forwarded to the NCUA Board for a vote. One commenter, however, was concerned that OCCU staff might exercise a veto over any particular application by deciding not to forward it to the NCUA Board. To assuage this concern, the final IRPS provides subscribers with the right to petition the Board directly for a vote on a charter application where either (1) the OCCU Director has determined that the application does not merit approval, or (2) the subscribers believe, after some sufficient time to process the initial application, OCCU has moved too slowly on pushing the application to the Board. Accordingly, subscribers will have a 90 day window—beginning from the date of an OCCU disapproval letter or 180 days from the date of initial application, whichever is earlier—to petition the Board for a direct vote on the application.

Section VI also provided that if the Board approved a charter application, the officials must sign a Letter of Understanding and Agreement (LUA) imposing certain restrictions and requirements. Two commenters stated that the IRPS should clarify that the LUA will not impose any arbitrary restrictions that could hamper a corporate's growth. The Board assures the commenters that NCUA is committed to the success of any corporate it charters and will not act to harm the corporate.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small entities (those under $10 million in assets). The IRPS only applies to corporate credit unions, all of which have assets well in excess of $10 million. Accordingly, the Board certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. 44 U.S.C. 3507(d); 5 CFR part 1320. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections.

NCUA identified and described some information collection requirements in the proposed chartering process. As required by the PRA, NCUA has submitted a copy of this IRPS to the Office of Management and Budget (OMB) for its review and approval. While NCUA received comments on the proposed rule, no commenters specifically addressed the agency's estimates of burden hours as set out in the preamble to the proposed rule. Accordingly, NCUA anticipates that OMB will approve NCUA's submission and assign a collection number.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order.

This final rule will not have substantial direct effects on the States, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA

issues a final rule as defined by section 551 of the Administrative Procedure Act, 5 U.S.C. 551. OMB's determination about whether this rule is a major rule is pending.

By the National Credit Union Administration Board on February 17, 2011.

Mary F. Rupp,

Secretary of the Board.

Authority: 12 U.S.C. 1753, 1754, 1758, 1766.

Corporate Federal Credit Union Chartering Guidelines

I—Goals of NCUA Corporate Chartering Guidelines

These guidelines are intended to achieve the following goals:

- Uphold the provisions of the Federal Credit Union Act (Act);
- Promote safety and soundness within the credit union industry; and
- Provide quality services to members.

NCUA will consider the above criteria as the primary factors in determining whether to approve a corporate Federal credit union (FCU) charter. In unusual circumstances, NCUA may consider other information in deciding if a charter should be approved, such as other Federal law or public policies.

II—Subscribers

Seven or more natural person representatives of different natural person credit unions (NPCUs)—"the subscribers"—must present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed corporate FCU;
- The location of the proposed corporate FCU;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares; and
- The proposed field of membership.

False statements on any of the required documentation filed in obtaining an FCU charter may be grounds for Federal criminal prosecution.

III—Economic Advisability

A—General

Before chartering a corporate FCU, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. NCUA will conduct an independent investigation of each charter application to ensure that the proposed corporate credit union can be successful. In general, the success of any credit union depends on: (a) The character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

B—Proposed Management's Character and Fitness

The Act requires NCUA to ensure that the subscribers of Federal charters are of good "general character and fitness." In addition, employees and officials must be competent, experienced, honest, and of good character.

NCUA will conduct background and credit investigations on prospective officials and employees, and the reports must establish each applicant's character and ability to effectively handle financial matters. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of fraud and dishonesty. Other factors, such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks, may also disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills—particularly in leadership, accounting, funds management, and payment systems risk—and the commitment to dedicate the time and effort needed to make the proposed corporate FCU a success.

Section 701.14 of NCUA's Rules and Regulations sets forth the procedures for NCUA approval of officials of newly chartered FCUs, including corporate FCUs. If the application of a prospective official or employee to serve is not acceptable to NCUA's Director, Office of Corporate Credit Unions (OCCU), the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the OCCU's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an applicant acceptable to NCUA must be provided before the charter can be approved.

C—Member Support

An important chartering consideration is the degree of support from the field of membership. The charter applicant must demonstrate a sufficient customer base from which to draw business in the form of membership applications, capital and share commitments, and commitments to use the corporate FCU's services. The applicant must provide surveys and/or written commitments certifying to this potential membership base and capital commitment to the levels required by Part 704 of NCUA's Rules and Regulations. Although NCUA may work with a newly chartered corporate on a plan to meet the retained earnings requirements of Part 704, the newly chartered corporate must have a viable plan to solicit and maintain sufficient contributed capital. Generally, the plan must show how the corporate FCU will keep its total capital at 4 percent or more of its moving daily average net assets (MDANA) at all times beginning on the date NCUA issues the charter. MDANA at the time of charter will be calculated as the corporate's net assets on the day of charter. MDANA for month one consists of the DANA for that month. MDANA for months two through eleven consists of the average of DANA for the month being measured and the previous months back to the date of charter.

D—Present and Future Market Conditions—Business Plan

The ability to provide effective service to members, compete in the marketplace, and adapt to changing market conditions are key to the survival of any enterprise. Before NCUA will charter a corporate credit union, a charter applicant must submit a business plan based on realistic and supportable projections and assumptions. The business plan should contain, at a minimum, the following elements:

(1) Mission statement;

(2) Analysis of market conditions (*i.e.,* economic prospects for the corporate credit union and availability of proposed financial services from alternative depository institutions);

(3) Summary of survey results and/or customer base analysis;

(4) Proposed financial services to be offered;

(5) How and when services are to be implemented;

(6) Anticipated corporate credit union staffing and credentials of key employees;

(7) Physical facility—office and equipment;

(8) Proposed recordkeeping, data processing, and communications systems and/or vendors;

(9) Budget for the first three years;

(10) Semiannual pro-forma financial statements for the first three years, including a listing of the assumptions used to develop the financial statements;

(11) Goals for the number of members and shares under various scenarios;

(12) Projected break-even or date of achieving independent operations;

(13) Source of funds to pay expenses during the initial setup and early months of operation;

(14) Written policies for shares, lending, investments, funds management, capital accumulation as required by Part 704, payment systems, and EDP;

(15) Plan for continuity—directors, committee members, and senior management;

(16) Evidence of commitment (*i.e.,* letters and/or contracts used to substantiate projections); and

(17) Services and marketing strategies for financial and correspondent services, including the ability of the proposed corporate credit union to efficiently deliver these products.

IV—Organizing a Corporate Federal Credit Union

The subscribers must submit the following documentation to the NCUA Office of Corporate Credit Unions (OCCU) for processing:

(1) NCUA Form 4001—Federal Credit Union Investigation Report. In completing the form, subscribers may disregard any reference to "common bond." In addition, where Section B.2 of the form requires a potential interest survey sample of at least 250 potential members, subscribers may use a sample of at least 30 potential members.

(2) NCUA Form 4008—Organization Certificate. This document establishes the seven criteria required of subscribers by the Act and is signed by the subscribers and notarized. This document should be executed in duplicate.

(3) NCUA Form 4012—Report of Officials and Agreement to Serve. This form documents general background information for each official and employee of the proposed corporate credit union. Each designee must complete and sign this form.

(4) NCUA Form 9500—Application and Agreements for Insurance of Accounts. This document contains agreements FCUs must comply with in order to obtain NCUA insurance coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer.

(5) NCUA Form 9501—Certification of Resolutions. This document certifies the board of the proposed corporate credit union has resolved to apply for Federal insurance of member's accounts and has authorized the chief executive officer and chief financial officer to execute the Application and Agreements for Insurance of Accounts. Both the chief executive officer and recording officer of the proposed corporate credit union must sign this certification.

V—Name Selection

It is the responsibility of the corporate FCU organizers to ensure that the proposed corporate FCU name does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the corporate credit union's name:

- Is not already officially being used by another FCU;
- Will not be confused with NCUA or another Federal or State agency, or with another credit union; and
- Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

VI—NCUA Review

A—General

OCCU will conduct an independent investigation of the corporate credit union's charter application to assess the economic and long-term viability of the proposed corporate credit union. OCCU field staff will conduct the review and, if necessary, perform an on-site contact with selected officials and others having an interest in the proposed corporate credit union.

The review will include evaluation of proposed management's experience and suitability, commitment of proposed officials, and assessment of economic viability. OCCU field staff may also be called upon to assist subscribers in the proper completion of required forms and the Organization Certificate—NCUA Form 4008.

OCCU field staff will thoroughly analyze the prospective corporate credit union's business plan for realistic projections, attainable goals, and time commitment. Any concerns will be reviewed with the subscribers and discussed with prospective officials.

NCUA will follow the timeline set forth below in processing corporate charter applications:

1. Within 30 days of receipt of the application, OCCU field staff will meet with the proposed officials and management team to evaluate the adequacy of management and the information provided and to discuss the corporate credit union's ability to begin operations and meet financial projections if the charter is approved.

2. On completion of all required reviews, but no later than 60 days after the meeting described above, OCCU field staff will make a recommendation to the OCCU Director regarding the application. The recommendation may include provisional requirements to be completed prior to final approval of a corporate FCU charter.

3. Within 30 days of receiving the OCCU field staff recommendation, the OCCU Director will determine if the application can be forwarded to NCUA Board for action or if it should be returned to the subscribers for more information.

4. If the OCCU Director, after reviewing any additional information, believes the application has no merit, the OCCU Director may return the application to the subscribers as disapproved. If the OCCU Director believes the application has merit, the Director will forward the application to the Board, and the Board then has 60 days to vote on the proposed charter.

5. Notwithstanding the above timeline, the subscribers may petition the Board directly for a vote on a pending application. The right to petition begins upon the earlier of these two dates:

(a) The date of any OCCU disapproval described in paragraph 4 above, or

(b) 180 days from the date of initial charter application.

Subscribers must ensure the Board receives any petition no later than 90 days following the earlier of these two dates. The Board will act on a timely petition no later than 60 days from the date of petition receipt.

6. If the charter is approved, the officials must sign a "Letter of Understanding and Agreement" (LUA) before the corporate credit union can commence operations. This LUA will impose certain operational restrictions, require compliance with NCUA's Rules and Regulations and adoption of the standard Corporate FCU Bylaws, and contain several financial performance milestones that the new charter must meet, consistent with Part 704.

B—Finalization of New Charter

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors for the newly chartered corporate FCU. The new board of directors will subsequently appoint the supervisory committee. The corporate FCU must then submit a report of officials to OCCU.

[FR Doc. 2011–4071 Filed 2–23–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM449; Notice No. 25–420–SC]

Special Conditions: Embraer Model EMB–135BJ (Legacy 650) Airplanes, Limit Engine Torque Loads for Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer Model EMB–135BJ (Legacy 650) airplanes, modified in accordance with design-change application (DCA) 0145–000–00020–2008/FAA (the most current FAA-approved revision; hereafter referred to as "the DCA"). This Model EMB–135BJ airplane, as modified by the DCA, is commonly referred to as the Legacy 650 airplane. It will have a novel or unusual design feature associated with engine size and the potential torque load imposed by sudden engine-stoppage conditions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 17, 2011. We must receive your comments by April 11, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM449, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM449. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, FAA Airframe Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2279; facsimile (425) 227–1149; e-mail *carl.niedermeyer@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On September 19, 2008, Embraer applied for an amendment to U.S. type certificate (TC) T00011AT to include the new certification basis of Model EMB–135BJ (Legacy 650), modified according to major level 1 design change documented in DCA 0145–000–00020–2008/FAA Revision original. This airplane is a derivative of the Model EMB–135BJ (Legacy 600) airplane, which is approved under the same TC.

The Model EMB–135BJ (Legacy 650) airplane, modified according to the DCA, is powered by two Rolls Royce Allison engines, model AE3007A2. The airplane has an interior seating arrangement similar to the baseline configuration Model EMB–135BJ (Legacy 600) airplane, with increased maximum takeoff weight (MTOW) of 24,300 kg. It is intended for long-range operations with enhanced performance, and has additional fuel capacity over the Model EMB–135BJ (Legacy 600) baseline configuration.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR), 21.17, Embraer must show that the Model EMB–135BJ (Legacy 650) airplane meets the applicable provisions of the regulations incorporated by reference in TC T00011AT or the applicable regulations in effect on the date of application for the change to the TC data sheet. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type-certification basis." The regulations incorporated by reference in TC T00011AT are 14 CFR part 25 effective February 1, 1965, including Amendments 25–1 through 25–85, and 25–86 (applicable for § 25.1517), 25–88, 25–90, 25–91 (applicable for §§ 25.331, 25.335(b)(2), 25.351, 25.363, 25.371, 25.415, 25.491, 25.499 and 25.561), 25–93, 25–94 (applicable for § 25.807), 25–96 (applicable for § 25.571(e)(1)), 25–97, and 25–98, with certain exceptions that are not relevant to this special condition.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Model EMB–135BJ (Legacy 650) airplane must be shown to comply with the airworthiness standards of part 25, including Amendments 25–1 through 25–124, for components, areas, appliances, and systems affected by the type design change presented in the DCA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model EMB–135BJ (Legacy 650) airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, this Model EMB–135BJ (Legacy 650) airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the

noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued according to § 11.38 and become part of the type-certification basis according to 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Model EMB–135BJ (Legacy 650) airplane will incorporate novel or unusual design features involving engine size and the potential torque load imposed by sudden-engine-stoppage conditions.

Discussion

The limit engine-torque load imposed by sudden engine stoppage, due to malfunction or structural failure (such as compressor jamming), has been a specific requirement for transport-category airplanes since 1957. The size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque loads if they become jammed. It is evident from service history that the frequency of occurrence of the most severe sudden-engine-stoppage events is rare.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines is capable of producing, during failure, transient loads that are significantly higher and more complex than the generation of engines that were present when the existing standard was developed. Therefore, the FAA has determined that special conditions are needed for the Model EMB–135BJ (Legacy 650) airplanes.

To maintain the level of safety intended in § 25.361(b), a more comprehensive criteria is needed for the new generation of high-bypass engines. These special conditions would distinguish between the more-common seizure events and those less-common seizure events resulting from structural failures. For those less-common but severe seizure events, these criteria could allow some deformation in the engine-supporting structure (ultimate load design) in order to absorb the higher energy associated with the high-bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher safety factor. The criteria for the more-severe events would no longer be a pure static torque-load condition, but would account for the full spectrum of transient dynamic loads developed from the engine-failure condition.

Applicability

As discussed above, these special conditions are applicable to the Model EMB–135BJ (Legacy 650) airplanes. Should Embraer apply at a later date for a change to the type design of a certified airplane without new model designation on Type Certificate No. T00011AT to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Certification of the Model EMB–135BJ (Legacy 650) airplane is currently scheduled for February 18, 2011. The substance of these special conditions has been subject to the notice and public-comment procedure in several prior instances. Therefore, because a delay would significantly affect the applicant's both installation of the system and certification of the airplane, these special conditions are effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on Model EMB–135BJ airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer Model EMB–135BJ (Legacy 650) airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Embraer Model EMB–135BJ (Legacy 650) airplanes.

1. For turbine engine installations, the engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden engine deceleration due to a malfunction, which could result in a temporary loss of power or thrust; and

b. The maximum acceleration of the engine.

2. For auxiliary-power-unit installations, the power-unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden auxiliary-power-unit deceleration due to malfunction or structural failure; and

b. The maximum acceleration of the power unit.

3. For engine supporting structure, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from:

a. The loss of any fan, compressor, or turbine blade; and

b. Separately, where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. The ultimate loads developed from these conditions are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

5. Any permanent deformation that results from the conditions specified in Special Condition number 3 must not prevent continued safe flight and landing.

Issued in Renton, Washington, on February 17, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4072 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0951; Directorate Identifier 2010–NM–107–AD; Amendment 39–16608; AD 2011–04–08]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc. Model 45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires a general visual inspection for damage of wiring (including chafing, pinched wires, and exposed wires) and correct routing of wires in the left and right circuit breaker panels, and related investigative and corrective actions if necessary. This AD results from reports of wire damage on the pilot and copilot circuit breaker panels caused by a short circuit between chafed wiring and the circuit breaker panel forward mounting bracket. We are issuing this AD to detect and correct damaged or misrouted wires, which could result in a short circuit and the loss of systems associated with the wiring (including fire suppression function for one engine and essential avionics systems).

DATES: This AD is effective March 31, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 31, 2011.

ADDRESSES: For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com; Internet http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jose Flores, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone 316–946–4133; fax 316–946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM was published in the **Federal Register** on October 1, 2010 (75 FR 60667). That NPRM proposed to require a general visual inspection for damage of wiring (including chafing, pinched wires, and exposed wires) and correct routing of wires in the left and right circuit breaker panels, and related investigative and corrective actions if necessary.

Comments

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

Request To Revise Unsafe Condition

Learjet requested that we revise the unsafe condition, as stated in paragraph (e) of the NPRM, to "This AD results from reports of wire damage on the pilot and copilot circuit breaker panels caused by a short circuit between chafed wiring and the circuit breaker panel forward mounting bracket" instead of "This AD results from reports of wire damage on the pilot and copilot circuit breaker panels caused by a short circuit between chafed wires."

We agree with the commenter's request. We have revised the language in the **SUMMARY** section and paragraph (e) of this AD accordingly.

Request To Revise Paragraph (g) of the NPRM

Learjet requested that we revise paragraph (g) of the NPRM to "except if arcing damage is found on the forward mounting bracket of the circuit breaker panel" instead of "except if arcing damage is found on the mounting brackets of the forward circuit breaker panel."

We agree with the request provided by the commenter. We have revised paragraph (g) of this AD accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 339 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $28,815, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–04–08 Learjet Inc.: Amendment 39–16608; Docket No. FAA–2010–0951; Directorate Identifier 2010–NM–107–AD.

Effective Date

(a) This AD is effective March 31, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Inc. Model 45 airplanes, certificated in any category; having serial numbers identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Serial numbers 45–2001 through 45–2114 inclusive, 45–2116 through 45–2120 inclusive, 45–2122, 45–2125, and 45–2126.

(2) Serial numbers 45–005 through 45–380 inclusive, 45–382 through 45–391 inclusive, 45–393 through 45–396 inclusive, 45–398, 45–400, 45–401, and 45–403.

Subject

(d) Air Transport Association (ATA) of America Code 24: Electrical power.

Unsafe Condition

(e) This AD results from reports of wire damage on the pilot and copilot circuit breaker panels caused by a short circuit between chafed wiring and the circuit breaker panel forward mounting bracket. The Federal Aviation Administration is issuing this AD to detect and correct damaged or misrouted wires, which could result in a short circuit and the loss of systems associated with the wiring (including fire suppression function for one engine and essential avionics systems).

Compliance

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

Inspection and Corrective Action

(g) Within 50 flight hours after the effective date of this AD: Do a general visual inspection for damage of wiring and correct routing of wires in the left and right circuit breaker panels, and all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A40–24–11, dated November 16, 2009; or Bombardier Alert Service Bulletin A45–24–16, dated November 16, 2009; as applicable; except if arcing damage is found on the forward mounting bracket of the circuit breaker panel, before further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office, FAA. Do all applicable related investigative and corrective actions before further flight.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jose Flores, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone 316–946–4133; fax 316–946–4107.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(i) For more information about this AD, contact Jose Flores, Aerospace Engineer, Electrical Systems and Avionics, ACE–119W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone 316–946–4133; fax 316–946–4107.

Material Incorporated by Reference

(j) You must use Bombardier Alert Service Bulletin A40–24–11, dated November 16, 2009; or Bombardier Alert Service Bulletin A45–24–16, dated November 16, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Alert Service Bulletin A40–24–11, dated November 16, 2009; and Bombardier Alert Service Bulletin A45–24–16, dated November 16, 2009; under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on February 7, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3534 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1039; Directorate Identifier 2010–NM–002–AD; Amendment 39–16612; AD 2011–05–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There has been numerous reported failures of the Regional Jet engine TCGB [throttle control gearbox] P/Ns: 2100140–003, 2100140–005 & 2100140–007. Some of these failures have resulted in in-flight engine shutdowns. Post incident investigations revealed that excessive wear within the

engine TCGB could alter the rigging position or cause the throttle to jam. With the rigging position altered, movement of the throttle lever towards the idle position can result in throttle moving too close to the fuel shut-off position, which potentially, can cause the engine to flame out.

* * * * *

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

DATES: This AD becomes effective March 31, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 31, 2011.

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

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Senior Aviation Safety Engineer, Avionic & Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7331; fax (516) 794–5531; e-mail *Rocco.Viselli@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 21, 2010 (75 FR 64960), and proposed to supersede AD 2005–06–04, Amendment 39–14012 (70 FR 12963, March 17, 2005). That NPRM proposed to correct an unsafe condition for the specified products.

Since we issued AD 2005–06–04, the inspection for the throttle control gearbox (TCGB) required by that AD has been transcribed in a new certification maintenance requirement (CMR) task. This AD mandates the incorporation of new CMR Task C76–11–127–01 into the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM) as introduced by Bombardier Temporary Revision 2A–47. Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2004–01R2, dated September 29, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

There has been numerous reported failures of the Regional Jet engine TCGB [throttle control gearbox] P/Ns: 2100140–003, 2100140–005 & 2100140–007. Some of these failures have resulted in in-flight engine shutdowns. Post incident investigations revealed that excessive wear within the engine TCGB could alter the rigging position or cause the throttle to jam. With the rigging position altered, movement of the throttle lever towards the idle position can result in throttle moving too close to the fuel shut-off position, which potentially, can cause the engine to flame out.

Bombardier issued Service Bulletin (SB) 601R–76–019 dated 21 August 2003, to introduce an inspection of, and if required, replacement of the throttle control gearbox with a serviceable unit. AD CF–2004–01 was originally issued to mandate the subject inspection requirement as per SB 601R–76–019 and subsequent revisions.

The subject TCGB inspection requirements mandated as per the earlier versions of this [Canadian] AD, are now transcribed in a new Certification Maintenance Requirement (CMR) task. This revision is issued to mandate the incorporation of the new CMR task [Task C76–11–127–01] into the CL–600–2B19 Maintenance Requirements Manual (MRM), as introduced by the MRM Temporary Revision (TR) 2A–47.

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

Relevant Service Information

The NPRM referred to Bombardier Service Bulletin 601R–76–019, Revision C, dated July 5, 2007, as the appropriate source of service information for accomplishing certain proposed actions. Bombardier Inc. has issued Service Bulletin 601R–76–019, Revision D, dated September 23, 2010. This service bulletin does not add any work for the affected airplanes. We have revised this final rule to refer to Bombardier Service Bulletin 601R–76–019, Revision D, dated September 23, 2010, as the appropriate source of service information for accomplishing the applicable actions.

We have added new paragraph (m) to this final rule to give credit to operators for accomplishing the applicable actions before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–76–019, Revision C, dated July 5, 2007. We have re-identified subsequent paragraphs accordingly.

The NPRM also referred to Bombardier Temporary Revision 2A–47, dated May 27, 2009, to Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual for incorporating new CMR Task C76–11–127–01 into the maintenance program. Bombardier Inc. has issued Temporary Revision 2A–53, dated December 15, 2010, to Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual. Bombardier Temporary Revision 2A–53, dated December 15, 2010, was issued to revise the task description of CMR Task C76–11–127–01. We have revised this final rule to allow operators to use either Bombardier Temporary Revision 2A–47, dated May 27, 2009; or Bombardier Temporary Revision 2A–53, dated December 15, 2010; for revising the maintenance program to include CMR Task C76–11–127–01.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 638 products of U.S. registry.

The actions that are required by AD 2005–06–04 and retained in this AD take about 7 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $595 per product.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-

hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $54,230, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14012 (70 FR 12963, March 17, 2005) and adding the following new AD:

2011–05–03 Bombardier, Inc.: Amendment 39–16612. Docket No. FAA–2010–1039; Directorate Identifier 2010–NM–002–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 31, 2011.

Affected ADs

(b) The AD supersedes AD 2005–06–04, Amendment 39–14012.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, having an engine throttle control gearbox (TCGB) with part number 2100140–003, 2100140–005, or 2100140–007 installed.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (n)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 76: Engine Controls.

Reason

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

There has been numerous reported failures of the Regional Jet engine TCGB P/Ns: 2100140–003, 2100140–005 & 2100140–007. Some of these failures have resulted in in-flight engine shutdowns. Post incident investigations revealed that excessive wear within the engine TCGB could alter the rigging position or cause the throttle to jam. With the rigging position altered, movement of the throttle lever towards the idle position can result in throttle moving too close to the fuel shut-off position, which potentially, can cause the engine to flame out.

Bombardier issued Service Bulletin (SB) 601R–76–019 dated 21 August 2003, to introduce an inspection of, and if required, replacement of the throttle control gearbox with a serviceable unit. AD CF–2004–01 was originally issued to mandate the subject inspection requirement as per SB 601R–76–019 and subsequent revisions.

The subject TCGB inspection requirements mandated as per the earlier versions of this [Canadian] AD, are now transcribed in a new Certification Maintenance Requirement (CMR) task. This revision is issued to mandate the incorporation of the new CMR task [Task C76–11–127–01] into the CL–600–2B19 Maintenance Requirements Manual (MRM), as introduced by the MRM Temporary Revision (TR) 2A–47.

Compliance

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

Restatement of Requirements of AD 2005–06–04, With New Service Information

Inspection

(g) For airplanes having serial numbers (S/Ns) 7003 through 7067 inclusive, and 7069 and subsequent: At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed inspection for wear of the left and right engine throttle control gearboxes having part number (P/N) 2100140–005 or 2100140–007 by doing all the actions per Part A, paragraphs A., B., and C.(1) through C.(4), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010. If the wear value is the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010; repeat the inspection thereafter at intervals not to exceed 1,000 flight hours. As of the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision D, dated September 23, 2010, may be used. Doing the inspection required by paragraph (k) of this AD terminates the requirement in this paragraph.

(1) For airplanes having S/Ns 7003 through 7067 inclusive and 7069 through 7999 inclusive: Within 1,000 flight hours or 90 days after March 25, 2004 (the effective date of AD 2004–05–12), whichever is later.

(2) For airplanes having S/Ns 8000 and subsequent: Within 1,000 flight hours or 90

days after April 1, 2005 (the effective date of AD 2005–06–04), whichever is later.

Note 2: For the purposes of this AD, a detailed inspection is: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(h) If the wear value found during any inspection required by paragraph (g) of this AD is not the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010: Do the applicable actions required by paragraph (h)(1), (h)(2), or (h)(3) of this AD, at the time specified, per the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010. Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 1,000 flight hours. As of the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision D, dated September 23, 2010, may be used. Doing the inspection required by paragraph (k) of this AD terminates the inspection requirements of this paragraph.

(1) If the wear value on one or both of the gearboxes is the same as that specified in Part A, paragraph B.(5), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010: Before further flight, replace the affected gearbox with a new or serviceable gearbox, by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010. As of the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision D, dated September 23, 2010, may be used.

(2) If the wear value on both the left and right gearboxes is the same as that specified in Part A, paragraph B.(6), of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010: Before further flight, replace the gearbox having the higher wear value with a new or serviceable gearbox, by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010. Within 1,000 flight hours after doing the replacement, replace the other gearbox. As of the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision D, dated September 23, 2010, may be used.

(3) If the wear value on only one gearbox is the same as that specified in Part A, paragraph B.(7), and the wear value on the other gearbox is the same as that specified in Part A, paragraph B.(8), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010: Within 1,000 flight hours after the inspection, replace the gearbox with the wear value that is the same as that specified in Part A, paragraph B.(7), with a new or serviceable gearbox. Do the replacement by doing all the actions per Part B, paragraphs D. through F.(7), of the Accomplishment Instructions of Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; or Revision D, dated September 23, 2010. As of the effective date of this AD, only Bombardier Service Bulletin 601R–76–019, Revision D, dated September 23, 2010, may be used.

Additional Guidance

Note 3: Bombardier Service Bulletin 601R–76–019, dated August 21, 2003; Revision 'A,' dated February 19, 2004; Revision B, dated February 16, 2005; Revision C, dated July 5, 2007; and Revision D, dated September 23, 2010; reference Trans Digm, Inc., AeroControlex Group Service Bulletin 2100140–007–76–04, dated July 22, 2003, as an additional source of guidance for accomplishment of the inspections and replacement.

Reporting Requirement

(i) At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, submit a report of gearbox wear to Bombardier Aerospace, In-Service Engineering (Engine Group); fax (514) 855–7708. The report must include the airplane serial number, the number of flight hours on the airplane, and the number of flight hours on each gearbox (if different than the number of flight hours on the airplane).

(1) For Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7067 inclusive, and 7069 through 7999 inclusive: Submit a report within 10 days after doing the inspection required by paragraph (g) of this AD, or within 10 days after March 25, 2004, whichever is later.

(2) For Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 8000 and subsequent: Submit a report within 10 days after doing the inspection required by paragraph (g) of this AD, or within 10 days after April 1, 2005 (the effective date of AD 2005–06–04), whichever is later.

New Requirements of This AD

Actions

(j) For all airplanes: Within 30 days after the effective date of this AD, revise the maintenance program to include new CMR Task C76–11–127–01 specified in Bombardier Temporary Revision 2A–47, dated May 27, 2009; or Bombardier Temporary Revision 2A–53, dated December 15, 2010; to Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

Note 4: The actions required by paragraph (j) of this AD may be done by inserting a copy of Bombardier Temporary Revision 2A–47, dated May 27, 2009; or Bombardier Temporary Revision 2A–53, dated December 15, 2010; into the AWL section of Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual. When this temporary revision has been included in the limitation section of the general revisions of the document, the general revisions may be inserted in the document, provided the relevant information (CMR Task C76–11–127–01) in the general revision is identical to that in Bombardier Temporary Revision 2A–47, dated May 27, 2009; or Bombardier Temporary Revision 2A–53, dated December 15, 2010.

(k) For CMR Task C76–11–127–01 identified in Bombardier Temporary Revision 2A–47, dated May 27, 2009; or Bombardier Temporary Revision 2A–53, dated December 15, 2010; do the initial inspection within 1,000 flight hours after the effective date of this AD. Doing the initial inspection required by this paragraph terminates the requirements of paragraph (g) of this AD and the inspection requirements of paragraph (h) of this AD.

(l) Thereafter, except as provided by paragraph (n) of this AD, no alternative intervals may be approved for CMR Task C76–11–127–01 identified in Bombardier Temporary Revision 2A–47, dated May 27, 2009; or Bombardier Temporary Revision 2A–53, dated December 15, 2010; which require a special detailed inspection of the throttle control gearbox for gear and rack teeth wear.

(m) Accomplishment of the actions specified in paragraphs (g) and (h) of this AD before the effective date of this AD according to Bombardier Service Bulletin 601R–76–019, Revision C, dated July 5, 2007, is acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft

Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(o) Refer to MCAI Canadian Airworthiness Directive CF–2004–01R2, dated September 29, 2009; Bombardier Service Bulletin 601R–76–019, Revision D, dated September 23, 2010; and Bombardier Temporary Revision 2A–47, dated May 27, 2009, or Bombardier Temporary Revision 2A–53, dated December 15, 2010, to Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual; for related information.

Material Incorporated by Reference

(p) You must use Bombardier Service Bulletin 601R–76–019, Revision D, dated September 23, 2010; and Bombardier Temporary Revision 2A–47, dated May 27, 2009, or Bombardier Temporary Revision 2A–53, dated December 15, 2010, to Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on February 14, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4012 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1192; Directorate Identifier 2010–CE–020–AD; Amendment 39–16611; AD 2011–05–02]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate No. A–815 Formerly Held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires repetitively inspecting the elevator control tabs for discrepancies and, if any discrepancies are found, taking necessary corrective actions to bring all discrepancies within acceptable tolerances. This AD also requires reporting certain inspection results to the FAA. This AD was prompted by an evaluation of revisions to the manufacturer's maintenance manual that adds new repetitive inspections of the elevator control tabs. To require compliance with these inspections for U.S. owners and operators we are mandating the inspections through the rulemaking process. We are issuing this AD to add new repetitive inspections of the elevator control tabs. If these inspections are not done, excessive free-play in the elevator control tabs could develop. This condition could lead to loss of tab control linkage and severe elevator flutter. Such elevator flutter could lead to possible loss of control.

DATES: This AD is effective March 31, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 31, 2011.

ADDRESSES: For information about the revisions to the FAA-approved maintenance/inspection program identified in this AD, contact Viking Air Ltd., 9574 Hampden Road, Sidney, BC Canada V8L 5V5; telephone: (800) 663–8444; Internet: *http://www.vikingair.com.* You may review copies of the referenced revisions at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, New York Aircraft Certification Office, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7325; fax: (516) 794–5531; e-mail: *george.duckett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM published in the **Federal Register** on

December 7, 2010 (75 FR 75932). That NPRM proposed to require repetitively inspecting the elevator control tabs for discrepancies and, if any discrepancies are found, taking necessary corrective actions to bring all discrepancies within acceptable tolerances.

That NPRM also proposed a reporting requirement requesting information when the total maximum free play of the elevator servo tab and trim tab relative to the elevator exceeds 1.0 degree (this is equal to a maximum displacement of 0.070″ at the trailing edge of the servo tab). Collecting this information will help us better understand the service history related to excessive free-play in the elevator control tabs for various Model DHC–3 engine configurations.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

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

Interim Action

We are continuing to evaluate the cause of the unsafe condition identified in this AD to enable us to obtain better insight into the nature, cause, and extent of excessive free-play in the elevator control tabs. Based on this evaluation, we may consider further rulemaking.

Costs of Compliance

We estimate that this AD affects 65 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	Not applicable	$85 per inspection cycle	$5,525 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Minimum repair	1 work-hour × $85 per hour = $85	$50	$135
Moderate repair	3 work-hours × $85 per hour = $255	150	405
Maximum repair	6 work-hours × $85 per hour = $510	450	960

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

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–05–02 Viking Air Limited (Type Certificate No. A–815 Formerly Held by Bombardier Inc. and de Havilland, Inc.): Amendment 39–16611; Docket No. FAA–2010–1192; Directorate Identifier 2010–CE–020–AD.

Effective Date

(a) This AD is effective March 31, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Viking Air Limited (Type Certificate No. A–815 formerly held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes, all serial numbers, that:

(1) Do not have the new elevator servo tab and redundant control linkage installed according to Supplemental Type Certificate (STC) No. SA01059SE; and

(2) Are certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 27, Flight Controls.

Unsafe Condition

(e) This AD results from an evaluation of revisions to the manufacturer's maintenance manual that adds new repetitive inspections to the elevator control tabs. To require compliance with these inspections for U.S. owners and operators we are mandating these inspections through the rulemaking process. We are issuing this AD to add new repetitive inspections of the elevator control tabs. If these inspections are not done, excessive free-play in the elevator control tabs could develop. This condition could lead to loss of tab control linkage and severe elevator flutter. Such elevator flutter could lead to possible loss of control.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Actions	Compliance	Procedures
(1) Inspect the elevator control tabs for discrepancies.	Initially within the next 50 hours time-in-service (TIS) after March 31, 2011 (the effective date of this AD). Repetitively thereafter inspect at intervals not to exceed 100 hours TIS.	Following Viking DHC–3 Otter Maintenance Manual Temporary Revisions No. 18, No. 19, and No. 20, all dated December 5, 2008.
(2) If any discrepancies are found during any inspection required in paragraph (f)(1) of this AD, take necessary corrective actions to bring all discrepancies within acceptable tolerances.	Before further flight after any inspection required in paragraph (f)(1) of this AD in which discrepancies are found.	Following Viking DHC–3 Otter Maintenance Manual Temporary Revisions No. 18, No. 19, and No. 20, all dated December 5, 2008.
(3) If, during any inspection required in paragraph (f)(1) of this AD, the total maximum free play of the elevator servo tab and trim tab relative to the elevator exceeds 1.0 degree (this is equal to a maximum displacement of 0.070″ at the trailing edge), report the results of the inspection to the FAA.	Within 30 days after the inspection. We are collecting these inspection results for 24 months after March 31, 2011 (the effective date of this AD). The reporting requirements of this AD are no longer required after that time.	Use the form (Figure 1 of this AD) and submit it to FAA, Small Airplane Directorate, Attn: Jim Rutherford, 901 Locust, Room 301, Kansas City, Missouri 64106.

BILLING CODE 4910–13–P

Docket No. FAA-2010-1192	
Airplane Serial Number:	
Time-in-Service (TIS) of Airplane:	
Airplane Engine Type/Model Number/ Series Number:	
TIS of Airplane When Current Engine was Installed:	
Date When Current Engine was Installed:	
STC Number that Installed Current Engine (if applicable):	
Out of Tolerance Recording:	
Corrective Action Taken:	
Any Additional Information (Optional):	
Name:	
Telephone and/or Email Address:	
Date:	

Send report to: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; facsimile: (816) 329-4090; email: jim.rutherford@faa.gov

Figure 1

BILLING CODE 4910–13–C

Paperwork Reduction Act Burden Statement

(g) A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing, and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(i) For more information about this AD, contact George Duckett, Aerospace Engineer, New York ACO, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7325; fax: (516) 794–5531; e-mail: *george.duckett@faa.gov*.

Material Incorporated by Reference

(j) You must use Viking DHC–3 Otter Maintenance Manual Temporary Revision No. 18, Viking DHC–3 Otter Maintenance Manual Temporary Revision No. 19, and Viking DHC–3 Maintenance Manual Temporary Revision No. 20, all dated December 5, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For information about the revisions to the maintenance program identified in this AD, contact Viking Air Ltd., 9574 Hampden Road, Sidney, BC Canada V8L 5V5; telephone: (800) 663–8444; Internet: *http://www.vikingair.com*.

(3) You may review copies of the referenced revisions at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on February 15, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3926 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1099; Directorate Identifier 2010–CE–054–AD; Amendment 39–16610; AD 2011–05–01]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 Airplanes

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

ACTION: Final rule.

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

> Compass mismatch (up to loss of heading information) were reported by operators, due to ferro-magnetic masses (like the telescopic Tow-Bar) stowed in the baggage compartment.

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

DATES: This AD becomes effective March 31, 2011.

On March 31, 2011, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

For service information identified in this AD, contact Piaggio Aero Industries S.p.A., Via Cibrario, 4–16154 Genoa, Italy; phone: +39 010 6481 353; fax: +39 010 6481 881; e-mail: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 3, 2010 (75 FR 67639). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Compass mismatch (up to loss of heading information) were reported by operators, due to ferro-magnetic masses (like the telescopic Tow-Bar) stowed in the baggage compartment. A limitation was added to the approved Airplane Flight Manual, stating that the towing bar P/N 01–1227–0000 or similar ferromagnetic masses are prohibited to be carried in the baggage compartment.

We require the incorporation of Piaggio Aero Industries S.p.A. and Piaggio Aero Industries (Piaggio) Temporary Change No. 7, into the Pilot's Operating Handbook and EASA Approved Airplane Flight Manual Rep. 6591, issued: February 24, 2009, and Temporary Change No. 11 into the EASA Approved Airplane Flight Manual Rep. 180–MAN–0010–01100, issued: February 24, 2009, and installation of a placard. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Comment Issue: Study Relocation of Magnetic Flux Valves

James Wright stated that investigation into the feasibility of relocating the magnetic flux valves to an area less susceptible to magnetic interference may be a better course of action. We infer that the commenter requests that we withdraw the AD action and relocate the magnetic flux valves to an area less susceptible to magnetic interference.

We do not agree with the commenter. The current airplane flight manual limitation stipulates:

> The towing bar TRONAIR p/n 01–1227–0000 or other ferromagnetic masses with comparable mass and length are prohibited to be carried in the baggage compartment.

Additionally, Piaggio evaluated the possibility of relocating the flux valve and concluded it should remain in its current location. Piaggio confirmed that a new tow bar made of aluminum is available and can be used on Model PIAGGIO P–180 airplanes.

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

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 100 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $50 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $13,500 or $135 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–05–01 PIAGGIO AERO INDUSTRIES S.p.A: Amendment 39–16610; Docket No. FAA–2010–1099; Directorate Identifier 2010–CE–054–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 31, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 airplanes, all manufacturer serial numbers (MSN), certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 50: Cargo and Accessory Compartments.

Reason

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

Compass mismatch (up to loss of heading information) were reported by operators, due to ferro-magnetic masses (like the telescopic Tow-Bar) stowed in the baggage compartment. A limitation was added to the approved Airplane Flight Manual, stating that the towing bar P/N 01–1227–0000 or similar ferromagnetic masses are prohibited to be carried in the baggage compartment.

We require the incorporation of Piaggio Aero Industries S.p.A. and Piaggio Aero Industries (Piaggio) Temporary Change No. 7, into the Pilot's Operating Handbook and EASA Approved Airplane Flight Manual Rep. 6591, issued: February 24, 2009, and Temporary Change No. 11 into the EASA Approved Airplane Flight Manual Rep. 180–MAN–0010–01100, issued: February 24, 2009, and installation of a placard.

Actions and Compliance

(f) Unless already done, within 5 flights after March 31, 2011 (the effective date of this AD), do the following actions:

(1) *For MSN 1004 through 1104:* Incorporate Piaggio Aero P.180 AVANTI Temporary Change No. 7 to the Pilot's Operating Handbook and EASA Approved Airplane Flight Manual Rep. 6591, issued: February 24, 2009, in the Limitations section following Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009.

(2) *For MSN 1105 and subsequent:* Incorporate Piaggio Aero P.180 AVANTI II Temporary Change No. 11 to the EASA Approved Airplane Flight Manual Rep. 180–MAN–0010–01100, issued: February 24, 2009, in the Limitations section following Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009.

(3) *All MSN:* Install the part number 80K347593–005 limitation placard in the front of the baggage compartment door following Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: Revisions and changes to the Limitations section of the AFM are mandatory in Europe as part of the

European regulatory process upon issuance by the type certificate holder. The FAA must mandate any such changes through rulemaking, specifically in this case an airworthiness directive.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009; Piaggio Aero P.180 AVANTI Temporary Change No. 7 to the Pilot's Operating Handbook and EASA Approved Airplane Flight Manual Rep. 6591, issued: February 24, 2009; and Piaggio Aero P.180 AVANTI II Temporary Change No. 11 to the EASA Approved Airplane Flight Manual Rep. 180–MAN–0010–01100, issued: February 24, 2009, for related information. For service information related to this AD, contact Piaggio Aero Industries S.p.A., Via Cibrario, 4–16154 Genoa, Italy; phone: +39 010 6481 353; fax: +39 010 6481 881; e-mail: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Material Incorporated by Reference

(i) You must use Piaggio Aero Industries S.p.A. Service Bulletin (Mandatory) N.: SB 80–0275, Rev. N. 0, dated June 15, 2009; Piaggio Aero P.180 AVANTI Temporary Change No. 7 to the Pilot's Operating Handbook and EASA Approved Airplane Flight Manual Rep. 6591, issued: February 24, 2009; and Piaggio Aero P.180 AVANTI II Temporary Change No. 11 to the EASA Approved Airplane Flight Manual Rep. 180–MAN–0010–01100, issued: February 24, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.A., Via Cibrario, 4–16154 Genoa, Italy; phone: +39 010 6481 353; fax: +39 010 6481 881; e-mail: *airworthiness@piaggioaero.it*; Internet: *http://www.piaggioaero.com.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on February 14, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–3923 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0698; Directorate Identifier 2009–NM–264–AD; Amendment 39–16613; AD 2011–05–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires sealing the fasteners on the front and rear spars inside the left and right main fuel tanks and on the rear spar and lower panel of the center fuel tank. That AD also requires inspections of the wire bundle support installations to verify if certain clamps are installed and if Teflon sleeving covers the wire bundles inside the left and right equipment cooling system bays, on the left and right rear spars, and on the left and right front spars; and corrective actions if necessary. This new AD also requires sealing the additional fasteners on the rear spar inside the left and right main fuel tanks. This AD was prompted by a fuel system review conducted by the manufacturer. We have received reports from the manufacturer that additional fasteners in the main fuel tanks must be sealed for lightning strike protection. We are issuing this AD to detect and correct improper wire bundle support installation and sleeving and to prevent improperly sealed fasteners in the main and center fuel tanks from becoming an ignition source, in the event of a fault current or lightning strike, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective March 31, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 31, 2011.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket

Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6499; fax (425) 917–6590.; e-mail: *Takahisa.Kobayashi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2008–23–19, Amendment 39–15740 (73 FR 71534, November 25, 2008). That AD applies to the specified products. The NPRM published in the **Federal Register** on July 23, 2010 (75 FR 43097). That NPRM proposed to continue to require sealing the fasteners on the front and rear spars inside the left and right main fuel tanks and on the rear spar and lower panel of the center fuel tank. That NPRM also proposed to require inspections of the wire bundle support installations to verify if certain clamps are installed and if Teflon sleeving covers the wire bundles inside the left and right equipment cooling system bays, on the left and right rear spars, and on the left and right front spars; corrective actions if necessary; and sealing of additional fasteners on the rear spar inside the left and right main fuel tanks.

Comments

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

Concurrence With the NPRM

Boeing concurs with the contents of the proposed rule.

Request To Revise the Compliance Time

FedEx, US Airways, Delta, European Air Transport Leipzig GmbH (European Air)/DHL Air requested a change in the compliance time. FedEx, Delta, and US Airways requested that we change the compliance time from "60 months after December 30, 2008," to "60 months after the effective date of the final rule" in paragraph (h) of the NPRM. European Air/DHL Air requested an extension of the compliance time from 60 months to a minimum of 72 months for airplanes that have already been modified in accordance with Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007. FedEx and Delta stated that fuel tank access occurs at 72-month intervals. European Air/DHL Air stated that they purge the fuel tanks during a 4C-check corresponding to 72 months, 12,000 flight cycles, or 24,000 flight hours, whichever occurs first. European Air/DHL Air stated that the proposed compliance time does not allow a suitable maintenance opportunity to accomplish the additional work without disturbing the scheduled maintenance activities. Delta stated that the proposed compliance time allows approximately 3 years from the effective date of the final rule. Delta considered this requirement an undue burden that is not justified. Delta stated that the SFAR88 initiative and the Aging Aircraft initiatives generally have a timeline of 60 months to upgrade the airplanes based on the FAA harmonization policy of the aging airplane programs per "Fuel Tank Safety Compliance Extension (Final Rule) and Aging Airplane Program Update (Request for Comments)" (69 FR 45936, July 30, 2004).

We agree that the compliance time in paragraph (h) of this AD should be changed to "within 60 months after the effective date of this AD" to avoid causing an undue burden on operators who have already accomplished the modification in accordance with Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007. In addition, we consider the following condition may warrant this change in the compliance time. The additional work specified in Boeing Alert Service Bulletin 757–57A0064, Revision 1, dated October 5, 2009, is intended to provide an additional layer of protection to the main fuel tanks to prevent ignition sources from occurring inside those tanks under a lightning strike event. The existing fastener installation is able to tolerate lightning current without introducing ignition sources inside the main fuel tanks if no failure conditions exist. The additional work of sealing the affected fasteners will add a fail-safe design feature to the existing fastener installation so that no ignition sources are introduced under the presence of single failures. Because of this, we consider that an acceptable level of safety would still be provided with this change in the compliance time. We have also limited the airplanes affected by paragraph (h) of this AD to airplanes on which Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007, was done before the effective date of this AD.

We have also revised paragraph (g) of this AD to add the following sentence: "As of the effective date of this AD, only Boeing Alert Service Bulletin 757–57A0064, Revision 1, dated October 5, 2009, may be used."

We do not agree with extending the compliance time to 72 months. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely replacement of the fasteners. In consideration of all of these factors, we determined that the 60-month compliance time represents an acceptable interval in which the fasteners can be sealed in a timely manner, while still maintaining an acceptable level of safety. According to the provisions of paragraph (j) of this AD, operators may request an alternative method of compliance (AMOC) to request a longer compliance time, if the request is submitted with substantiating data that proves that the longer compliance time will provide an acceptable level of safety. We have not changed the AD further in this regard.

Request To Allow Modification in Accordance With Original Issue of Service Bulletin

European Air/DHL Air requested that we allow the modification, in accordance with Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007, and Boeing Multi Operator Message (MOM) 1–1046487761, dated November 6, 2008, as an accepted means of compliance. European Air stated that they started incorporating the modifications specified in Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007, and Boeing MOM 1–1046487761, dated November 6, 2008, before AD 2008–23–19 was issued.

We infer that European Air/DHL Air are requesting that we allow the modification done in accordance with Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007, and Boeing MOM 1–1046487761, dated November 6, 2008, as a means of compliance with paragraphs (g) and (h) of this AD. We do not agree. Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007, is not sufficient to address the unsafe condition, and Boeing MOM 1–1046487761, dated November 6, 2008, merely informs operators of a forthcoming revision to Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007, which will include additional work of sealing 40 fasteners that are not identified in Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007. Boeing MOM 1–1046487761, dated November 6, 2008, refers to two sketches that provide the locations of additional

fasteners that must be sealed. Those sketches can help operators to accomplish the additional work, but they only provide figures that are applicable to certain airplane groups identified in Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007. In addition, those sketches are not a published document and cannot be incorporated by reference in the AD. We have determined that it is inappropriate to include Boeing MOM 1–1046487761, dated November 6, 2008, as an accepted means to comply with the actions required by this AD. However, operators who have used those data can still request approval of an AMOC, in accordance with paragraph (j) of this AD. No change has been made to the AD in this regard.

Request To Clarify Instructions for Continued Airworthiness (ICA)

Continental stated that proper ICA must be provided in order to prevent inadvertent reversal of implemented changes that can lead to violation of requirements of the SFAR88 program as well as the final rule. Continental Airlines requested that we coordinate with Boeing to ensure proper instructions are provided.

We acknowledge the commenter's concern. Operators and owners are responsible for ensuring that the configuration mandated by this AD is maintained in accordance with section 39.7 of the Federal Aviation Regulations (14 CFR 39.7). If any new airworthiness limitations (AWLs) related to any of the design features mandated by this AD are developed, we may consider additional rulemaking to mandate incorporation of those AWLs into operators' maintenance programs. The FAA is working with industry to evaluate potential changes to the AD process that are intended to more clearly identify how to maintain configurations that are required for AD compliance. We have not changed the AD regarding this issue.

Request To Allow Alternative Color of Lacing Tape

Continental raised a question regarding the color of lacing tape specified in Boeing Alert Service Bulletins 757–57A0064, dated July 16, 2007; and Revision 1, dated October 5, 2009. Continental stated that those service bulletins require use of a lacing tape identified as BMS 13–54, Type III, Class 1, Finish C, Black. Continental stated that a specific color of the lacing tape should not be mandated. Continental stated that Boeing Standard Wiring Process Manual 20–10–11 makes no distinction regarding the color of the lacing tape for sleeve installation.

We infer that Continental is requesting that we allow any color as long as the lacing tape is BMS 13–54, Type III, Class 1, Finish C. We agree to allow the use of white lacing tape because white is a neutral color that is not associated with any specific color code requirement. However, we disagree with allowing the use of lacing tape with colors other than black or white because use of colors other than black or white may be inconsistent with color-coding used by the manufacturer or operator, and could create confusion in wiring identification. We have granted a global AMOC to allow the use of lacing tape BMS 13–54, Type III, Class 1, Finish C, with white color in place of black color when accomplishing the actions specified in Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007, as required by paragraph (f) of AD 2008–23–19, Amendment 39–15740. Paragraph (i) has been added to this AD to reflect these changes.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes:

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

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 667 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Fastener Sealing and Inspections (required by AD 2008–23–19).	Up to 545 work-hours × $85 per hour = Up to $46,325 per airplane depending on configuration.	$325	Up to $46,650	Up to $31,115,550.
Main Tank Fastener Sealing (new proposed action).	Up to 30 work-hours × $85 per hour = Up to $2,550.	$0	Up to $2,550	Up to $1,700,850.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Clamp Replacement	Up to 6 work-hours × $85 per hour = $510	$0	Up to $510.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII,

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–23–19, Amendment 39–15740 (73 FR 71534, November 25, 2008), and adding the following new AD:

2011–05–04 The Boeing Company: Amendment 39–16613; Docket No. FAA–2010–0698; Directorate Identifier 2009–NM–264–AD.

Effective Date

(a) This airworthiness directive (AD) is effective March 31, 2011.

Affected ADs

(b) This AD supersedes AD 2008–23–19, Amendment 39–15740.

Applicability

(c) This AD applies to all The Boeing Company Model 757–200, –200CB, –200PF, and –300 series airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from a fuel system review conducted by the manufacturer. We have received reports from the manufacturer that additional fasteners in the main fuel tanks must be sealed for lightning strike protection. The Federal Aviation Administration is issuing this AD to detect and correct improper wire bundle support installation and sleeving and to prevent improperly sealed fasteners in the main and center fuel tanks from becoming an ignition source, in the event of a fault current or lightning strike, which could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Restatement of Requirements of AD 2008–23–19, With Revised Service Information

Fastener Sealing and Inspections

(g) Within 60 months after December 30, 2008 (the effective date of AD 2008–23–19), seal the applicable fasteners and do the general visual inspections of the wire bundle support installations, and do all the applicable corrective actions before further flight, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007; or Part 1 through Part 10 of the Work Instructions of Boeing Alert Service Bulletin 757–57A0064, Revision 1, dated October 5, 2009. As of the effective date of this AD, only Boeing Alert Service Bulletin 757–57A0064, Revision 1, dated October 5, 2009, may be used.

New Requirements of This AD

Fastener Sealing on the Rear Spar

(h) For airplanes on which the actions in Boeing Alert Service Bulletin 757–57A0064, dated July 16, 2007, were accomplished before the effective date of this AD: Within 60 months after the effective date of this AD, seal the fasteners on the rear spar inside the left and right main fuel tanks, in accordance with Part 11 of the Work Instructions of Boeing Alert Service Bulletin 757–57A0064, Revision 1, dated October 5, 2009.

Acceptable Lacing Tape for Repair Actions

(i) Where Boeing Alert Service Bulletin 757–57A0064, Revision 1, dated October 5, 2009, describes the use of lacing tape BMS 13–54, Type III, Class 1, Finish C, Black, this AD also allows the use of lacing tape BMS 13–54, Type III, Class 1, Finish C, White, as an alternative.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6499; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC, notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(3) AMOCs approved previously in accordance with AD 2008–23–19, Amendment 39–15740, are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

Related Information

(k) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6499; fax (425) 917–6590; e-mail: *Takahisa.Kobayashi@faa.gov*.

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 757–57A0064, Revision 1, dated October 5, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this

material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on February 14, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4013 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0859; Directorate Identifier 2010–NM–113–AD; Amendment 39–16614; AD 2011–05–05]

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), Department of Transportation (DOT).

ACTION: Final rule.

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

* * * * *

* * * [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.

* * * * *

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

DATES: This AD becomes effective March 31, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 31, 2011.

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

FOR FURTHER INFORMATION CONTACT: 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:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 29, 2010 (75 FR 60010). That NPRM proposed 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

The NPRM referred to the service information in the following table as the applicable sources of service information.

TABLE—SERVICE INFORMATION CITED IN THE NPRM

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.

Airbus has released the service information in the following table. No additional work is necessary for airplanes on which earlier revisions of the service information are done. We have updated Tables 1 and 3 of the final rule to refer to these sources of service information. We have also updated Table 2 of the final rule to give credit for using Revision 01 of the service information.

TABLE—REVISED SERVICE INFORMATION

Airplane model—	Airbus Mandatory Service Bulletin—	Revision—	Dated—
A330	A330–92–3088, including Appendix 01	02	September 1, 2010.
A340	A340–92–4081, including Appendix 01	02	September 1, 2010.
A340	A340–92–5053, including Appendix 01	02	September 1, 2010.

Comments

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

Support for the NPRM

Delta stated that it agreed with the intent of the rule.

Request To Revise Compliance Times

Delta requested that we revise the compliance time from within 3,600-flight-hours to 10,000 flight hours or 24 months after the effective date of the AD to allow operators the flexibility to schedule the task during routine maintenance opportunities. Delta stated that revising the compliance times would be more congruous with AD 2008–06–25, Amendment 39–15437 (73 FR 14659). Delta stated that it reviewed its maintenance records for Model A330 airplanes, and it has not experienced a single failure of a hydraulic electric motor pump electrical connector in approximately 738,000 hours of operation. Furthermore, Delta stated that there have been no cases of fire as a result of arcing within the hydraulic electric motor pump connectors and that arcing within the connectors without the presence of flammable fluid does not constitute a safety issue.

We do not agree with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the modification. In consideration of these items, we have determined that a 3,600-flight-hour compliance time will ensure an acceptable level of safety and allow the modifications to be done during scheduled maintenance intervals for most affected operators. However, under the provisions of paragraph (i)(1) of the final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed the final rule in regard to this issue.

Request To Include Reference for Additional Tooling

Delta requested that we revise the NPRM to include Airbus Service Bulletin Information Telex (SBIT) 10–0039, dated October 14, 2010, or that we delay issuing the final rule until Revision 03 of Airbus Mandatory Service Bulletin A330–92–3088 is released. Delta stated that Airbus has informed operators that Airbus Mandatory Service Bulletin A330–92–3088 is being revised to include direct references to the adequate tool part numbers.

We disagree with the request to include the SBIT and with the request to delay the final rule until Revision 03 of Airbus Mandatory Service Bulletin A330–92–3088 is released. Although the SBIT does contain tooling information, this AD does not mandate which tooling to use. We did not revise the final rule in this regard.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 43 products of U.S. registry. We also estimate that it will take about 13 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will 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 parts. 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 this AD to the 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–05–05 Airbus: Amendment 39–16614. Docket No. FAA–2010–0859; Directorate Identifier 2010–NM–113–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 31, 2011.

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, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –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, –212, –213, –311, –312, –313, –541, and –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	02	September 1, 2010.
A340	A340–92–4081	02	September 1, 2010.
A340	A340–92–5053	02	September 1, 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.
A330	A330–92–3088	01	February 22, 2010.
A340	A340–92–4081	Original	September 2, 2009.
A340	A340–92–4081	01	February 22, 2010.
A340	A340–92–5053	Original	September 2, 2009.
A340	A340–92–5053	01	February 22, 2010.

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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Branch, send it 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. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response,

including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

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, including Appendix 01	02	September 1, 2010.
A340	A340–92–4081, including Appendix 01	02	September 1, 2010.
A340	A340–92–5053, including Appendix 01	02	September 1, 2010.

Material Incorporated by Reference

(k) You must use the service information contained in Table 4 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—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.*

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

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

TABLE 4—MATERIAL INCORPORATED BY REFERENCE

Airplane model—	Airbus Mandatory Service Bulletin—	Revision—	Dated—
A330	A330–92–3088, including Appendix 01	02	September 1, 2010.
A340	A340–92–4081, including Appendix 01	02	September 1, 2010.
A340	A340–92–5053, including Appendix 01	02	September 1, 2010.

Issued in Renton, Washington, on February 14, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4041 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 420

Schedule of Water Charges

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: By Resolution No. 2010–9 on September 15, 2010, the Delaware River Basin Commission (DRBC or "Commission") approved amendments to its Administrative Manual, Part III, Basin Regulations—Water Supply Charges. Accordingly, the Commission's water charging rates for consumptive use and non-consumptive use, as codified, are hereby amended.

DATES: *Applicability date:* This rule is applicable beginning January 1, 2011, to first quarter 2011 payments due by April 30, 2011. *Effective Date:* February 24, 2011.

FOR FURTHER INFORMATION CONTACT: For questions about the water charging program, please contact Ms. Amy Shallcross at 609–477–7201.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission is a state and federal compact agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four basin states—Delaware, New Jersey, New York, and Pennsylvania—and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the President of the United States and all Federal agencies.

In order to fund certain water supply storage facility projects in the Basin, the Commission between 1964 and 1974 established a system of water supply charges consistent with section 3.7 of the Delaware River Basin Compact. DRBC Resolution No. 71–4 established a schedule of rates for water withdrawals and provided that "the charges for water supplied will include all costs associated with making basin water supply available and maintaining its continued availability in adequate quantity and quality over time." Res. No. 71–4, Apr. 7, 1971, par. A.2. Revenues from the sale of water in accordance with the rule are placed in a "Water Supply Storage Facilities Fund," from which payments are made to meet the annual cost of the Commission's water storage projects—including "debt service, operation, maintenance, replacement, reserves and associated administrative costs." Id., par. A.2.b. The schedule of water charges in effect from 1978 through 2010 was established by Resolution No. 78–14 in October of 1978, based on the unit cost of water storage owned by the Commission in the Federal government's Beltzville and Blue Marsh reservoirs. The rates established in 1978—$60 per million gallons for consumptive use and $.60 per million for non-consumptive use—remained unchanged for over 30 years.

Notice of the proposed amendments appeared in the **Federal Register** on February 19, 2010 (75 FR 7411), as well as in the Delaware Register of Regulations on March 1, 2010 (13 DE Reg. 1144), the New Jersey Register on March 15, 2010 (42 N.J.R. 667(a)), the New York State Register on March 3, 2010 (p. 5) and the Pennsylvania Bulletin on March 6, 2010 (40 Pa. B.

1201). The February-March 2010 proposal called for a two-stage increase. The consumptive use rate was proposed to increase from $60 to $90 per million gallons, effective January 1, 2011, and from $90 to $120 per million gallons, effective January 1, 2012; and the non-consumptive use rate was proposed to increase from $.60 to $.90 per million gallons, effective January 1, 2011, and from $.90 to $1.20 per million gallons, effective January 1, 2012. A public hearing on the proposed rate increases was held on April 13, 2010 and written comments were accepted through April 16, 2010.

On September 15, 2010, the Commission approved a single-stage increase of $20 per million gallons in the consumptive use rate and $.20 per million gallons in the non-consumptive use rate. Accordingly, effective January 1, 2011, the Commission's water charging rates are $80 per million gallons for consumptive use and $.80 per million gallons for non-consumptive use. No change to the list of uses exempt from charges was proposed or adopted. The Commission also authorized the Executive Director to establish a Water Charges Advisory Committee and to identify and develop proposals for studies to address issues affecting water charges. A comment and response document setting forth the Commission's responses in detail was approved by the Commission simultaneously with adoption of the final rule.

Resolution No. 2010–9, the text of the final rule, and a copy of the comment and response document are available on the Commission's Web site, drbc.net.

List of Subjects in 18 CFR Part 420

Incorporation by reference, Water resources, Water reservoirs, Water supply, Watersheds.

For the reasons set forth in the preamble, the Delaware River Basin Commission amends 18 CFR part 420 as follows:

PART 420—BASIN REGULATIONS—WATER SUPPLY CHARGES

■ 1. The authority citation for part 420 continues to read as follows:

Authority: Delaware River Basin Compact, 75 Stat. 688.

■ 2. Amend § 420.41 by revising paragraphs (a) and (b) to read as follows:

§ 420.41 Schedule of water charges.

* * * * *

(a) $80 per million gallons for consumptive use; and

(b) $.80 per million gallons for nonconsumptive use.

Dated: February 16, 2011.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

[FR Doc. 2011–3969 Filed 2–23–11; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB08

Amendment to the Bank Secrecy Act Regulations—Reports of Foreign Financial Accounts

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is issuing this final rule to amend the Bank Secrecy Act (BSA) regulations regarding reports of foreign financial accounts. The rule addresses the scope of the persons that are required to file reports of foreign financial accounts. The rule further specifies the types of accounts that are reportable, and provides filing relief in the form of exemptions for certain persons with signature or other authority over foreign financial accounts. Finally, the rule adopts provisions intended to prevent persons subject to the rule from avoiding their reporting requirement.

DATES: *Effective Date:* This rule is effective March 28, 2011.

Applicability Date: This rule applies to reports required to be filed by June 30, 2011 with respect to foreign financial accounts maintained in calendar year 2010 and for reports required to be filed with respect to all subsequent calendar years.

FOR FURTHER INFORMATION CONTACT: FinCEN, Regulatory Policy and Programs Division at (800) 949–2732 and select Option 1.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The BSA, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, authorizes the Secretary of the Treasury (Secretary), among other things, to issue regulations requiring persons to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, regulatory, and counter-terrorism matters. The regulations implementing the BSA appear at 31 CFR part 103 (31 CFR Chapter X, effective March 1, 2011).[1] The Secretary's authority to administer the BSA has been delegated to the Director of FinCEN.

Under 31 U.S.C. 5314 the Secretary "shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to * * * keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency." For this purpose, foreign financial agency means "a person acting for a person as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold."[2] The Secretary is authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out section 5314.

The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 103.24, 103.27, and 103.32. Section 103.24 generally requires each person subject to the jurisdiction of the United States having a financial interest in or signature or other authority over a bank, securities, or other financial account in a foreign country to "report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists, and * * * provide such information as shall be specified in a reporting form prescribed by the Secretary to be filed by such persons." Section 103.27 requires the form to be filed with respect to foreign financial accounts exceeding $10,000. The form must be filed on or before June 30 of each calendar year for accounts maintained during the previous

[1] On October 26, 2010, FinCEN issued a final rule (the Chapter X Final Rule), creating a new Chapter X in title 31 of the Code of Federal Regulations (CFR) for BSA regulations. (*See* 75 FR 65806 (October 26, 2010) (Transfer and Reorganization of Bank Secrecy Act Regulations Final Rule)). As discussed in the Chapter X Final Rule, FinCEN reorganized its regulations that previously appeared at 31 CFR part 103 in the new Chapter X. The Chapter X reorganization is effective as of March 1, 2011, and is not intended to have any substantive effect on the BSA regulations. The notice of proposed rulemaking (NRPM) that preceded today's final rule (amending the BSA regulations related to reports of foreign bank and financial accounts) was published prior to the effective date of the Chapter X reorganization. Accordingly, the NPRM used the 31 CFR part 103 numbering system. References in today's final rule generally use the 31 CFR part 103 numbering system. However, the text of the final rule itself is renumbered using the Chapter X numbering system.

[2] *See* 31 U.S.C. 5312(a)(1) which excepts from the definition of financial agency a person acting for a country, a monetary or financial authority acting as a monetary or financial authority or an international financial institution of which the United States government is a member.

calendar year. Section 103.32 requires records of accounts to be maintained for each person having a financial interest in or signature or other authority over such account. The records must be maintained for a period of five years.

The form used to file the report required by section 103.24 is the Report of Foreign Bank and Financial Accounts—Form TD–F 90–22.1 (FBAR). The instructions to the FBAR specify which persons must file as well as the types of accounts that must be reported.

II. Notice of Proposed Rulemaking

On February 26, 2010, FinCEN published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) that proposed changes to the rules for the reporting of foreign financial accounts.[3] Most significantly, the NPRM proposed to (1) Define the scope of individuals and entities required to file the FBAR, (2) delineate the types of reportable accounts, and (3) exempt certain persons and accounts from the reporting requirement and provide certain additional relief. The changes proposed in the NPRM were accompanied by proposed changes to the FBAR form instructions, a draft of which appeared in the **Federal Register** as an attachment to the NPRM.

Comments on the NPRM—Overview and General Issues

In response to the NPRM, FinCEN received a total of 42 timely filed comment letters from individuals, entities, and representatives of various groups and industries whose members are affected by FBAR requirements. The comments were generally supportive of the NPRM but sought broader exemptions than in the NPRM and often asked for clarification of the NPRM. In particular, commenters were uncertain about when an account was reportable under the FBAR and the scope of individuals covered by the signature authority definition. To this end, this final rulemaking document—

- Clarifies whether an account is foreign and therefore reportable as a foreign financial account and addresses the treatment of custodial accounts in this context;
- Revises the definition of signature or other authority to more clearly apply to individuals who have the authority to control the disposition of assets in the account by direct communication (whether in writing or otherwise) to the foreign financial institution;
- Clarifies that officers or employees who file an FBAR because of signature or other authority over the foreign financial account of their employers are not expected to personally maintain the records of the foreign financial accounts of their employers;
- Clarifies that filers may rely on provisions of this final rule in order to determine their filing obligation for FBARs in those cases where filing was properly deferred under prior Treasury guidance.

FinCEN believes that these clarifications and changes should address many of the concerns expressed in the public comments regarding uncertainty about the scope of the NPRM and therefore should make it easier for filers to determine whether the FBAR must be filed.

A. Reportable Accounts

FinCEN received a large number of comments requesting clarification as to when an account is deemed "foreign" for purposes of triggering the FBAR filing requirement. Commenters requested clarification on this issue with respect to holdings of securities accounts, pension fund accounts, and covered life insurance policies and annuities. FinCEN wishes to clarify that, as a general matter, an account is not a foreign account under the FBAR if it is maintained with a financial institution located in the United States. For example, individuals may purchase securities of a foreign company through a securities broker located in the United States as part of their investment portfolio. The mere fact that the account may contain holdings or assets of foreign entities does not render the account "foreign" for purposes of the FBAR. In this instance, the individual maintains the account with a financial institution in the United States.

FinCEN received a number of comments asking for clarification regarding specific custodial arrangements. Commenters explained that in some cases a United States person may have an account with a financial institution located in the United States, such as a bank. According to the commenters, that U.S. bank may act as a global custodian and hold the person's assets outside the United States. In many cases, the custody bank creates pooled cash and securities accounts in the non-U.S. market to hold the assets of multiple investors. These accounts, commonly called omnibus accounts, are in the name of the global custodian. Typically, the U.S. customer does not have any legal rights in the omnibus account and can only access their holdings outside of the United States through the U.S. global custodian bank. FinCEN wishes to clarify that in this situation, the U.S. customer would not have to file an FBAR with respect to assets held in the omnibus account and maintained by the global custodian. In this situation, the U.S. customer maintains an account with a financial institution located in the United States.

However, if the specific custodial arrangement permits the United States person to directly access their foreign holdings maintained at the foreign institution, the United States person would have a foreign financial account.

B. Signature or Other Authority, Generally

FinCEN received a large number of comments generally regarding the signature authority requirement. Some commenters sought further clarification of the definition, while other commenters recommended an elimination of the requirement. In the NPRM, FinCEN proposed to define "signature or other authority" as the "authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by delivery of instructions (whether communicated in writing or otherwise) *directly* to the person with whom the financial account is maintained."[4] To avoid confusion, FinCEN inserted the word "directly" into the definition proposed in the NPRM to place the filing requirement on an individual only if the individual has the authority to directly deliver instructions to the foreign financial institution.[5]

Nonetheless, commenters stated that they were unsure whether the proposed definition of signature authority would apply to an individual who merely participates in the decision to allocate assets or has the ability to instruct or supervise others with signature authority over a reportable account. In light of these comments, FinCEN has decided to revise the proposed definition of signature or other authority as follows:

> Signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.

The test for determining whether an individual has signature or other

[3] *See* 75 FR 8844 (February 26, 2010).

[4] 75 FR 8851 (February 26, 2010) (*Emphasis added*).

[5] A revised FBAR form that modified several aspects of the form instructions was issued in October 2008. That revision eliminated the words "direct communication" from the definition of signature or other authority.

authority over an account is whether the foreign financial institution will act upon a direct communication from that individual regarding the disposition of assets in that account. The phrase "in conjunction with another" is intended to address situations in which a foreign financial institution requires a direct communication from more than one individual regarding the disposition of assets in the account.

Some commenters requested that FinCEN eliminate the requirement to report signature or other authority over a foreign financial account. Commenters expressed concern about perceived duplication of reporting as well as a perceived lack of utility to law enforcement when both individuals with signature authority and those with a financial interest file FBARs with respect to the same account. Some commenters suggested that investigators could obtain the relevant information if FinCEN were to modify the FBAR form to enable the person with a financial interest in a reportable account to list all of the individuals with signature or other authority over the account. Another commenter suggested that FinCEN provide an exemption for all employees who have signature authority over but no financial interest in their employer's foreign financial accounts if the employer provides notice to the employees that the employer has filed an FBAR for its accounts.

Although FinCEN has considered the concerns raised by these commenters, FinCEN has decided not to eliminate the signature authority reporting requirement or revise the obligations as suggested by these commenters. Law enforcement agencies have indicated to FinCEN that FBARs filed by individuals with only signature authority are valuable tools in investigations. Law enforcement representatives disagreed with commenters that the signature authority requirement results in duplication of information. Although FinCEN may receive more than one FBAR with respect to the same foreign financial account, the reports contain information about different individuals with access to the account (either through financial interest or signature authority). Moreover, if FinCEN were to adopt a modified reporting system which relies upon the person with financial interest to report those individuals having signature authority over the account, there would be an increased opportunity to evade reporting because the signature authority requirement also acts as an independent check on FBAR reporting. For example, a person with financial interest may not report the FBAR at all, or may not identify all individuals with signature authority over the account. In such a case, law enforcement and other agencies would be deprived of valuable information regarding the full range of individuals with access to the account. Likewise, if FinCEN were to adopt an exemption for employees who receive notice from their employers regarding the filing of the FBAR, and the employer falsely provides the notice, law enforcement again would be deprived of valuable information. By adopting an independent reporting requirement for individuals with signature authority, the final rule maintains the check and balance that has existed since 1972, making it more difficult for the account and the individuals having access to that account to escape detection. The signature authority filing requirement is a necessary component of an effective FBAR regulatory regime. Thus, in this final rule, FinCEN continues to require reporting by individuals with signature or other authority.

Finally, FinCEN received one comment that pointed to a discrepancy between the NPRM definition of signature authority and the definition contained in the draft form instructions, which accompanied the NPRM. This comment noted that the draft form instructions slightly varied from the regulatory definition leaving the commenter unclear whether the definition of signature authority was intended to apply more broadly than just to individuals. FinCEN wishes to clarify that the signature authority definition contained in this final rule only applies to individuals. The instructions to the FBAR form have been revised to reflect the language in the final rule.

C. Recordkeeping and Truncated Filing Related to Signature or Other Authority

Commenters sought relief from the recordkeeping provisions of 31 CFR 103.32 for individuals with signature authority over their employer's accounts. These commenters argued that the recordkeeping rules present challenges in such cases, because these individuals do not own the records of the employing firm. Further, these commenters argued that they should not be expected to personally maintain the records of that employer for five years. FinCEN wishes to clarify that in the case of officers or employees who file an FBAR because of signature or other authority over the foreign financial accounts of their employer, we do not expect such officers or employees to personally maintain the records of the foreign financial accounts of their employers.

The preamble of the NPRM noted that a modified form of reporting would be available in the case of United States persons who are employed in a foreign country and who have signature or other authority over foreign financial accounts owned or maintained by their employer. FinCEN received two comments recommending that this modified form of reporting be available to United States persons employed in the United States with respect to foreign financial accounts over which they have signature authority. One of these commenters cited the difficulties in complying with the recordkeeping obligation, while the other commenter did not believe that United States persons should be treated differently based on the location of their employment. As noted above, FinCEN has clarified the recordkeeping obligations of officers and employees with only signature authority over the foreign financial accounts of their employers. FinCEN also wishes to note that in providing the modified reporting for United States persons who are employed overseas, FinCEN was attempting to balance the need for information contained in the FBAR with a recognition that United States persons working overseas are subject to both U.S. law and foreign law. FinCEN has not provided United States persons employed in the United States by a foreign employer with the modified form of reporting. In such cases, FinCEN believes that the foreign employer should expect that U.S. law will apply to these U.S. employees.

Finally, FinCEN received a comment asking that the modified reporting be explicitly available to "officers" employed overseas. The form instructions have been amended to reflect this change. The commenter also asked that FinCEN incorporate the modified reporting into the text of the final rule. FinCEN does not believe that it is necessary to include this form of relief in the text of the final rule itself.

D. General Exemptions

The NPRM proposed exemptions from the reporting requirements for certain types of persons and accounts. FinCEN received a number of comments asking for broader exemptions. One commenter requested that FinCEN exempt from the reporting requirement accounts located in jurisdictions that are not considered to be "tax havens" or that have highly functional bank regulation and information exchange with the United States. FinCEN also received comments from individuals living abroad who objected to the FBAR filing requirement. Some of these commenters were married

individuals who raised concerns that their non-U.S. spouses did not want information regarding joint financial accounts to be reported to U.S. government authorities. Another commenter requested that FinCEN exempt regulated financial institutions, such as those that qualify for exempt recipient status for purposes of filing an IRS 1099 series form, to report interest income and dividends.

Finally, FinCEN received several comments requesting a broad exemption for pension plans and welfare benefit plans, or at least for large ERISA plans. These commenters argued that pension plans and welfare benefit plans already are subject to comprehensive regulation and believed that the FBAR filing obligations would be unduly burdensome and duplicative in light of existing reporting requirements, particularly Form 5500, Annual Return/Report of Employee Benefit Plan. Commenters also pointed to the tax-exempt status of certain ERISA plan trusts, and a provision in the customer identification program (CIP) rules which exempts from the CIP rules an account established for the purpose of participating in an ERISA plan as indicating that an exemption from the FBAR rules would be appropriate in the case of ERISA pension and welfare benefit plans.[6] Alternatively, these commenters stated that many of their concerns would be addressed if FinCEN were to clarify the scope of a number of definitions in the NPRM such as signature authority and reportable accounts.

Section 5314 of the BSA mandates that the Secretary require each "resident or citizen of the United States or a person in, and doing business in, the United States" to keep records and file reports that disclose information regarding their foreign financial accounts. Section 5314 authorizes the Secretary to "prescribe a reasonable classification of persons subject to or exempt from" the reporting requirements.

FinCEN does not believe it appropriate to expand the exemptions as recommended by the commenters. Although the commenters noted that certain countries may have a robust set of anti-money laundering laws, the FBAR places the obligation of reporting on the United States person, and individuals and businesses can commit financial abuses and other crimes using financial institutions in those countries. By requiring United States persons to identify foreign financial accounts, the FBAR creates a financial trail that assists law enforcement and other agencies to identify accounts outside of the United States.

With respect to the comments raised by United States persons living abroad, FinCEN does not believe that an exemption is appropriate simply because a United States person chooses to live outside of the United States. With respect to commenters who recommended exempting certain regulated entities, such as those that qualify for exempt recipient status for purposes of reporting on IRS Form 1099, FinCEN has carefully considered the comments and has decided not to adopt them. While these entities may be entitled to some measure of special treatment under the Federal tax rules, FinCEN wishes to note that the purpose of the FBAR is broader than tax administration.[7]

Finally, FinCEN has considered the concerns raised by commenters regarding the treatment of pension and welfare benefit plans. FinCEN has not adopted the recommendation for a broad exemption for such plans. Because the purpose of the FBAR is broader than tax administration, FinCEN does not believe that it is appropriate to exempt entities from the FBAR requirement based on their tax-exempt status. In addition, while the CIP rule exempts accounts of certain entities, FinCEN does not believe that those CIP provisions which apply in the case of accounts established or maintained at a financial institution located in the United States, are determinative in the case of accounts maintained with a foreign financial institution. However, in response to these commenters' request for greater clarification of the NPRM, the final rule has provided a number of clarifications that address their concerns regarding the scope of foreign financial accounts that are reportable, and the definitions of signature authority and financial interest.[8]

E. Other Issues

Commenters raised a number of issues related to the process of filing the FBAR. Specifically, they requested the option to file the form electronically.[9] As noted in the NPRM, the FBAR form currently available on both the FinCEN and IRS Web sites allows users to complete the form electronically and print a PDF document that can be mailed to the address on the form. FinCEN is in the process of modernizing its IT system and has plans to include the ability to file FBARs electronically.

Commenters requested clarification of the draft instructions regarding how to determine the value of an account. The draft instructions to the FBAR form which accompanied the NPRM provide that periodic account statements may be relied on to determine the maximum value of the account provided that the statements fairly reflect the maximum account value during the calendar year. The commenters were uncertain whether it is possible to rely on periodic statements that provide the value in the account at the end of the statement period. Where *bona fide* statements are prepared in the ordinary course of business, FinCEN believes that such periodic account statements may be relied on for this purpose.

F. Applicability Date

The final rules contained in this document apply to FBARs required to be filed by June 30, 2011 with respect to foreign financial accounts maintained in calendar year 2010 and for reports required to be filed with respect to all subsequent calendar years.

FinCEN received several comments regarding the applicability date for the final rule. These commenters specifically asked whether filers would be permitted to rely on favorable provisions of the final rule with respect to foreign financial accounts maintained in calendar years beginning before 2010. We recognize that in certain instances, United States persons might have deferred filing the FBAR for prior reporting years in accordance with guidance issued by Treasury.[10] Although this final rule is not retroactive, filers who properly deferred filing obligations pursuant to IRS Notice 2010–23 may, if they wish, apply the provisions of this final rule in determining their FBAR filing requirements for reports due June 30, 2011, with respect to foreign financial

[6] The CIP rules require certain financial institutions to collect identifying information about a customer at account opening and implement procedures for verifying the customer's identity that are sufficient to enable the financial institution to form a reasonable belief that it knows the true identity of the customer. *See, e.g.,* 31 CFR 103.121.

[7] 31 U.S.C. 5311.

[8] FinCEN wishes to note that the final rule eliminates the proposed trust protector provision; *see* the discussion in the Section-by-Section Analysis.

[9] A few commenters raised other issues concerning the filing of the FBAR such as increasing the filing threshold and changing the due date of the FBAR. The threshold and the due date are established under a regulation section, 31 CFR 103.27 that was not proposed to be amended by the NPRM. Thus, changes suggested by those comments are not addressed in this final rulemaking.

[10] As a result of changes that were made to the FBAR form instructions in October 2008, the IRS extended the FBAR filing deadline for certain filers. *See* IRS Notice 2009–62 and IRS Notice 2010–23.

accounts maintained in calendar years beginning before 2010.

G. Coordination With Chapter X

On October 26, 2010, FinCEN finalized a reorganization of all the BSA regulations appearing in part 103 of Title 31 of the Code of Federal Regulations, effective March 1, 2011.[11] As discussed in the preamble of that final rule, BSA regulations that previously appeared in part 103 of Title 31 now appear in new Chapter X of Title 31. The reorganization is not intended to have any substantive effect on the BSA regulations.

Because the NRPM was published prior to the effective date of the Chapter X reorganization, the NPRM used the 31 CFR part 103 numbering system. For consistency with the NPRM, references in this final rule generally continue to use the 31 CFR part 103 numbering system. However, because the effective date of this final rule is March 28, 2011, the text of the regulations finalized today must use the Chapter X numbering system. Thus, instead of being numbered 31 CFR 103.24, today's final rule is numbered 31 CFR 1010.350.

III. Section-by-Section Analysis

The NPRM set forth general requirements for filing the FBAR and specific definitions applicable to such reporting. The final rule continues these general requirements and includes definitions of United States person, and bank, securities, and other financial accounts in a foreign country. These definitions delineate both the scope of individuals and entities that would be required to file the FBAR and the types of accounts for which such reports should be made. In addition, the final rule exempts certain persons with signature or other authority from filing the FBAR. Finally, the final rule includes provisions intended to prevent United States persons required to file the FBAR from avoiding this reporting requirement.

A. Section 103.24(a)—In General

FinCEN received no comments on proposed paragraph (a) of section 103.24 of the NPRM. Accordingly, the final rule adopts this paragraph without change.

B. Section 103.24(b)—United States Person

The NPRM defined a United States person as a citizen or resident of the United States, or an entity, including but not limited to a corporation, partnership, trust or limited liability company, created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories, and Insular Possessions of the United States or the Indian Tribes. The NPRM provided that the determination of whether an individual is a resident of the United States would be made under the rules of the Internal Revenue Code, specifically, 26 U.S.C. 7701(b) and the regulations thereunder, except that the definition of the term United States provided in 31 CFR 103.11(nn) will be used instead of the definition of United States in the rules under the Internal Revenue Code.

FinCEN received a number of comments about the proposed definition of United States person. Commenters raised questions about the part of the definition of United States person concerning trusts. They also raised questions about the application of the provisions of the Internal Revenue Code with respect to the term "resident."

Commenters generally objected to the inclusion of trust in the definition. They argued that trusts should not have a separate filing obligation in light of the fact that a U.S. trustee would also have an obligation to file an FBAR with respect to the trust. Commenters also believed that the NPRM is unclear about whether a trust that is treated as wholly owned by another person under the Internal Revenue Code would be required to file an FBAR. Finally, commenters believed that the final rule should define trust with reference to the rules of the Internal Revenue Code, specifically section 7701(a)(30), rather than considering whether a trust has been "created, organized, or formed under the laws of the United States * * *".

FinCEN acknowledges that in the case of trusts, a U.S. trustee must file the FBAR for the trust. However, FinCEN has decided to retain trust under the definition of United States person in the same manner that it has retained other entities such as corporations and limited liability companies.

FinCEN does not believe it appropriate to define trust under section 7701(a)(30) of the Internal Revenue Code because that definition might allow trusts formed under the law of a State to be excluded from the scope of FBAR obligations. For example, if a trust is formed under New York law and has one trustee who is a United States person and two trustees who are not United States persons, under section 7701(a)(30) the trust would not be considered a U.S. trust if all substantial trust decisions were not controlled by its U.S. trustee.

Commenters also raised questions with respect to the term "resident" in the definition of United States person. These commenters sought clarification on the treatment of individuals who make certain elections under section 7701(b) of the Internal Revenue Code. FinCEN believes that individuals who elect to be treated as residents for tax purposes under section 7701(b) should file FBARs only with respect to foreign accounts held during the period covered by the election. A legal permanent resident who elects under a tax treaty to be treated as a non-resident for tax purposes must still file the FBAR. Commenters also sought clarification about the interaction of elections under section 6013(g) and (h) of the Internal Revenue Code and the definition of resident. FinCEN wishes to clarify that the determination of whether an individual is a United States resident should be made without regard to elections under section 6013(g) or 6013(h) of the Internal Revenue Code. In the same vein, a commenter asked whether foreign corporations holding a U.S. real property interest and electing to be treated as a U.S. corporation for U.S. income tax purposes under section 897(i) of the Internal Revenue Code are required to file FBARs. FinCEN wishes to reiterate that, for purposes of FBAR reporting, a corporation is a United States person only if it is created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States, or the Indian Tribes.

C. Section 103.24(c)—Types of Reportable Accounts

FinCEN proposed to amend 31 CFR 103.24 by adding definitions of the accounts subject to reporting. FinCEN has chosen to define the terms bank account, securities account, and other financial account with reference to the kinds of financial services for which a person maintains an account.

D. Section 103.24(c)(1)—Bank Account

The NPRM defined "bank account" as a savings deposit, demand deposit, checking, or any other account maintained with a person engaged in the business of banking. The proposed definition would include time deposits such as certificates of deposit accounts that allow individuals to deposit funds with a banking institution and redeem the initial amount along with interest earned after a prescribed period of time. FinCEN received no comments on the proposed definition and, therefore, is adopting this definition without change.

[11] 75 FR 65806, Oct. 26, 2010.

E. Section 103.24(c)(2)—Securities Account

The NPRM defined "securities account" as an account maintained with a person in the business of buying, selling, holding, or trading stock or other securities. FinCEN received no comments on the proposed definition and, therefore, is adopting this definition without change.

F. Section 103.24(c)(3)—Other Financial Account

The term "other financial account" appears in current section 103.24. In order to enhance compliance, the NPRM proposed certain types of accounts that would fall within the meaning of this term. Specifically, the NPRM defined "other financial account" to mean

- An account with a person that is in the business of accepting deposits as a financial agency;
- An account that is an insurance policy with a cash value or an annuity policy;
- An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association; or
- An account with a mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions.

FinCEN received comments on the parts of the proposed definition addressing life insurance and annuity policies and mutual funds. With respect to life insurance and annuity policies, one commenter was concerned that the treatment of life insurance policies as accounts under the FBAR rule would cause these policies to be treated as accounts under other BSA regulations. The final rule clarifies that this definition is limited to the FBAR requirement.

The commenter also asked FinCEN to revise the definition with respect to life insurance and annuity policies so that the FBAR reporting requirement would apply only to such policies with a cash value or only at the time of the payment of an income stream to the policy holder. FinCEN has considered this comment. We are amending the definition with respect to life insurance and annuities to clearly reflect that only those life insurance or annuity policies with a cash value are covered under this definition. However, we do not believe it appropriate to limit the FBAR requirement to situations in which there is payment of an income stream. As with other types of reportable accounts, such as bank accounts, which are included in this final rule, the reporting of the FBAR is not limited to situations in which there is payment from the account. FinCEN also received a comment seeking clarification as to whether the obligation to file the FBAR in the case of life insurance rests with the policy holder or the beneficiary. FinCEN would like to clarify that the obligation in such a case rests with the policy holder.

With respect to mutual funds, FinCEN received a number of comments seeking clarification of the definition. Commenters noted that the term "mutual fund" may have a different meaning outside of the United States and might potentially cover hedge funds and private equity funds that have periodic redemptions. FinCEN wishes to reiterate that the definition of mutual fund includes a requirement that the shares be available to the *general public* in addition to having a regular net asset value determination and regular redemption feature. FinCEN believes that some of the concerns of commenters arose because the draft instructions to the form published with the proposed rule did not include the words "which issues shares available to the general public." The instructions have been revised to reflect the language of the definition contained in the final rule. As such, FinCEN does not believe it necessary to amend the proposed definition with respect to mutual funds. Accordingly, FinCEN is retaining this part of the definition as proposed. Furthermore, FinCEN notes that the NPRM specifically reserved the treatment of investment companies other than mutual funds or similar pooled funds, and the final rule continues to do so.

G. Section 103.24(c)(4)—Exceptions for Certain Accounts

Section 103.24(c)(4) of the NPRM proposed exceptions for certain accounts for which reporting will not be required by persons with a financial interest in or signature or other authority over the accounts. The following accounts were proposed to be excepted from reporting:

- An account of a department or agency of the United States, an Indian Tribe, or any State or any political subdivision of a State, or a wholly-owned entity, agency, or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity established under the laws of the United States, of an Indian Tribe, of any State, or of any political subdivision of any State, or under an intergovernmental compact between two or more States or Indian Tribes[,] that exercises governmental authority on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.

A few commenters sought clarification as to the meaning of proposed section 103.24(c)(4)(i). In particular, the commenters asked FinCEN to clarify whether the last sentence of the paragraph concerning the exercise of governmental authority applied to the entire paragraph or only the second sentence of the paragraph. In response, FinCEN clarifies that the last sentence should be read in conjunction with the second sentence of the paragraph, which contains a specific requirement concerning the exercise of governmental authority. FinCEN is also making a minor editorial change to the second sentence so that it will be clearer that the exercise of governmental authority requirement applies to the entire second sentence.[12]

Commenters recommended that the final rule provide an exception for the accounts of foreign insurance companies that elect under section 953(d) of the Internal Revenue Code to be treated as U.S. companies. Their recommendation appears to be based, in part, on a reading of the second sentence of proposed section 103.24(c)(4)(i) as providing an exception for the accounts of any entity organized in the United States. As explained above, the second sentence of proposed section 103.24(c)(4)(i) would only exempt the accounts of certain entities organized under the laws of the United States (or the law of other levels of government, such as State and local governments) if the entities exercise governmental authority. The commenters also indicate that by making a section 953(d) election, these companies are agreeing to comply with U.S. tax law. FinCEN wishes to clarify that making such an election does not render the entity a United States person for purposes of the FBAR.[13] Accordingly, the final rule does not adopt this recommendation.

[12] A comma is added before the word "that".

[13] FinCEN reaffirms that the FBAR requirement addressed in this document is a requirement under title 31 of the United States Code rather than under the Internal Revenue Code.

The last three exceptions contained in proposed 31 CFR 103.24(c)(4) were as follows:

- An account of an international financial institution of which the United States government is a member is not required to be reported.[14]
- An account in an institution known as "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.
- Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.

FinCEN received no comments on these proposed exceptions and, therefore, is adopting these exceptions without change.

H. Section 103.24(d)—Foreign Country

The term foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 103.11(nn). FinCEN received no comments on the proposed definition and, therefore, is adopting this definition without change.

I. Section 103.24(e)—Financial Interest

The NPRM proposed a definition of financial interest. The proposed definition covered situations in which the United States person is the owner of record or holder of legal title, as well as situations in which the United States person's ownership or control over the owner of record or holder of legal title rises to such a level that the person should be deemed to have a financial interest in the account.

Section 103.24(e)(1) proposed the following:

- A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which he is the owner of record or has legal title regardless of whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.

Section 103.24(e)(2) proposed that a United States person also has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is one of the following:

- A person acting on behalf of that United States person such as an attorney, agent, or nominee with respect to the account. (Section 103.24(e)(2)(i)).
- A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than a trust) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits. (Section 103.24(e)(2)(ii)).
- A trust, if the United States person is the trust settlor and has an ownership interest in the account for United States Federal tax purposes. *See* 26 U.S.C. 671–679 to determine if a settlor has an ownership interest in a trust's financial account for a year. (Section 103.24(e)(2)(iii)).
- A trust in which the United States person either has a beneficial interest in more than 50 percent of the assets or from which such person receives more than 50 percent of the income. (Section 103.24(e)(2)(iv)).
- A trust that was established by the United States person and for which the United States person has appointed a trust protector that is subject to such person's direct or indirect instruction. (Section 103.24(e)(2)(v)).

FinCEN received one comment seeking clarification on the scope of proposed section 103.24(e)(2)(iii). The commenter noted that although FinCEN incorporates the provisions of 26 U.S.C. 671–679 for determining ownership interest, section 103.24(e)(2)(iii) references the interests of the trust "settlor," while the provisions of 26 U.S.C. 671–679 refer to "grantor". The commenter noted that FinCEN did not define the term "settlor." FinCEN agrees with the commenter and has revised section 103.24(e)(2)(iii) to replace the word "settlor" with the word "grantor". In addition, the NPRM inadvertently used the word "account" instead of "trust" in section 103.24(e)(2)(iii). The final rule revises the section by using the word "trust."

FinCEN received a few comments related to the application of the definition of financial interest in the context of trusts, including trusts for pension plans. With respect to trusts generally, commenters raised concerns about determining whether a person has more than a 50 percent beneficial interest in the trust, when the trust is a discretionary trust. FinCEN recognizes that in the case of trusts, determinations regarding beneficial interest for purposes of filing the FBAR may be difficult if the person is a beneficiary of a discretionary trust or has a remainder interest in a trust. After considering this comment, FinCEN has revised section 103.24(e)(2)(iv) to change the term "beneficial interest" to "present beneficial interest." FinCEN does not intend for a beneficiary of a discretionary trust to have a financial interest in a foreign account simply because of his status as a discretionary beneficiary. Further, FinCEN does not intend to include a remainder interest within the scope of the term "present beneficial interest" for purposes of filing an FBAR. Finally, the final rule adds the word "current" before the word "income" which was inadvertently omitted from the text of the NPRM.

FinCEN also received comments regarding the trust protector provision in section 103.24(e)(2)(v). Commenters were concerned that the trust protector provision could be read in an overly broad manner, particularly in the case of pension plans, and another commenter believed that the trust protector provision would not adequately address situations in which the grantor has retained control over the trust. Although FinCEN has considered these comments and is removing the trust protector provision from the final rule, FinCEN remains concerned with the potential for abuse when a trust protector is appointed.[15] FinCEN believes that instances of abuse or arrangements designed to obfuscate ownership in the context of trusts, including the use of a trust protector to evade an FBAR reporting obligation, are sufficiently captured through the anti-avoidance provision discussed below.

Finally, the NPRM provided that a United States person that causes an entity to be created for a purpose of evading the FBAR reporting requirement would have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title. The term "evading" as used in the anti-avoidance rule is not intended to apply to persons who make a good faith effort to comply with the final rule.

[14] This exception does not limit the operation of the International Organization Immunities Act of December 29, 1945 (22 U.S.C. 288).

[15] *See,* the Senate Permanent Subcommittee on Investigations (PSI), Committee on Homeland Security and Governmental Affairs 2006 report titled, *Tax Haven Abuses: the Enablers, the Tools and Secrecy,* Senate Hearing 109–797, 109th Cong., 2d Sess. (August 1, 2006).

FinCEN received one comment on the proposed anti-avoidance provision, which recommended that the provision specifically incorporate rules found in 26 CFR 1.671–2(e)(4), relating to the treatment of transfer companies used to disguise the fact that a trust had a United States grantor. FinCEN believes that the anti-avoidance rule is sufficiently broad as to make it unnecessary to specifically incorporate 26 CFR 1.671–2(e)(4) because the rule captures all situations in which entities, including trusts, are used to evade an FBAR reporting obligation.

J. Section 103.24(f)—Signature or Other Authority

Current section 103.24 requires reporting by United States persons with signature or other authority over bank, securities, or other financial accounts in a foreign country. The NPRM proposed to continue this requirement and to define signature or other authority. As discussed in Section II.B above, the final rule revises the definition and continues the signature authority filing requirement.

K. Signature Authority Exceptions

The NPRM proposed to grant relief from the obligation to report signature or other authority over a foreign financial account to the officers and employees of five categories of entities subject to specific types of Federal regulation. These exceptions would apply, however, only where the officers or employees have no financial interest in the reportable account. These entities would still be obligated to report their financial interest in these reportable accounts. Officers and employees would be able to avail themselves of these exceptions without receiving notice that the entities had filed an FBAR with respect to these accounts.

FinCEN received a number of comments on the signature authority exceptions. Some commenters sought additional relief in the form of new exceptions. FinCEN received comments requesting relief from the signature authority filing requirement for the officers and employees of entities located in countries that FinCEN would designate as "low-risk," of entities listed on a foreign securities exchange, of foreign-located banks that have entered into a Qualified Intermediary agreement with the IRS, and of 501(c)(3) private colleges and universities. FinCEN wishes to reiterate that although certain countries may have a robust set of anti-money laundering laws, the FBAR places the obligation of reporting on the United States person, and the purpose of the FBAR is to create a financial trail of foreign accounts. Likewise, the fact that a foreign bank may have entered into a Qualified Intermediary agreement with the IRS for tax purposes or that an entity is exempt from tax under the Internal Revenue Code does not eliminate the need for law enforcement and other agencies to have information about the existence of foreign financial accounts of United States persons.

Commenters also submitted specific comments on the proposed exceptions. We are addressing these concerns below in connection with the specific provisions of the NPRM.

The NPRM provided the following exceptions:

- *31 CFR 103.24(f)(2)(i).* An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.

This exception would be available to officers or employees of banks examined by the Federal banking agencies. Several commenters asked that the exemption be expanded to cover officers and employees of trust companies and credit unions that lack a Federal functional regulator. We proposed this exception for officers and employees of entities that are subject to functional regulation by Federal agencies that also examine them for compliance with the BSA. Limiting the exemption as proposed provides for a degree of uniformity in functional regulation and BSA examination and compliance that may not necessarily exist on the part of State or even other Federal agencies with little or no involvement in BSA compliance.

- *31 CFR 103.24(f)(2)(ii).* An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.

This exception would be available to officers or employees of financial institutions which are registered with, and examined by, the SEC or CFTC. As with the first exception, this is available to officers and employees of entities that are subject to functional regulation by Federal agencies that also examine such entities for compliance with the BSA. Commenters sought clarification on whether this exception would apply to SEC registered investment advisers when they are providing advisory services to clients that are not registered investment companies. FinCEN wishes to clarify that this exception does not apply in this situation. The exception applies to officers and employees of "financial institutions," which is a defined term under 31 CFR 103.11(n). Investment advisers are not included in that definition of financial institution.

- *31 CFR 103.24(f)(2)(iii).* An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. "Authorized Service Provider" means an entity that is registered with and examined by the Securities and Exchange Commission and provides services to an investment company registered under the Investment Company Act of 1940.

The NPRM included this exception to address the fact that mutual funds do not have employees of their own. Instead, the day-to-day operations of such a fund are performed by individuals who are employed by fund service providers, such as investment advisors. This exception would be available to officers or employees of an Authorized Service Provider that is registered with and examined by the SEC, provided that the fund serviced by the Authorized Service Provider is also registered with the SEC.

Commenters sought clarification on the scope of this exception and specifically asked how this exception relates to the exception provided in the NPRM under section 103.24(f)(2)(ii). FinCEN wishes to reiterate that the exception in 103.24(f)(2)(ii) applies to officers and employees of financial institutions as defined in 31 CFR 103.11(n) that are registered with and examined by the SEC or CFTC. Thus, section 103.24(f)(2)(ii) does not apply to officers and employees of investment advisers. These commenters also sought clarification as to the scope of accounts covered by the exception contained in section 103.24(f)(2)(iii). FinCEN wishes to clarify that officers and employees of an Authorized Service Provider may avail themselves of this exception only with respect to the reportable accounts of those clients which are investment companies registered under the Investment Company Act of 1940 and are managed by the Authorized Service

Provider. If FinCEN were to expand the exception as requested beyond clients that are registered investment companies, the exception would apply even in situations where the officer and employee is providing service to individuals. FinCEN does not believe that such a change is appropriate.

Likewise, commenters asked that FinCEN consider expanding the scope of the proposed exception to cover service providers to registered investment companies even when the service providers are not registered with the SEC. These commenters noted that the preamble to the anti-money laundering rules for mutual funds permits the fund contractually to delegate the implementation and operation of their AML program to a service provider that is not registered with the SEC. FinCEN has considered this comment but declined to expand the exception as requested by these commenters. First, FinCEN believes that this exception is appropriate not only because the service provider and the fund are registered with the SEC, but also because the investment companies registered under the 1940 Act have obligations under the BSA. Further, we note that under the AML rules, the mutual fund remains responsible for AML compliance. Under this exception, however, officers and employees of the Authorized Service Provider would be relieved of the reporting obligations of this rule.

• *31 CFR 103.24(f)(2)(iv).* An officer or employee of an entity with a class of equity securities listed on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of such entity need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is named in a consolidated FBAR report of the parent filed under proposed paragraph (g)(3) of 31 CFR103.24.

This exception would be available to officers and employees of entities with a class of equity securities listed upon a U.S. national securities exchange, regardless of whether the entity is domestic or foreign. Officers and employees of a U.S subsidiary of such listed U.S. entities are also covered by this exception if the U.S subsidiary is named in a consolidated FBAR report of the parent.

FinCEN received a number of comments on this exception. Most of these comments addressed the interaction between the exception for officers and employees of corporations listed on a United States national securities exchange and the special rule for consolidated FBARs. Some commenters questioned whether the exception contained in section 103.24(f)(2)(iv), which discusses consolidated FBARs filed by a parent, enables a foreign listed parent to file a consolidated report on behalf of its United States subsidiaries. FinCEN notes that by its terms the special rule for consolidated FBAR reporting only applies to United States persons.

FinCEN received a number of comments regarding the treatment of U.S. subsidiaries of foreign parents. Some commenters noted that a foreign listed parent cannot file a consolidated FBAR report, and, therefore, the officers and employees of its U.S. subsidiaries cannot avail themselves of the signature authority exceptions. Commenters recommended that in the case of foreign entities listed on a U.S. national securities exchange, the U.S. subsidiary of that foreign entity be permitted to file a consolidated report for other U.S. subsidiaries. Other commenters recommended that the exception be revised to apply to the officers and employees of U.S. subsidiaries whose foreign parent is listed on a foreign exchange, provided that FinCEN determined that the foreign exchange was subject to suitable regulation. Some of these commenters suggested that FinCEN allow the foreign parent to voluntarily file a consolidated FBAR on behalf of its U.S. subsidiaries.

FinCEN has considered these comments but has decided to retain the exception as originally proposed. In the NPRM, FinCEN considered it appropriate to provide an exception for officers and employees of a U.S. subsidiary when the U.S. parent files a consolidated FBAR in light of both the listed parent's regulation by the SEC and its legal obligation to file the FBAR. In the case of a U.S. subsidiary with a foreign parent listed on a U.S. national securities exchange, the parent has no legal obligation to file the FBAR, and the subsidiary is not required to file the same reports with the SEC as the U.S. listed parent.[16] For similar reasons, FinCEN has decided not to extend the exception to U.S. subsidiaries of foreign parents listed on foreign exchanges. Furthermore, because the FBAR rules apply only to United States persons, FinCEN will not permit voluntary filing by the foreign parent to satisfy the filing obligations of the officers and employees of U.S. subsidiaries.[17]

Finally, commenters asked that a U.S. subsidiary be permitted to rely on this exception if its U.S. listed parent does not file a consolidated FBAR. While the rules permit the parent to file a consolidated FBAR, if it chooses not to do so for its own reasons, FinCEN does not believe it necessary to provide a special treatment for such U.S. subsidiaries.

FinCEN received two comments seeking an expansion of the exception when an employee of a U.S. parent also has signature authority over the foreign accounts of a U.S. parent's subsidiary which have been included in the consolidated FBAR report. These commenters noted that under the proposed exception, officers or employees of the parent who have signature authority over the foreign accounts of the subsidiary would not benefit from the exception, which is limited to the accounts of the employer. The commenter further noted that in this situation, officers or employees of the subsidiary would benefit from the exception with respect to the subsidiary's foreign accounts. Likewise, one of the commenters asked for similar treatment when the officers and employees of the subsidiary have signature authority over the accounts of the listed parent.

FinCEN has considered these comments and has decided not to revise the exception as recommended. Given the revision in the final rule to the signature authority definition, the clarifications provided regarding the scope of the signature authority filing requirement and the recordkeeping rules, FinCEN does not believe that a further relaxation of the rule is appropriate.

FinCEN also received a comment recommending that the exception be extended to employees with respect to the accounts of an employee benefit trust established by an entity listed

[16] To make the application of the exception clearer in the context of the special rule for consolidated FBARs, the final rule revises the second sentence of the exception by deleting the words "such entity" and adding the words "a United States entity with a class of equity securities listed on a United States security exchange." FinCEN believes that this change will clarify that the second sentence of the exception does not apply in the case of parent companies that are not U.S. entities.

[17] FinCEN also received comments requesting that we adopt a provision in the instructions to the 2008 version of the FBAR that provided officers and employees of a foreign subsidiary with an exception to the signature authority obligation. In light of the broader set of changes made with respect to the signature authority provisions, FinCEN has decided not to adopt this recommendation.

upon a U.S. national securities exchange. The commenter argued that in this situation, the entity is required to report the assets and liabilities of its employee benefit plans on its own financial statements filed with the SEC, and the trust accounts are subject to oversight and examination by the Department of Labor. FinCEN has considered this comment and decided not to adopt the recommendation because an employee benefit trust itself is not a listed entity. Further, FinCEN believes that the clarifications previously discussed concerning the scope of foreign financial accounts that are reportable and the definitions of signature authority and financial interest should address some of the concerns regarding FBAR filing obligations.

• *31 CFR 103.24(f)(2)(v)*—An officer or employee of a United States corporation that has a class of equity securities registered under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such corporation if he has no financial interest in the accounts.

This exception as proposed would apply to officers and employees of U.S. corporations whose size in terms of assets and shareholders [18] requires them to register their stock with the SEC and makes them subject to reporting under the Securities Exchange Act. FinCEN received a comment requesting a similar exception for officers or employees of a mutual insurance company with assets of more than $10 million and more than 500 policy holders. FinCEN has decided not to adopt such an exception because these companies are not subject to the SEC regulation that applies to companies covered by the exception.

FinCEN also received comments seeking an amendment to the proposed exceptions contained in sections 103.24(f)(2)(iv) and 103.24(f)(2)(v) to include listed American Depository Receipts (ADRs), unlisted ADRs that are traded over-the-counter if they are listed on the Designated Offshore Securities Market, ADRs with unlisted trading privileges on a national securities exchange, ADRs registered under section 12(g) or ADRs with unlisted trading privileges under section 12(f) of the Securities Exchange Act. After considering these comments, FinCEN believes that listed ADRs would be covered by the first sentence of the exception in section 103.24(f)(2)(iv). In addition, if a foreign issuer has registered under section 12(g) a class of equity securities underlying ADRs, FinCEN believes it should be covered by the exception under section 103.24(f)(2)(v). The final rule makes appropriate changes to reflect this coverage. FinCEN does not believe that other ADRs are subject to the same requirements as listed entities on a U.S. national securities exchange or entities registered under section 12(g), and, therefore, we have not adopted the recommendations to include other types of ADRs.

Accordingly, the final rule adopts these exceptions as revised.

L. 103.24(g)—Special Rules

The NPRM proposed the following special rules to simplify FBAR filings in certain cases.

• *25 or more foreign financial accounts.* A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate. Similarly, a United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

Commenters raised concerns that the simplified reporting requirements for filers having signature authority over 25 or more foreign financial accounts requires more information than the simplified reporting for persons having financial interest in 25 or more foreign financial accounts. In the case of simplified reporting for persons with a financial interest, filers are required to provide identifying information about themselves and indicate that they have a financial interest in 25 or more foreign financial accounts. Where persons have signature authority over 25 or more such accounts, filers are required to provide identifying information about themselves as well as those who have a financial interest in the accounts. FinCEN notes that where filers have only signature authority, the FBAR requires identifying information about the persons with a financial interest to ensure that law enforcement receives meaningful information about these accounts.

• *Consolidated reports.* An entity that is a United States person and owns directly or indirectly more than a 50 percent interest in an entity required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entity.[19]

One commenter urged additional consolidated filing relief be available to funds organized by the same fund manager, specifically all foreign financial account information for all funds in the same fund family should be reportable in a single consolidated FBAR filing. FinCEN believes that this issue is better addressed in the form of specific guidance because the factual situations may vary.

• *Participants and beneficiaries in certain retirement plans.* Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code will not be required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.

FinCEN received one comment proposing an across-the-board exemption for all pension plan participants and beneficiaries. The commenter was concerned about the filing obligations of participants and beneficiaries of other types of plans not covered by the exemption. In proposing this exemption, FinCEN considered that participants and beneficiaries of these plans were less likely to be aware of the existence of foreign financial accounts because they were unlikely to exceed the 50 percent ownership threshold. Participants and beneficiaries that are not covered by this exemption should look to the 50 percent ownership indicia to determine whether a filing obligation exists.

• *Certain trust beneficiaries.* A beneficiary of a trust described in proposed paragraph (e)(2)(iv) is not required to report the trust's foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files an FBAR disclosing the trust's foreign financial accounts and provides any additional information as required by the report.

This provision is intended to provide relief to beneficiaries of trusts if the

[18] Currently, these are corporations which have more than $10 million in assets and more than 500 shareholders of record. *See* 15 U.S.C. 78l(g) (2006) and the regulations thereunder.

[19] One commenter recommended that we provide for consolidated filing where the listed parent's ownership in the subsidiary exceeds 20 percent so that a broader range of officers and employees may take advantage of the signature authority exception. We believe that 20 percent is too low of an ownership interest for purposes of the consolidated filing.

trust, trustee of the trust, or agent of the trust is a United States person and has filed the FBAR as required. FinCEN is adopting this provision without change.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), FinCEN certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule revises a rule in existence since 1972 that requires reports to be made to Treasury with respect to certain foreign financial accounts. Because this final rule addresses the scope of reportable accounts and financial interest, and revises the definition of signature authority and narrows the scope of individuals and entities subject to reporting and recordkeeping requirements, the final rule will reduce regulatory obligations overall.

The final rule will not affect a substantial number of small entities. The final rule applies to United States persons, a term that includes entities of all sizes, if they have reportable accounts under this rule. However, we expect that small entities will be less likely to have reportable foreign financial accounts or to have many such accounts unlike larger entities, which have a broader base of business operations.

In any event, the final rule will not have a significant economic impact on small entities. As explained above, the final rule revises an existing rule that requires reports to be made to Treasury with respect to certain foreign financial accounts. Filing the reports will require entities to transfer basic information that they will often have received on account statements from the foreign financial institution at which the account is opened and maintained. Those statements will provide the entity with the information about the account needed to file the FBAR. No special accounting or legal skills are necessary to transfer the basic information required to be reported, such as the name of the foreign financial institution, the type of account, and the account number, to the FBAR. Furthermore, the final rule continues a simplified reporting method for persons with a financial interest in 25 or more foreign financial accounts and also provides a similar simplified reporting method to persons with signature or other authority over 25 or more foreign financial accounts.

In the NPRM, FinCEN requested comments on the accuracy of the statement that the proposed rule would not have a significant economic impact on a substantial number of small entities. FinCEN received no comments that directly challenged the accuracy of that statement.

V. Executive Order 12866

It has been determined that the final rule is a "significant regulatory action" for purposes of Executive Order 12866 (although not economically significant) and has been reviewed by the Office of Management and Budget.

VI. Paperwork Reduction Act Notices

The collection of information burden contained in this rule (31 CFR 1010.350) has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) (Paperwork Reduction Act) under control number (1506–0009). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Estimate Number of Affected Filing Individuals and Entities: 400,000.

Estimate Average Annual Burden Hours Per Affected Filer: The estimated average burden associated with the recordkeeping requirement in this rule will vary depending on the number of reportable accounts. We estimate that the recordkeeping burden will range from five minutes to sixty minutes, and that the average burden will be thirty minutes. The estimated average burden associated with the reporting requirement (FBAR form completion) will also vary depending on the number of reportable accounts and whether the filer will be able to take advantage of the exceptions provided in this rule. We estimate that the average reporting burden will range from approximately twenty minutes to one hour and that the average reporting burden will be approximately 45 minutes. The reporting burden is reflected in the burden listed for completing TD–F 90–22.1 (*See* OMB Control Number 1506–0009/1545–2038). The burden associated with reporting a financial interest in or signature or other authority over a foreign financial account to the Commissioner of Internal Revenue is reflected in the burden for the appropriate income tax return or schedule.

Estimated Total Annual Burden: 500,000 hours.

FinCEN received one comment on the estimated number of filers. The commenter believed that the number of filers should be higher. The commenter stated that estimates of Americans living abroad may be as high as 5 million, and that approximately 2 million of those Americans might be affected by the FBAR rules. The commenter did not provide a verifiable source or methodology for arriving at those estimates. As stated above, the rule contained in this document addresses the FBAR rules that have been in existence since 1972. FinCEN's estimate of the number of affected filing individuals and entities (400,000) is based on the number of FBARs annually filed in recent previous years.

One commenter noted that several of its clients had spent considerably more time than the NPRM estimated for complying with the FBAR requirement. FinCEN believes that changes made by the NPRM and incorporated in this document, such as addressing the scope of persons that are required to file reports of foreign financial accounts, specifying the types of reportable accounts, and providing relief in the form of exemptions for certain persons with signature or other authority over foreign financial accounts from filing reports, will assist filers in complying with the rule. Further, clarifications in this document regarding the scope of terms in the NPRM, such as reportable accounts and financial interest, as well as revisions to the definition of signature authority and the provision of truncated filing, will assist filers in complying with the rule. Accordingly, FinCEN has not increased the average estimated burden.

Finally, several commenters recommended that filers be allowed to file the FBAR electronically. As noted earlier in this document, FinCEN is in the process of modernizing its IT system and has plans to include the ability to file FBARs electronically.

VII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance the proposals in the Notice of Proposed Rulemaking provide the most cost-effective and least burdensome

alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, Banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Amendment

For the reasons set forth above in the preamble, 31 CFR part 1010, published October 26, 2010 (75 FR 65812), is amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

■ 2. Section 1010.350 is revised to read as follows:

§ 1010.350 Reports of foreign financial accounts.

(a) *In general.* Each United States person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner of Internal Revenue for each year in which such relationship exists and shall provide such information as shall be specified in a reporting form prescribed under 31 U.S.C. 5314 to be filed by such persons. The form prescribed under section 5314 is the Report of Foreign Bank and Financial Accounts (TD–F 90–22.1), or any successor form. *See* paragraphs (g)(1) and (g)(2) of this section for a special rule for persons with a financial interest in 25 or more accounts, or signature or other authority over 25 or more accounts.

(b) *United States person.* For purposes of this section, the term "United States person" means—

(1) A citizen of the United States;

(2) A resident of the United States. A resident of the United States is an individual who is a resident alien under 26 U.S.C. 7701(b) and the regulations thereunder but using the definition of "United States" provided in 31 CFR 1010.100(hhh) rather than the definition of "United States" in 26 CFR 301.7701(b)–1(c)(2)(ii); and

(3) An entity, including but not limited to, a corporation, partnership, trust, or limited liability company created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States, or the Indian Tribes.

(c) *Types of reportable accounts.* For purposes of this section—

(1) *Bank account.* The term "bank account" means a savings deposit, demand deposit, checking, or any other account maintained with a person engaged in the business of banking.

(2) *Securities account.* The term "securities account" means an account with a person engaged in the business of buying, selling, holding or trading stock or other securities.

(3) *Other financial account.* The term "other financial account" means—

(i) An account with a person that is in the business of accepting deposits as a financial agency;

(ii) An account that is an insurance or annuity policy with a cash value;

(iii) An account with a person that acts as a broker or dealer for futures or options transactions in any commodity on or subject to the rules of a commodity exchange or association; or

(iv) An account with—

(A) *Mutual fund or similar pooled fund.* A mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions; or

(B) *Other investment fund.* [Reserved]

(4) *Exceptions for certain accounts.*

(i) An account of a department or agency of the United States, an Indian Tribe, or any State or any political subdivision of a State, or a wholly-owned entity, agency or instrumentality of any of the foregoing is not required to be reported. In addition, reporting is not required with respect to an account of an entity established under the laws of the United States, of an Indian Tribe, of any State, or of any political subdivision of any State, or under an intergovernmental compact between two or more States or Indian Tribes, that exercises governmental authority on behalf of the United States, an Indian Tribe, or any such State or political subdivision. For this purpose, an entity generally exercises governmental authority on behalf of the United States, an Indian Tribe, a State, or a political subdivision only if its authorities include one or more of the powers to tax, to exercise the power of eminent domain, or to exercise police powers with respect to matters within its jurisdiction.

(ii) An account of an international financial institution of which the United States government is a member is not required to be reported.

(iii) An account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve United States government installations abroad is not required to be reported even though the United States military banking facility is located in a foreign country.

(iv) Correspondent or nostro accounts that are maintained by banks and used solely for bank-to-bank settlements are not required to be reported.

(d) *Foreign country.* A foreign country includes all geographical areas located outside of the United States as defined in 31 CFR 1010(hhh).

(e) *Financial interest.* A financial interest in a bank, securities or other financial account in a foreign country means an interest described in this paragraph (e):

(1) *Owner of record or holder of legal title.* A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which he is the owner of record or has legal title whether the account is maintained for his own benefit or for the benefit of others. If an account is maintained in the name of more than one person, each United States person in whose name the account is maintained has a financial interest in that account.

(2) *Other financial interest.* A United States person has a financial interest in each bank, securities or other financial account in a foreign country for which the owner of record or holder of legal title is—

(i) A person acting as an agent, nominee, attorney or in some other capacity on behalf of the United States person with respect to the account;

(ii) A corporation in which the United States person owns directly or indirectly more than 50 percent of the voting power or the total value of the shares, a partnership in which the United States person owns directly or indirectly more than 50 percent of the interest in profits or capital, or any other entity (other than an entity in paragraphs (e)(2)(iii) through (iv) of this section) in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of the equity interest or assets, or interest in profits;

(iii) A trust, if the United States person is the trust grantor and has an ownership interest in the trust for United States Federal tax purposes. *See* 26 U.S.C. 671–679 and the regulations thereunder to determine if a grantor has an ownership interest in the trust for the year; or

(iv) A trust in which the United States person either has a present beneficial interest in more than 50 percent of the

assets or from which such person receives more than 50 percent of the current income.

(3) *Anti-avoidance rule.* A United States person that causes an entity, including but not limited to a corporation, partnership, or trust, to be created for a purpose of evading this section shall have a financial interest in any bank, securities, or other financial account in a foreign country for which the entity is the owner of record or holder of legal title.

(f) *Signature or other authority*—(1) *In general.* Signature or other authority means the authority of an individual (alone or in conjunction with another) to control the disposition of money, funds or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person with whom the financial account is maintained.

(2) *Exceptions*—(i) An officer or employee of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Administration need not report that he has signature or other authority over a foreign financial account owned or maintained by the bank if the officer or employee has no financial interest in the account.

(ii) An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission need not report that he has signature or other authority over a foreign financial account owned or maintained by such financial institution if the officer or employee has no financial interest in the account.

(iii) An officer or employee of an Authorized Service Provider need not report that he has signature or other authority over a foreign financial account owned or maintained by an investment company that is registered with the Securities and Exchange Commission if the officer or employee has no financial interest in the account. "Authorized Service Provider" means an entity that is registered with and examined by the Securities and Exchange Commission and that provides services to an investment company registered under the Investment Company Act of 1940.

(iv) An officer or employee of an entity with a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange need not report that he has signature or other authority over a foreign financial account of such entity if the officer or employee has no financial interest in the account. An officer or employee of a United States subsidiary of a United States entity with a class of equity securities listed on a United States national securities exchange need not file a report concerning signature or other authority over a foreign financial account of the subsidiary if he has no financial interest in the account and the United States subsidiary is included in a consolidated report of the parent filed under this section.

(v) An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under section 12(g) of the Securities Exchange Act need not report that he has signature or other authority over the foreign financial accounts of such entity or if he has no financial interest in the accounts.

(g) *Special rules*—(1) *Financial interest in 25 or more foreign financial accounts.* A United States person having a financial interest in 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(2) *Signature or other authority over 25 or more foreign financial accounts.* A United States person having signature or other authority over 25 or more foreign financial accounts need only provide the number of financial accounts and certain other basic information on the report, but will be required to provide detailed information concerning each account when so requested by the Secretary or his delegate.

(3) *Consolidated reports.* An entity that is a United States person and which owns directly or indirectly more than a 50 percent interest in one or more other entities required to report under this section will be permitted to file a consolidated report on behalf of itself and such other entities.

(4) *Participants and beneficiaries in certain retirement plans.* Participants and beneficiaries in retirement plans under sections 401(a), 403(a) or 403(b) of the Internal Revenue Code as well as owners and beneficiaries of individual retirement accounts under section 408 of the Internal Revenue Code or Roth IRAs under section 408A of the Internal Revenue Code are not required to file an FBAR with respect to a foreign financial account held by or on behalf of the retirement plan or IRA.

(5) *Certain trust beneficiaries.* A beneficiary of a trust described in paragraph (e)(2)(iv) of this section is not required to report the trust's foreign financial accounts if the trust, trustee of the trust, or agent of the trust is a United States person that files a report under this section disclosing the trust's foreign financial accounts.

Dated: February 16, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2011–4048 Filed 2–23–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 59

RIN 2900–AN57

Updating Fire Safety Standards

AGENCY: Department of Veterans Affairs.

ACTION: Final rule with request for comments.

SUMMARY: This document adopts as a final rule, with changes, the proposed rule to amend the Department of Veterans Affairs (VA) regulations concerning community residential care facilities, contract facilities for certain outpatient and residential services, and State home facilities. The final rule will clarify current regulations and update the standards for VA approval of such facilities, including standards for fire safety and heating and cooling systems. The final rule will help ensure the safety of veterans in the affected facilities. This document also implements and seeks comments regarding a new interim final sprinkler system requirement for certain facilities.

DATES: *Effective Date:* This final rule is effective March 28, 2011.

Comment Date: Comments on the interim final amendments to 38 CFR 59.130 only must be received on or before April 25, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this rule as of March 28, 2011.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN57—Updating Fire Safety

Standards." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, 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: Brian McCarthy, Office of Patient Care Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, 202–461–6759. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 7, 2010 (75 FR 17641), VA proposed to amend its regulations concerning the codes and standards applicable to community residential care facilities, contract facilities for outpatient and residential treatment services for veterans with alcohol or drug dependence or abuse disabilities, and State homes. We proposed to amend 38 CFR 17.63, 17.81(a)(1), 17.82(a)(1), and 59.130(d)(1) to require facilities to meet the requirements in the applicable provisions of current editions of publications produced by the National Fire Protection Association (NFPA). These publications are: NFPA 10, Standard for Portable Fire Extinguishers; NFPA 99, Standard for Health Care Facilities; NFPA 101, Life Safety Code; and NFPA 101A, Guide on Alternative Approaches to Life Safety.

We provided a 60-day comment period and received three comments. All three comments were entirely supportive. Two comments from the public noted the importance of requiring facilities to meet up-to-date safety standards. The third comment, from the NFPA, described in detail the improvements in the current editions of the codes that are referenced in this final rule. Although we noted in the proposed rule that we were not aware of any significant changes from the 2000 edition of NFPA 101 referenced in current § 59.130 to the 2009 edition of NFPA 101, as the NFPA commented, a substantive revision in the 2009 edition of NFPA 101 is the requirement that all existing nursing homes have automatic sprinklers. We are aware that not all existing State home facilities currently meet this requirement. Therefore, to give certain facilities that are not currently in compliance ample time to come into compliance with the sprinkler requirement, we are requiring certain existing nursing home facilities to comply with the automatic sprinkler requirement of the 2009 edition of NFPA 101 by February 24, 2016.

The Centers for Medicare & Medicaid Services (CMS) has determined that, after considering fire safety concerns and feasibility, 5 years is a reasonable amount of time to install sprinkler systems in existing nursing home facilities, *see* 73 FR 47081, as required by paragraph 19.3.5.1 in the 2009 edition of NFPA 101, which specifically states that "[b]uildings containing nursing homes shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with Section 9.7, unless otherwise permitted by 19.3.5.5." We agree, and therefore based on the NFPA's comment we have included such a requirement in the final rule. The extended compliance date of 5 years from the date of publication of this final rule does not apply to buildings with nursing home facilities that were newly constructed and in operation after June 25, 2001, because the 2000 edition of NFPA 101, which was incorporated by reference into 38 CFR 59.130 in 66 FR 33845 as of June 26, 2001, required installment of automatic sprinklers in all newly constructed buildings with nursing home facilities. Thus, the extended compliance date applies only to "existing buildings" with nursing home facilities as of June 25, 2001, and is not intended to postpone enforcement of the existing requirement for sprinkler protection in all other buildings with nursing home facilities. *See* paragraph 3.3.32.5 in the 2009 edition of NFPA 101 (defining an "[e]xisting [b]uilding" as "[a] building erected or officially authorized prior to the effective date of the adoption of this edition of the *Code* by the agency or jurisdiction"). Accordingly, we have made interim final revisions to 38 CFR 59.130 to reflect this change. The public is invited to comment on the 5-year extended compliance period for existing buildings with nursing home facilities as of June 25, 2001.

We are also clarifying the second sentence in proposed 38 CFR 17.1(a) to state the following: "To enforce an edition of a publication other than that specified in this section, VA will provide notice of the change in a notice of proposed rulemaking in the **Federal Register** and the material will be made available to the public." We will thus provide notice of the adoption of an updated edition of a publication specified in § 17.1 through the public notice-and-comment process.

This final rule amends parts 17 and 59 and incorporates by reference, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the following publications: NFPA 10, Standard for Portable Fire Extinguishers (2010 edition); NFPA 99, Standard for Health Care Facilities (2005 edition); NFPA 101, Life Safety Code (2009 edition); and NFPA 101A, Guide on Alternative Approaches to Life Safety (2010 edition). In the proposed rule, we noted that facilities had to meet the requirements in certain provisions of specific editions of these NFPA publications. Regarding the NFPA 10 requirements, we proposed to require facilities to meet the standard for portable fire extinguishers. However, we did not propose to separately incorporate by reference NFPA 10 because we believed the applicable requirements in the updated version of that standard were subsumed in NFPA 101. The Office of the Federal Register recently informed us that we need to incorporate by reference NFPA 10 because our regulations refer to it directly and require its use. Accordingly, we are correcting the final rule to separately incorporate by reference NFPA 10. This correction is consistent with our proposal regarding compliance with the portable fire extinguisher standard.

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 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 will have no such effect on State, local, and Tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

This document contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

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) unless OMB waives such review,

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.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it does not constitute a significant regulatory action under the Executive Order.

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. In addition to having an effect on individuals (veterans), the final rule will have an insignificant economic impact on a few small entities.

The changes to § 17.63 will likely affect fewer than 100 of the 2,800 community residential care facilities approved for referral of veterans under the regulations. Also, any additional costs for compliance with the final rule will constitute an inconsequential amount of the operational costs of such facilities.

The changes to §§ 17.81 and 17.82 will affect only small entities; however, most, if not all, of these entities are already in compliance with the current NFPA codes and therefore should not be significantly impacted by this rule.

The changes to part 59 will affect State homes. The State homes that will be subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number operated by entities under contract with State governments. These contractors are not small entities.

Accordingly, pursuant to 5 U.S.C. 605(b), this rule will be exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care.

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, approved this document on December 10, 2010 for publication.

List of Subjects

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 59

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Incorporation by reference, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: February 16, 2010.

Robert C. McFetridge,

Director, Regulations Policy and Management, Department of Veterans Affairs.

For the reasons stated above, VA amends 38 CFR parts 17 and 59 as follows:

PART 17—MEDICAL

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

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

■ 2. Add § 17.1 to part 17 to read as follows:

§ 17.1 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce an edition of a publication other than that specified in this section, VA will provide notice of the change in a notice of proposed rulemaking in the **Federal Register** and the material will be made available to the public. All approved materials are available for inspection at the Department of Veterans Affairs, Office of Regulation Policy and Management (02REG), 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420, or at the National Archives and Records Administration (NARA). For information on the availability of approved materials at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269. (For ordering information, call toll-free 1–800–344–3555.)

(b) The following materials are incorporated by reference into this part.

(1) NFPA 10, Standard for Portable Fire Extinguishers (2010 edition), Incorporation by Reference (IBR) approved for §§ 17.63 and 17.81.

(2) NFPA 101, Life Safety Code (2009 edition), IBR approved for §§ 17.63, 17.81, 17.82.

(3) NFPA 101A, Guide on Alternative Approaches to Life Safety (2010 edition), IBR approved for § 17.63.

(Authority: 5 U.S.C. 552(a), 38 U.S.C. 501, 1721.)

■ 3. Amend § 17.63 as follows:

■ a. Revise paragraph (a)(2); and

■ b. Add a new paragraph (a)(4).

The revision and addition read as follows:

§ 17.63 Approval of community residential care facilities.

* * * * *

(a) * * *

(2) Meet the requirements in the applicable provisions of NFPA 101 and NFPA 101A (incorporated by reference, *see* § 17.1) and the other publications referenced in those provisions. The institution shall provide sufficient staff to assist patients in the event of fire or other emergency. Any equivalencies or variances to VA requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Network (VISN) Director;

* * * * *

(4) Meet the following additional requirements, if the provisions for One and Two-Family Dwellings, as defined in NFPA 101, are applicable to the facility:

(i) Portable fire extinguishers must be installed, inspected, and maintained in accordance with NFPA 10 (incorporated by reference, *see* § 17.1); and

(ii) The facility must meet the requirements in section 33.7 of NFPA 101.

* * * * *

■ 4. Amend § 17.81(a)(1) as follows:

■ a. Revise paragraph (a)(1)(i);

■ b. Remove paragraphs (a)(1)(v) through (a)(1)(viii);

■ c. Add a new paragraph (a)(1)(v); and

■ d. Redesignate paragraph (a)(1)(ix) as paragraph (a)(1)(vi).

The revision and addition read as follows:

§ 17.81 Contracts for residential treatment services for veterans with alcohol or drug dependence or abuse disabilities.

(a) * * *

(1) * * *

(i) The building must meet the requirements in the applicable provisions of NFPA 101 (incorporated by reference, *see* § 17.1) and the other publications referenced in those provisions. Any equivalencies or variances to VA requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Network (VISN) Director.

* * * * *

(v) The facility must meet the following additional requirements, if the provisions for One and Two-Family Dwellings, as defined in NFPA 101, are applicable to the facility:

(A) Portable fire extinguishers shall be installed, inspected, and maintained in accordance with NFPA 10 (incorporated by reference, *see* § 17.1).

(B) The facility shall meet the requirements in section 33.7 of NFPA 101.

* * * * *

■ 5. Amend § 17.82(a)(1) as follows:

■ a. Revise paragraphs (a)(1)(i) and (iv);

■ b. Remove paragraphs (a)(1)(v) and (a)(1)(vi); and

■ c. Redesignate paragraph (a)(1)(vii) as (a)(1)(v).

The revisions read as follows:

§ 17.82 Contracts for outpatient services for veterans with alcohol or drug dependence or abuse disabilities.

(a) * * *

(1) * * *

(i) The building must meet the requirements in the applicable provisions of the NFPA 101 (incorporated by reference, *see* § 17.1) and the other publications referenced in those provisions. Any equivalencies or variances to VA requirements must be approved by the appropriate Veterans Health Administration Veterans Integrated Service Network (VISN) Director.

* * * * *

(iv) As a minimum, fire exit drills must be held at least quarterly, and a written plan for evacuation in the event of fire shall be developed and reviewed annually. The plan shall outline the duties, responsibilities and actions to be taken by the staff in the event of a fire emergency. This plan shall be implemented during fire exit drills.

* * * * *

PART 59—GRANTS TO STATES FOR CONSTRUCTION OR ACQUISITION OF STATE HOMES

■ 6. The authority citation for part 59 continues to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1742, 8105, 8131–8137.

■ 7. Amend § 59.130(d)(1) as follows:

■ a. Remove the phrase "(2000 edition)" and add, in its place, "(2009 edition), except that the NFPA requirement in paragraph 19.3.5.1 for all buildings containing nursing homes to have an automatic sprinkler system is not applicable until February 24, 2016 for "existing buildings" with nursing home facilities as of June 25, 2001 (paragraph 3.3.32.5 in the NFPA 101 defines an "[e]xisting [b]uilding" as "[a] building erected or officially authorized prior to the effective date of the adoption of this edition of the *Code* by the agency or jurisdiction"),"; and

■ b. Remove the phrase "(1999 edition)" and add, in its place, "(2005 edition)".

■ c. Remove "Office of Regulations Management (02D), Room 1154" and add, in its place, "Office of Regulation Policy and Management (02REG), Room 1068".

[FR Doc. 2011–3887 Filed 2–23–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0252; FRL–9269–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions To Control Volatile Organic Compound Emissions From Consumer Related Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to approve revisions to the Texas State Implementation Plan (SIP). We are approving revisions to Title 30 of the Texas Administrative Code (TAC), Chapter 115, which the State submitted on March 4, 2010. These revisions remove the Texas Portable Fuel Container rule as an ozone control strategy from the Texas SIP for the Control of Ozone Air Pollution. In the submittal, Texas demonstrates that Federal portable fuel container standards promulgated by EPA in 2007 are expected to provide equal to or greater emissions reductions than those resulting from the State regulations. The EPA is approving these revisions pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule will be effective on April 25, 2011 without further notice unless EPA receives relevant adverse comments by March 28, 2011. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2010–0252, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Please follow the online instructions for submitting comments.
- *EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6comment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person

listed in the **FOR FURTHER INFORMATION CONTACT** section below.

• *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

• *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

• *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2010–0252. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–7241; fax number 214–665–7263; e-mail address *medina.dayana@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" means the EPA.

Outline

I. Background
II. What action is EPA taking?
III. Comparison of the Texas and Federal Portable Fuel Container Regulations
IV. What is the effect of this action?
V. Final Action
VI. Statutory and Executive Order Reviews

I. Background

Section 110 of the CAA requires States to develop air pollution regulations and control strategies to ensure that air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the State, to ensure that air quality in the State meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. A SIP can be extensive, containing State regulations or other enforceable documents and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each State must submit regulations and control strategies to EPA for approval and incorporation into the Federally-enforceable SIP. Revisions to the SIP must comply with Section 110(l) of the CAA which states, "Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this chapter."

II. What action is EPA taking?

EPA is taking direct final action to approve a revision to the Texas SIP for the Control of Ozone Air Pollution that pertains to regulations which control VOC emissions from consumer related sources. The revision repeals sections 115.620—115.622, 115.626, 115.627, and 115.629 of 30 TAC Chapter 115, Control of Air Pollution from Volatile Organic Compounds, Subchapter G, Consumer-Related Sources. This revision consists of the repeal of the Texas Portable Fuel Container rule, as submitted to EPA by the TCEQ on March 4, 2010. This revision is substantive in nature, and eliminates the redundancy that has been created with the adoption by EPA of the Federal portable fuel container regulations in 2007. We are approving this revision in accordance with section 110 of the CAA.

On October 27, 2004, the State adopted the Texas Portable Fuel Container rule, which set requirements for portable fuel containers and spouts sold or distributed in Texas that are manufactured on or after December 31, 2005. The Texas Portable Fuel Container rule established design criteria for "no-spill" portable fuel containers based primarily on standards adopted by the California Air Resources Board (CARB) in 2001. The purpose of the Texas Portable Fuel Container rule was to lower VOC emissions in Texas from portable fuel containers that spill or leak. EPA approved the Texas Portable

Fuel Container rule into the SIP on February 10, 2005 (70 FR 7041).

On February 26, 2007, EPA adopted Federal portable fuel container regulations that set new national standards for gasoline, diesel, and kerosene portable fuel containers.[1] Based on this rulemaking, all containers manufactured on or after January 1, 2009, are required to comply with the Federal standards. The Federal regulations can be found at 40 CFR part 59 subpart F. The Federal regulations are very similar to the revised portable fuel container regulations adopted by the CARB on September 15, 2005. The standards in the Federal portable fuel container regulations aim to reduce nationwide hydrocarbon emissions from containers due to evaporation, permeation, and spillage. The portable fuel container standards in the national regulations are more stringent than those found in the Texas regulations. Texas repealed the State portable fuel container regulations on February 10, 2010, and submitted this SIP revision to EPA on March 4, 2010. In their submittal, Texas asserted that the State portable fuel container regulations have become unnecessary with EPA's implementation of the more stringent Federal regulations, and that the repeal of the State rule is intended to eliminate duplication and to provide a clear regulatory structure for manufacturers who may otherwise become confused about which standards they are required to comply with.

EPA is approving this revision to the SIP because it is expected that reliance on the more stringent Federal portable fuel container standards will ensure that emission reductions equivalent to or greater than those in the repealed Texas portable fuel container regulations will continue to be achieved in the State of Texas. Accordingly, it is expected that this SIP revision will not have a negative impact neither on the emission reductions claimed in the Texas SIP, nor in Texas' attainment of the NAAQS for ozone. Thus, EPA can approve this revision in compliance with section 110(l) of the CAA.

III. Comparison of the Texas and Federal Portable Fuel Container Regulations

On October 27, 2004, the State adopted the Texas Portable Fuel Container rule, which set provisions specifying performance standards, testing requirements, and labeling requirements for portable fuel containers and spouts sold or distributed in Texas that are manufactured on or after December 31, 2005. The Texas Portable Fuel Container rule did not apply to or affect in any way the sale of portable fuel containers or spouts manufactured prior to December 31, 2005. The Texas Portable Fuel Container rule established design criteria for "no-spill" portable fuel containers based primarily on presently outdated standards adopted by the CARB in 2001. The purpose of the Texas Portable Fuel Container rule was to lower VOC emissions in Texas from portable fuel containers that spill or leak. The State regulations mandated that portable fuel containers must have only one opening in the vessel. Spouts for these containers must (1) have an automatic shutoff device to prevent spilling, (2) automatically close and seal when removed from the fuel tank, (3) seal without leakage when affixed to the portable fuel container vessel, and (4) meet fuel flow rate and fuel flow cut-off standards.[2]

On February 26, 2007, EPA adopted Federal portable fuel container regulations that set new national standards for gasoline, diesel, and kerosene portable fuel containers.[3] Based on this rulemaking, all containers manufactured on or after January 1, 2009, are required to comply with the Federal portable fuel container standards. As of July 1, 2009, manufacturers and importers must not enter into U.S. commerce any products manufactured prior to January 1, 2009, which do not meet the Federal standards. The Federal regulations are very similar to the revised portable fuel container regulations adopted by the CARB on September 15, 2005. The standards in the Federal portable fuel container regulations aim to reduce nationwide hydrocarbon emissions from containers due to evaporation, permeation, and spillage. Rather than establishing design criteria for portable fuel containers, the Federal regulations established a performance-based standard of 0.3 grams per gallon per day (g/gal/day) of hydrocarbons to control evaporative and permeation losses. The standard is based on the performance of best available control technologies, such as durable permeation barriers, automatically closing spouts, and cans that are well-sealed, and it is expected that in order to comply with the performance-based standard, manufacturers will incorporate these control technologies in the design of their containers. The Federal standard is measured based on the emissions from the container over a diurnal test cycle, after the container has been preconditioned by going through three durability aging cycles, a fuel soak to allow the hydrocarbon permeation rate to stabilize, and a durability demonstration of the spout. These test procedures ensure that containers meet the emissions standard over a range of in-use conditions such as different temperatures, different fuels, and taking into consideration factors affecting durability.[4] In order to insure that containers meet the emission standard in use over the life of the container, the Federal regulations also established a new certification and compliance program. The Federal regulations also require an emissions warranty period of one year to be provided by the manufacturer of the portable fuel container to the consumer. The warranty covers emissions-related materials defects and breakage under normal use, which promotes the objective of the rule by helping ensure that manufacturers will "stand behind" their product if they fail in-use, thus improving product design and performance.

Comparison of the State and Federal regulations demonstrates that the Federal regulations adopted more stringent portable fuel container standards than those found in the Texas regulations.[5] While the Texas regulations merely adopted design criteria for portable fuel containers and spouts, the performance-based standard established by the Federal regulations, along with the various other requirements, including test procedures, and the certification and compliance program, help ensure that containers meet the emission standard over a range of in-use conditions. Although the Federal regulations do not specify required design criteria for portable fuel containers, it is expected that in order to comply with the performance-based standard, manufacturers will have to use best available control technologies such as durable permeation barriers, automatically closing spouts, and cans that are well-sealed.

In the submittal Texas submitted to EPA on November 16, 2004, requesting approval of the Texas Portable Fuel Container rule into the SIP, Texas estimated that the reduction in spills and evaporation expected from the State

[1] *See* 72 FR 8432.

[2] For a more detailed description of the PFC requirements in the Texas PFC regulations approved into the Texas SIP, please *see* 70 FR 7041.

[3] *See* 72 FR 8432.

[4] A more detailed description of the test procedures can be found at 72 FR 8432.

[5] *See* the TSD for a complete description of our evaluation. The TSD can be found in the docket for this rulemaking, and is available at *http://www.regulations.gov*. The docket number is EPA–R06–OAR–2010–0252.

portable fuel container regulations would eventually reduce statewide emissions from portable fuel containers by 45%.[6] In the February 26, 2007 rulemaking in which EPA approved the Federal portable fuel container regulations, we provided estimates of the national reductions in VOC emissions expected from the Federal standards. We estimated that in 2010, national VOC emissions from portable fuel containers will be reduced by 19% because of reduced permeation, spillage, and evaporative emissions.[7] We also estimated that in 2015, 2020, and 2030, the national VOC emissions from portable fuel containers will be reduced by 61% for each year. In the submittal for the present rulemaking, Texas also submitted a table comparing the estimated statewide VOC emissions reductions in ozone season tons per day expected from the Federal and State portable fuel container regulations.[8] According to these estimates, the statewide VOC emissions reductions expected from the Federal and State regulations for the year 2002 are equal to each other. For each of the years 2008, 2011, 2014, 2017, 2018, and 2019, the estimated statewide VOC emissions reductions expected from the Federal portable fuel container regulations exceed those expected from the State regulations.

IV. What is the effect of this action?

This action approves revisions to the Texas SIP that pertain to regulations to control VOC emissions from consumer related sources. These revisions remove the Texas portable fuel container regulations as an ozone control strategy from the Texas SIP for the Control of Ozone Air Pollution because more stringent national standards are in place. Portable fuel containers sold or distributed in Texas must meet national VOC emission standards and related requirements found in 40 CFR part 59 subpart F.

V. Final Action

EPA is approving revisions to the Texas SIP pertaining to control of VOC emissions from consumer related sources.

We have evaluated the State's submittal and have determined that it meets the applicable requirements of the Clean Air Act and EPA air quality regulations. Therefore, we are approving revisions to the Texas SIP which repeal the Texas Portable Fuel Container rule because it is expected that reliance on the more restrictive Federal portable fuel container standards will ensure that emission reductions equivalent to or greater than those in the repealed Texas portable fuel container regulations will continue to be achieved. Accordingly, it is expected that this SIP revision will not have a negative impact neither on the emission reductions claimed in the Texas SIP, nor in Texas' attainment of the NAAQS for ozone.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revisions if relevant adverse comments are received. This rule will be effective on April 25, 2011 without further notice unless we receive relevant adverse comments by March 28, 2011. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

[6] This submittal dated November 16, 2004, can be found in the docket for the rulemaking in which we approved the Texas PFC regulations (70 FR 7041), and is available at *http://www.regulations.gov.* The docket number is R06–OAR–2005–TX–0001.

[7] *See* 72 FR 8432.

[8] The submittal can be found in the docket for this rulemaking, and is available at *http://www.regulations.gov.* The docket number is EPA–R06–OAR–2010–0252.

this action must be filed in the United States Court of Appeals for the appropriate circuit by April 25, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: February 9, 2011.

Al Armendariz,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. Section 52.2270 is amended as follows:

■ a. The table in paragraph (c) entitled "EPA Approved Regulations in the Texas SIP" is amended under Chapter 115 (Reg 5), Subchapter G, by removing the centered heading "Division 2: Portable Fuel Containers" and by removing the entries under Division 2 for Sections 115.620 through 115.629.

■ b. The second table in paragraph (e) entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding to the end of the table a new entry entitled "Texas Portable Fuel Container State Implementation Plan" to read as follows:

§ 52.2270 Identification of plan

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State sub-mittal/effective date	EPA approval date	Comments
* *	* *	*	*	*
Texas Portable Fuel Container State Implementation Plan.	All Affected 1997 Eight-Hour Ozone Standard Nonattainment And Near Nonattainment Areas In The State Of Texas.	3/4/2010	2/24/2011 [Insert FR page number where document begins].	

[FR Doc. 2011–3996 Filed 2–23–11; 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: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@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
Matanuska-Susitna Borough, Alaska, and Incorporated Areas Docket No.: FEMA–B–1087			
Susitna River	Approximately 11 miles northwest of the intersection of Talkeetna Road and Comsat Road.	+336	Borough of Matanuska-Susitna.
	Approximately 1,100 feet downstream of the confluence with the Chulitna River.	+355	
Talkeetna River	Approximately 900 feet downstream of the railroad bridge north of Talkeetna.	+348	Borough of Matanuska-Susitna.
	Approximately 400 feet downstream of the confluence of Whiskey Slough.	+394	
Twister Creek	Just downstream of South Talkeetna Road Spur	+345	Borough of Matanuska-Susitna.
	At the divergence from Talkeetna River	+381	

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

ADDRESSES

Borough of Matanuska-Susitna
Maps are available for inspection at 350 East Dahlia Avenue, Palmer, AK 99645.

Carroll County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1066			
Leatherwood Creek	Approximately 0.61 mile upstream of Magnetic Road	+1109	City of Eureka Springs, Unincorporated Areas of Carroll County.
	Approximately 1,250 feet upstream of Magnetic Road	+1131	

* 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 Eureka Springs
Maps are available for inspection at City Hall, 44 South Main Street, Eureka Springs, AR 72632.

Unincorporated Areas of Carroll County
Maps are available for inspection at the Carroll County Courthouse, 210 West Church Street, Berryville, AR 72616.

Vanderburgh County, Indiana, and Incorporated Areas Docket No.: FEMA–B–1080			
Bluegrass Creek	At Heckel Road	+384	Unincorporated Areas of Vanderburgh County.
	Approximately 1.5 miles upstream of Boonville-New Harmony Road.	+387	
Crawford-Brandeis Ditch	Just upstream of Norfolk Southern Railroad	+386	Unincorporated Areas of Vanderburgh County.
Dry Run Lower	At the confluence with Pigeon Creek	+378	City of Evansville.
	Approximately 100 feet upstream of 1st Avenue	+381	
Dry Run Upper	At the confluence with Dry Run Lower	+378	City of Evansville.
	Approximately 0.3 mile upstream of Cross Gate Drive	+407	
Greenbriar Hills Tributary	Approximately 600 feet upstream of the confluence with Little Pigeon Creek.	+381	Unincorporated Areas of Vanderburgh County.
	Approximately 800 feet upstream of Greendale Drive	+413	
Harper Ditch	At the confluence with Hirsch Ditch	+381	City of Evansville.

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
	At the confluence with Pigeon Creek	+381	
Hirsch Ditch	At the confluence with Harper Ditch	+381	City of Evansville, Unincorporated Areas of Vanderburgh County.
	At the confluence with Crawford-Brandeis, Lockwood, and Stockfleith Ditches.	+386	
Little Pigeon Creek	At the confluence with Pigeon Creek	+378	City of Evansville, Unincorporated Areas of Vanderburgh County.
	Approximately 2,250 feet upstream of the confluence with Pigeon Creek.	+378	
Lockwood Ditch	At the confluence of Crawford-Brandeis, Stockfleith, and Hirsch Ditches.	+386	Unincorporated Areas of Vanderburgh County.
	At the county boundary	+387	
Mill Road Tributary	At the confluence with Little Pigeon Creek	+378	City of Evansville.
	Approximately 725 feet upstream of Inwood Drive	+407	
Nurenbern Ditch	At the confluence with Lockwood Ditch	+387	Unincorporated Areas of Vanderburgh County.
	At State Road 66	+389	
Ohio River	Approximately 7.3 miles upstream of the Posey County boundary (extended).	+374	City of Evansville, Unincorporated Areas of Vanderburgh County.
	Approximately 1.5 miles downstream of the Warrick County boundary (extended).	+381	
Pigeon Creek	Approximately 1,200 feet downstream of North Fulton Avenue.	+378	City of Evansville, Unincorporated Areas of Vanderburgh County.
	At Green River Road	+383	
Schlensker Ditch	At Green River Road	+389	Unincorporated Areas of Vanderburgh County.
	Approximately 2,000 feet upstream of Browning Road	+441	
Schlensker Ditch Tributary	At the confluence with Schlensker Ditch	+405	Unincorporated Areas of Vanderburgh County.
	Approximately 0.5 mile upstream of the confluence with Schlensker Ditch.	+409	
Stockfleith Ditch	At the confluence with Hirsch, Lockwood, and Crawford-Brandeis Ditches.	+386	Unincorporated Areas of Vanderburgh County.
	At State Road 66	+388	

* 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 Evansville

Maps are available for inspection at the Evansville Civic Center Complex, Building Commission Department, 1 Northwest Martin Luther King Jr. Boulevard, Room 310, Evansville, IN 47708.

Unincorporated Areas of Vanderburgh County

Maps are available for inspection at the Evansville Civic Center Complex, Building Commission Department, 1 Northwest Martin Luther King Jr. Boulevard, Room 310, Evansville, IN 47708.

Marion County, Kansas, and Incorporated Areas
Docket No.: FEMA–B–1087

Clear Creek	At the confluence with Mud Creek	+1319	Unincorporated Areas of Marion County.
	Approximately 250 feet upstream of Cedar Street	+1319	
Cottonwood River	Approximately 1,100 feet downstream of 5th Street	+1272	Unincorporated Areas of Marion County.
	Approximately 775 feet upstream of West Main Street	+1316	
Cottonwood River Tributary	Approximately 1,100 feet upstream of Upland Road	+1307	Unincorporated Areas of Marion County.
	Approximately 1,200 feet upstream of Tanglewood Street	+1322	
Doyle Creek	Approximately 1.1 miles downstream of 105th Street	+1272	City of Marion, Unincorporated Areas of Marion County.
	Approximately 0.7 mile upstream of Maple Street	+1367	

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
Mud Creek	Approximately 1,000 feet upstream of the confluence with Cottonwood Creek.	+1316	City of Marion, Unincorporated Areas of Marion County.
	Approximately 1,200 feet upstream of the confluence with Clear Creek.	+1319	
Old Mud Creek Channel	Approximately 1,100 feet downstream of Commercial Street	+1299	City of Marion, Unincorporated Areas of Marion County.
	Approximately 1.6 miles upstream of Main Street	+1300	
Old Mud Creek Channel Tributary.	At the confluence with Old Mud Creek Channel	+1299	City of Marion.
	At West Santa Fe Street	+1304	
Prairie Creek	At the confluence with Doyle Creek	+1356	Unincorporated Areas of Marion County.
	Approximately 0.7 mile upstream of Old Mill Road	+1390	
Spring Creek	At Peabody Street	+1368	Unincorporated Areas of Marion County.
	Approximately 1,325 feet upstream of 70th Street	+1377	
Tributary to Cottonwood River	Approximately 1,375 feet downstream of West Main Street	+1299	City of Marion.
	Approximately 75 feet downstream of West Main Street	+1299	

* 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 Marion

Maps are available for inspection at City Hall, 208 East Sante Fe Street, Marion, KS 66861.

Unincorporated Areas of Marion County

Maps are available for inspection at the Marion County Courthouse, 200 South 3rd Street, Marion, KS 66861.

Simpson County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1066

Webb Branch	Just downstream of KY–1008 (Industrial Bypass)	+660	City of Franklin, Unincorporated Areas of Simpson County.
	Approximately 0.4 mile upstream of Witt Road	+736	

* 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 Franklin

Maps are available for inspection at 117 West Cedar Street, Franklin, KY 42135.

Unincorporated Areas of Simpson County

Maps are available for inspection at 100 Main Street, Franklin, KY 42135.

Allen Parish, Louisana, and Incorporated Areas
Docket No.: FEMA–B–1040

Beaver Creek	Approximately 7,218 feet downstream of 16th Street	+117	City of Oakdale.
	Approximately 575 feet downstream of 16th Street	+119	
Bunch Creek	At Martin Tram Road	+37	Unincorporated Areas of Allen Parish.
	Approximately 3,097 feet upstream of U.S. Route 190	+38	
Calcasieu River	Approximately 341 feet upstream of the confluence with unnamed creek.	+106	City of Oakdale.
	At the intersection of unnamed creek and Union Pacific Railroad.	+107	
Gilley Gully	Approximately 1,539 feet downstream of Martin Tram Road	+35	Unincorporated Areas of Allen Parish.
	Approximately 4,613 feet upstream of Martin Tram Road	+36	
Whisky Chitto Creek	Approximately 10,369 feet upstream of the confluence with the Calcasieu River.	+41	Unincorporated Areas of Allen Parish.

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 6,544 feet upstream of the confluence with the Calcasieu River.	+41	

* 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 Oakdale
Maps are available for inspection at 333 East 6th Avenue, Oakdale, LA 71463.

Unincorporated Areas of Allen Parish
Maps are available for inspection at the Allen Parish Police Jury, 602 Court Street, Oberlin, LA 70655.

Barton County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1075

North Fork Spring River	Approximately 6,200 feet downstream of the City of Lamar Heights corporate limits.	+935	City of Lamar Heights, Unincorporated Areas of Barton County.
	Approximately 600 feet upstream of the City of Lamar corporate limits.	+942	

* 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 Lamar Heights
Maps are available for inspection at 1004 Gulf Street, Room 103, Lamar, MO 64759.

Unincorporated Areas of Barton County
Maps are available for inspection at 1004 Gulf Street, Room 103, Lamar, MO 64759.

Greene County, Ohio, and Incorporated Areas
Docket No.: FEMA–B–1012 and FEMA–B–1085

Possum Run	Approximately 900 feet downstream of Wilmington Pike	+931	City of Centerville.
	At the confluence of Wilmington Pike North Branch	+940	
Shawnee Park Tributary	Approximately 0.80 mile upstream of Monroe Drive	+924	City of Xenia, Unincorporated Areas of Greene County.
	Just downstream of U.S. Route 42	+943	
South Fork Massies Creek	Approximately 0.53 mile upstream of the railroad	+1041	Unincorporated Areas of Greene County.
	Approximately 240 feet downstream of Weimer Road	+1050	
Yellow Springs Creek	Approximately 0.8 mile upstream of Grinnell Road	+886	Village of Yellow Springs
	Approximately 0.7 mile downstream of Fairfield Road	+905	

* 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 Centerville
Maps are available for inspection at the Municipal Building, 100 West Spring Valley Road, Centerville, OH 45458.

City of Xenia
Maps are available for inspection at City Hall, 101 North Detroit Street, Xenia, OH 45385.

Unincorporated Areas of Greene County
Maps are available for inspection at the Greene County Building Regulations, 667 Dayton-Xenia Road, Xenia, OH 45385.

Village of Yellow Springs
Maps are available for inspection at 100 Dayton Street, Yellow Springs, OH 45387.

Hopkins County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1091

Coleman Creek	Approximately 0.56 mile upstream of State Highway 19	+437	Unincorporated Areas of Hopkins County.
	Approximately 600 feet upstream of State Highway 19	+445	

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
Gena Creek	Just upstream of FM Road 1870	+440	Unincorporated Areas of Hopkins County.
	Approximately 1.04 miles upstream of FM Road 1870	+457	
Rock Creek	Just downstream of unnamed railroad	+421	Unincorporated Areas of Hopkins County.
	Approximately 500 feet upstream of Holiday Drive	+476	
Turtle Creek	Just upstream of State Highway 11	+481	Unincorporated Areas of Hopkins County.
	Just upstream of unnamed railroad	+494	

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

ADDRESSES

Unincorporated Areas of Hopkins County

Maps are available for inspection at the Hopkins County Courthouse, 118 Church Street, Sulphur Springs, TX 75483.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: February 8, 2011.

Edward L. Connor,

Acting Federal Insurance and Mitigation Administrator, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–4129 Filed 2–23–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 11–02]

RIN 3072–AC41

Amendments to Commission's Rules of Practice and Procedure

DATE: February 17, 2011.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (FMC or Commission) amends its Rules of Practice and Procedure to update, clarify, and reduce the burden on parties to proceedings before the Commission.

DATES: The final rule is effective February 24, 2011.

FOR FURTHER INFORMATION CONTACT:

Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, Tel.: (202) 523–5725, E-mail: *secretary@fmc.gov.*

Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, Tel.: (202) 523–5740, E-mail: *generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission's Rules of Practice and Procedure, 46 CFR part 502, govern procedures before the Commission. 46 CFR 502.1–502.991. The rules are in place to secure just, speedy, and inexpensive resolution of proceedings before the Commission. After review of the procedural rules in their current form, the Commission has found that certain provisions have become outdated, unclear, or unduly burdensome. Therefore, the Commission has determined to amend part 502 of Title 46 of the Code of Federal Regulations to update and improve the Commission's Rules of Practice and Procedure.

As a first step in updating and improving its procedural rules, the Commission is making changes to Subparts A, H, I, S, and T of its Rules of Practice and Procedure. A number of technical, non-substantive changes are made to other Subparts of the rules. This Final Rule also includes corrections of some typographical errors in the rules.

The most notable changes are as follows:

Section 502.2

The Commission has clarified the provisions for electronic filing of documents and has amended the number of copies to be filed in Commission proceedings. Previously, in proceedings before the Commission, an original and fifteen (15) copies of certain documents filed and served in the proceedings were required to be furnished for the Commission's use and an original and four (4) copies of other documents were required to be furnished. The Commission is now requiring the filing of an original and five (5) copies of all documents filed in order to simplify this requirement, to reduce the burden on parties to Commission proceedings, and to reduce paper waste. The rule as revised requests that filings also be sent in PDF form when possible, either through electronic e-mail ("e-mail") or on an electronic storage device.

As many parties currently transmit documents by electronic means (except for initial filing of complaints and claims), the Commission has determined to accommodate electronic submission of documents for the purpose of meeting filing deadlines if the original and five (5) copies follow immediately by mail or courier. This Final Rule includes new rules for such electronic submission of documents to the Commission, and removes reference to facsimile transmissions.

To facilitate communications and service of documents, the amended rule requires all parties to provide the Commission and all other parties with accurate and current contact information.

The Final Rule amends the requirement to file discovery materials. The previous rule, 46 CFR 502.118(b)(3)(i) (repealed by this Final Rule) required parties to file with the Commission a single copy of discovery

materials. The Commission has found that filed discovery materials were often not used in the proceedings, and has noted that for years the Commission's Office of Administrative Law Judges has issued orders waiving the filing requirement and prohibiting filing of discovery materials until they were to be used in the proceedings or were ordered by the presiding officer to be filed. Under the Federal Rules of Civil Procedure (FRCP), discovery requests and responses "must not be filed until they are used in the proceeding or the court orders filing." Fed. R. Civ. P. 5(d)(1). The Commission has determined to amend its discovery rules to conform more closely to the FRCP. This change will reduce costs to the parties and to the Commission. The Commission has also determined that, consistent with the FRCP, expert witness reports must not be filed with the Commission until used in the proceeding or ordered to be filed.

The Final Rule provides that discovery materials must not be filed until they are "used in the proceeding." This phrase is meant to refer to a proceeding before the Commission or a presiding officer. This filing requirement is not triggered by "use" of discovery materials in other discovery activities, such as depositions. In connection with a proceeding before the Commission or presiding officer, however, the rule should be interpreted broadly, and any use of discovery materials before the Commission or presiding officer in connection with a motion, a pretrial conference, or otherwise, would trigger the filing requirement for those discovery materials used.

Once discovery materials are used in the proceeding, the materials must be filed. The Final Rule includes a provision directing a party who wishes to use discovery materials that are not yet in the record to include those materials in an appendix to be filed with the motion or other paper to which they relate. Because the filing requirement applies only with regard to materials that are used, only those parts of voluminous materials that are actually used should be included in the appendix. Any adverse or other party is then free to file an appendix including any other part of the materials that are so used. If the parties are unduly or unfairly sparing in their submissions of materials that are used, the Commission or presiding officer may order further filings.

Finally, to streamline the Commission's filing rules and for ease of reference, the requirements previously found in sections 502.111, 502.112, 502.114(c), 502.118(a) and (b)(1)–(3), and 502.119 are moved to § 502.2.

Section 502.13

Section 205(c)(3) of the E-Government Act of 2002, Public Law 107–347, requires the Supreme Court to prescribe rules "to protect privacy and security concerns relating to electronic filing of documents and the public availability * * * of documents filed electronically." The rule developed by the Court goes further than the E-Government Act requires, and also protects paper filings even when they are not converted to electronic form. *See* Fed. R. Civ. P. 5.2. ("Privacy Protection For Filings Made with the Court"). *See also* Fed. R. Civ. P. 5.2, advisory committee notes, 2007 adoption. Federal Rule 5.2 requires a party or non-party making an electronic or paper filing with the court to redact personally identifiable information before filing. There has been no comparable Commission rule.

Although Federal Rule 5.2 is applicable in Commission proceedings pursuant to Commission rule § 502.12, the Commission has determined to create a rule to ensure protection of privacy and security concerns. The new rule, 502.13, adopts verbatim Rule 5.2 of the FRCP except where "court" is changed to "Commission or presiding officer" or "Secretary" as appropriate, and portions of subparagraphs (b) and (c) of the Federal Rule that are not applicable to Commission proceedings have been deleted. As under the FRCP, "[t]he responsibility to redact filings rests with counsel and the party or non-party making the filing." Fed. R. Civ. P. 5.2, advisory committee notes, 2007 adoption.

Section 502.131

Section 502.131 is amended to require that requests for subpoenas be made in writing to the Office of Administrative Law Judges. Under the current rules, requests for subpoenas for the attendance of witnesses may be made orally or in writing, and requests for subpoenas for the production of evidence shall be in writing. The Commission has found it preferable that all subpoena requests must be in writing. The Commission has further found that having subpoena requests delivered to the Office of Administrative Law Judges, as opposed to the presiding officer, will ensure that they are handled promptly. In addition, the number of copies required has been reduced from two copies to one copy in addition to the original, to reduce the burden on the parties.

Sections 502.305 and 502.321

Sections 502.305 and 502.321 are amended to make certain rules of the Commission's Rules of Practice and Procedure applicable to Subpart S (Informal Procedure for Adjudication of Small Claims) and Subpart T (Formal Procedure for Adjudication of Small Claims) proceedings. Currently, only §§ 502.253 and 502.254 are applicable to Subpart S proceedings; under § 502.321, the rules in Subpart A through Q are not applicable to Subpart T proceedings. The Commission has found that certain rules should apply to Subparts S and T proceedings. These include rules for filing, providing contact information, documents in foreign languages, attorney appearances, substitution of parties, interest, and attorney's fees. The amendment also makes Subparts S and T proceedings consistent with other Commission proceedings where appropriate, and clarifies the rules of practice and procedure applicable to those proceedings.

Because the changes made in this Final Rule only address the Commission's Rules of Practice and Procedure, to which the Administrative Procedure Act is not applicable pursuant to 5 U.S.C. 553, the amended rules are published as final.

This Final Rule is not a "major rule" under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the supplementary information, the Federal Maritime Commission amends 46 CFR part 502 as follows.

PART 502—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1964–1965 Comp. P. 306; 21 U.S.C. 853a.

■ 2. Revise § 502.2 to read as follows:

§ 502.2 Filing of documents.

(a) *Requirement for filing.* Documents relating to any matter pending before the Commissioners for decision or to any matter pending before the Commission which is likely to come

before the Commissioners for decision, whether or not relating to proceedings governed by this part, must be filed with the Secretary, Federal Maritime Commission. Such documents should not be filed with or separately submitted to the offices of individual Commissioners. Distribution to Commissioners and other agency personnel is handled by the Office of the Secretary to ensure that persons in decision-making and advisory positions receive identical copies of submissions in a uniform and impersonal manner and to avoid the possibility of ex parte communications within the meaning of § 502.11. These considerations apply to informal and oral communications as well, such as requests for expedited consideration.

(b) *Date and time of filing.* (1) Documents may be hand-delivered at the Commission during normal business hours from 8:30 a.m. to 5 p.m., Monday through Friday.

(2) Except with respect to initial filing of complaints pursuant to §§ 502.62 and 502.63, and claims pursuant to §§ 502.301 and 502.302, the date of filing shall be either the date on which the pleading, document, or paper is physically delivered to the Commission by a party, the date on which a party certifies it to have been deposited in the mail or delivered to a courier, or the date of e-mail transmission.

(c) *Place of filing.* Except for exhibits filed pursuant to § 502.118(b)(4) and petitions for review of final agency orders served on the Commission pursuant to 28 U.S.C. 2112(a), all documents required to be filed in, and correspondence relating to proceedings governed by this part must be addressed and delivered to "Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001" or to *secretary@fmc.gov.*

(d) *Service of petition for review of Commission order.* Petitions for review of final agency orders served on the Commission pursuant to 28 U.S.C. 2112(a) must be addressed and delivered to "General Counsel, Office of the General Counsel, Federal Maritime Commission, 800 N. Capitol Street, NW., Washington, DC 20573–0001."

(e) *Number of copies.* Parties filing documents in proceedings before the Commission or an administrative law judge must file an original, signed document and five (5) copies, and, if possible, a PDF of the document. The PDF document should be sent by e-mail to *secretary@fmc.gov* or submitted on an electronic storage device (such as compact disc or USB flash drive).

(f) *E-mail transmission of filings.* (1) Initial filing of complaints and claims pursuant to §§ 502.62–502.63 and 502.301–502.302 must be accomplished in the traditional manner on paper, rather than by e-mail.

(2) Pursuant to § 502.5 of this subpart, confidential filings must be accomplished in the traditional manner on paper, rather than by e-mail.

(3) If a filing is submitted electronically as a PDF attached to an e-mail, the original, signed document, and five (5) copies must be received by the Secretary within seven working days. The e-mail transmitting the PDF copy of a document must include a certification by the filing party that the electronic copy is a true and correct copy of the paper original, and that the paper signed original and five (5) copies are being filed with the Secretary of the Commission. The e-mail Subject Line must include the docket number of the proceeding and be sent to *secretary@fmc.gov.*

(g) *Filing after announcement of Commission meeting prohibited.* No filings relating to matters scheduled for a Commission meeting will be accepted by the Secretary if submitted subsequent to public announcement of the particular meeting, except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances. (See § 503.82(e) of this chapter.)

(h) *Return of rejected filings.* Any pleading, document, writing, or other paper submitted for filing which is rejected because it does not conform to the rules in this part will be returned to the sender.

(i) *Continuing obligation to provide contact information.* All parties and representatives are under a continuing obligation to provide the Commission and all other parties in a proceeding with accurate and current contact information including a street address, telephone number, and e-mail address.

(j) *Form of documents.* All papers to be filed under the rules in this part must be clear and legible, dated, show the docket number and title of the proceeding, document title, and include the title, if any, and address of the authorized signer or representative. An original signed in ink must be provided. Text shall appear on only one side of the paper and must be double spaced except that quotations of fifty or more words should be single-spaced and indented on the left and right without quotation marks. The paper must be strong and durable, of letter size (8½ x 11 in. or 215.9 x 279.4 mm) or A4 size (8.27 x 11.69 in. or 210 x 297 mm), with a margin of at least one inch on all four sides. Documents must be printed in clear type, and the type size, including footnotes and endnotes, must not be smaller than 12-point.

(k) *Discovery materials excluded from filing requirement.* (1) The following discovery requests and responses must not be filed with the Secretary until they are used in the proceeding, or the Commission or presiding officer orders filing:

(i) Notice and transcript of depositions;

(ii) Interrogatories;

(iii) Requests for documents or tangible things or to permit entry onto designated land or other property;

(iv) Requests for admission; and

(v) Expert witness reports.

(2) The party that served the notice of deposition or discovery papers must preserve and ensure the integrity of original transcripts and discovery papers for use by the Commission or the presiding officer. A party that wants to use any part or all of discovery requests and responses in the proceeding must include the part or all of the documents in an appendix to be filed with the motion or other paper that refers to those documents. A party filing an appendix exceeding 100 pages should file an original and two (2) copies on paper and, if possible, also file such appendix by e-mail or on an electronic storage device. [Rule 2.]

■ 3. Revise § 502.3 to read as follows:

§ 502.3 Compliance with rules or orders of Commission.

Persons named in a rule or order shall notify the Commission during business hours on or before the day on which such rule or order becomes effective whether they have complied therewith, and if so, the manner in which compliance has been made. [Rule 3.]

■ 4. Revise § 502.4 to read as follows:

§ 502.4 Authentication of rules or orders of Commission.

All rules or orders issued by the Commission in any proceeding covered by this part shall, unless otherwise specifically provided, be signed by the Secretary of the Commission in the name of the Commission. [Rule 4.]

■ 5. Add § 502.5 to read as follows:

§ 502.5 Documents containing confidential materials.

Except as otherwise provided in the rules of this part, all filings that contain information previously designated as confidential pursuant to §§ 502.13, 502.167, 502.201(i)(1)(vii), or any other rules of this part or for which a request for protective order pursuant to § 502.201(i) is pending, are subject to the following requirements:

(a) Filings shall be accompanied by a transmittal letter that identifies the filing as "confidential" and describes the nature and extent of the authority for requesting confidential treatment. The confidential copies shall consist of the complete filing and shall include a cover page marked "Confidential-Restricted," with the confidential materials clearly marked on each page. Confidential filings should not be made by e-mail.

(b) Whenever a confidential filing is submitted, there must also be submitted an original and one copy of a public version of the filing. Such public version shall exclude confidential materials, and shall indicate on the cover page and on each affected page "confidential materials excluded." Public versions of confidential filings may be submitted by e-mail.

(c) Confidential treatment afforded by this section is subject to the proviso that any information designated as confidential may be used by the administrative law judge or the Commission if deemed necessary to a correct decision in the proceeding. [Rule 5.]

■ 6. Add § 502.6 to read as follows:

§ 502.6 Verification of documents.

(a) If a party is represented by an attorney or other person qualified to practice before the Commission under the rules in this part, each pleading, document or other paper of such party filed with the Commission shall be signed by at least one person of record admitted to practice before the Commission in his or her individual name, whose address shall be stated. Except when otherwise specifically provided by rule or statute, such pleading, document or paper need not be verified or accompanied by affidavit. The signature of a person admitted or qualified to practice before the Commission constitutes a certificate by the signer that the signer has read the pleading, document or paper; that the signer is authorized to file it; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. For a willful violation of this section, a person admitted or qualified to practice before the Commission may be subjected to appropriate disciplinary action.

(b) If a party is not represented by a person admitted or qualified to practice before the Commission, each pleading, document or other paper of such party filed with the Commission shall be signed and verified under oath by the party or by a duly authorized officer or agent of the party, whose address and title shall be stated.

(c) Wherever, under any rules of this part, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition under § 502.203 or § 502.204), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by such person, as true under penalty of perjury, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct." [Rule 6.]

■ 7. Add § 502.13 to subpart A of part 502 to read as follows:

§ 502.13 Privacy protection for filings made with the Commission.

(a) *Redacted filings.* Unless the Commission or presiding officer orders otherwise, in an electronic or paper filing that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) The last four digits of the social-security number and taxpayer-identification number;

(2) The year of the individual's birth;

(3) The minor's initials; and

(4) The last four digits of the financial-account number.

(b) *Exemptions from the redaction requirement.* The redaction requirement does not apply to the following:

(1) The record of an administrative or agency proceeding;

(2) The record of a state-court proceeding;

(3) The record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; and

(4) A filing covered by paragraph (c) of this section.

(c) *Filings made under seal.* The Commission or presiding officer may order that a filing be made under seal without redaction. The Commission or presiding officer may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) *Protective orders.* For good cause, the Commission or presiding officer may by order in a case:

(1) Require redaction of additional information; or

(2) Limit or prohibit a nonparty's remote electronic access to a document filed with the Commission.

(e) *Option for additional unredacted filing under seal.* A person making a redacted filing may also file an unredacted copy under seal. The Commission must retain the unredacted copy as part of the record.

(f) *Option for filing a reference list.* A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) *Waiver of protection of identifiers.* A person waives the protection of this rule as to the person's own information by filing it without redaction and not under seal. [Rule 13.]

§ 502.27 [Amended]

■ 8. Amend § 502.27(a)(1), in the last sentence, by removing the reference "§ 503.43(g)" and adding the reference "§ 503.43(e)" in its place.

Exhibit No. 1 to Subpart E [§ 502.62] of Part 502—[Amended]

■ 9. Amend the appendix, Exhibit No. 1 to Subpart E, by removing the reference "subpart S [Informal Docket for a claim of $10,000 or less]" and adding the reference "subpart S [Informal Docket for a claim of $50,000 or less]" in its place in the first paragraph of the Exhibit's *Information To Assist in Filing Formal Complaint, General.*

§ 502.111 [Removed and Reserved]

■ 10. Remove and reserve § 502.111.

§ 502.112 [Removed and Reserved]

■ 11. Remove and reserve § 502.112.

§ 502.114 [Amended]

■ 12. In § 502.114, remove paragraph (c).

§ 502.118 [Amended]

■ 13. In § 502.118, remove and reserve paragraphs (a) and (b)(1) through (3).

§ 502.119 [Removed]

■ 14. Remove § 502.119.

Subpart I—Subpoenas

■ 15. Revise the heading to subpart I as set forth above.

■ 16. Revise § 502.131 to read as follows:

§ 502.131 Requests; issuance.

Subpoenas for the attendance of witnesses or the production of evidence shall be issued upon request of any party, without notice to any other party. Requests for subpoenas must be submitted in writing to the Office of Administrative Law Judges. The party requesting the subpoena shall tender an original and one copy of such subpoena. Where it appears that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the administrative law judge may in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. [Rule 131.]

§ 502.132 [Amended]

■ 17. Amend § 502.132 by removing "subpena" and adding "subpoena" in its place wherever it occurs.

§ 502.133 [Amended]

■ 18. Amend § 502.133 by removing "subpena" and adding "subpoena" in its place.

§ 502.134 [Amended]

■ 19. Amend § 502.134 as follows:

■ a. Amend the section heading by removing "subpenas" and adding "subpoenas" in its place; and

■ b. Amend the text by removing "subpena" and adding "subpoena" in its place wherever it occurs.

§ 502.135 [Amended]

■ 20. Amend § 502.135 as follows:

■ c. Amend the section heading by removing "Subpena" and adding "Subpoena" in its place;

■ d. Amend paragraph (a) by removing "subpena" and adding "subpoena" in its place wherever it occurs; and

■ e. Amend paragraph (b) by removing "subpenaed" and adding "subpoenaed" in its place.

§ 502.136 [Amended]

■ 21. Amend § 502.136 by removing "subpena" and adding "subpoena" in its place.

§ 502.147 [Amended]

■ 22. Amend § 502.147(a), in the first sentence, by removing "subpenas" and adding "subpoenas" in its place.

§ 502.203 [Amended]

■ 23. Amend § 502.203(a)(2) and (3) by removing "subpena" and adding "subpoena" in its place wherever it occurs.

§ 502.210 [Amended]

■ 24. Amend § 502.210 in paragraph (b) by removing "subpenas" and "subpoena" and adding "subpoenas" and "subpoena", respectively, in their place wherever they occur.

§ 502.286 [Amended]

■ 25. Amend § 502.286 by removing "subpenas" and adding "subpoenas" in two places.

■ 26. Revise § 502.305 to read as follows:

§ 502.305 Applicability of other rules of this part.

(a) Except otherwise specifically provided in this subpart or in paragraph (b) of this section, the sections in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart.

(b) The following sections in subparts A through Q of this part apply to situations covered by this subpart: §§ 502.2(a) (Requirement for filing); 502.2(f)(1) (Email transmission of filings); 502.2(i) (Continuing obligation to provide contact information); 502.7 (Documents in foreign languages); 502.21–502.23 (Appearance, Authority for representation, Notice of appearance; substitution and withdrawal of representative); 502.43 (Substitution of parties); 502.101 (Computation); 502.117 (Certificate of service); 502.253 (Interest in reparation proceedings); and 502.254 (Attorney's fees in reparation proceedings). [Rule 305.]

Exhibit No. 1 to Subpart S—[Amended]

■ 27. Amend the appendix, Exhibit No. 1 to subpart S, by removing "$10,000 or less" and adding "$50,000 or less" in its place in the first paragraph of the Exhibit's *Information To Assist in Filing Informal Complaints.*

■ 28. Revise § 502.321 to read as follows:

§ 502.321 Applicability of other rules of this part.

(a) Except otherwise specifically provided in this subpart or in paragraph (b) of this section, the sections in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart.

(b) The following sections in subparts A through Q apply to situations covered by this subpart: §§ 502.2(a) (Requirement for filing); 502.2(f)(1) (E-mail transmission of filings); 502.2(i) (Continuing obligation to provide contact information); 502.7 (Documents in foreign languages); 502.21–502.23 (Appearance, Authority for representation, Notice of appearance; substitution and withdrawal of representative); 502.43 (Substitution of parties); 502.253 (Interest in reparation proceedings); and 502.254 (Attorney's fees in reparation proceedings). [Rule 321.]

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–4060 Filed 2–23–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 503

[Docket No. 11–01]

RIN 3072–AC40

Information Security Program

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (FMC or Commission) amends its regulations relating to its Information Security Program to reflect the changes implemented by Executive Order 13526—Classified National Security Information—that took effect January 5, 2010, and which prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism.

DATES: Effective February 28, 2011.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Fenneman, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740, *GeneralCounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION: The FMC amends Subpart F of Part 503 of Title 46

of the Code of Federal Regulations to reflect the changes implemented by Executive Order 13526—Classified National Security Information—that took effect January 5, 2010, which prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism.

Because the changes made in this proceeding only address agency operating procedure and practice, which do not require notice and public comment pursuant to the Administrative Procedure Act, 5 U.S.C. 553, this rule is published as final.

This rule is not a "major rule" under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Part 503

Freedom of Information Act, Privacy, Sunshine Act.

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Federal Maritime Commission amends 46 CFR part 503 as follows.

PART 503—PUBLIC INFORMATION

■ 1. Revise the authority citation for part 503 to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 13526 of January 5, 2010 (75 FR 707), sections 5.1(a) and (b).

■ 2. Amend § 503.51 by revising paragraphs (i)(3), (j), (p), and (q) to read as follows:

§ 503.51 Definitions.

* * * * *

(i) * * *

(3) Information received and treated as "Foreign Government Information" under the terms of Executive Order 13526 or any predecessor order.

(j) *Mandatory declassification review* means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of Executive Order 13526.

* * * * *

(p) *Self-inspection* means the internal review and evaluation of individual Commission activities and the Commission as a whole with respect to the implementation of the program established under Executive Order 13526 and its implementing directives.

(q) *Senior agency official* means the official designated by the Chairman under section 5.4(d) of Executive Order 13526 to direct and administer the Commission's program under which classified information is safeguarded.

* * * * *

■ 3. Revise § 503.52 to read as follows:

§ 503.52 Senior agency official.

The Managing Director is designated as Senior Agency Official of the Commission, and shall be responsible for directing, administering and reporting on the Commission's information security program, which includes oversight (self-inspection) and security information programs to ensure effective implementation of Executive Orders 13526 and 12968 and 32 CFR part 2001.

■ 4. Amend § 503.53 by revising the introductory text and paragraphs (a) and (d) to read as follows:

§ 503.53 Oversight Committee.

An Oversight Committee is established, under the chairmanship of the Senior Agency Official with the following responsibilities:

(a) Establish a Commission security education program to familiarize all personnel who have or may have access to classified information with the provisions of Executive Order 13526 and directives of the Information Security Oversight Office. The program shall include initial, refresher, and termination briefings;

* * * * *

(d) Recommend appropriate administrative action to correct abuse or violations of any provision of Executive Order 13526; and

* * * * *

■ 5. Amend § 503.54 by revising paragraphs (b) and (c) to read as follows:

§ 503.54 Original classification.

* * * * *

(b) If a Commission Member or employee develops information that appears to require classification, or receives any foreign government information as defined in section 6.1(s) of Executive Order 13526, the Member or employee shall immediately notify the Senior Agency Official and appropriately protect the information.

(c) If the Senior Agency Official believes the information warrants classification, it shall be sent to the appropriate agency with original classification authority over the subject matter, or to the Information Security Oversight Office, for review and a classification determination.

* * * * *

■ 6. Amend § 503.55 as follows:

■ a. In paragraph (a) introductory text by removing the reference "Executive Order 12958" and adding the reference "Executive Order 13526" in its place; and

■ b. By adding paragraphs (c)(1) and (2) to read as follows:

§ 503.55 Derivative classification.

* * * * *

(c) * * *

(1) *Classification authority.* The authority for classification shall be shown as follows:

(i) "Classified by (description of source documents or classification guide)," or

(ii) "Classified by multiple sources," if a document is classified on the basis of more than one source document or classification guide.

(iii) In these cases, the derivative classifier shall maintain the identification of each source with the file or record copy of the derivatively classified document. A document derivatively classified on the basis of a source document that is marked "Classified by Multiple Sources" shall cite the source document in its "Classified by" line rather than the term "Multiple sources."

(2) *Declassification and downgrading instructions.* Date or events for automatic declassification or downgrading, or the notation "Originating Agency's Determination Required" to indicate that the document is not to be declassified automatically, shall be carried forward from the source document, or as directed by a classification guide, and shown on "declassify on" line as follows:

"Declassify on: (date, description of event);" or "Originating Agency's Determination Required (OADR)."

■ 7. In § 503.56, revise paragraph (a) to read as follows:

§ 503.56 General declassification and downgrading policy.

(a) The Commission exercises declassification and downgrading authority in accordance with section 3.1 of Executive Order 13526, only over that information originally classified by the Commission under previous Executive Orders. Declassification and downgrading authority may be exercised by the Commission Chairman and the Senior Agency Official, and such others as the Chairman may designate. Commission personnel may not declassify information originally classified by other agencies.

* * * * *

■ 8. Revise § 503.57 to read as follows:

§ 503.57 Mandatory review for declassification.

(a) Reviews and referrals in response to requests for mandatory declassification shall be conducted in compliance with section 3.5 of Executive Order 13526, 32 CFR 2001.33, and 32 CFR 2001.34.

(b) Any individual may request a review of classified information and material in possession of the Commission for declassification. All information classified under Executive Order 13526 or a predecessor Order shall be subject to a review for declassification by the Commission, if:

(1) The request describes the documents or material containing the information with sufficient specificity to enable the Commission to locate it with a reasonable amount of effort. Requests with insufficient description of the material will be returned to the requester for further information.

(2) The information requested is not the subject of pending litigation.

(3) The information requested has not been reviewed for declassification in the previous two years. If so, the FMC shall inform the requester of this fact and provide the requester with appeal rights in accordance with 32 CFR 2001.33(a)(2)(iii).

(c) Requests shall be in writing, and shall be sent to: Office of the Managing Director, Attn.: Senior Agency Official, Federal Maritime Commission, Washington, DC 20573 or submitted via the FMC's on-line declassification information portal which provides an e-mail address through which requests can be submitted: *http://www.http://www.fmc.gov/about/web_policies_notices_and_acts.aspx.*

(d) If the request requires the provision of services by the Commission, fair and equitable fees may be charged pursuant to 31 U.S.C. 9701.

(e) Requests for mandatory declassification reviews shall be acknowledged by the Commission within 15 days of the date of receipt of such requests.

(f) If the document was derivatively classified by the Commission or originally classified by another agency, the request, the document, and a recommendation for action shall be forwarded to the agency with the original classification authority. The Commission may, after consultation with the originating agency, inform the requester of the referral.

(g) If a document is declassified in its entirety, it may be released to the requester, unless withholding is otherwise warranted under applicable law. If a document or any part of it is not declassified, the Senior Agency Official shall furnish the declassified portions to the requester unless withholding is otherwise warranted under applicable law, along with a brief statement concerning the reasons for the denial of the remainder, and the right to appeal that decision to the Commission appellate authority within 60 days.

(h) If a declassification determination cannot be made within 45 days, the requester shall be advised that additional time is needed to process the request. Final determination shall be made within one year from the date of receipt of the request. The Commission shall inform the requester in writing of the final determination and of the reasons for any denials. The Commission shall inform the requester in writing of his or her final appeal rights to the Interagency Security Classification Appeals Panel.

(i) When a request has been submitted both under mandatory declassification review and the Freedom of Information Act (FOIA), the agency shall require the requester to select one process or the other. If the requester fails to select one process or the other, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory declassification review.

■ 9. Revise § 503.58 to read as follows:

§ 503.58 Appeals of denials of mandatory declassification review requests.

(a) Within 60 days after the receipt of denial of a request for mandatory declassification review, the requester may submit an appeal in writing to the Chairman through the Secretary, Federal Maritime Commission, Washington, DC 20573. The appeal shall:

(1) Identify the document in the same manner in which it was identified in the original request;

(2) Indicate the dates of the request and denial, and the expressed basis for the denial; and

(3) State briefly why the document should be declassified.

(b) The Chairman shall rule on the appeal within 60 working days of receiving it. If additional time is required to make a determination, the Chairman shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The Chairman shall notify the requester in writing of the final determination and the reasons for any denial.

(c) In accordance with section 5.3 of Executive Order 13526 and 32 CFR 2001.33, within 60 days of such issuance, the requester may appeal a final determination of the Commission under paragraph (b) of this section to the Interagency Security Classification Appeals Panel. The appeal should be addressed to, Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Classification Challenge Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room 5W, Washington, DC 20408.

■ 10. Amend § 503.59 by revising paragraphs (f) introductory text, (g)(2), (k), (m), (n), (o), (q)(1) through (3), (r), and (s) to read as follows:

§ 503.59 Safeguarding classified information.

* * * * *

(f) Waivers under paragraph (e) of this section may be granted when the Commission Senior Agency Official:

* * * * *

(g) * * *

(2) To protect the classified information in accordance with the provisions of Executive Order 13526; and

* * * * *

(k) An inventory of all documents classified higher than confidential shall be made at least annually and whenever there is a change in classified document custodians. The Senior Agency Official shall be notified, in writing, of the results of each inventory.

* * * * *

(m) Combinations to dial-type locks shall be changed only by persons having an appropriate security clearance, and shall be changed whenever such equipment is placed in use; whenever a person knowing the combination no longer requires access to the combination; whenever a combination has been subject to possible compromise; whenever the equipment is taken out of service; and at least once each year. Records of combinations shall be classified no lower than the highest level of classified information to be stored in the security equipment concerned. One copy of the record of each combination shall be provided to the Senior Agency Official.

(n) Individuals charged with the custody of classified information shall conduct the necessary inspections within their areas to insure adherence to procedural safeguards prescribed to protect classified information. The Commission Senior Agency Official shall conduct periodic inspections to determine if the procedural safeguards prescribed in this subpart are in effect at all times.

(o) Whenever classified material is to be transmitted outside the Commission, the custodian of the classified material shall contact the Commission Senior Agency Official for preparation and receipting instructions. If the material is to be hand carried, the Senior Agency Official shall ensure that the person who will carry the material has the appropriate security clearance, is knowledgeable of safeguarding

requirements, and is briefed, if appropriate, concerning restrictions with respect to carrying classified material on commercial carriers.

* * * * *

(q) * * *

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under Executive Order 13526 or predecessor orders;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 13526 or any implementing directive; or

(3) Knowingly and willfully violate any other provision of Executive Order 13526 or implementing directive.

(r) Any person who discovers or believes that a classified document is lost or compromised shall immediately report the circumstances to his or her supervisor and the Commission Senior Agency Official, who shall conduct an immediate inquiry into the matter.

(s) Questions with respect to the Commission Information Security Program, particularly those concerning the classification, declassification, downgrading, and safeguarding of classified information, shall be directed to the Commission Senior Agency Official.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–4063 Filed 2–23–11; 8:45 am]

BILLING CODE 6730–01–P

Proposed Rules

Federal Register
Vol. 76, No. 37
Thursday, February 24, 2011

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2008–0085]

RIN 0579–AD17

Importation of Ovine Meat From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of certain animals, meat, and other animal products to allow, under certain conditions, the importation of fresh (chilled or frozen) ovine meat from Uruguay. Based on the evidence in a risk assessment that we have prepared, we believe that fresh (chilled or frozen) ovine meat can safely be imported from Uruguay provided certain conditions are met. These actions would provide for the importation of ovine meat from Uruguay into the United States, while continuing to protect the United States against the introduction of foot-and-mouth disease.

DATES: We will consider all comments that we receive on or before April 25, 2011.

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-2008-0085* 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–2008–0085, 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–2008–0085.

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: Dr. Silvia Kreindel, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–8419.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture may prohibit the importation of any animal or article if the Secretary determines that the prohibition is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock.

Pursuant to this Act, the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest and foot-and-mouth disease (FMD). These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest and FMD. Section 94.11 lists regions that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

In a final rule effective and published in the **Federal Register** on May 29, 2003 (68 FR 31940–31949, Docket No. 02–109–3), we amended the regulations to authorize the importation of fresh beef from Uruguay, a region of the world that we do not recognize as free of FMD, under certain conditions. Those conditions, found in § 94.22 of the regulations, require that the meat come from bovines that have been born, raised, and slaughtered in Uruguay, that the bovines have not been exposed to FMD on their premises of origin or through contact with bovines from other premises, that the bovines are subject to inspections and processing designed to detect FMD and remove potentially affected body parts, that the beef is subject to a maturation process designed to deactivate the FMD virus, that Uruguay is free of FMD for a year prior to the export of the beef, and that the beef has not come in contact with meat from FMD-affected regions.

In 2006, Uruguay's Ministry of Livestock, Agriculture, and Fisheries (MGAP) submitted information to APHIS in support of their request that we amend the regulations to allow the importation of fresh ovine meat into the United States.

In response to this request, APHIS prepared a risk assessment, which can be viewed on the Internet on the Regulations.gov Web site or in our reading room.[1] This assessment pays close attention, in particular, to the role sheep played in the last outbreak of FMD in Uruguay in 2001, and the likelihood that FMD has been introduced into the domestic ovine population within the country since that time. In addition, as part of our evaluation of the risks associated with Uruguay's request, APHIS conducted a site visit in Uruguay in March 2007.

Based on the risk assessment and the site visit, we have determined that it is not necessary to prohibit the importation of fresh (chilled or frozen) ovine meat from Uruguay, provided certain requirements, similar to those described above for fresh beef and discussed later in this document, are met. These requirements would be

[1] Instructions on accessing Regulations.gov and information on the location and hours of the reading room may be found at the beginning of this document under **ADDRESSES**. You may also request paper copies of the risk assessment by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**.

nearly identical to the existing requirements for the importation of beef; hence we are proposing to revise § 94.22 to authorize the importation of both beef and ovine meat from Uruguay into the United States.

Mitigation Measures for the Importation of Ovine Meat From Uruguay

There are several risk factors associated with the importation of ovine meat from Uruguay. We discuss our proposed mitigation measures for these risk factors in the following paragraphs.

Uruguayan Origin of Ovine Meat; Restrictions on Contact With Meat of a Different Region of Origin

Currently, paragraph (a) of § 94.22 requires that beef from Uruguay must come from bovines that have been born, raised, and slaughtered in Uruguay. Likewise, paragraph (h) of § 94.22 currently requires that beef from Uruguay not have been in contact with meat from regions other than those listed in § 94.1(a)(2), which lists regions declared to be free of both rinderpest and FMD. We would subject ovine meat from Uruguay to these same requirements. As documented in our assessment, Brazil and Argentina, countries that border Uruguay, both experienced outbreaks of FMD as recently as 2006, and FMD is under control, but endemic, in the region of South America surrounding Uruguay.

FMD Status of Uruguay

Currently, paragraph (b) of § 94.22 requires that FMD not have been diagnosed in Uruguay within the previous 12 months before beef from Uruguay is exported to the United States. We would amend the paragraph so that it would state that, if FMD is detected anywhere in Uruguay, the export of beef and ovine meat from all of Uruguay to the United States is prohibited until at least 12 months have elapsed since the depopulation, cleaning, and disinfection of the last infected premises. The current provision could be construed to state that the 12 month prohibition begins following diagnosis of the last affected animal during an outbreak, while eradication, cleaning, and disinfection efforts are still ongoing. This is not the case; it is APHIS' policy that the 12 month prohibition begins only after all "stamping out" efforts cease.

Premises of Origin

Paragraph (c) of § 94.22 currently requires that beef from Uruguay exported to the United States come from bovines that originated from premises where FMD has not been present during the lifetime of any bovines slaughtered for the export of beef to the United States. We would modify paragraph (c) so that it would pertain to both bovines and sheep. This measure is necessary because sheep that have been exposed to FMD on their premises of origin pose an unacceptably high risk of spreading the disease.

Movement From the Premises of Origin

Paragraph (d) of § 94.22 currently requires that beef from Uruguay come from bovines that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals. We would also subject ovine meat from Uruguay to this requirement, which addresses the risk of cattle or sheep coming into contact with or commingling during transit to slaughter with animals from regions in which FMD is known to exist, or that have not been evaluated by APHIS with regard to their FMD status.

Ante- and Post-Mortem Inspections

Paragraph (e) of § 94.22 currently requires that beef from Uruguay come from bovines that received ante- and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease. Because FMD has a short incubation period, if animals were infected with FMD at a premises of origin, it is likely that lesions would be visible in at least a few of those animals at the slaughtering establishment prior to slaughter. Similarly, post-mortem inspection of carcasses would be likely to identify any lesions and vesicles in animals infected with FMD. Since the lesions associated with FMD occur primarily on the feet and in the mouth, particular attention must be paid to the head and feet during these inspections. Because ante- and post-mortem inspections are effective in reducing disease risk, we are proposing to also require ante- and post-mortem inspections for sheep slaughtered for the export of fresh (chilled or frozen) ovine meat from Uruguay to the United States.

Restrictions on Certain Ovine Parts

Paragraph (f) of § 94.22 currently requires that beef from Uruguay consist only of bovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. Accordingly, the paragraph prohibits the importation of all parts of bovine heads, feet, hump, hooves, or internal organs.

We would apply this requirement to ovine meat from Uruguay, and would therefore authorize the importation into the United States only of ovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. As a result, we would continue to prohibit the importation of ovine heads, feet, hooves, and internal organs into the United States; sheep have no humps.

While portions of a sheep's head, feet, hooves, and internal organs may reach the necessary pH level to inactivate the FMD virus during the required maturation process (*see* the section below titled "Maturation Process"), these items can contain lymph tissue, depot fat, and blood clots that may potentially harbor active FMD virus, even after that process; hence the need for this requirement.

Bone, Blood Clots, and Lymphoid Tissue

Paragraph (g) of § 94.22 currently requires all bone and visually identifiable blood clots and lymphoid tissue to be removed from beef from Uruguay prior to export to the United States. We would subject ovine meat from Uruguay to this same requirement.

The removal of bones and visually identifiable blood clots is necessary because any FMD virus these parts might potentially harbor may not be inactivated by the maturation process described later in this document. Although we consider the removal of these parts to be necessary, we recognize that meat may contain small portions of blood clots or lymphoid tissue that are not visually identifiable as such. Because such small parts are unlikely to harbor any FMD virus that is not inactivated by the maturation process, and because we recognize that it would be difficult, if not impossible, to remove parts of blood clots or lymphoid tissue that are not recognizable as such, we have specified that all visually identifiable blood clots and lymphoid tissue would have to be removed.

Maturation Process

Paragraph (i) of § 94.22 currently requires that beef from Uruguay come from bovine carcasses that were allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and that reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. It further states that measurement of the pH must be taken at the middle of both *longissimus dorsi* muscles. Finally, it provides that any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and states that, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass

may not be exported to the United States. These requirements are based on the fact that the FMD virus in meat is inactivated by acidification, which occurs naturally during maturation. An acid environment of a pH of 5.8 or less destroys the virus quickly. Accordingly, we would subject ovine meat from Uruguay to these same requirements.

APHIS Inspection of Slaughtering Establishments

Paragraph (j) of § 94.22 currently requires that an authorized veterinary official of the Government of Uruguay certify on the foreign meat inspection certificate that the conditions for importation of the beef have been met. Similarly, paragraph (k) currently requires that the establishment in which the bovines are slaughtered allow periodic APHIS inspection of their facilities, records, and operations. We would subject ovine meat from Uruguay to these requirements. We believe that, in the great majority of cases, certification by an authorized veterinary official of Uruguay will be sufficient verification that the ovine meat has met the conditions for importation into the United States. However, because of the possibility of occasional differing interpretations of the regulations, we consider it advisable to have provisions within the regulations enabling APHIS representatives to have access to slaughtering establishments for periodic inspections.

Finally, we note that, in addition to the above provisions, any ovine meat imported from Uruguay would have to meet the additional certification requirements under § 94.11(c). That paragraph prohibits the export-approved slaughter establishment from receiving FMD-susceptible animals or animal products that originated, transported, or commingled with animals or animal products from regions that APHIS does not consider as FMD-free.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of fresh (chilled or frozen) ovine meat from Uruguay. Based on the evidence in a recent risk assessment, we believe that fresh (chilled or frozen) ovine meat can be safely imported from Uruguay provided certain conditions are met.

We have prepared an economic analysis for this proposed rule. The analysis, which considers the number of and type of entities that are likely to be affected by this action and the potential economic effects on those entities, provides the basis for the Administrator's determination that this action would not have a significant impact on a substantial number of small entities. The economic analysis may be viewed on the Regulations.gov Web site (*see* **ADDRESSES** above for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) No retroactive effect will be given to this rule and (2) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2008–0085. Please send a copy of your comments to: (1) Docket No. APHIS–2008–0085, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the regulations governing the importation of certain animals, meat, and other animal products to allow, under certain conditions, the importation of fresh (chilled or frozen) ovine meat from Uruguay. This action would provide for the importation of ovine meat from Uruguay into the United States, while continuing to protect the United States against the introduction of foot-and-mouth disease. Under the proposed regulations, APHIS would collect information, provided by an authorized certifying official of the Government of Uruguay, certifying that specific conditions for importation have been met.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed 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 (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.6 hours per response.

Respondents: Animal health officials of the government of Uruguay.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 5.

Estimated total annual burden on respondents: 8 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.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with allowing the importation of ovine meat from Uruguay into the United States, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the Internet on the Regulations.gov Web site and is available for public inspection in our reading room. (Instructions for accessing Regulations.gov and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are proposing to amend 9 CFR Part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. Section 94.1 is amended by revising paragraph (b)(4) and the introductory text of paragraph (d) to read as follows:

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

* * * * *

(b) * * *

(4) Except as provided in § 94.22 for fresh (chilled or frozen) beef and ovine meat from Uruguay.

* * * * *

(d) Except as otherwise provided in this part, fresh (chilled or frozen) meat of ruminants or swine raised and slaughtered in a region free of foot-and-mouth disease and rinderpest, as designated in paragraph (a)(2) of this section, and fresh (chilled or frozen) beef and ovine meat exported from Uruguay in accordance with § 94.22, which during shipment to the United States enters a port or otherwise transits a region where rinderpest or foot-and-mouth disease exists, may be imported provided that all of the following conditions are met:

* * * * *

3. Section 94.22 is revised to read as follows:

§ 94.22 Restrictions on importation of beef and ovine meat from Uruguay.

Notwithstanding any other provisions of this part, fresh (chilled or frozen) beef and ovine meat from Uruguay may be exported to the United States under the following conditions:

(a) The meat is beef and ovine meat from animals that have been born, raised, and slaughtered in Uruguay.

(b) If foot-and-mouth disease is detected anywhere in Uruguay, the export of beef and ovine meat from all of Uruguay to the United States is prohibited until at least 12 months have elapsed since the depopulation, cleaning, and disinfection of the last infected premises.

(c) The meat comes from bovines and sheep that originate from premises where foot-and-mouth disease has not been present during the lifetime of any bovines and sheep slaughtered for the export of beef and ovine meat to the United States.

(d) The meat comes from bovines and sheep that were moved directly from the premises of origin to the slaughtering establishment without any contact with other animals.

(e) The meat comes from bovines and sheep that received ante-mortem and post-mortem veterinary inspections, paying particular attention to the head and feet, at the slaughtering establishment, with no evidence found of vesicular disease.

(f) The meat consists only of bovine parts and ovine parts that are, by standard practice, part of the animal's carcass that is placed in a chiller for maturation after slaughter. The bovine and ovine parts that may not be imported include all parts of the head, feet, hump, hooves, and internal organs.

(g) All bone and visually identifiable blood clots and lymphoid tissue have been removed from the meat.

(h) The meat has not been in contact with meat from regions other than those listed in § 94.1(a)(2).

(i) The meat comes from carcasses that were allowed to maturate at 40 to 50 °F (4 to 10 °C) for a minimum of 36 hours after slaughter and that reached a pH of 5.8 or less in the loin muscle at the end of the maturation period. Measurements for pH must be taken at the middle of both *longissimus dorsi* muscles. Any carcass in which the pH does not reach 5.8 or less may be allowed to maturate an additional 24 hours and be retested, and, if the carcass still has not reached a pH of 5.8 or less after 60 hours, the meat from the carcass may not be exported to the United States.

(j) An authorized veterinary official of the Government of Uruguay certifies on the foreign meat inspection certificate that the above conditions have been met.

(k) The establishment in which the bovines and sheep are slaughtered allows periodic on-site evaluation and subsequent inspection of its facilities, records, and operations by an APHIS representative.

Done in Washington, DC, this 18th day of February 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–4138 Filed 2–23–11; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

[NRC–2010–0131]

RIN 3150–AI81

AP1000 Design Certification Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) proposes to amend its regulations to certify an amendment to the AP1000 standard plant design. The purpose of the amendment is to replace the combined license (COL) information items and design acceptance criteria (DAC) with specific design information, address the effects of the impact of a large commercial aircraft, incorporate design improvements, and increase standardization of the design. Upon NRC rulemaking approval of its amendment to the AP1000 design, an

applicant seeking an NRC license to construct and operate a nuclear power reactor using the AP1000 design need not demonstrate in its application the safety of the certified design. The applicant for this amendment to the AP1000 certified design is Westinghouse Electric Company, LLC (Westinghouse). The public is invited to submit comments on this proposed design certification rule (DCR), the revised generic design control document (DCD) that would be incorporated by reference into the DCR, and the environmental assessment (EA) for this amendment to the AP1000 design.

DATES: Submit comments on the DCR, the revised DCD and/or the EA for this amendment by May 10, 2011. Submit comments specific to the information collections aspects of this rule by March 28, 2011. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration of comments received after these dates cannot be given.

ADDRESSES: Please include Docket ID NRC–2010–0131 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–2010–0131. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov*.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852 between 7:30 a.m. and 4:15 p.m. during Federal workdays (telephone: 301–415–1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Serita Sanders, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2956; e-mail: *serita.sanders@nrc.gov*.

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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*. 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 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 O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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, 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov*.

Federal Rulemaking Web Site: Public comments and supporting materials related to this proposed rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0131.

Documents that are not publicly available because they are considered to be either SUNSI (including SUNSI constituting proprietary information (PI)) or SGI may be available to interested persons who may wish to comment on the proposed design certification amendment. Interested persons shall follow the procedures described in the Supplementary Information section of this document, Section VII, "Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Preparation of Comments on the Proposed Amendment to the AP1000 Design Certification."

II. Background

Title 10 of the Code of Federal Regulations (10 CFR), part 52, "Licenses, Certifications, and Approvals for Nuclear Power Plants," subpart B, presents the process for obtaining standard design certifications. Section 52.63, "Finality of standard design certifications," provides criteria for determining when the Commission may amend the certification information for a previously certified standard design in response to a request for amendment from any person.

During its initial certification of the AP1000 design, the NRC issued a final safety evaluation report (FSER) for the AP1000 as NUREG–1793, "Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design," in September 2004. From March 2006 through May 2007, NuStart Energy Development, LLC (NuStart) [1] and Westinghouse provided the NRC with a number of technical reports (TRs) for pre-application review in an effort to: (1) Close specific, generically

[1] The NuStart member companies are: Constellation Generation Group, LLC, Duke Energy Corporation, EDF-International North America, Inc., Entergy Nuclear, Inc., Exelon Generation Company, LLC, Florida Power and Light Company, Progress Energy, and Southern Company Services, Inc.

applicable COL information items (information to be supplied by COL applicants/holders) in the AP1000 certified standard design; (2) identify standard design changes resulting from the AP1000 detailed design efforts; and (3) provide specific standard design information in areas or for topics where the AP1000 DCD was focused on the design process and acceptance criteria. TRs typically addressed a topical area (*e.g.,* redesign of a component, structure or process) and included the technical details of a proposed change, design standards, analyses and justifications as needed, proposed changes to the DCD, and Westinghouse's assessment of the applicable regulatory criteria (e.g. the assessment of the criteria in 10 CFR part 52, Appendix D, Section VIII, "Processes for Changes and Departures"). The NRC identified issues associated with the TRs and engaged Westinghouse in requests for additional information and meetings during the pre-application phase to resolve them.

On May 26, 2007, Westinghouse submitted Revision 16 (ADAMS Accession No. ML071580939) of its application via transmittal letter (ADAMS Accession No. ML071580757) to amend the AP1000 design certification. This application was supplemented by letters dated October 26, November 2, and December 12, 2007, and January 11 and January 14, 2008. The application noted, in part:

(1) Generic amendments to the design certification, including additional design information to resolve DAC and design-related COL information items, as well as design information to make corrections and changes, would result in further standardization and improved licensing efficiency for the multiple COL applications referencing the AP1000 DCR that were planned for submittal in late 2007 and early 2008.

(2) Westinghouse, in conjunction with NuStart, has been preparing TRs since late 2005. These TRs were developed with input, review, comment, and other technical oversight provided by NuStart members, including the prospective AP1000 COL applicants. Submittal of these TRs to the NRC was initiated in March 2006. The TRs contain discussion of the technical changes and supplemental information that is used to support the detailed information contained in the DCD.

In Attachment 2 to the May 26, 2007, application, Westinghouse identified the criteria of 10 CFR 52.63(a)(1) that apply to the changes described in each TR and associated COL information items, if applicable.

On January 18, 2008, the NRC notified Westinghouse that it accepted the May 26, 2007, application, as supplemented, for docketing (Docket No. 52–006) and published a notice of acceptance (ADAMS Accession No. ML073600743) in the **Federal Register** (73 FR 4926, January 28, 2008). On September 22, 2008, Westinghouse submitted Revision 17 to the AP1000 DCD. Revision 17 contains changes to the DCD that have been previously accepted by the NRC in the course of its review of Revision 16 of the DCD. In addition, Revision 17 proposes changes to DAC in the areas of piping design (Chapter 3), instrumentation and control (I&C) systems (Chapter 7) and human factors engineering (HFE) (Chapter 18). Revision 17 also includes a number of design changes not previously discussed with the NRC.

The NRC issued guidance on the finalization of design changes in Interim Staff Guidance (ISG) DC/COL–ISG–011, "Finalizing Licensing-basis Information," (ADAMS Accession No. ML092890623), which describes various categories of design changes that should not be deferred and those that should be included in the DCR.

By letter dated January 20, 2010, Westinghouse submitted a list of design change packages that would be included in Revision 18 of the AP1000 DCD (ADAMS Accession No. ML100250888). A number of subsequent submittals were made by Westinghouse to narrow the focus to those design changes to the categories of changes that should not be deferred, as recommended by DC/COL–ISG–011.

Revision 18 to the AP1000 DCD (ADAMS Accession No. ML103480572) was submitted on December 1, 2010, and contains both proposed changes previously described in the design change packages and changes already accepted by the NRC in the review process of Revision 17 to the AP1000 DCD. In the course of the review of both design change packages, the NRC determined that DCD changes were needed. In response to NRC questions, Westinghouse proposed such changes. Once the NRC was satisfied with these DCD markups, they were documented in the safety evaluation report (SER) as confirmatory items (CIs). The CIs were first identified during the NRC's review of Revision 17 of the AP1000 DCD. With the review of Revision 18, the NRC will confirm that Westinghouse has made those changes to the DCD accepted by the NRC that were not addressed in Revision 17 to the AP1000 DCD. The use of CIs is restricted to cases where the NRC has reviewed and approved specific design control document proposals. For the final rule, the NRC will complete the review of the CIs and prepare a FSER reflecting that action. The CIs are closed based upon an acceptable comparison between the revised DCD text and the text required by the CI. No technical review of Revision 18 by the NRC is necessary, because only CIs and design changes pursuant to DC/COL–ISG–011 previously accepted by the NRC are contained in Revision 18 to the DCD.

In order to simplify the NRC's review of the design change documentation, and to simplify subsequent review by the NRC's Advisory Committee on Reactor Safeguards (ACRS), the design changes pursuant to DC/COL–ISG–011 are reviewed in a separate chapter (Chapter 23) of the FSER. This chapter indicates which areas of the DCD are affected by each design change and the letters from Westinghouse that submitted them. In some cases, NRC's review of the design changes reviewed in Chapter 23 may be incorporated into the chapters of the FSER where this material would normally be addressed because of the relationship between individual design changes and the review of prior DCD changes from Revisions 16 and 17 of the DCD.

The Westinghouse Revision 18 letter includes an enclosure providing a cross-reference to the DCD changes and the applicable 10 CFR 52.63(a)(1) criteria. Revision 17 provides a similar cross-reference in the September 22, 2008, Westinghouse letter for those changes associated with the revised DCD. Revision 16 on the other hand, uses TRs to identify the DCD changes and lists the corresponding applicable 10 CFR 52.63(a)(1) criteria via Westinghouse memorandum, dated May 26, 2007 (Table 1).

As of the date of this document, the application for amendment of the AP1000 design certification has been referenced in the following COL applications:

Vogtle, Units 3 and 4, Docket No. 05200025/6, 73 FR 33118;

Bellefonte Nuclear Station, Units 3 and 4, Docket Nos. 05200014/5, 73 FR 4923;

Levy County, Units 1 and 2, Docket Nos. 05200029/30, 73 FR 60726;

Shearon Harris, Units 2 and 3, Docket Nos. 05200022/3, 73 FR 21995;

Turkey Point, Units 6 and 7, Docket Nos. 05200040/1, 74 FR 51621;

Virgil C. Summer, Units 2 and 3, Docket Nos. 05200027/8, 73 FR 45793;

William States Lee III, Units 1 and 2, Docket Nos. 05200018/9, 73 FR 11156.

III. Discussion

A. Technical Evaluation of Westinghouse Amendment to the AP1000 Design

Westinghouse's request to amend the AP1000 design contained several classes

of changes. Each class is discussed below:

Editorial Changes

Westinghouse requested changes to the AP1000 DCD to correct spelling, punctuation, grammar, designations, and references. None of these changes is intended to make any substantive changes to the certified design, and NUREG–1793, "Final Safety Evaluation Report Related to Certification of the AP1000 Standard Design," Supplement 2 (SER) does not address these changes.

Changes To Address Consistency and Uniformity

Westinghouse requested changes to the AP1000 DCD to achieve consistency and uniformity in the description of the certified design throughout the DCD. For example, a change to the type of reactor coolant pump (RCP) motor is evaluated in Chapter 5 of the SER on the application for the AP1000 amendment; Westinghouse requested that wherever this RCP motor is described in the DCD, the new description of the changed motor be used. The NRC reviewed the proposed change (to be used consistently throughout the DCD) to ensure that the proposed changes needed for uniformity and consistency are technically acceptable and do not adversely affect the previously approved design description. The NRC's bases for approval of these changes are set forth in the SER for the AP1000 amendment.

Substantive Technical Changes to the AP1000 Design (Other Than Those Needed for Compliance With the AIA Rule)

Among the many technical changes that are proposed by Westinghouse for inclusion in Revision 18 of the AP1000 DCD, the NRC selected 15 substantive changes for specific discussion in this proposed rule document, based on their safety significance:

- Removal of Human Factors Engineering (HFE) Design Acceptance Criteria (DAC) from the DCD
- Change to Instrumentation and Control (I&C) DAC and Inspection, Test, Analysis, and Acceptance Criteria (ITAAC)
- Minimization of Contamination
- Extension of Seismic Spectra to Soil Sites and Changes to Stability and Uniformity of Subsurface Materials and Foundations
- Long-Term Cooling
- Control Room Emergency Habitability System
- Changes to the Component Cooling Water System (CCWS)
- Changes to I&C Systems
- Changes to the Passive Core Cooling System (PCCS)—Gas Intrusion
- Integrated Head Package (IHP)—Use of the QuickLoc Mechanism
- Reactor Coolant Pump Design
- Reactor Pressure Vessel (RPV) Support System
- Spent Fuel Pool (SFP) Decay Heat Analysis and Associated Design Changes
- Spent Fuel Rack Design and Criticality Analysis
- Vacuum Relief System

The NRC evaluated each of the proposed changes and concluded that they are acceptable. The NRC's bases for approval of these changes are set forth in the SER for the AP1000 amendment. Further information about how each of these changes is provided in Section XIV, "Backfitting," of this document.

Changes To Address Compliance With the AIA Rule

Westinghouse requested changes to the AP1000 design in order to comply with the requirements of the AIA rule, 10 CFR 50.150. The NRC confirmed that Westinghouse has adequately described key AIA design features and functional capabilities in accordance with the AIA rule and conducted an assessment reasonably formulated to identify design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. In addition, the NRC determined that there will be no adverse impacts from complying with the requirements for consideration of aircraft impacts on conclusions reached by the NRC in its review of the original U.S. AP1000 design certification. The NRC's bases for approval of these changes are set forth in the SER for the AP1000 amendment. As a result of these changes, the AP1000 design will achieve the Commission's objectives of enhanced public health and safety and enhanced common defense and security through improvement of the facility's inherent robustness to the impact of a large commercial aircraft at the design stage.

B. Changes to Appendix D

1. Scope and Contents (Section III)

The purpose of Section III is to describe and define the scope and contents of this design certification and to present how documentation discrepancies or inconsistencies are to be resolved. Paragraph A is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic technical specifications (TSs) into this appendix. The NRC is proposing to update the revision number of the DCD that would be incorporated by reference to the revision Westinghouse provided to the NRC in its application for amendment to this DCR.

The legal effect of incorporation by reference is that the incorporated material has the same legal status as if it were published in the Code of Federal Regulations. This material, like any other properly issued regulation, has the force and effect of law. The AP1000 DCD was prepared to meet the technical information contents of application requirements for design certifications under 10 CFR 52.47(a) and the requirements of the OFR for incorporation by reference under 10 CFR part 51. One requirement of the OFR for incorporation by reference is that the applicant for the design certification (or amendment to the design certification) makes the generic DCD available upon request after the final rule becomes effective. Therefore, paragraph A would identify a Westinghouse representative to be contacted to obtain a copy of the AP1000 DCD. The NRC is proposing to update the Westinghouse representative's contact information in this DCR.

The AP1000 DCD is electronically accessible under ADAMS Accession No. ML103480572, at the OFR, and at *http://www.regulations.gov* by searching under Docket ID NRC–2010–0131. Copies of the generic DCD would also be available at the NRC's PDR. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the master copy of the generic DCD in ADAMS. If the design certification amendment applicant makes a generic change (through NRC rulemaking) to the DCD under 10 CFR 52.63 and the change process provided in Section VIII, then at the completion of the rulemaking the NRC would request approval of the Director, OFR, for the revised master DCD. The NRC would require that the design certification amendment applicant maintain an up-to-date copy of the master DCD under paragraph A.1 in Section X and that it include any generic changes made.

The NRC is also proposing a change to paragraph D. Paragraph D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and the design certification application or the FSER for the certified standard design. The proposed revision would renumber paragraph D as paragraph D.1, clarify this requirement as applying to the initial design certification, and add a similar paragraph D.2 to indicate that this is also the case for an inconsistency

between the generic DCD and the amendment application and the NRC's associated FSER for the amendment.

2. Additional Requirements and Restrictions (Section IV)

Section IV presents additional requirements and restrictions imposed upon an applicant who references Appendix D to 10 CFR part 52. Paragraph A presents the information requirements for these applicants. Paragraph A.3 currently requires the applicant to include, not simply reference, the PI and SGI referenced in the AP1000 DCD, or its equivalent, to ensure that the applicant has actual notice of these requirements. The NRC is proposing to revise paragraph A.3 to indicate that a COL applicant must include, in the plant-specific DCD, the SUNSI (including PI) and SGI referenced in the AP1000 DCD. This revision would address a wider class of information (SUNSI) to be included in the plant-specific DCD, rather than limiting the required information to PI. The requirement to include SGI in the plant-specific DCD would not change.

The NRC is also proposing to add a new paragraph A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Proposed paragraph A.4 would require that a COL applicant referencing Appendix D to 10 CFR part 52 include, as part of its application, a demonstration that an entity other than Westinghouse is qualified to supply the AP1000 certified design unless Westinghouse supplies the design for the applicant's use. In cases where a COL applicant is not using Westinghouse to supply the AP1000 certified design, this information is necessary to support any NRC finding under 10 CFR 52.73(a) that the entity is qualified to supply the certified design.

3. Applicable Regulations (Section V)

The purpose of Section V is to specify the regulations applicable and in effect when the design certification is approved (i.e., as of the date specified in paragraph A, which will be the date that the proposed revisions to Appendix D are approved by the Commission and the final rule is signed by the Secretary of the Commission). The NRC is proposing to redesignate paragraph A as paragraph A.1 to indicate that this paragraph applies to that portion of the design that was certified under the initial design certification. The NRC is further proposing to add new paragraph A.2, similar to that of paragraph A.1, to indicate the regulations that would apply to that portion of the design within the scope of this amendment, as would be approved by the Commission and signed by the Secretary of the Commission.

4. Issue Resolution (Section VI)

The purpose of Section VI is to identify the scope of issues that were resolved by the Commission in the original certification rulemaking, and, therefore, are "matters resolved" within the meaning and intent of 10 CFR 52.63(a)(5). Paragraph B presents the scope of issues that may not be challenged as a matter of right in subsequent proceedings and describes the categories of information for which there is issue resolution. Paragraph B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954 (the Act), as amended, that are associated with the information in the NRC's final safety evaluation report related to certification of the AP1000 standard design (ADAMS Accession No. ML103260072) and the Tier 1 and Tier 2 information and the rulemaking record for Appendix D to 10 CFR part 52, are resolved within the meaning of 10 CFR 52.63(a)(5). These issues include the information referenced in the DCD that are requirements (i.e., "secondary references"), as well as all issues arising from PI and SGI, which are intended to be requirements. Paragraph B.2 provides for issue preclusion of PI and SGI.

The NRC is proposing to revise paragraph B.1 to extend issue resolution to the information contained in the NRC's FSER (Supplement No. 2) and the rulemaking record for this amendment. In addition, the NRC is proposing to revise paragraph B.2 to extend issue resolution to the broader category of SUNSI, including PI, referenced in the generic DCD.

The NRC is also proposing to revise paragraph B.7, which identifies as resolved all environmental issues concerning severe accident mitigation design alternatives (SAMDA) arising under the National Environmental Policy Act of 1969 (NEPA) associated with the information in the NRC's final EA for the AP1000 design and Appendix 1B of the generic DCD (Revision 15) for plants referencing Appendix D to 10 CFR part 52 whose site parameters are within those specified in the SAMDA evaluation. The NRC is proposing to revise this paragraph to identify as also resolved all environmental issues concerning SAMDA associated with the information in the NRC's final EA for this amendment and Appendix 1B of Revision 18 of the generic DCD for plants referencing Appendix D to 10 CFR part 52 whose site parameters are within those specified in the SAMDA evaluation.

Finally, the NRC is proposing to revise paragraph E, which provides the procedure for an interested member of the public to obtain access to SUNSI (including PI) and SGI for the AP1000 design in order to request and participate in proceedings, as identified in paragraph B, involving licenses and applications that reference Appendix D to 10 CFR part 52. The NRC is proposing to replace the current information in this paragraph with a statement that the NRC will specify at an appropriate time the procedure for interested persons to review SGI or SUNSI (including PI) for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to Appendix D to 10 CFR part 52 in which interested persons have a right to request an adjudicatory hearing. The NRC expects to follow its current practice of establishing the procedures by order when the notice of hearing is published in the **Federal Register**. (*See, e.g.,* Florida Power and Light Co, Combined License Application for the Turkey Point Units 6 and 7, Notice of Hearing, Opportunity To Petition for Leave To Intervene and Associated Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation (75 FR 34777; June 18, 2010); Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of AREVA Enrichment Services, LLC (Eagle Rock Enrichment Facility) (74 FR 38052; July 30, 2009).

In the four currently approved design certifications (10 CFR part 52, Appendices A through D), paragraph E presents specific directions on how to obtain access to PI and SGI on the design certification in connection with a license application proceeding referencing that DCR. The NRC is proposing this change because these provisions were developed before the terrorist events of September 11, 2001. After September 11, 2001, Congress changed the statutory requirements governing access to SGI, and the NRC revised its rules, procedures, and practices governing control and access to SUNSI and SGI. The NRC now believes that generic direction on

obtaining access to SUNSI and SGI is no longer appropriate for newly approved DCRs. Accordingly, the specific requirements governing access to SUNSI and SGI contained in paragraph E of the four currently approved DCRs should not be included in the DCR for the AP1000. Instead, the NRC should specify the procedures to be used for obtaining access at an appropriate time in the COL proceeding referencing the AP1000 DCR. The NRC intends to include the new rule language in any future amendments or renewals of the currently existing DCRs, as well as in new (i.e., initial) DCRs. However, the NRC is not planning to initiate rulemaking to change paragraph E of the existing DCRs, to minimize unnecessary resource expenditures by both the original DCR applicant and the NRC.

5. Processes for Changes and Departures (Section VIII)

The purpose of Section VIII is to present the processes for generic changes to, or plant-specific departures (including exemptions) from, the DCD. The Commission adopted this restrictive change process to achieve a more stable licensing process for applicants and licensees that reference this DCR. The change processes for the three different categories of Tier 2 information, namely, Tier 2, Tier 2*, and Tier 2* with a time of expiration, are presented in paragraph B.

Departures from Tier 2 that a licensee may make without prior NRC approval are addressed under paragraph B.5 (similar to the process in 10 CFR 50.59). The NRC is proposing changes to Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC is proposing to revise paragraph B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required by 10 CFR 52.47(a)(28) to address 10 CFR 50.150. In addition, the NRC is proposing to redesignate paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and to add a new paragraph B.5.d. Proposed paragraph B.5.d would require an applicant or licensee who proposed to depart from the information required by 10 CFR 52.47(a)(28) to be included in the final safety analysis report (FSAR) for the standard design certification to consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The FSAR information required by the AIA rule which is subject to this change control requirement includes the descriptions of the design features and functional capabilities incorporated into the final design of the nuclear power facility and the description of how the identified design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1). The objective of the change controls is to determine whether the design of the facility, as changed or modified, is shown to withstand the effects of the aircraft impact with reduced use of operator actions. In other words, the applicant or licensee must continue to show, with the modified design, that the acceptance criteria in 10 CFR 50.150(a)(1) are met with reduced use of operator actions. The AIA rule does not require an applicant or a licensee implementing a design change to redo the complete AIA to evaluate the effects of the change. The NRC believes it may be possible to demonstrate that a design change is bounded by the original design or that the change provides an equivalent level of protection, without redoing the original assessment.

Consistent with the NRC's intent when it issued the AIA rule, under the proposed revision to this section, plant-specific departures from the AIA information in the FSAR would not require a license amendment, but may be made by the licensee upon compliance with the substantive requirements of the AIA rule (*i.e.,* the AIA rule acceptance criteria). The applicant or licensee would also be required to document, in the plant-specific departure, how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1), in accordance with Section X of Appendix D to 10 CFR part 52. Applicants and licensees making changes to design features or capabilities included in the certified design may also need to develop alternate means to cope with the loss of large areas of the plant from explosions or fires to comply with the requirements in 10 CFR 50.54(hh). The proposed addition of these provisions to Appendix D to 10 CFR part 52 is consistent with the NRC's intent when it issued the AIA rule in 2009, as noted in the statements of consideration for that rule (74 FR 28112; June 12, 2009, at page 28122, third column).

Paragraph B.6 of Appendix D to 10 CFR part 52 provides a process for departing from Tier 2* information. The creation of, and restrictions on changing, Tier 2* information resulted from the development of the Tier 1 information for the ABWR design certification (Appendix A to 10 CFR part 52) and the ABB–CE [ASEA Brown Boveri—Combustion Engineering] System 80+ design certification (Appendix B to 10 CFR part 52). During this development process, these applicants requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references these appendices. Also, many codes, standards, and design processes that would not be specified in Tier 1, but were acceptable for meeting ITAAC, were specified in Tier 2. The result of these actions was that certain significant information only exists in Tier 2 and the Commission did not want this significant information to be changed without prior NRC approval. This Tier 2* information was identified in the generic DCD with italicized text and brackets (*See* Table 1–1 of the AP1000 DCD Introduction for a list of the Tier 2* items). Although the Tier 2* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC determined that some of the Tier 2* information could expire when the plant first achieves full power (100 percent), after the finding required by 10 CFR 52.103(g), while other Tier 2* information must remain in effect throughout the life of the facility. The factors determining whether Tier 2* information could expire after the first full-power was achieved were whether the Tier 1 information would govern these areas after first full-power and the NRC's determination that prior approval was required before implementation of the change due to the significance of the information. Therefore, certain Tier 2* information listed in paragraph B.6.c would cease to retain its Tier 2* designation after full-power operation is first achieved following the Commission finding under 10 CFR 52.103(g). Thereafter, that information would be deemed to be Tier 2 information that would be subject to the departure requirements in paragraph B.5. By contrast, the Tier 2* information identified in paragraph B.6.b would retain its Tier 2* designation throughout the duration of the license, including any period of license renewal.

The NRC is proposing to revise certain items designated as Tier 2*. The item on HFE would be moved from paragraph B.5.b to paragraph B.5.c, with the effect that the Tier 2* designation on that information would expire after full-power operation is achieved rather than never expiring. In addition, a new item

would be added to paragraph B.5.b for RCP type. The NRC determined that certain specific characteristics of the RCP were significant to the safety review and that prior approval of changes affecting those characteristics would be required. This Tier 2* designation does not expire.

Finally, the NRC also concluded that the Tier 2* designation was not necessary for the specific Code edition and addenda for the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), as listed in item VIII.B.6.c.(2). At the time of the initial certification, the NRC determined that this information should be Tier 2*. Subsequently, 10 CFR part 50 was modified to include provisions in 10 CFR 50.55a(b)(1)(iii) to provide restrictions in the use of certain editions/addenda to the ASME Code, Section III, that the NRC found unacceptable. In addition, 10 CFR 50.55a(c)(3), (d)(2) and (e)(2), for reactor coolant pressure boundary, Quality Group B Components, and Quality Group C Components, respectively, provide regulatory controls on the use of later edition/addenda to the ASME Code, Section III, through the conditions NRC established on use of paragraph NCA–1140 of the Code. As a result, these rule requirements adequately control the ability of a licensee to use a later edition of the ASME Code and addenda such that Tier 2* designation is not necessary. Thus, the Tier 2* item in paragraph B.6.c.(2) for ASME Code was modified to be limited to ASME Code piping design restrictions as identified in Section 5.2.1.1 of the AP1000 DCD and to include certain Code cases, including Code Case N–284–1, as discussed in Section 3.8.2.2 and other Code cases as designated in Table 5.2–3 of the DCD (Code Case N–284–1 is the only case currently specified in Appendix D to 10 CFR part 52). The NRC retained the Tier 2* designation for applying ASME Code, Section III, Subsection NE to containment design, by moving this provision to the end of item VIII.B.6.c.(14). Section 3.8.2.2 of the DCD identifies the specific edition and addenda for containment design (2001 Edition of ASME Code, Section III, including 2002 Addenda) with the Tier 2* markings.

6. Records and Reporting (Section X)

The purpose of Section X is to present the requirements that apply to maintaining records of changes to and departures from the generic DCD, which would be reflected in the plant-specific DCD. Section X also presents the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. Paragraph A.1 requires that a generic DCD and the PI and SGI referenced in the generic DCD be maintained by the applicant for this rule. The NRC is proposing to revise paragraph A.1 to replace the term "proprietary information," or PI, with the broader term "sensitive unclassified non-safeguards information," or SUNSI. Information categorized as SUNSI is information that is generally not publicly available and encompasses a wide variety of categories. These categories include information about a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as SGI or classified as National Security Information or Restricted Data (security-related information), which is required by 10 CFR 2.390 to be protected in the same manner as commercial or financial information (*i.e.,* they are exempt from public disclosure). This change is necessary because the NRC is proposing to approve PI and security-related information. This change would also ensure that Westinghouse (as well as any future applicants for amendments to the AP1000 DCR who intend to supply the certified design) are required to maintain a copy of the applicable generic DCD, and maintain the applicable SUNSI (including PI) and SGI—developed by that applicant—that were approved as part of the relevant design certification rulemakings.

The NRC notes that the generic DCD concept was developed, in part, to meet OFR requirements for incorporation by reference, including public availability of documents incorporated by reference. However, the PI and SGI were not included in the public version of the DCD. Only the public version of the generic DCD would be identified and incorporated by reference into this rule. Nonetheless, the SUNSI for this amendment was reviewed by the NRC and, as stated in paragraph B.2, the NRC would consider the information to be resolved within the meaning of 10 CFR 52.63(a)(5). Because this information is in the non-public version of the DCD, this SUNSI (including PI) and SGI, or its equivalent, is required to be provided by an applicant for a license referencing this DCR.

In addition, the NRC is proposing to add a new paragraph A.4.a that would require the applicant for the AP1000 design to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). The NRC is also proposing a new paragraph A.4.b that would require an applicant or licensee who references this appendix to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). The addition of paragraphs A.4.a and A.4.b is consistent with the NRC's intent when it issued the AIA rule in 2009 (74 FR 28112; June 12, 2009, at page 28121, second column).

IV. Section-by-Section Analysis

The following discussion sets forth each proposed amendment to the AP1000 DCR. All section and paragraph references are to the provisions in the proposed amendment to Appendix D to 10 CFR part 52, unless otherwise noted.

A. Introduction (Section I)

The NRC is proposing to amend Section I, Introduction, to change the DCD revision number from 15 to 18.

B. Scope and Contents (Section III)

The NRC is proposing to amend Section III, Scope and Contents, to revise paragraph A to update the revision number of the DCD, from Revision 15 to Revision 18, approved for incorporation by reference; update the contact information of the Westinghouse representative to be contacted should a member of the public request a copy of the generic DCD; and update other locations (*e.g.,* the NRC's PDR) where a member of the public could request a copy of or otherwise view the generic DCD.

The NRC is proposing to revise paragraph D to set forth the way potential conflicts are to be resolved. Paragraph D would establish the generic DCD as the controlling document in the event of an inconsistency between the DCD and either the application or the FSER for the certified standard design. This clarification would further distinguish between the conflict scenarios presented in paragraphs D.1 (for the initial certification of the design) and D.2 (for Amendment 1 to the design).

C. Additional Requirements and Restrictions (Section IV)

The NRC is proposing to amend Section IV, Additional Requirements and Restrictions, to set forth additional requirements and restrictions imposed upon an applicant who references Appendix D to 10 CFR part 52. Paragraph A would set forth the information requirements for these applicants. The NRC is proposing to revise paragraph A.3 to replace the term "proprietary information" with the

broader term "sensitive unclassified non-safeguards information."

The NRC is also proposing to add a new paragraph A.4 to indicate requirements that must be met in cases where the COL applicant is not using the entity that was the original applicant for the design certification (or amendment) to supply the design for the applicant's use. Proposed paragraph A.4 would require a COL applicant referencing Appendix D to 10 CFR part 52 to include, as part of its application, a demonstration that an entity other than Westinghouse is qualified to supply the AP1000 certified design, unless Westinghouse supplies the design for the applicant's use. In cases where a COL applicant is not using Westinghouse to supply the AP1000 certified design, the required information would be used to support any NRC finding under 10 CFR 52.73(a) that an entity other than the one originally sponsoring the design certification or design certification amendment is qualified to supply the certified design.

D. Applicable Regulations (Section V)

The NRC proposes to revise paragraph A to distinguish between the regulations that are applicable and in effect at the time the initial design certification was approved (paragraph A.1) and the regulations that would be applicable and in effect at the time that Amendment 1 is approved (paragraph A.2).

E. Issue Resolution (Section VI)

The NRC proposes to amend Section VI, Issue Resolution, by revising paragraph B.1 to provide that all nuclear safety issues arising from the Act that are associated with the information in the NRC's FSER (NUREG–1793), the Tier 1 and Tier 2 information (including the availability controls in Section 16.3 of the generic DCD), and the rulemaking record for Appendix D to 10 CFR part 52 are resolved within the meaning of 10 CFR 52.63(a)(5). These issues include the information referenced in the DCD that are requirements (i.e., secondary references), as well as all issues arising from SUNSI (including PI) and SGI, which are intended to be requirements. This paragraph would be revised to extend issue resolution beyond that of the previously certified design to also include the information in Supplement No. 2 of the FSER and the rulemaking record associated with Amendment 1 to the AP1000 design.

The NRC is proposing to revise paragraph B.2 to replace the term "proprietary information" with the broader term "sensitive unclassified non-safeguards information."

Paragraph B.7 would be revised to extend environmental issue resolution beyond that of the previously certified design to also include the information in Amendment 1 to the AP1000 design and Appendix 1B of Revision 18 of the generic DCD.

New paragraph VI.E would provide that the NRC will specify at an appropriate time the procedures for interested persons to obtain access to PI, SUNSI, and SGI for the AP1000 DCR. Access to such information would be for the sole purpose of requesting or participating in certain specified hearings, such as (1) The hearing required by 10 CFR 52.85 where the underlying application references Appendix D to 10 CFR part 52; (2) any hearing provided under 10 CFR 52.103 where the underlying COL references Appendix D to 10 CFR part 52; and (3) any other hearing relating to Appendix D to 10 CFR part 52 in which interested persons have the right to request an adjudicatory hearing.

F. Processes for Changes and Departures (Section VIII)

The NRC is proposing changes to Section VIII to address the change control process specific to departures from the information required by 10 CFR 52.47(a)(28) to address the NRC's AIA requirements in 10 CFR 50.150. Specifically, the NRC is proposing to revise the introductory text of paragraph B.5.b to indicate that the criteria in this paragraph for determining if a proposed departure from Tier 2 requires a license amendment do not apply to a proposed departure affecting information required by 10 CFR 52.47(a)(28) to address aircraft impacts.

In addition, the NRC is proposing to redesignate paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and to add a new paragraph B.5.d. Proposed paragraph B.5.d would require an applicant referencing the AP1000 DCR, who proposed to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, to consider the effect of the changed feature or capability on the original 10 CFR 50.150(a) assessment.

The NRC is proposing to revise certain items designated as Tier 2*. The item on HFE would be moved from paragraph B.6.b to paragraph B.6.c, with the effect that the Tier 2* designation on that information would expire after full-power operation is achieved rather than never. In addition, a new item would be added to paragraph B.6.b for RCP type. The NRC determined that certain specific characteristics of the RCP were significant to the safety review and that prior approval of changes affecting those characteristics would be required. This Tier 2* designation does not expire.

The NRC also concluded that the Tier 2* designation was not necessary for the specific Code edition and addenda for the ASME code as listed in paragraph B.6.c(2). Thus, the item in paragraph B.6.c(2) for the ASME Code would be modified to be more limited in scope. The NRC would retain the Tier 2* designation for the Code edition applicable to containment in paragraph B.6.c(14) and added paragraph B.6.c(16) on ASME Code cases, which are specified in Table 5.2–3 of the generic DCD.

G. Records and Reporting (Section X)

The NRC is proposing to amend Section X, Records and Reporting, to revise paragraph A.1 to replace the term "proprietary information" with the broader term "sensitive unclassified non-safeguards information." Paragraph A.1 would also be revised to require the design certification amendment applicant to maintain the SUNSI, which it developed and used to support its design certification amendment application. This would ensure that the referencing applicant has direct access to this information from the design certification amendment applicant, if it has contracted with the applicant to provide the SUNSI to support its license application. The AP1000 generic DCD and the NRC-approved version of the SUNSI would be required to be maintained for the period that Appendix D to 10 CFR part 52 may be referenced.

The NRC is also proposing to add a new paragraph A.4.a, which would require Westinghouse to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal). This proposed provision, which is consistent with 10 CFR 50.150(c)(3), would facilitate any NRC inspections of the assessment that the NRC decides to conduct.

Similarly, the NRC is proposing new paragraph A.4.b, which would require an applicant or licensee who references Appendix D to 10 CFR part 52 to maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal). This provision is consistent with 10 CFR 50.150(c)(4). For all applicants and licensees, the supporting

documentation retained onsite should describe the methodology used in performing the assessment, including the identification of potential design features and functional capabilities to show that the acceptance criteria in 10 CFR 50.150(a)(1) would be met.

V. Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement States Programs," approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Act or the provisions of this section. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements by a mechanism that is consistent with the particular State's administrative procedure laws. Category "NRC" regulations do not confer regulatory authority on the State.

VI. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see Section I, "Submitting Comments and Accessing Information" of this notice.

Document	PDR	Web	ADAMS
SECY–11–0002, "Proposed Rule—AP1000 Design Certification Amendment"	X	X	ML103000397
AP1000 Design Control Document (DCD) Revision 18, Transmittal Letter	X	X	ML103480059
Westinghouse AP1000 DCD Revision 18 (public version)	X		ML103480572
Advanced Final Safety Evaluation Report for Revision 18 to the AP1000 Standard Design Certification (publicly available)	X		ML103260072
AP1000 Environmental Assessment	X	X	ML103000415
Interim Staff Guidance DC/COL–ISG–011, "Finalizing Licensing-basis Information"	X	X	ML092890623
Design Changes Submitted by Westinghouse, Revision 18	X	X	ML100250873
AP1000 Technical Reports (Appendix)	X		ML103350501
TR–26, "AP1000 Verification of Water Sources for Long-Term Recirculation Cooling Following a LOCA," Revision 8	X	X	ML102170123
TR–54, "Spent Fuel Storage Racks Structure and Seismic Analysis," Revision 4	X	X	ML101580475
TR–65, "Spent Fuel Storage Racks Criticality Analysis," Revision 2	X	X	ML100082093
TR–103, "Fluid System Changes," Revision 2	X	X	ML072830060
"Evaluation of the Effect of the AP1000 Enhanced Shield Building on the Containment Response and Safety Analysis," Revision 1	X	X	ML102220579
AP1000 DCD Transmittal Letter, Revision 17	X	X	ML083220482
AP1000 DCD, Revision 17	X	X	ML083230868
AP1000 DCD Transmittal Letter, Revision 16	X	X	ML071580757
AP1000 DCD, Revision 16	X	X	ML071580939
NRC Notice of Acceptance, Revision 16	X	X	ML073600743
December 13, 2010 ACRS Letter to Chairman (Report on FSER to AP1000 DCD)	X	X	ML103410351
December 20, 2010 ACRS Letter to Chairman (Long-Term Core Cooling)	X	X	ML103410348
Regulatory History of Design Certification[2]	X		ML003761550

VII. Procedures for Access to Sensitive Unclassified Non-Safeguards Information (Including Proprietary Information) and Safeguards Information for Preparation of Comments on the Proposed Amendment to the AP1000 Design Certification

This section contains instructions regarding how interested persons who wish to comment on the proposed design certification may request access to documents containing SUNSI (including PI[3]), and SGI, to prepare their comments. Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. This document provides information specific to this proposed rulemaking; however, nothing in this document is intended to conflict with the SGI regulations.

Interested persons who desire access to SUNSI information on the AP1000 design constituting PI should first request access to that information from the design certification applicant. A request for access should be submitted to the NRC if the applicant does not either grant or deny access by the 10-day deadline described below.

Submitting a Request to the NRC

Within 10 days after publication of this document, an individual or entity (thereinafter, the "requester") may request access to such information. Requests for access to SUNSI or SGI submitted more than 10 days after publication of this document will not be considered absent a showing of good cause for the late filing explaining why the request could not have been filed earlier.

The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, Washington DC 20555–0001. The expedited delivery or courier mail address is: Office of the Secretary, U.S. Nuclear Regulatory Commission, Attention: Rulemakings and Adjudications Staff, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary is *rulemaking.comments@nrc.gov.* The requester must send a copy of the request to the design certification applicant at the same time as the original transmission to the NRC using the same method of transmission. Copies of the request to the applicant must be sent to Stanley E. Ritterbusch, Manager, AP1000 Design Certification, Westinghouse Electric Company, 1000 Westinghouse Drive, Cranberry

[2] The regulatory history of the NRC's design certification reviews is a package of documents that is available in NRC's PDR and ADAMS. This history spans the period during which the NRC simultaneously developed the regulatory standards for reviewing these designs and the form and content of the rules that certified the designs.

[3] For purposes of this discussion, "proprietary information" constitutes trade secrets or commercial or financial information that are privileged or confidential, as those terms are used under the Freedom of Information Act (5 U.S.C. 552) and the NRC's implementing regulation at 10 CFR part 9.

Township, PA 16066, or by e-mail to *ritterse@westinghouse.com.* For purposes of complying with this requirement, a "request" includes all the information required to be submitted to the NRC as presented in this section.

The request must include the following information:

1. The name of this design certification amendment (AP1000 Design Certification Amendment), the rulemaking identification number RIN 3150–AI81, the rulemaking Docket ID NRC–2010–0131, and a citation to this document at the top of the first page of the request;

2. The name, address, e-mail, or fax number of the requester. If the requester is an entity, the name of the individual(s) to whom access is to be provided, then the address and e-mail or fax number for each individual, and a statement of the authority granted by the entity to each individual to review the information and to prepare comments on behalf of the entity must be provided. If the requester is relying upon another individual to evaluate the requested SUNSI and/or SGI and prepare comments, then the name, affiliation, address, and e-mail or fax number for that individual must be provided.

3.(a) If the request is for SUNSI, then the requester's need for the information to prepare meaningful comments on the proposed design certification must be demonstrated. Each of the following areas must be addressed with specificity.

(i) The specific issue or subject matter on which the requester wishes to comment;

(ii) An explanation why information which is publicly available, including the publicly available versions of the application and DCD, and information on the NRC's docket for the design certification application is insufficient to provide the basis for developing meaningful comment on the proposed design certification with respect to the issue or subject matter described previously in paragraph 3.(a)(i); and

(iii) Information demonstrating that the individual to whom access is to be provided has the technical competence (demonstrable knowledge, skill, experience, education, training, or certification) to understand and use (or evaluate) the requested information for a meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 3.(a)(i) above.

(b) If the request is for SUNSI constituting PI, then a chronology and discussion of the requester's attempts to obtain the information from the design certification applicant, and the final communication from the requester to the applicant and the applicant's response with respect to the request for access to PI must be submitted.

4.(a) If the request is for SGI, then the requester's "need to know" the SGI must be demonstrated as required by 10 CFR 73.2 and 10 CFR 73.22(b)(1). Consistent with the definition of "need to know" as stated in 10 CFR 73.2 and 10 CFR 73.22(b)(1), each of the following areas must be addressed with specificity:

(i) The specific issue or subject matter on which the requester wishes to comment;

(ii) An explanation why information which is publicly available, including the publicly available versions of the application and DCD, and information on the NRC's docket for the design certification application is insufficient to provide the basis for developing meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 4.(a)(i) above, and that the SGI requested is indispensible in order to develop meaningful comments;[4]

(iii) Information demonstrating that the individual to whom access is to be provided has the technical competence (demonstrable knowledge, skill, experience, education, training, or certification) to understand and use (or evaluate) the requested SGI, for meaningful comment on the proposed design certification with respect to the issue or subject matter described in paragraph 4.(a)(i) above.

(b) A completed Form SF–85, "Questionnaire for Non-Sensitive Positions," must be submitted for each individual who would have access to SGI. The completed Form SF–85 will be used by the Office of Administration to conduct the background check required for access to SGI, as required by 10 CFR part 2, Subpart G, and 10 CFR 73.22(b)(2), to determine the requester's trustworthiness and reliability. For security reasons, Form SF–85 can only be submitted electronically through the electronic Questionnaire for Investigations Processing (e-QIP) Web site, a secure Web site that is owned and operated by the Office of Personnel Management (OPM). To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–492–3524.[5]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted under 10 CFR 73.57(d). Copies of Form FD–258 may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; by calling 301–415–5877 or 301–492–7311; or by e-mail to *Forms.Resource@nrc.gov.* The fingerprint card will be used to satisfy the requirements of 10 CFR Part 2, 10 CFR 73.22(b)(1), and Section 149 of the Act, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of Investigation identification and criminal history records check;

(d) A check or money order in the amount of $200.00[6] payable to the NRC for each individual for whom the request for access has been submitted; and

(e) If the requester or any individual who will have access to SGI believes they belong to one or more of the categories of individuals relieved from the criminal history records check and background check requirements, as stated in 10 CFR 73.59, the requester should also provide a statement specifically stating which relief the requester is invoking, and explaining the requester's basis (including supporting documentation) for believing that the relief is applicable. While processing the request, the NRC's Office of Administration, Personnel Security Branch, will make a final determination whether the stated relief applies. Alternatively, the requester may contact the Office of Administration for an evaluation of their status prior to submitting the request. Persons who are not subject to the background check are not required to complete the Form SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Copies of documents and materials required by paragraphs 4(b), (c), (d), and (e), as applicable, of this section of this document must be sent to the following address: Office of Administration, U.S. Nuclear Regulatory Commission, Personnel Security Branch, Mail Stop: TWB–05 B32M, Washington, DC 20555–0012.

[4] Broad SGI requests under these procedures are unlikely to meet the standard for need to know. Furthermore, NRC staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. The procedures in this document of proposed rulemaking do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with either adjudicatory or non-adjudicatory access to SGI.

[5] The requester will be asked to provide his or her full name, Social Security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within 1 business day.

[6] This fee is subject to change pursuant to the OPM's adjustable billing rates.

These documents and materials should not be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as required above.

5. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete or illegible packages to the sender without processing.

6. Based on an evaluation of the information submitted under paragraphs 3(a) and (b), or 4(a), (b), (c), and (e) of this section, as applicable, the NRC will determine within 10 days of receipt of the written access request whether the requester has established a legitimate need for the SUNSI access or "need to know" the SGI requested.

7. For SUNSI access requests, if the NRC determines that the requester has established a legitimate need for access to SUNSI, the NRC will notify the requester in writing that access to SUNSI has been granted, provided however, that if the SUNSI consists of PI (*i.e.,* trade secrets or confidential or financial information), the NRC must first notify the applicant of the NRC's determination to grant access to the requester not less than 10 days before informing the requester of the NRC's decision. If the applicant wishes to challenge the NRC's determination, it must follow the procedures in paragraph 12 of this section. The NRC will not provide the requester access to disputed PI until the procedures in paragraph 12 of this section are completed.

The written notification to the requester will contain instructions on how the requester may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions will include, but are not necessarily limited to, the signing of a protective order presenting terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI. Claims that the provisions of such a protective order have not been complied with may be filed by calling NRC's toll-free safety hotline at 800–695–7403. Please note that calls to this number are not recorded between the hours of 7 a.m. to 5 p.m. Eastern Time. However, calls received outside these hours are answered by the NRC's Incident Response Operations Center on a recorded line. Claims may also be filed via e-mail sent to *NRO_Allegations@nrc.gov,* or may be sent in writing to the U.S. Nuclear Regulatory Commission, ATTN: N. Rivera-Feliciano, Mail Stop: T–7D24, Washington, DC 20555–0001.

8. For requests for access to SGI, if the NRC determines that the requester has established a need to know the SGI, the NRC's Office of Administration will then determine, based upon completion of the background check, whether the proposed recipient is trustworthy and reliable, as required for access to SGI by 10 CFR 73.22(b). If the NRC's Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requester in writing. The notification will provide the names of approved individuals as well as the conditions under which the SGI will be provided. Those conditions will include, but are not necessarily limited to, the signing of a protective order by each individual who will be granted access to SGI. Claims that the provisions of such a protective order have not been complied with may be filed by calling NRC's toll-free safety hotline at 1–800–695–7403. Please note that calls to this number are not recorded between the hours of 7 a.m. to 5 p.m. Eastern Time. However, calls received outside these hours are answered by the NRC's Incident Response Operations Center on a recorded line. Claims may also be filed via e-mail sent to *NRO_Allegations@nrc.gov,* or may be sent in writing to the U.S. Nuclear Regulatory Commission, ATTN: N. Rivera-Feliciano, Mail Stop: T–7D24, Washington, DC 20555–0001. Because SGI requires special handling, initial filings with the NRC should be free from such specific information. If necessary, the NRC will arrange an appropriate setting for transmitting SGI to the NRC.

9. Release and Storage of SGI. Prior to providing SGI to the requester, the NRC will conduct (as necessary) an inspection to confirm that the recipient's information protection system is sufficient to satisfy the requirements of 10 CFR 73.22. Alternatively, recipients may choose to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

10. Filing of Comments on the Proposed Design Certification. Any comments in this rulemaking proceeding that are based upon the disclosed SUNSI or SGI must be filed by the requester no later than 25 days after receipt of (or access to) that information, or the close of the public comment period, whichever is later. The commenter must comply with the NRC requirements regarding the submission of SUNSI and SGI to the NRC when submitting comments to the NRC (including marking and transmission requirements).

11. Review of Denials of Access.

(a) If the request for access to SUNSI or SGI is denied by the NRC, the staff shall promptly notify the requester in writing, briefly stating the reason or reasons for the denial.

(b) Before the NRC's Office of Administration makes an adverse determination regarding the trustworthiness and reliability of the proposed recipient(s) of SGI, the NRC's Office of Administration, under 10 CFR 2.705(c)(3)(iii), must provide the proposed recipient(s) any records that were considered in the trustworthiness and reliability determination, including those required to be provided under 10 CFR 73.57(e)(1), so that the proposed recipient is provided an opportunity to correct or explain information.

(c) Appeals from a denial of access must be made to the NRC's Executive Director for Operations (EDO) under 10 CFR 9.29. The decision of the EDO constitutes final agency action, as provided in 10 CFR 9.29(d).

12. Predisclosure Procedures for SUNSI Constituting Trade Secrets or Confidential Commercial or Financial Information. The NRC will follow the procedures in 10 CFR 9.28 if the NRC determines, under paragraph 7 of this section, that access to SUNSI constituting trade secrets or confidential commercial or financial information will be provided to the requester. However, any objection filed by the applicant under 10 CFR 9.28(b) must be filed within 15 days of the NRC notice in paragraph 7 of this section rather than the 30-day period provided for under that paragraph. In applying the provisions of 10 CFR 9.28, the applicant for the DCR will be treated as the "submitter."

VIII. Plain Language

The Presidential memorandum "Plain Language in Government Writing" published on June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** heading of this document.

IX. Voluntary Consensus Standards

The National Technology and Transfer Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus

standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this proposed rule, the NRC proposes to approve Amendment 1 to the AP1000 standard plant design for use in nuclear power plant licensing under 10 CFR part 50 or 52. Design certifications (and amendments thereto) are not generic rulemakings establishing a generally applicable standard with which all 10 CFR parts 50 and 52 nuclear power plant licensees must comply. Design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certifications (and amendments thereto) are initiated by an applicant for rulemaking, rather than by the NRC. For these reasons, the NRC concludes that the National Technology and Transfer Act of 1995 does not apply to this proposed rule.

X. Finding of No Significant Environmental Impact: Availability

The Commission has determined under NEPA, and the Commission's regulations in Subpart A, "National Environmental Policy Act; Regulations Implementing Section 102(2)," of 10 CFR part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," that this proposed DCR, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the EA, is that the Commission has made a generic determination under 10 CFR 51.32(b)(2) that there is no significant environmental impact associated with the issuance of an amendment to a design certification. This amendment to 10 CFR part 52 would not authorize the siting, construction, or operation of a facility using the amended AP1000 design; it would only codify the amendment to the AP1000 design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate under NEPA as part of the application for the construction and operation of a facility referencing this amendment to the AP1000 DCR. In addition, as part of the draft EA for the amendment to the AP1000 design, the NRC reviewed Westinghouse's evaluation of various design alternatives to prevent and mitigate severe accidents in Appendix 1B of the AP1000 DCD Tier 2. According to 10 CFR 51.30(d), an EA for a design certification amendment is limited to the consideration of whether the design change, which is the subject of the proposed amendment renders a SAMDA previously rejected in the earlier EA to become cost beneficial, or results in the identification of new SAMDAs, in which case the costs and benefits of new SAMDAs and the bases for not incorporating new SAMDAs in the design certification must be addressed. Based upon review of Westinghouse's evaluation, the Commission concludes that the proposed design changes: (1) Do not cause a SAMDA previously rejected in the EA for the initial AP1000 design certification to become cost beneficial; and (2) do not result in the identification of any new SAMDAs that could become cost beneficial.

The Commission is requesting comment on the draft EA. As provided in 10 CFR 51.31(b), comments on the draft EA will be limited to the consideration of SAMDAs as required by 10 CFR 51.30(d). The Commission will prepare a final EA following the close of the comment period for the proposed standard design certification. If a final rule is issued, all environmental issues concerning SAMDAs associated with the information in the final EA and Appendix 1B of the AP1000 DCD Tier 2 will be considered resolved for plants referencing Amendment 1 to the AP1000 design whose site parameters are within those specified in SAMDA evaluation. The existing site parameters specified in the SAMDA evaluation are not affected by this design certification amendment.

The draft EA, upon which the Commission's finding of no significant impact is based, and Revision 18 of the AP1000 DCD are available for examination and copying at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852.

XI. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This rule has been submitted to OMB for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR part 52, AP1000 Design Certification Amendment.

The form number if applicable: N/A.

How often the collection is required: On occasion. Reports required under 10 CFR part 52, Appendix D, paragraph IV.A.4, are collected and evaluated once if licensing action is sought on a COL application referencing the AP1000 design and the COL applicant is not using the entity that was the original applicant for the design certification, or amendment, to supply the design for the license applicant's use. In addition, COL applicants and the applicant for a design certification must keep records of the aircraft impact assessment performed to comply with the requirements of 10 CFR 50.150(a).

Who will be required or asked to report: COL applicants and one applicant for a design certification.

An estimate of the number of annual responses: 8 (0 annual responses plus 8 recordkeepers).

The estimated number of annual respondents: 8.

An estimate of the total number of hours needed annually to complete the requirement or request: 24 hours (0 hours reporting and 24 hours recordkeeping).

Abstract: The NRC proposes to amend its regulations to certify an amendment to the AP1000 standard plant design to bring the design into compliance with NRC's regulations and to increase standardization of the design. This action is necessary so that applicants or licensees intending to construct and operate an AP1000 design may do so by referencing this DCR as amended.

The NRC is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC's PDR, One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852. The OMB clearance package and rule are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this document.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by March 28, 2011 to the Information

Services Branch (T5–F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by e-mail to *INFOCOLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503. Comments on the proposed information collections may also be submitted via the Federal rulemaking Web site, *http://www.regulations.gov,* Docket ID NRC–2010–0131. 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. You may also e-mail comments to *Christine_J._Kymn@omb.eop.gov* or comment by telephone at 202–395–4638.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XII. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this proposed rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications (and amendments thereto) are not generic rulemakings in the sense that design certifications (and amendments thereto) do not establish standards or requirements with which all licensees must comply. Rather, design certifications (and amendments thereto) are Commission approvals of specific nuclear power plant designs by rulemaking, which then may be voluntarily referenced by applicants for COLs. Furthermore, design certification rulemakings are initiated by an applicant for a design certification (or amendments thereto), rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

XIII. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule provides for certification of an amendment to a nuclear power plant design. Neither the design certification amendment applicant, nor prospective nuclear power plant licensees who reference this DCR, fall within the scope of the definition of "small entities" presented in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810). Thus, this rule does not fall within the purview of the Regulatory Flexibility Act.

XIV. Backfitting

The NRC has determined that this proposed rule meets the requirements of the backfit rule, 10 CFR 50.109, and the requirements governing changes to DCRs in 10 CFR 52.63(a)(1).

The proposed rule does not constitute backfitting as defined in the backfit rule (10 CFR 50.109) with respect to operating licenses under 10 CFR part 50 because there are no operating licenses referencing this DCR.

Westinghouse requested many changes to the AP1000 DCD to correct spelling, punctuation, or similar errors, which result in text that has the same essential meaning. The NRC concludes that these Westinghouse-requested changes, which are editorial in nature, neither constitute backfitting as defined in 10 CFR 50.109(a)(1), nor are these changes inconsistent with the issue finality provisions of 10 CFR 52.63 or 10 CFR 52.83. The backfitting and issue finality provisions were not meant to apply to such editorial changes inasmuch as such changes would have insubstantial impact on licensees with respect to their design and operation, and are not the kind of changes falling within the policy considerations that underlie the backfit rule and the issue finality provisions of 10 CFR 52.63 and 52.83.

Westinghouse also requested changes to the AP1000 DCD, which the NRC understands were the result of requests to Westinghouse from COL applicants referencing the AP1000 design, to achieve consistency in description and approach in different portions of the DCD. In the absence of a generic change to the AP1000, the referencing COL applicants stated to Westinghouse and the NRC that each would likely take plant-specific departures to address the inconsistency. While this could result in more consistency within any given COL application, it would result in inconsistencies among the different referencing COLs, which is inconsistent with the overall standardization goal of 10 CFR part 52. Accordingly, the NRC concludes that the Westinghouse-requested changes to the AP1000 to address consistency do not constitute backfitting under the backfit rule (in as much as they are voluntary) and are not otherwise inconsistent with the issue finality provisions of 10 CFR 52.63 and 52.83.

Westinghouse also proposed numerous substantive changes to the AP1000 design, including, but not limited to, minor component design details, replacement of a design feature with another having similar performance (*e.g.,* turbine manufacturer, power for the auxiliary boiler), and changes allowing additional capability for operational flexibility (*e.g.,* liquid waste holdup tanks, unit reserve transformer). Westinghouse included within its application a detailed list of each DCD content change and the basis under 10 CFR 52.63(a)(1) that supports including that change in this amendment.

With respect to DCD Revision 18, the bases under 10 CFR 52.63(a)(1) for the various changes to the DCD are documented in an enclosure, entitled Revision Change Roadmap, to a December 1, 2010, Westinghouse letter sent to the NRC. This Revision Change Roadmap cross-references the DCD changes in DCD Revision 18, as compared to DCD Revision 17, and applicable 10 CFR 52.63(a)(1) criteria. Revision 18 contains both proposed changes previously described in the design change packages and changes already accepted by the NRC in the review process of Revision 17 to the AP1000 DCD. In the course of the review of both design change packages, the NRC determined that DCD changes were needed. In response to NRC questions, Westinghouse proposed such changes. Once the NRC was satisfied with these DCD markups, they were documented in the safety evaluation report (SER) as "confirmatory items" (CIs). The CIs were first identified during the NRC's review of Revision 17 of the AP1000 DCD. With the review of Revision 18, the NRC will confirm that Westinghouse has made those changes to the DCD accepted by the NRC that were not addressed in Revision 17 to the AP1000 DCD. The use of CIs is restricted to cases where the NRC has reviewed and approved specific design control document proposals. For the final rule, the NRC will complete the review of the CIs and prepare an FSER reflecting that action. The CIs are closed based upon an acceptable comparison between the revised DCD text and the text required by the CI. No technical review of Revision 18 by the NRC is necessary, because only CIs and design changes pursuant to DC/COL–ISG–011,

previously accepted by the NRC, are contained in Revision 18 to the DCD.

A September 22, 2008, Westinghouse letter provides a similar set of cross-references for those changes associated with DCD Revision 17, as compared to DCD Revision 16. For Revision 16, in contrast, Westinghouse used TRs to identify the DCD changes in DCD Revision 16, as compared to DCD Revision 15, and listed the corresponding applicable 10 CFR 52.63(a)(1) criteria in an enclosure to a Westinghouse letter dated May 26, 2007 (Table 1). These tables include the editorial and consistency changes described above as well as design changes. In the course of the NRC review of the technical changes proposed by Westinghouse, the NRC considered the basis offered by Westinghouse and made conclusions about whether the criteria of 10 CFR 52.63(a) were satisfied. These conclusions are included in the chapters of the Advanced Final Safety Evaluation Report. The NRC concluded that all of these changes met at least one of the criteria in 10 CFR 52.63(a) and are not otherwise inconsistent with the issue finality provisions of 10 CFR 52.63 and 52.83. Fifteen of the most significant changes are discussed below, to show that each of the 15 substantive changes to the AP1000 certified design meet at least one of the criteria in 10 CFR 52.63(a)(1)(i) through (a)(1)(vii) and, therefore, do not constitute a violation of the finality provisions in that section.

Revision 17 provides a similar cross-reference in the DCD as submitted by a September 22, 2008, Westinghouse letter for those changes associated with Revision 17. Revision 16 on the other hand, uses TRs to identify the DCD changes and lists the corresponding applicable 10 CFR 52.63(a)(1) criteria in an enclosure to a Westinghouse letter, dated May 26, 2007 (Table 1). These tables include the editorial and consistency changes described above as well as design changes. In the course of the NRC review of the technical changes proposed by Westinghouse, the NRC considered the basis offered by Westinghouse and made conclusions about whether the criteria of 10 CFR 52.63(a) were satisfied. These conclusions are included in the chapters of the Advanced Final Safety Evaluation Report. The NRC concluded that all of these changes met at least one of the criteria in 10 CFR 52.63(a) and are not otherwise inconsistent with the issue finality provisions of 10 CFR 52.63 and 52.83. Fifteen of the most significant changes are discussed below, to show that each of the 15 substantive changes to the AP1000 certified design meet at least one of the criteria in 10 CFR 52.63(a)(1)(i) through (a)(1)(vii) and, therefore, do not constitute a violation of the finality provisions in that section.

I. 10 CFR 52.63 Criterion (a)(1)(iv): Provides the Detailed Design Information to be Verified under those ITAAC, which are Directed at Certification Information (i.e., DAC).

Title: Removal of Human Factors Engineering Design Acceptance Criteria from the Design Control Document.

Item: 1 of 15.

Significant Change: The ITAAC Design Commitments for Human Factor Engineering (HFE) is in Tier 1, Table 3.2–1. In Revision 17 of the AP1000 DCD, Westinghouse proposed deletion of the Human Factors DAC (Design Commitments 1 through 4) and provided sufficient supporting documentation to meet the requirements of these ITAAC. Design Commitment 1 pertains to the integration of human reliability analysis with HFE design. Design Commitment 2 pertains to the HFE task analysis. Design Commitment 3 pertains to the human-system interface. Design Commitment 4 pertains to the HFE program verification and validation implementation. The information developed by Westinghouse to satisfy these ITAAC is included in Chapter 18 of the DCD.

Location within the Safety Evaluation (SER) where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with the HFE DAC are in Sections 18.7.6 (design commitment 1), 18.5.9 (design commitment 2), 18.2.8 (design commitment 3), and 18.11 (design commitment 4) of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

The additional information included in Tier 2 provides detailed design information on human factors design that would otherwise have to be addressed through verification of implementation of the human factors DAC. Therefore, the changes to the DCD eliminate the need for DAC on human factors and meet the finality criteria in § 52.63(a)(1)(iv).

Title: Change to Instrumentation and Control DAC and Associated ITAAC.

Item: 2 of 15.

Significant Change: In the proposed revision to DCD Chapter 7, Westinghouse chose the Common Q platform to implement the Protection and Safety Monitoring System (PMS) and removed all references to the Eagle 21 platform. This design change, coupled with the development of other information about the PMS system definition design phase, was the basis for Westinghouse's proposed removal of its Tier 1, Chapter 2, Section 2.5.2, Design Commitment 11(a) Design Requirements phase from Table 2.5.2–8, "Inspections, Tests, Analyses, and Acceptance Criteria," for the PMS.

In its proposed revision to the DCD in Chapter 7, Westinghouse altered its design for the Diverse Actuation System (DAS) by implementing it with Field Programmable Gate Array (FPGA) technology instead of microprocessor-based technology. Additional information about the design process for the DAS was added as the basis for Westinghouse's proposed completion of its Tier 1, Chapter 2, Section 2.5.1, Design Commitment 4a) and 4b) Design Requirements and System Definition phases from Table 2.5.1–4 "Inspections, Tests, Analyses, and Acceptance Criteria" for the DAS.

Location within the Safety Evaluation (SER) where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with I&C DAC and ITAAC are in Sections 7.2.2.3.14, 7.2.5, 7.8.2, 7.9.2, and 7.9.3 of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Westinghouse provided additional information that incorporates the results of the design process implementation for the PMS and DAS (which both support completion of Design Commitments 11a from Table 2.5.2–8 and 4a and 4b from Table 2.5.1–4, respectively) into the DCD. The additional information included in Tier 2 provides detailed design information on I&C design that would otherwise have to be addressed through verification of implementation of the I&C DAC. Therefore, the changes to the DCD eliminate the need for DAC on I&Cs and meet the finality criteria in § 52.63(a)(1)(iv).

II. 10 CFR 52.63 CRITERION (a)(1)(vii): Contributes to Increased Standardization of the Certification Information

The changes being proposed for the AP1000 amendment generally fall into one of two categories: (1) Changes which provide additional information or a greater level of detail not previously available in the currently-approved version of the AP1000 DCD (Revision 15); or (2) changes requested by COL applicants referencing the AP1000 who would plan to include these changes in their application as departures if they were not approved in the AP1000 DCR amendment. The Commission concludes that both categories of

changes meet the 10 CFR 52.63 criterion of "contributes to increased standardization." The bases for the Commission's conclusions, including each category of change, are discussed below.

Additional and more detailed information:

Westinghouse proposes that the DCD be changed by adding new, more detailed design information that expands upon the design information already included in the DCD. This information would be used by every COL referencing the AP1000 DCR. Incorporating these proposed changes into the AP1000 DCR as part of this amendment contributes to the increased standardization of the certification information by eliminating the possibility of multiple departures. Therefore, these changes enhance standardization, and meet the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Changes for which COL applicants would otherwise request departures:

Westinghouse proposes several changes to its DCD with the stated purpose of contributing to increased standardization. Westinghouse represents that these changes were requested by the lead COL applicants currently referencing the AP1000. The NRC, in meetings with these applicants as part of the "Design-Centered Working Group" process for jointly resolving licensing issues, confirmed that these applicants requested these changes and committed to pursuance of plant-specific departures from the AP1000 if Westinghouse did not initiate such changes to the AP1000 DCR. Such departures may be pursued by individual COL applicants (and licensees) as described in Part VIII, "Processes for Changes and Departures" of the AP1000 DCR (Appendix D to 10 CFR Part 52). Incorporating these proposed changes into the AP1000 DCR as part of this amendment contributes to the increased standardization of the certification information by eliminating the possibility of multiple departures. Therefore, all Westinghouse-initiated changes for the purpose of eliminating plant-specific departures enhance standardization, and meet the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Minimization of Contamination (10 CFR 20.1406 (b)).

Item: 3 of 15.

Significant Change: In DCD Section 12.1.2.4, Westinghouse discussed features incorporated into the amended design certification to demonstrate compliance with 10 CFR 52.47(a)(6), which requires that a design certification application include the information required by 10 CFR 20.1406 (b), which was adopted in 2007 as part of the general revisions to 10 CFR part 52. This regulation requires design certification applicants whose applications are submitted after August 20, 1997, to describe how the design will minimize, to the extent practicable, contamination of the facility and the environment, facilitate decommissioning and minimize the generation of radioactive waste. The DCD changes are documented in Westinghouse Technical Report 98, "Compliance with 10 CFR 20.1406" (APP–GW–GLN–098), Revision 0 (ADAMS Accession No. ML071010536). Westinghouse evaluated contaminated piping, the spent fuel pool (SFP) air handling systems, and the radioactive waste drain system to show that piping and components utilize design features that will prevent or mitigate the spread of contamination within the facility or the environment. Westinghouse has incorporated modifications and features such as elimination of underground radioactive tanks, RCPs without mechanical seals, fewer embedded pipes, less radioactive piping in the auxiliary building and containment vessel, and monitoring the radwaste discharge pipeline to demonstrate that the AP1000 design certification, as amended, will be in compliance with the subject regulation and Regulatory Guidance (RG) 4.21, "Minimization of Contamination and Radioactive Waste Generation: Life-Cycle Planning," (June 2008).

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features are in Section 12.2 of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1)(vii):

Inclusion in the DCD of the more detailed information about the features for minimization of contamination provides additional information to be included in the DCD for the AP1000 that increases standardization of the AP1000 design. Thus, the changes meet the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Extension of Seismic Spectra to Soil Sites and Changes to Stability and Uniformity of Subsurface Materials and Foundations.

Item: 4 of 15.

Significant Change: In AP1000 DCD Tier 2, Sections 2.5.2 and 3.7, Westinghouse extended the AP1000 design to five soil profiles, including firmrock through soft soil sites, for Category I structures, systems, and components. The certified design included only hard rock conditions. To support the technical basis for the extension, Westinghouse provided: seismic analysis methods, procedures for analytical modeling, soil-structure interaction analysis with three components of earthquake motion, and interaction of non-seismic Category I structures with seismic Category I structures. Also, in DCD Section 2.5.4, Westinghouse extended the AP1000 design with "Stability and Uniformity of Subsurface Materials and Foundations," where the DCD presents the requirements related to subsurface materials and foundations for COL applicants referencing AP1000 standard design. The site-specific information includes excavation, bearing capacity, settlement, and liquefaction potential. On April 21, 2010, Westinghouse submitted Revision 5 to TR–03, "Extension of Nuclear Island Seismic Analysis to Soil Sites," Revision 0, and summarized the report in DCD Appendix 3G, to provide more detail about its analyses.

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with extension of seismic spectra to soil sites are in Section 3.7 of the SER (ADAMS Accession No. ML103260072). The details of the NRC's evaluation of Westinghouse's design features associated with stability and uniformity of subsurface materials and foundations are in Sections 2.5.2 and 2.5.4 of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Westinghouse submitted a change to the DCD that would provide the seismic design and supporting analysis for a range of soil conditions representative of expected applicants for a COL referencing the AP1000 design. As a result, the certified design can be used at more sites without the need for departures to provide site-specific analyses or design changes, thus leading to a more uniform analysis and seismic design for all the AP1000 plants. Including in the DCD the information demonstrating adequacy of the design for seismic events for a wider range of soil conditions is a change that provides additional information leading to increased standardization of this aspect of the design. In addition, the change reduces the need for COL applicants to seek departures from the current AP1000 design in as much as most sites do not conform to the currently-approved hard rock sites. Therefore, the change increases standardization and

meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Long-Term Cooling.

Item: 5 of 15.

Significant Change: DCD Tier 2, Section 6.3.8 describes the changes to COL information items related to containment cleanliness and verification of water sources for long-term recirculation cooling following a loss-of-coolant accident (LOCA). The COL information item related to verification of water sources for long-term recirculation cooling following a LOCA was closed based on Westinghouse TR–26, "AP1000 Verification of Water Sources for Long-Term Recirculation Cooling Following a LOCA," APP–GW–GLR–079 (ADAMS Accession No. ML102170123) and other information contained in DCD Chapter 6. Section 6.3.2.2.7 describes the evaluation of the water sources for long-term recirculation cooling following a LOCA, including the design and operation of the AP1000 PCCS debris screens. DCD Tier 1, Section 2.2.3, includes the associated design descriptions and ITAAC. The COL information item requires a cleanliness program to limit the amount of latent debris in containment consistent with the analysis and testing assumptions.

Location within the SE where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with long-term cooling in the presence of LOCA-generated and latent debris and General Design Criteria 35 and 38 are in Subsection 6.2.1.8 of the SE (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Inclusion in the DCD of the design and analysis information that demonstrates adequacy of long-term core cooling provides additional information leading to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Control Room Emergency Habitability System.

Item: 6 of 15.

Significant Change: DCD Tier 2, Section 6.4 has undergone significant revision. Westinghouse re-designed its main control room emergency habitability system to meet control room radiation dose requirements using the standard assumed in-leakage of 5 cubic feet per minute in the event of a release of radiation. The changes include the addition of a single-failure proof passive filter train. The flow through the filter train is provided by an eductor downstream of a bottled air supply. These changes were prompted by Westinghouse's proposal to revise the atmospheric dispersion factors from those certified in Revision 15 to larger values to better accommodate COL sites. As a result, other design changes were needed to maintain doses in the control room within acceptable limits.

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with radiation dose to personnel under accident conditions are in Section 6.4 of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Incorporation of design changes to the main control room ventilation systems would contribute to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Changes to the Component Cooling Water System.

Item: 7 of 15.

Significant Change: In Revision 18 to AP1000 DCD Tier 2, Westinghouse proposed changes to the design of the component cooling water system (CCWS) to modify the closure logic for system motor-operated containment isolation valves and install safety-class relief valves on system supply and return lines. The closure logic would close the isolation valves upon a high reactor coolant pump (RCP) bearing water temperature signal, which might be indicative of a large leak in the heat exchanger tube. This change would automatically isolate this potential leak to eliminate the possibility of reactor coolant from a faulted heat exchanger discharging to portions of the CCWS outside containment.

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with the CCWS are in Chapter 23, Section V, of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Westinghouse included changes to the component cooling water in the DCD. These changes will contribute to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Changes to Instrumentation and Control Systems.

Item: 8 of 15.

Significant Change: In AP1000 DCD Tier 2 Sections 7.1 through 7.3, Westinghouse completed planning activities related to the architecture of its safety related I&C protection system, referred to as the PMS. Westinghouse also proposed changes to the DCD to reflect resolution of PMS interdivisional data communications protocols and methods utilized to ensure a secure development and operational environment. A secure development and operational environment in this context refers to a set of protective actions taken against a predictable set of non-malicious acts (*e.g.,* inadvertent operator actions, undesirable behavior of connected systems) that could challenge the integrity, reliability, or functionality of a digital safety system. The establishment of a secure development and operational environment for digital safety systems involves: (i) measures and controls taken to establish a secure environment for development of the digital safety system against undocumented, unneeded and unwanted modifications and (ii) protective actions taken against a predictable set of undesirable acts (*e.g.,* inadvertent operator actions or the undesirable behavior of connected systems) that could challenge the integrity, reliability, or functionality of a digital safety system during operations.

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with I&C systems are in Sections 7.1 through 7.3, and 7.9 of NRC's Chapter 7 SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Inclusion in the DCD of the more detailed information about the I&C architecture and communications provides additional information leading to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Changes to the Passive Core Cooling System—Gas Intrusion.

Item: 9 of 15.

Significant Change: In AP1000 DCD Tier 1 and Tier 2, Westinghouse proposed changes to the design of the PCCS to add manual maintenance vent valves and manual maintenance drain valves, and to re-route accumulator discharge line connections in order to address concerns related to gas intrusion. In addition, Westinghouse provided descriptions of surveillance and venting procedures to verify gas void elimination during plant startup and operations. These proposed changes are responsive to the actions requested

by Generic Letter 2008–01, "Managing Gas Accumulation in Emergency Core Cooling, Decay Heat Removal, and Containment Spray Systems."

The passive core cooling system (PCCS) provides rapid injection of borated water, which provides negative reactivity to reduce reactor power to residual levels and ensures sufficient core cooling flow. Non-condensible gas accumulation in the PCCS has the potential to delay injection of borated water, which would impact the moderating and heat removal capabilities, thus providing a challenge to the primary fission product barrier and maintenance of a coolable core geometry. As part of its review, the NRC determined that the proposed changes in the design of the PCCS were acceptable for providing protection for design basis events, such as LOCAs.

Location within the SER where the changes are principally described:

The NRC's evaluation of proposed changes to the DCD associated with changes to the PCCS is in Chapter 23, Section L, of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Inclusion in the DCD of the design and analysis information that provides for venting of non-condensible gases provides additional information leading to increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Integrated Head Package—Use of the QuickLoc Mechanism.

Item: 10 of 15.

Significant Change: In DCD Tier 2, Section 5.3.1.2, Westinghouse describes a revised integrated head package (IHP) design. The new design includes eight QuickLoc penetrations in lieu of the forty-two individual in-core instrument thimble-tube-assembly penetrations on the reactor vessel head, which is a significant decrease in the number of RPV closure head penetrations for access to in-core and core exit instrumentation. The QuickLoc mechanism allows the removal of the RPV closure head without removal of in-core and core exit instrumentation and, thus, decreases refueling outage time and overall occupational exposure. This head package design has been installed on a number of operating plants and, as noted, has several operational and safety advantages.

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with the (1) IHP and QuickLoc mechanism are in Section 5.2.3 of the SER (ADAMS Accession No. ML103260072) and (2) radiation protection pertaining to the addition of the integrated reactor head package and QuickLoc connectors are in Subsection 12.4.2.3 of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Inclusion in the DCD of the changes to the IHP would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Reactor Coolant Pump Design.

Item: 11 of 15.

Significant Change: In AP1000 DCD Tier 2 Subsection 5.4.1, Westinghouse proposed changes related to the RCP design. These changes include: change to a single-stage, hermetically sealed, high inertia, centrifugal sealless RCP of canned motor design; use of an externally mounted heat exchanger; and change of the RCP flywheel to bimetallic construction. These DCD changes are documented in: TR–34, "AP1000 Licensing Design Change Document for Generic Reactor Coolant Pump," APP–GW–GLN–016, November 2006 and in other documentation in response to NRC inquiries. The supporting documentation includes an analysis demonstrating that failure of the flywheel would not generate a missile capable of penetrating the surrounding casing, and, therefore, that such failure would not damage the reactor coolant pressure boundary.

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with the RCP design are in Section 5.4.1 of the NRC's Chapter 5 SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Inclusion in the DCD of the changes to the RCP would reduce the possibility of plant-specific departure requests by COL applicants referencing the AP1000 DCR. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Reactor Pressure Vessel (RPV) Support System.

Item: 12 of 15.

Significant Change: The RPV structural support system of the AP1000 standard design is designed to provide the necessary support for the heavy RPV in the AP1000 standard design. The original anchorage design was bolting into embedded plates of the CA04 structural module. Subsection 3.8.3.1.1 of the AP1000 DCD Tier 2 would be changed to reflect modifications to the RPV support design. In the revised design, there are four support "boxes" or "legs" located at the bottom of RPV's cold leg nozzles. The support boxes are anchored directly to the primary shield wall concrete base via steel embedment plates. This CA04 structural module is no longer used in the new design. The four RV support boxes are safety-related and the design of the RPV associated support structures is consistent with the safe shutdown earthquake design of Seismic Category I equipment. Subsections 3.8.3.5.1 and 5.4.10.2.1 would also be modified.

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with RPV supports are in Chapter 23, Section R, of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Inclusion in the DCD of the changes to the RPV supports contributes to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Spent Fuel Pool Decay Heat Analysis and Associated Design Changes.

Item: 13 of 15.

Significant Change: In AP1000 DCD Tier 2 Section 9.1.3, Westinghouse proposed changes to the SFP cooling system. Westinghouse proposed to increase the number of spent fuel storage locations from 619 to 889 fuel assemblies and implement the following associated design changes: (1) Increase in component cooling system (CCS) pump design capacity, (2) increase in the CCS supply temperature to plant components, and (3) changes in the CCS parameters related to the RCPs. The increase in the number of assemblies affects the decay heat removal/SFP heatup analyses. The supporting bases for DCD changes are documented in: TR–111, "Component Cooling System and Service Water System Changes Required for Increased Heat Loads," APP–GW–GLN–111, Revision 0, dated May 2007 (ADAMS Accession No. ML071500563); TR–103, "Fluid System Changes," APP–GW–GLN–019, Revision 2, dated October 2007 (ADAMS Accession No. ML072830060); TR–108, "AP1000 Site Interface Temperature Limits," APP–GW–GLN–108, Revision 2, dated September 2007 (ADAMS Accession No. ML103260072), and TR–APP–GW–GLR–097, "Evaluation of the Effect of the AP1000 Enhanced Shield Building on the Containment Response and Safety Analysis," Revision 1, dated

August 2010 (ADAMS Accession No. ML102220579).

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with the SFP decay heat analysis are in Section 9.2.2 of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Inclusion in the DCD of the changes to the SFP decay heat analysis would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Spent Fuel Rack Design and Criticality Analysis.

Item: 14 of 15.

Significant Change: In DCD Tier 2 Section 9.1.2, Westinghouse proposed changes to the spent fuel racks: (1) to increase the storage capacity by 270 additional fuel assemblies, and (2) to integrate a new neutron poison into the rack design. These changes included a different rack design and associated structural analysis and a revised criticality analysis. These DCD changes are documented in TR–54, "Spent Fuel Storage Racks Structure and Seismic Analysis," APP–GW–GLR–033, Revision 4, dated June 2, 2010 (ADAMS Accession No. ML101580475); and TR–65, "Spent Fuel Storage Racks Criticality Analysis," APP–GW–GLR–029, Revision 2, date January 5, 2010 (ADAMS Accession No. ML100082093).

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with the spent fuel rack design and criticality analysis are in Section 9.1.2 of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Inclusion in the DCD of the changes to the spent fuel rack design and criticality analysis would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Title: Vacuum Relief System.

Item: 15 of 15.

Significant Change: In Revision 18 to AP1000 DCD Tier 2, Chapters 3, 6, 7, 9, and 16, Westinghouse proposed changes to the design of the containment which add a vacuum relief system to the existing containment air filtration system vent line penetration. The proposed vacuum relief system consists of redundant vacuum relief devices inside and outside containment sized to prevent differential pressure between containment and the shield building from exceeding the design value of 1.7 psig, which could occur under extreme temperature conditions.

Each relief flow path consists of a check valve inside containment and a motor operated butterfly valve outside of containment. The redundant relief devices outside containment share a common inlet line with redundant outside air flow entry points. The outlet lines downstream of the outside containment relief devices are routed to a common header connected to the vent line penetration. The redundant relief devices inside containment share a common inlet line from the vent line penetration and have independent discharge lines into containment.

Location within the SER where the changes are principally described:

The details of the NRC's evaluation of Westinghouse's design features associated with the addition of the vacuum relief system are in Chapter 23, Section W, of the SER (ADAMS Accession No. ML103260072).

Evaluation of the Criteria in 10 CFR 52.63(a)(1):

Inclusion in the DCD of the introduction of a containment vacuum relief system would contribute to the increased standardization of this aspect of the design. Therefore, the change meets the finality criterion for changes in 10 CFR 52.63(a)(1)(vii).

Changes Addressing Compliance With Aircraft Impact Assessment Rule (10 CFR 50.150)

The proposed rule would amend the existing AP1000 DCR, in part, to address the requirements of the AIA rule. The AIA rule itself mandated that a DCR be revised, if not during the DCR's current term, then no later than its renewal to address the requirements of the AIA rule. In addition, the AIA rule provided that any COL issued after the effective date of the final AIA rule must reference a DCR complying with the AIA rule, or itself demonstrate compliance with the AIA rule. The AIA rule may therefore be regarded as inconsistent with the finality provisions in 10 CFR 52.63(a) and Section VI of the AP1000 DCR. However, the NRC provided an administrative exemption from these finality requirements when the final AIA rule was issued. See **Federal Register** notice, 74 FR 28112; June 12, 2009, at 28143–28145. Accordingly, the NRC has already addressed the backfitting implications of applying the AIA rule to the AP1000 with respect to the AP1000 and referencing COL applicants.

Conclusion

The proposed amendment to the AP1000 DCR does not constitute backfitting and is not otherwise inconsistent with finality provisions in 10 CFR part 52. Accordingly, the NRC has not prepared a backfit analysis or documented evaluation for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification, Incorporation by reference.

For the reasons set out in the preamble and under the authority of the Act, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552; the NRC is proposing to adopt the following amendments to 10 CFR part 52.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

1. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

2. In Appendix D to 10 CFR part 52:

a. In Section III, revise paragraphs A and D;

b. In Section IV, revise paragraph A.3 and add paragraph A.4;

c. In Section V, redesignate paragraph A as paragraph A.1 and add a new paragraph A.2;

d. In Section VI, revise paragraphs B.1, B.2, B.7, and E;

e. In Section VIII, revise the introductory text of paragraph B.5.b, redesignate paragraphs B.5.d, B.5.e, and B.5.f as paragraphs B.5.e, B.5.f, and B.5.g, respectively, and add a new paragraph B.5.d, and revise paragraphs B.6.b and B.6.c; and

f. In Section X, revise paragraph A.1 and add a new paragraph A.4.

The revisions and additions read as follows:

Appendix D to Part 52—Design Certification Rule for the AP1000 Design

* * * * *

III. Scope and Contents

A. Tier 1, Tier 2 (including the investment protection short-term availability controls in Section 16.3), and the generic TSs in the AP1000 DCD (Revision 18, dated December 1, 2010) are approved for incorporation by reference by the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the generic DCD may be obtained from Stanley E. Ritterbusch, Manager, AP1000 Design Certification, Westinghouse Electric Company, 1000 Westinghouse Drive, Cranberry Township, PA 16066. A copy of the generic DCD is also available for examination and copying at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Copies are available for examination at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852, telephone 301–415–5610, e-mail *LIBRARY.RESOURCE@NRC.GOV.* The DCD can also be viewed on the Federal rulemaking Web site *http://www.regulations.gov* by searching for documents filed under Docket ID NRC–2010–0131 or in the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* by searching under ADAMS Accession No. ML103480059. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

D.1. If there is a conflict between the generic DCD and either the application for the initial design certification of the AP1000 design or NUREG–1793, "Final Safety Evaluation Report Related to Certification of the Westinghouse Standard Design," and Supplement No. 1, then the generic DCD controls.

2. If there is a conflict between the generic DCD and either the application for Amendment 1 to the design certification of the AP1000 design or NUREG–1793, "Final Safety Evaluation Report Related to Certification of the Westinghouse Standard Design," Supplement No. 2, then the generic DCD controls.

* * * * *

IV. Additional Requirements and Restrictions

A. * * *

3. Include, in the plant-specific DCD, the SUNSI (including PI) and SGI referenced in the AP1000 DCD.

4. Include, as part of its application, a demonstration that an entity other than Westinghouse is qualified to supply the AP1000 design, unless Westinghouse supplies the design for the applicant's use.

* * * * *

V. Applicable Regulations

A.* * *.

2. The regulations that apply to those portions of the AP1000 design approved by Amendment 1 [FINAL RULE FEDERAL REGISTER CITATION] are in 10 CFR parts 20, 50, 73, and 100, codified as of [DATE THE FINAL RULE IS SIGNED BY THE SECRETARY OF THE COMMISSION], that are applicable and technically relevant, as described in the Supplement No. 2 of the FSER.

* * * * *

VI. Issue Resolution

* * * * *

B. * * *

1. All nuclear safety issues, except for the generic TS and other operational requirements, associated with the information in the FSER and Supplement Nos. 1 and 2, Tier 1, Tier 2 (including referenced information, which the context indicates is intended as requirements, and the investment protection short-term availability controls in Section 16.3 of the DCD), and the rulemaking records for initial certification and Amendment 1 of the AP1000 design;

2. All nuclear safety and safeguards issues associated with the referenced SUNSI (including PI) and SGI which, in context, are intended as requirements in the generic DCD for the AP1000 design;

* * * * *

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's EA for the AP1000 design, Appendix 1B of Revision 15 of the generic DCD, the NRC's final EA for Amendment 1 to the AP1000 design, and Appendix 1B of Revision 18 of the generic DCD, for plants referencing this appendix whose site parameters are within those specified in the severe accident mitigation design alternatives evaluation.

* * * * *

E. The NRC will specify at an appropriate time the procedures to be used by an interested person who wishes to review SUNSI (including PI, such as trade secrets or financial information obtained from a person that are privileged or confidential (10 CFR 2.390 and 10 CFR Part 9)) or SGI for the AP1000 certified design, for the purpose of participating in the hearing required by 10 CFR 52.85, the hearing provided under 10 CFR 52.103, or in any other proceeding relating to this appendix in which interested persons have a right to request an adjudicatory hearing.

* * * * *

VIII. Processes for Changes and Departures

* * * * *

B. * * *

5. * * *

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD or one affecting information required by 10 CFR 52.47(a)(28) to address 10 CFR 50.150, requires a license amendment if it would:

* * * * *

d. If an applicant or licensee proposes to depart from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also document how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1) in accordance with Section X of this appendix.

* * * * *

6. * * *

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burn-up.

(2) Fuel principal design requirements.

(3) Fuel criteria evaluation process.

(4) Fire areas.

(5) Reactor coolant pump type.

(6) Small-break LOCA analysis methodology.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except under paragraph B.6.b of this section. After the plant first achieves full-power, the following Tier 2* matters revert to Tier 2 status and are subject to the departure provisions in paragraph B.5 of this section.

(1) Nuclear Island structural dimensions.

(2) ASME Code piping design restrictions, and ASME Code Cases.

(3) Design Summary of Critical Sections.

(4) American Concrete Institute (ACI) 318, ACI 349, American National Standards Institute/American Institute of Steel Construction (ANSI/AISC)–690, and American Iron and Steel Institute, "Specification for the Design of Cold Formed Steel Structural Members, Part 1 and 2," 1996 Edition and 2000 Supplement.

(5) Definition of critical locations and thicknesses.

(6) Seismic qualification methods and standards.

(7) Nuclear design of fuel and reactivity control system, except burn-up limit.

(8) Motor-operated and power-operated valves.

(9) I&C system design processes, methods, and standards.

(10) Passive residual heat removal natural circulation test (first plant only).

(11) Automatic depressurization system and core make-up tank verification tests (first three plants only).

(12) Polar crane parked orientation.

(13) Piping DAC.

(14) Containment vessel design parameters, including ASME Code, Section III, Subsection NE.

(15) Human factors engineering.

* * * * *

X. Records and Reporting

A. * * *

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes it makes to Tier 1 and Tier 2, and the generic TS and other operational requirements. The applicant shall maintain SUNSI (including PI) and SGI referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

* * * * *

4.a. The applicant for the AP1000 design shall maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) for the term of the certification (including any period of renewal).

b. An applicant or licensee who references this appendix shall maintain a copy of the AIA performed to comply with the requirements of 10 CFR 50.150(a) throughout the pendency of the application and for the term of the license (including any period of renewal).

* * * * *

Dated at Rockville, Maryland, this 16th day of February 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–3989 Filed 2–23–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0044; Directorate Identifier 2010–NM–059–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767–200, –300, –300F, and –400ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to The Boeing Company Model 767–200, –300, and –300F series airplanes. The existing AD currently requires inspections to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station 955 and the skin; and follow-on and corrective actions. Since we issued that AD, we have received additional reports of cracks in 51 fail-safe straps on 41 airplanes; we have also received a report of a crack found in the "T" fitting that connects the fail-safe strap to the outboard edge of the pressure deck. This proposed AD would expand the applicability, and would add an inspection for cracking in the fail-safe strap, and repair or replacement if necessary. We are proposing this AD to detect and correct fatigue cracking or corrosion of the fail-safe straps and the "T" fittings, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage.

DATES: We must receive comments on this proposed AD by April 11, 2011.

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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6577; *fax:* 425–917–6590; *e-mail: berhane.alazar@faa.gov.*

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–2011–0044; Directorate Identifier 2010–NM–059–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On September 26, 2005, we issued AD 2004–19–06 R1, amendment 39–14313 (70 FR 58000, October 5, 2005), for certain Model 767–200, –300, and –300F series airplanes. That AD requires inspections to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station (BS) 955 and the skin; and follow-on/corrective actions. That AD resulted from reports of cracked and/or corroded fail-safe straps at BS 955 on Model 767–200 series airplanes. We issued that AD to detect and correct fatigue cracking or corrosion of the fail-safe straps, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage.

Actions Since Existing AD Was Issued

Since we issued AD 2004–19–06 R1, we have received additional reports of cracks in 51 fail-safe straps on 41 airplanes. There were 42 fail-safe straps repaired, and 9 were not repairable and were replaced. Fail-safe straps were repaired on 33 airplanes with total accumulated flight cycles ranging from 39,886 to 89,236. Fail-safe straps were replaced on 9 airplanes with flight cycles ranging from 12,565 to 31,809, and flight hours ranging from 48,704 to 93,212. In addition, 4 fail-safe straps on 4 airplanes with total accumulated flight cycles ranging from 12,540 to 23,987 and flight hours ranging from 37,634 to 74,823 were replaced due to corrosion damage.

One report was received of a crack found in the "T" fitting that connects the fail-safe strap and the pressure deck. The cracked "T" fitting was found at

13,449 total accumulated flight cycles and 74,008 flight hours, and was located at the lower of the 3 fastener holes common to the fail-safe strap.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 767–53A0100, Revision 1, dated August 11, 2006; and Revision 2, dated January 15, 2010. Revision 1 of this service bulletin both adds certain Model 767–400ER airplanes to the Effectivity, and removes other airplanes from the Effectivity, of Boeing Alert Service Bulletin 767–53A0100, dated September 26, 2002 (which is identified as the appropriate source of service information for accomplishing the actions specified in the existing AD). Revision 1 also adds procedures for an ultrasonic inspection and expands the inspection area for cracking and corrosion to an area within five inches of the fail-safe strap.

Revision 2 of this service bulletin adds an airplane that had been removed from the Effectivity of Revision 1 of this service bulletin. In addition, Revision 2 of this service bulletin adds procedures for a related investigative action for certain crack findings during the ultrasonic inspection specified in Revision 1 of this service bulletin. The related investigative action involves an open-hole HFEC inspection for cracking at the lower of three fastener holes common to the fail-safe strap and the "T" fitting, and repair if necessary. The repair includes various inspections (i.e., detailed, open-hole HFEC, and surface HFEC) for cracking and corrosion of the "T" fitting and adjacent structure; replacement of the "T" fitting with a new "T" fitting; repair of corrosion within specified limits; and replacement of the fail-safe strap with a new strap, if necessary. The service bulletin specifies to contact Boeing for certain repair and replacement procedures. Repairing the fail-safe strap or replacing the fail-safe strap with a strap having a revised edge configuration eliminates the need for the repetitive inspections only on the side of the airplane on which the corrective action is done.

For airplanes on which a fail-safe strap is replaced with a strap that does not have a revised edge configuration, the service bulletin describes procedures for detailed and surface HFEC inspections for cracks and corrosion of the fail-safe strap, and an ultrasonic inspection for cracks of the fail-safe strap.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2004–19–06 R1. This proposed AD would expand the applicability statement of the existing AD. This proposed AD would also require accomplishing the actions specified in Revision 2 of the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information."

Differences Between the Proposed AD and the Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Changes to Existing AD

We have added a new paragraph (d) to this proposed AD to provide the Air Transport Association (ATA) of America subject code 53, Fuselage. This code is added to make this proposed AD parallel with other new AD actions. We have re-identified subsequent paragraphs accordingly.

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

Since AD 2004–19–06 R1 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–19–06 R1	Corresponding requirement in this proposed AD
paragraph (d).	paragraph (e).
paragraph (e).	paragraph (f).
paragraph (f).	paragraph (g).
paragraph (g).	paragraph (h).

Costs of Compliance

We estimate that this proposed AD affects 390 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for Model 767–200, –300, and –300F airplanes (retained actions from existing AD).	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle.	$60,180 per inspection cycle.
New proposed inspections for all airplanes (new proposed action).	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle.	$66,300 per inspection cycle.

We estimate the following costs to do any necessary repairs/replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs/replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair or replacement, Groups 1–7, 10, and 11 airplanes.	295 work-hours × $85 per hour = $25,075.	Between $9,054 and $15,837	Between $34,129 and $40,912.
Repair or replacement, Groups 8 and 9 airplanes.	297 work hours × $85 per hour = $25,245.	Between $32,593 and $32,727	Between $57,838 and $57,972.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 that the 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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2004–19–06 R1, Amendment 39–14313 (70 FR 58000, October 5, 2005), and adding the following new AD:

The Boeing Company: Docket No. FAA–2011–0044; Directorate Identifier 2010–NM–059–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 11, 2011.

Affected ADs

(b) This AD supersedes AD 2004–19–06 R1, Amendment 39–14313.

Applicability

(c) This AD applies to Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

Unsafe Condition

(e) This AD was prompted by additional reports of cracks in 51 fail-safe straps on 41 airplanes; we have also received a report of a crack found in the "T" fitting that connects the fail-safe strap to the outboard edge of the pressure deck. We are issuing this AD to detect and correct fatigue cracking or corrosion of the fail-safe straps and the "T" fittings, which could result in cracking of adjacent structure and consequent reduced structural integrity of the fuselage.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Requirements of AD 2004–19–06 R1, Amendment 39–14313: Inspections and Follow-On/Corrective Actions

(g) For Model 767–200, –300, and –300F series airplanes having line numbers 1 through 931 inclusive: Except as provided by paragraph (h) of this AD, prior to the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after November 1, 2004 (the effective date of AD 2004–19–06 R1, Amendment 39–14313), whichever occurs later, perform a detailed inspection and eddy current inspection to detect cracking or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at body station (BS) 955 and the skin, per Figure 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0100, dated September 26, 2002; or Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010. As of the effective date of this AD, use only Revision 2 of Boeing Alert Service Bulletin 767–53A0100. Doing the inspections required by paragraph (i) of this AD terminates the requirements of this paragraph.

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

(1) If no crack or corrosion is found, repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles or 36 months, whichever occurs first, until paragraph (i) of this AD is done.

(2) If any crack or corrosion is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using a method approved in accordance with paragraph (o) of this AD.

(h) For airplanes identified in paragraph (g) of this AD on which the fail-safe strap has been replaced before November 1, 2004: Do the actions required by paragraph (g) of this AD within 12,000 flight cycles after accomplishing the replacement.

Note 2: Steps 2 and 8 of the Work Instructions of Boeing Alert Service Bulletin 767–53A0100, dated September 26, 2002, refer incorrectly to Boeing 767 Airplane Maintenance Manual (AMM) 32–00–20 for opening the MLG doors; the correct reference is Boeing 767 AMM 32–00–15, which is referred to in steps 3 and 7 of the Work Instructions. Step 2 also should state "Open Main Landing Gear (MLG) doors" instead of "Open Main Landing Green (MLG) doors."

New Requirements of This AD With Revised Service Information: Repetitive Detailed and Eddy Current Inspections

(i) Prior to the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever

occurs later: Perform detailed and eddy current inspections to detect cracking and/or corrosion of the fail-safe straps between the side fitting of the rear spar bulkhead at BS 955 and the skin, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010. If no crack or corrosion is found, repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles or 36 months, whichever occurs first. Accomplishing the actions required by this paragraph ends the requirements of paragraphs (g) and (g)(1) of this AD.

Repetitive Ultrasonic Inspections

(j) Prior to the accumulation of 15,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Do an ultrasonic inspection of the fail-safe strap for cracking, and all applicable related investigative actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010. Do all applicable related investigative actions before further flight. If no crack is found, repeat the inspection thereafter at intervals not to exceed 6,000 flight cycles or 36 months, whichever occurs first.

Corrective Actions

(k) If any corrosion is found during any inspection required by paragraph (i) of this AD: Before further flight, repair the corrosion, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010.

(l) If any crack is found during any inspection required by paragraph (i) or (j) of this AD: Before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010; except where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (o) of this AD. Accomplishing the fail-safe strap trim repair in accordance with Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010, ends the repetitive inspections required by paragraphs (i) and (j) of this AD only on the side of the airplane where the repair was done. Replacing the fail-safe strap with a replacement strap that has the revised edge configuration in accordance with Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010, ends the repetitive inspections required by paragraphs (i) and (j) of this AD only on the side of the airplane where the replacement was done.

Post-Replacement Inspections

(m) For any replacement strap that does not have a revised edge configuration, as specified in Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010: Within 12,000 flight cycles after doing the replacement, accomplish the inspections required by paragraphs (i) and (j) of this AD. Repeat the inspections thereafter at intervals not to exceed 6,000 flight cycles or 36 months, whichever occurs first. Replacing the fail-safe strap with a replacement strap that has the revised edge configuration in accordance with Boeing Alert Service Bulletin 767–53A0100, Revision 2, dated January 15, 2010, ends the repetitive inspections required by paragraphs (i) and (j) of this AD only on the side of the airplane where the replacement was done.

Credit for Actions Accomplished in Accordance With Previous Service Information

(n) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–53A0100, Revision 1, dated August 11, 2006, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2004–19–06 and AD 2004–19–06 R1 are approved as AMOCs for paragraphs (g) and (h) of this AD, as applicable.

Related Information

(p) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6577; *fax:* (425) 917–6590; *e-mail: berhane.alazar@faa.gov.*

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

Issued in Renton, Washington, on February 15, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–4200 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 120, 122, 123 and 129

[Public Notice 7338]

RIN 1400–AC74

Amendment to the International Traffic in Arms Regulations: Electronic Payment of Registration Fees; 60-Day Notice of the Proposed Statement of Registration Information Collection

AGENCY: Department of State.

ACTION: Proposed rule and information collection; request for comments.

SUMMARY: The Department of State is proposing to amend the International Traffic in Arms Regulations (ITAR) to change the method of payment to electronic submission of registration fees. Definitions for "Foreign Ownership" and "Foreign Control" are to be added. Pursuant to the Paperwork Reduction Act, public comment is requested on the Statement of Registration, the form used for the submission of the registration fee.

DATES: The Department of State will accept comments on this proposed rule until April 25, 2011.

ADDRESSES: Interested parties may submit comments within 60 days of the date of the publication by any of the following methods (for those seeking to submit comments regarding the information collection aspect of the Statement of Registration, contact information is supplied below):

- *E-mail: DDTCResponseTeam@state.gov* with the subject line, "Electronic Payment of Registration Fees."
- *Mail:* PM/DDTC, SA–1, 13th Floor, Directorate of Defense Trade Controls, Office of Defense Trade Controls Compliance, *Attn:* Electronic Payment of Registration Fees, Bureau of Political Military Affairs, U.S. Department of State, Washington, DC 20522–0112.
- Persons with access to the Internet may also view and comment on this notice by searching for its RIN on the U.S. Government regulations Web site at *http://regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Lisa V. Studtmann, Director, Office of Defense Trade Controls Compliance,

Directorate of Defense Trade Controls, Department of State, 2401 E Street, NW., SA–1, Room H1200, Washington, DC 200522–0112; Telephone 202–663–2477 or Fax 202–261–8198; or e-mail through *DDTCResponseTeam@state.gov,* with the subject line, "Electronic Payment of Registration Fees."

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC) is responsible for the collection of registration fees from persons in the business of manufacturing, exporting, and/or brokering defense articles or defense services.

To date, registration fees have been received by check or money order and processed manually. The collection of electronic payments will simplify the collection and verification of payments, eliminate the need to manually process and collect returned payments, and eliminate the possibility of lost payments.

Section 122.2(a) is to be revised to provide for electronic payment as the sole means of registration fee submission. The form used for obtaining registration, the DS–2032 (Statement of Registration), has been revised to reflect that fee payments are to be made electronically. Additionally, the certifications previously required through the transmittal letter referenced in § 122.2(b) of the ITAR have been incorporated into the revised DS–2032. Consequently, § 122.2(b) no longer will address a separate transmittal letter, but will address certain certifications to be made on the Statement of Registration that used to be provided via the transmittal letter. The new § 122.2(b) title will be "Statement of Registration Certification." Definitions for "ownership" and "control" have been removed from part 122 by the removal of § 122.2(c). Definitions for "Foreign Ownership" and "Foreign Control" are to constitute the new § 120.37.

Section 122.3(a) is to be revised to remove reference to the transmittal letter.

The proposed revision to § 129.4(a) is in line with the proposed change in part 122 regarding the provision of electronic payment of registration fees. References to the transmittal letter are to be removed from §§ 129.4(a) and (b).

Title and number of the registration form is to be corrected in § 120.28(a)(2), and § 123.16(b)(9) is to be revised to correct a reference to § 122.2(c) and replace it with a reference to proposed § 120.37.

Regulatory Analysis and Notices

Administrative Procedure Act

This proposed amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554. Nevertheless, it is being published as a Notice of Proposed Rule Making, with a 60-day public comment period.

Regulatory Flexibility Act

Since this proposed amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175

The Department has determined that this proposed rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to his proposed rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment 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. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

The proposed amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Executive Order 12988

The Department of State has reviewed the proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

The Paperwork Reduction Act requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations, which require the submission of information. The information collection requirements must be submitted to the Office of Management and Budget (OMB) for approval. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number or is exempt from the PRA.

As part of its continuing effort to reduce paperwork and respondent burden, the Department of State proposes to change the reporting requirement on the DS–2032, Statement of Registration. This notice serves to inform the general public and Federal agencies of the opportunity to comment on this information collection in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). This helps to ensure that the public understands the Department's collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The information collection (IC) requirements for the current Statement of Registration are approved under OMB control number 1405–0002.

Abstract of Proposed Collection

The export, temporary import, temporary export and brokering of defense articles, defense services, and related technical data are licensed by the Directorate of Defense Trade Controls (DDTC) in accordance with the International Traffic in Arms Regulations ("ITAR," 22 CFR parts 120–

130) and Section 38 of the Arms Export Control Act (AECA). Those who manufacture or export defense articles, furnish defense services, or engage in brokering activities, must register with the Department of State. We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Methodology

Currently, the ITAR, § 122.2(b), requires the respondent to provide separate correspondence (via a "transmittal letter," to accompany the DS–2032, Statement of Registration, submission) certifying criminal history, eligibility, and foreign ownership. Often, this mandate was overlooked by the respondent, resulting in the return without action of the incomplete application. The revised DS–2032 incorporates these certifications within the form, only requiring the user to select the appropriate response with a single click and providing the option to provide a response within the form.

The Department proposes to change other reporting requirements on the DS–2032. The DS–2032 was modified to include additional data fields necessary to match electronic payment to the DS–2032. Whereas payments will be received electronically, respondents will continue submitting the DS–2032 in paper format. New data elements specific to electronic payment were not previously required on the DS–2032 because such information is visible on U.S. and foreign bank drafts.

Additionally, data elements were added to ensure clarification during analysis as well as standardization of responses. Specifically, necessary information is listed in the form, only requiring the respondent to make a selection by simply clicking the applicable checkbox. Country and state information is now listed via a pick list requiring a selection rather than manual insertion of information. This enhancement eliminates typographical errors and the misinterpretation of information requested which often results in the submission of incorrect information.

With these proposed changes, the estimated burden time for completion will be reduced from two (2) hours to one (1) hour.

This proposed change does not impose any new recordkeeping requirements.

Summary of Proposed Collection: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register**. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* DS–2032 Statement of Registration.
- *OMB Control Number:* 1405–0002.
- *Type of Request:* Approved of Information Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* DS–2032.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 10,435.
- *Estimated Number of Responses:* 9,600.
- *Average Hours Per Response:* 1 hours.
- *Total Estimated Burden:* 9,600 hours.
- *Frequency:* Annually and On Occasion.
- *Obligation to Respond:* Mandatory.

Comments from the public on the information collection may be submitted to OMB up to 60 days after February 24, 2011.

Comments should be sent to the Department of State Desk Officer in the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs. Comments may be submitted to OMB by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

OMB requests that comments be received within 60 days of publication of the Proposed Rule to ensure their consideration. Please note that comments submitted to OMB are a matter of public record. You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Tanya Phillips, Bureau of Political Military Affairs, U.S. Department of State, SA–1, 12th Floor, Washington, DC 20522, who may be reached on (202) 663–2825 or *phillipsta@state.gov.*

List of Subjects in 22 CFR Part 120, 122, 123 and 129

Arms and munitions, Registration, Exports, Brokering.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 122, 123, and 129 are proposed to be amended as follows:

PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920.

2. Section 120.28(a)(2) is revised to read as follows:

§ 120.28 Listing of forms referred to in this subchapter.

* * * * *

(a) * * *

(2) Statement of Registration (Form DS–2032).

* * * * *

3. Sections 120.33 through § 120.36 are added and reserved, and a new § 120.37 is added to read as follows:

§ 120.33 [Reserved]

§ 120.34 [Reserved]

§ 120.35 [Reserved]

§ 120.36 [Reserved]

§ 120.37 Foreign ownership and foreign control.

Foreign ownership means more than 50 percent of the outstanding voting securities of the firm are owned by one or more foreign persons (as defined in § 120.16). Foreign control means one or more foreign persons have the authority or ability to establish or direct the general policies or day-to-day operations of the firm. Foreign control is presumed to exist where foreign persons own 25 percent or more of the outstanding voting securities unless one U.S. person controls an equal or larger percentage.

PART 122—REGISTRATION OF MANUFACTURERS AND EXPORTERS

4. The authority citation for part 122 continues to read as follows:

Authority: Secs. 2 and 38, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778); E.O. 11958, 42 FR 4311; 1977 Comp. p. 79, 22 U.S.C. 2651a.

5. Section 122.2 is revised to read as follows:

§ 122.2 Submission of registration statement.

(a) *General.* An intended registrant must submit a Department of State Form DS–2032 (Statement of Registration) to the Office of Defense Trade Controls Compliance by registered or overnight mail delivery, and must submit an electronic payment via Automated Clearing House (ACH) payable to the Department of State of one of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House is an electronic network used to process financial transactions in the United States. Intended registrants should access DDTC's Web site at *http://www.pmddtc.state.gov* for detailed guidelines on submitting an ACH electronic payment. Electronic payments must be in U.S. currency and must be payable through a U.S. financial institution. Cash, checks, foreign currency or money orders will not be accepted. In addition, the Statement of Registration must be signed by a senior officer (*e.g.,* Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant also shall submit documentation that demonstrates that it is incorporated or otherwise authorized to do business in the United States. The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) *Statement of Registration Certification.* The Statement of Registration of the intended registrant shall include a certification by an authorized senior officer of the following:

(1) Whether the intended registrant, chief executive officer, president, vice presidents, other senior officers or officials (*e.g.,* Comptroller, Treasurer, General Counsel) or any member of the board of directors:

(i) Has ever been indicted for or convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

(ii) Is ineligible to contract with, or to receive a license or other approval to import defense articles or defense services from, or to receive an export license or other approval from, any agency of the U.S. Government.

(2) Whether the intended registrant is foreign owned or foreign controlled (*see* § 120.37). If the intended registrant is foreign owned or foreign controlled, the certification shall also include whether the intended registrant is incorporated or otherwise authorized to engage in business in the United States.

6. Section 122.3 is amended by revising paragraph (a) introductory text to read as follows:

§ 122.3 Registration fees.

(a) A person who is required to register must do so on an annual basis upon submission of a completed Form DS–2032 and payment of a fee as follows:

* * * * *

PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

7. The authority citation for part 123 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec. 1205(a), Pub. L. 107–228.

8. Section 123.16 is amended by revising paragraph (b)(9) introductory text to read as follows:

§ 123.16 Exemptions of general applicability.

* * * * *

(b) * * *

(9) Port Directors of U.S. Customs and Border Protection shall permit the temporary export without a license by a U.S. person of any unclassified component, part, tool or test equipment to a subsidiary, affiliate or facility owned or controlled by the U.S. person (*see* § 120.37 of this subchapter for definition of foreign ownership and foreign control) if the component, part, tool or test equipment is to be used for manufacture, assembly, testing, production, or modification provided:

* * * * *

PART 129—REGISTRATION AND LICENSING OF BROKERS

9. The authority citation for part 129 continues to read as follows:

Authority: Sec. 38, Pub. L. 104–164, 110 Stat. 1437 (22 U.S.C. 2778).

10. Section 129.4 is amended by revising paragraphs (a) and (b) to read as follows:

§ 129.4 Registration statement and fees.

(a) *General.* An intended registrant must submit to the Department of State Form DS–2032 (Statement of Registration) by registered or overnight mail delivery to the Office of Defense Trade Controls Compliance, and must submit an electronic payment via Automated Clearing House (ACH) or Society for Worldwide Interbank Financial Telecommunications (SWIFT), payable to the Department of State of the fees prescribed in § 122.3(a) of this subchapter. Automated Clearing House (ACH) is an electronic network used to process financial transactions originating from within the United States and SWIFT is the messaging service used by financial institutions worldwide to issue international transfers for foreign accounts. Payment methods (*i.e.,* ACH and SWIFT) are dependent on the source of the funds (U.S. or foreign bank) drawn from the applicant's account. The originating account must be the registrant's account and not a third party's. Intended registrants should access DDTC's Web site at *http://www.pmddtc.state.gov* for detailed guidelines on submitting ACH and SWIFT electronic payments. Payments, including from foreign brokers, must be in U.S. currency, payable through a U.S. financial institution. Cash, checks, foreign currency or money orders will not be accepted. The Statement of Registration must be signed by a senior officer (*e.g.,* Chief Executive Officer, President, Secretary, Partner, Member, Treasurer, General Counsel) who has been empowered by the intended registrant to sign such documents. The intended registrant, whether a U.S. or foreign person, shall submit documentation that demonstrates it is incorporated or otherwise authorized to do business in its respective country. Foreign persons who are required to register shall provide information that is substantially similar in content to that which a U.S. person would provide under this provision (*e.g.,* foreign business license or similar authorization to do business). The Directorate of Defense Trade Controls will notify the registrant if the Statement of Registration is incomplete either by notifying the registrant of what information is required or through the return of the entire registration package. Registrants may not establish new entities for the purpose of reducing registration fees.

(b) A person registering as a broker who is already registered as a manufacturer or exporter in accordance with part 122 of this subchapter must cite their existing manufacturer or exporter registration, and must pay an additional fee according to the schedule prescribed in § 122.3(a) for registration as a broker.

* * * * *

Dated: January 20, 2011.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2011–3878 Filed 2–23–11; 8:45 am]

BILLING CODE 4710–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0252; FRL–9269–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions To Control Volatile Organic Compound Emissions From Consumer Related Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Texas State Implementation Plan (SIP) that amend Title 30 of the Texas Administrative Code (TAC), Chapter 115, Control of Air Pollution from Volatile Organic Compounds. The State submitted these revisions on March 4, 2010. These revisions remove the Texas Portable Fuel Container rule as an ozone control strategy from the Texas SIP for the Control of Ozone Air Pollution. In the submittal, Texas demonstrates that federal portable fuel container standards promulgated by EPA in 2007 are expected to provide equal to or greater emissions reductions than those resulting from the state regulations. The EPA is proposing to approve this SIP revision because it is expected that reliance on the more stringent federal portable fuel container standards will ensure that emission reductions equivalent to or greater than those in the repealed Texas portable fuel container regulations will continue to be achieved in the State of Texas. Accordingly, it is expected that this SIP revision will not have a negative impact neither on the emission reductions claimed in the Texas SIP, nor in Texas' attainment of the NAAQS for ozone. This SIP revision eliminates the redundancy that has been created with the adoption by EPA of the federal portable fuel container regulations in 2007. The EPA is proposing to approve these revisions pursuant to section 110 of the Federal Clean Air Act (CAA).

DATES: Written comments must be received on or before March 28, 2011.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Dayana Medina, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7241; fax number 214–665–7263; e-mail address *medina.dayana@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: February 9, 2011.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2011–3994 Filed 2–23–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 06–229; WT Docket 06–150; WP Docket 07–100; FCC 11–6]

Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comments on the development of a technical interoperability framework for the nationwide public safety broadband network. This document considers and proposes additional requirements to further promote and enable nationwide interoperability among public safety broadband networks operating in the 700 MHz band. This document addresses public safety broadband network interoperability from a technological perspective and considers interoperability at various communication layers.

DATES: Submit comments on or before April 11, 2011. Submit reply comments on or before May 10, 2011.

ADDRESSES: You may submit comments, identified by PS Docket No. 06–229, WT Docket 06–150 and WP Docket 07–100, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.fcc.gov.* Follow the instructions for submitting comments in the Electronic Comment Filing System, *http://www.fcc.gov/cgb/ecfs/.*
- *Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail):* Address to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- *U.S. Postal Service first-class, Express, and Priority mail:* Address to FCC Headquarters, 445 12th Street, SW., Washington DC 20554.
- *Hand Delivery/Courier:* FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** of this document.

FOR FURTHER INFORMATION CONTACT: Jennifer Manner, Federal Communications Commission, Public Safety and Homeland Security Bureau, at (202)–418–3619.

SUPPLEMENTARY INFORMATION: In the *Fourth Further Notice of Proposed Rulemaking,* FCC 11–6, adopted January 25, 2011, and released January 26, 2011, the Commission sought comment on an initial technical framework for public safety broadband network interoperability. The proposed framework would encompass technical rules for the network; public safety roaming on public safety networks; federal use of the network; testing and verification to ensure interoperability; and other matters relevant to ensuring the interoperability of the network. This full text of this document is available at *http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0204/FCC-11-6A1.pdf.*

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Procedural Matters

Paperwork Reduction Act

The *Fourth Further Notice of Proposed Rulemaking* contains proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Fourth Further Notice of Proposed Rule Making (Fourth Further NPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided herein. The Commission will send a copy of the *Fourth Further NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

A. Need for, and Objectives of, the Proposed Rules

The rules proposed in the *Fourth Further NPRM* are necessary to ensure the interoperability of 700 MHz public safety broadband networks that are expected to be deployed in the near term. The proposed rules create technical requirements designed to ensure that public safety broadband networks are technically and operationally compatible, so that public safety personnel from various jurisdictions and departments are able to communicate effectively over these networks.

The *Fourth Further NPRM* proposes changes to part 90 of the rules. Specifically, it proposes to:

(1) Develop a regulatory and operational framework for roaming from one public safety broadband network to another.

(2) Require that public safety broadband networks meet certain technical requirements designed to ensure that networks are technically interoperable or compatible.

(3) Require that public safety broadband networks meet additional requirements designed to ensure that networks achieve a baseline of operability necessary to support interoperable communications.

(4) Require public safety broadband network operators to complete testing for equipment and user devices operated on their networks to ensure conformance with relevant technical standards and ensure interoperability between networks.

(5) Make additional minor edits to part 90.

B. Legal Basis

The proposed action is authorized under sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615 and 710.

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

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A small business concern

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 603(a).

[3] 5 U.S.C. 603(b)(3).

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

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after

is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6]

The proposed requirements of the *Fourth Further NPRM* would apply to public safety entities granted authority from the Commission to pursue deployment of public safety broadband networks within their jurisdictions.

The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." [7] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[8] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions." [9] Thus, we estimate that most governmental jurisdictions are small.

We anticipate, however, that the vast majority of small governmental jurisdictions will not be directly authorized to serve as operators of their own 700 MHz public safety broadband networks. Rather, we anticipate that such entities will operate primarily under authority granted to larger regional, tribal or national entities to serve as public safety broadband network operators.[10] Accordingly, we anticipate that the proposed requirements that apply directly to public safety network operators are unlikely to directly affect a substantial number of small entities.

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

The *Fourth Further NPRM* proposes rule changes that will affect reporting, recordkeeping and other compliance requirements. Each of these changes is described below.

The *Fourth Further NPRM,* proposes to require public safety broadband networks to support roaming from users of other public safety broadband networks. This would require network operators to provide technical roaming capability within their networks and to support of minimum set of user applications.

The *Fourth Further NPRM* proposes to require public safety broadband networks to support seamless handover within the network's coverage region. This would require network operators to implement the technical capability to support this feature within their networks.

The *Fourth Further NPRM* proposes to require public safety broadband networks to adhere to a specified out-of-band-emissions requirement. This would require to public safety network operators to incorporate the proposed out-of-band-emissions requirement into the planning and design of their networks.

The *Fourth Further NPRM* proposes to require public safety broadband networks to support a minimum set of applications, namely (1) Internet access; (2) Virtual Private Network (VPN) access to any authorized site and to home networks; (3) a status or information "homepage;" (4) provision of network access for users under the Incident Command System; and (5) field-based server applications. This would require public safety network operators to implement the technical capability to support these applications on their networks.

The *Fourth Further NPRM* proposes to require public safety broadband network to meet performance requirements, namely that they provide outdoor coverage at minimum data rates 768 kbps downlink and 256 kbps uplink, for all types of devices, for a single user at the cell edge. Public safety network operators would need to incorporate these requirements into the planning and design of their networks. Public safety network operators would also be required to certify to the Public Safety and Homeland Security Bureau their compliance with these performance requirements. These certifications would need to be based on a representation of the actual "as-built" network and be accompanied by uplink and downlink data rate plots that map specific performance levels.

The *Fourth Further NPRM* proposes to require public safety broadband networks to support specified security features, namely (1) The LTE signaling layer security features over the Radio Resource Control (RRC) protocol layer (UE and eNodeB); (2) EPC signaling layer security features over the Non Access Stratum (NAS) protocol layer (UE and MME); (3) and user data/control layer security features over the Packet Data Convergence Sublayer (PDCP) protocol layer (UE and eNodeB).

The *Fourth Further NPRM* proposes to require public safety broadband networks to meet coverage and coverage reliability requirements. Specifically, it proposes to require public safety broadband networks to provide outdoor coverage reliability at a probability of coverage of 95 percent for all services and applications throughout the network. Public safety network operators would need to incorporate this requirement into the planning and design of their networks.

The *Fourth Further NPRM* proposes to require each public safety broadband network operator to notify adjacent or bordering jurisdictions prior to deployment, and to allow adjacent or bordering jurisdictions the opportunity to negotiate a formal coordination agreement with the deploying jurisdiction. Any formal written agreements would be required to be submitted to the Bureau.

The *Fourth Further NPRM* proposes to require public safety broadband network operators to complete conformance testing for the devices used on their network after a testing process for LTE devices operating in the public safety broadband spectrum becomes available. Public safety network operators would also be required to certify to the Commission their completion of conformance testing.

The *Fourth Further NPRM* proposes to require public safety broadband network operators to submit plans for completing interoperability testing with other public safety broadband networks. The scope of the testing called for in a network operator's plan would be required to be sufficiently broad to address all LTE capabilities and functions required for public safety broadband waiver recipients. Public safety network operators would also be required to certify their performance of such testing in accordance with their approved plans.

The *Fourth Further NPRM* proposes to require that public safety LTE devices support, at minimum, a five megahertz channel bandwidth. This requirement

consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632 (1996).

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

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

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

[10] We note that none of the twenty-one jurisdictions that applied for and were granted conditional waivers for early public safety broadband network deployment, except one, would qualify as "small governmental jurisdictions." *See* 5 U.S.C. 601(5); *see also* Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06–229, Order, 25 FCC Rcd 5145, 5147 (2010) (*Waiver Order*).

would need to be taken into account when designing or purchasing devices for use on public safety broadband networks.

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

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The proposed requirements of the *Fourth Further NPRM* are designed to ensure that public safety broadband networks achieve a baseline of operability and nationwide interoperability. In developing these proposed requirements, the Commission has made significant efforts to ensure that the requirements imposed are the minimum necessary to ensure that public safety broadband networks are truly interoperable. As an alternative to its proposed approach, the Commission could have proposed more detailed and burdensome conditions on the design and implementation of these networks. The proposed rules seek to balance the need for flexibility in network design, cost, and implementation with the demands of nationwide interoperability.

The establishment of differing compliance or reporting requirements for small entities would frustrate the goal of achieving nationwide interoperability. Given the importance of ensuring that public safety broadband networks are technically and operationally compatible, it is important that each network is subject to a comparable set of rules and requirements.

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

None.

Ordering Clauses

Pursuant to sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, and 337, the *Fourth Further Notice of Proposed Rulemaking* in PS Docket No. 06–229 is adopted. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Fourth Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Business and industry, Civil defense, Common carriers, Communications equipment, Emergency medical services, Individuals with disabilities, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7) unless otherwise noted.

2. Section 90.7 is amended by adding the following definitions, Field-Based Server Applications, Incident Command System, Internet Access, Interoperability, Interoperability Testing, Public Safety Narrowband Operator, Roamer, Status or Information Homepage and Virtual Private Network Access to read as follows:

§ 90.7 Definitions.

* * * * *

Field-Based Server Applications. Applications that require client devices to consistently and continuously reach server-based systems from any other location (i.e., field locations) on the Internet.

* * * * *

Incident Command System. A standardized, on-scene, all-hazards incident management approach that allows for the integration of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure; enables a coordinated response among various jurisdictions and functional agencies, both public and private; and establishes common processes for planning and managing resources.

* * * * *

Internet Access. Access to the global internet.

* * * * *

Interoperability. The ability of public safety agencies to communicate with one another via radio communications systems—to exchange voice and/or data with one another on demand, in real time, when needed and when authorized.

Interoperability Testing. Testing to ensure interoperability between or among public safety broadband networks.

* * * * *

Public Safety Narrowband Operator. A Public Safety Narrowband Operator is a public safety entity that is authorized to operate and has deployed narrowband operations within the 763–769 MHz and 793–799 MHz bands.

* * * * *

Roamer. A mobile station receiving service from a station or system in the public safety broadband network other than one to which it is a subscriber.

* * * * *

Status or Information Homepage. A method by which the operator of a host network provides roamers access to and distribution of available applications, alerts, incident-specific information, system status information, and information that the operator deems important to share with roamers on its system.

* * * * *

Virtual Private Network Access. Access to a network, such as a roamer's home network, through use of a Virtual Private Network connection.

3. Section 90.1407 is amended by adding and reserving paragraphs (d) and (e) and adding paragraphs (f) through (j) to read as follows:

§ 90.1407 Spectrum Use in the Network

* * * * *

(d) [Reserved]

(e) [Reserved]

(f) Public Safety Broadband Network Operators must submit to the Chief of the Public Safety and Homeland Security Bureau the following certifications:

(1) Prior to deployment of any Radio Access Network equipment, a certification that it will be in compliance with paragraph (e) of this section as of the date its network achieves service availability.

(2) Prior to deployment of any Radio Access Network equipment, a certification that it has performed

interoperability testing on the following 3GPP LTE interfaces: Uu—LTE air interface, S6a—Visited MME to Home HSS, S8—Visited SGW to Home PGW and S9—Visited PCRF to Home PCRF for dynamic policy arbitration.

(3) Within thirty days of the date its network achieves service availability, a certification that its network can provide a minimum outdoor data rate of 256 Kbps uplink and 768 Kbps downlink for all types of devices, per single user at the cell edge.

(4) Six months following the release of a public notice announcing the availability of the PTCRB testing process for 3GPP LTE Band Class 14, a certification that the devices in use on its network have gone through and completed this process.

(g) *Out of Band Emissions:* Public Safety Broadband Network Operators must adhere to the following limitations on out of band emissions:

(1) On any frequency outside the 763–768 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least 43 + 10 log (P) dB.

(2) On any frequency outside the 793–798 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least 43 + 10 log (P) dB.

(h) Public Safety Broadband Network Operators must support the following applications: Internet access; Virtual Private Network access; a status or information "homepage;" access for users to the Incident Command System; and field-based server applications.

(i) Public Safety Broadband Network Operators must support LTE signaling layer security features over the Radio Resource Control (RRC) protocol layer (UE and eNodeB); EPC signaling layer security features over the Non-Access Stratum (NAS) protocol layer (UE and MME); and user data/control layer security features over the Packet Data Convergence Sublayer (PDCP) protocol layer (UE and eNodeB).

(j) *Interference Mitigation.* Ninety days prior to the deployment of any Radio Access Network equipment, a Public Safety Broadband Network Operator must provide notice to all adjacent or bordering jurisdictions of its plans for deployment. Any notified jurisdiction may then request, in writing, the opportunity to enter a written frequency coordination agreement with the operator.

(1) Any such agreement, or modification to such agreement, must be submitted to the Public Safety and Homeland Security Bureau within 30 days of its execution.

(2) If parties are unable to execute an agreement within ninety days of the date a request is made, the parties may submit the dispute to the Bureau for resolution.

4. Add § 90.1409 to read as follows:

§ 90.1409 Protection of Incumbent Narrowband Operations

(a) Ninety days prior to the deployment of any Radio Access Network equipment, a Public Safety Broadband Network Operator must provide notice to any incumbent Public Safety Narrowband Operator within its proposed area of operation or in any adjacent or bordering jurisdictions of its plans for deployment. Such notice shall identify:

(1) The geographic borders within which the Public Safety Broadband Network Operator intends to operate;

(2) Any geographic overlap; and

(3) The proposed method of interference mitigation or notice of their intent to relocate the incumbent Public Safety Narrowband Operator.

(b) Any notified jurisdiction shall respond to a notification under paragraph (a) of this section within 60 days. Such response shall identify:

(1) The jurisdictions consent to any proposed interference mitigation or relocation proposal, and any counterproposals; and/or

(2) Specific objections to any element of the notification.

(c) The Public Safety Broadband Network Operator and Public Safety Narrowband Operator shall memorialize such agreements in writing. These agreements, or modification to such agreement, must be submitted to the Public Safety and Homeland Security Bureau within 30 days of its execution.

(d) Any jurisdictions failing to resolve any disputes within 90 days following a response under paragraph (b) of this section may submit the dispute to the Bureau for resolution.

[FR Doc. 2011–4058 Filed 2–23–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2010–0095; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants: 90-Day Finding on a Petition To List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the wild plains bison (*Bison bison bison*), or each of four distinct population segments (DPSs), as threatened under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition does not present substantial information indicating that listing may be warranted. Therefore, we are not initiating a status review in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the wild plains bison or its habitat at any time.

DATES: The finding announced in this document was made on February 24, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2010–0095. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services, Wyoming Field Office, 5353 Yellowstone Road, Suite 308A, Cheyenne, WY 82009. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Mark Sattelberg, Field Supervisor, Wyoming Field Office (*see* **ADDRESSES**), by telephone (307–772–2374) or by facsimile (307–772–2358). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On June 22, 2009, we received a petition, dated June 19, 2009, from James A. Bailey and Natalie A. Bailey, requesting that the wild plains bison be listed as threatened or that each of its four major ecotypes be considered DPSs and listed as threatened (Bailey and Bailey 2009, cover page). The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In a July 14, 2009, letter to the petitioners, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the subspecies under section 4(b)(7) of the Act was not warranted. We also stated that due to staff and budget limitations, we would not be able to begin work on a 90-day finding for this petition until Fiscal Year 2010 or 2011. On August 25, 2010, we received a letter from the petitioners requesting that we consider (1) New information regarding genetic diversity; (2) a publication by Gates *et al.,* 2010; (3) the National Park Service's (NPS) draft environmental impact statement on a proposed brucellosis remote vaccination program; and (4) any new information that was added to our files since the date of the original petition. This finding addresses the petition and all information readily available to us at this time.

Previous Federal Action(s)

We received a petition to list the bison herd at Yellowstone National Park (Yellowstone) in the northwest corner of Wyoming as a subspecies or "distinct population group" on February 11, 1999. We completed a 90-day finding on August 15, 2007 (72 FR 45717). Based upon the information available at that time, we determined that there was substantial information indicating that the Yellowstone bison herd may meet the criteria of discreteness and significance as defined by our policy on DPSs. However, we also determined that there was not substantial information indicating that listing the Yellowstone bison herd was warranted throughout all or a significant part of its range, and a status review was not conducted.

Species Information

Taxonomy

Bison occupied Eurasia about 700,000 years ago and moved across the Bering Land Bridge into Alaska during the middle Pleistocene Epoch 300,000 to 130,000 years ago (Martin 1970, p. 220; Kurtén and Anderson 1980, p. 39; Gates *et al.* 2010, p. 5). Bison moved further south into the grasslands of central North America as ice sheets retreated 130,000 to 75,000 years ago (Gates *et al.* 2010, p. 5). The genus *Bison* is represented by two extant species, the American bison (*Bison bison*) and the European bison (*B. bonasus*) (Halbert 2003, p. 1; Gates *et al.* 2010, p. 15).

Linnaeus first classified the bison in 1758, assigning the animal to *Bos,* the same genus as domestic cattle (*Bos taurus*) (Gates *et al.* 2010, p. 13). During the 19th century, taxonomists determined that there was adequate anatomical distinctiveness to warrant assigning the bison to its own genus, *Bison* (Gates *et al.* 2010, p. 13). Since then, taxonomists have debated the validity of the genus. Some recommend returning the species to the genus *Bos* (Boyd 2003, p. 27; Halbert 2003, p. 2). However, most sources, including the American Society of Mammalogists, the Integrated Taxonomic Information System (ITIS), and the International Union for Conservation of Nature (IUCN), consider *Bison* as a separate genus from *Bos* (Meagher 1986, p. 1; Wilson and Ruff 1999, pp. 342–343; Reynolds *et al.* 2003, p. 1010; Gates *et al.* 2010, p. 15; ITIS 2010, p. 1). At this time, we support continued placement of bison in the genus *Bison* because the majority of taxonomic experts consider this classification to be correct.

American bison is divided into two subspecies, first recognized by Rhoads in 1897 (Gates *et al.* 2010, p. 15). The two subspecies of American bison, plains bison (*B. b. bison*) and wood bison (*B. b. athabascae*), diverged approximately 5,000 years ago (Halbert 2003, p. 1). Many authors have acknowledged subspecific status, although some attribute differences in morphology to environmental influences and not to genetics (Reynolds *et al.* 2003, p. 1009). Differences in physical traits between the two subspecies are not affected by geographic location, suggesting that differences are genetically controlled (Boyd 2003, p. 32; Reynolds *et al.* 2003, p. 1009; Gates *et al.* 2010, pp. 15–18). However, due to the recent divergence of the two bison subspecies, current genetic analysis techniques may not yet be able to detect the differences (Boyd 2003, p. 33). At this time, we support continued recognition of two subspecies of American bison because of geographic separation, morphological differences, and greater genetic differences between the two subspecies than within either of the two subspecies (Gates *et al.* 2010, pp. 15–18).

Although the two entities are the same species (*Bison bison bison*), the petitioners generally limit their discussion to "wild" plains bison and assert that plains bison in commercial herds do not contribute to restoration of wild plains bison (Bailey and Bailey 2009, p. 5). Commercial herds are typically managed by private entities for production of meat and other commodities. Wild plains bison currently exist only in conservation herds, which are typically managed by governments and environmental organizations for the purpose of conserving the subspecies as wildlife in their native ecosystem. The petitioners contend that commercial herds are selectively bred, mixed with cattle genes, removed from natural selection, and not legally classified as wildlife under State laws (Bailey and Bailey 2009, p. 5). Further, the petitioners claim that wild plains bison in many conservation herds also may undergo selective culling, contain cattle genes from early efforts to crossbreed with domestic cattle, are removed from some aspects of natural selection, and in some cases are not legally classified as wildlife. These considerations are discussed in more detail under Factors B, D, and E.

Determination of the Listable Entity

Neither the Act nor our implementing regulations expressly address whether commercial populations should be considered part of an entity being evaluated for listing, and no Service policy addresses the issue. Consequently, in our determination of how to address commercial populations in our analysis, we considered the following: (1) Our interpretation of the intent of the Act with respect to the disposition of native populations, and (2) criteria from another organization (IUCN) regarding the consideration of commercial populations in species evaluations.

Intent of the Endangered Species Act

Section 2(b) of the Act states that the purposes of the Act "are to provide a means whereby the ecosystems upon which endangered species and

threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth." In recent decisions, including a 12-month finding published on September 8, 2010 (75 FR 54707), for the Arctic grayling (*Thymallus arcticus*) and a 12-month finding published on September 22, 2010, for the plant *Agave eggersiana* (75 FR 57720), we have focused on wild populations in our analysis of the species' status and potential threats because these are the populations that contribute to conservation of the species. Therefore, we believe that considering populations that contribute to species conservation in a listing evaluation is consistent with the intent of the Act.

Guidelines Used in Other Evaluation Systems

The IUCN follows similar criteria in their species evaluations. The IUCN uses its Red List system to evaluate the conservation status and relative risk of extinction for species, and to catalogue and highlight plant and animal species that are facing a higher risk of global extinction (*http://www.iucnredlist.org*). The IUCN does not use the term "listable entity" as the Service does; however, IUCN does clarify that their conservation ranking criteria apply to any taxonomic group at the species level or below (IUCN 2001, p. 4). Further, the IUCN guidelines for species status and scope of the categorization process focus on wild populations inside their natural range (IUCN 2001, p. 4; 2003, p. 10) or so-called "benign" or "conservation introductions," which are defined as attempts to establish a species, for the purpose of conservation, outside its recorded distribution, when suitable habitat is lacking within the historical range (IUCN 1998, p. 6; 2003, pp. 6, 10). Commercial plains bison herds are not eligible for consideration in the guidelines for evaluating conservation status under the IUCN (IUCN 2008, *http://www.iucnredlist.org*). In effect, the IUCN delineates between commercial plains bison herds and wild plains bison in conservation herds, in that commercial herds do not qualify for evaluation under the IUCN Red List system.

There does not appear to be any conservation value for plains bison in commercial herds, as they are not used in restoration programs. Instead, their primary purpose is the production of meat and other commodities for commercial purposes. Our interpretation is that the Act intended to conserve species in their native ecosystems. We are not considering plains bison managed for production of meat and other commodities in this finding because we do not believe that individuals propagated and managed for commercial uses aid in the conservation or the recovery of the subspecies in the wild. For the purposes of this finding, we are analyzing status and potential threats to a petitioned entity that includes plains bison managed primarily for purposes of wildlife and ecosystem conservation, hereby referred to as wild plains bison, even though no bison herd has remained in a completely wild state since prehistoric times (see our discussion on *Significance,* below). Consequently, we do not address commercial bison herds further in this finding.

In summary, we accept the characterization of plains bison as a valid subspecies because the preponderance of currently available information indicates that the genus, species, and subspecies nomenclature are correct. Furthermore, we will only consider wild plains bison in conservation herds in this evaluation because we do not consider it to be within the intent of the Act to consider plains bison in commercial herds for listing.

Physical Description

Bison are the largest native terrestrial mammal in North America (Reynolds *et al.* 2003, p. 1015). Wood bison are generally larger than the plains bison, but there is an overlap in size and dimensions between the two subspecies (Meagher 1986, p. 1). Body mass is 1,200 to 2,000 pounds (lbs) (544 to 907 kilograms (kg)) in mature males and 700 to 1,200 lbs (318 to 545 kg) in mature females (Meagher 1986, p. 1). Bison are brown, with longer hair over the forehead, neck, shoulder hump, and front-quarters; and shorter hair over the rear and tail (Meagher 1986, p. 1; Reynolds *et al.* 2003, p. 1009). The head is large and carried low on a short, thick neck (Meagher 1986, p. 1; Reynolds *et al.* 2003, p. 1009). Both sexes have short, black horns curving upward and inward, which are never shed (Meagher 1986, p. 1; Reynolds *et al.* 2003, p. 1009).

Life History

Sexual maturity most commonly occurs at 2 to 4 years of age; however, bulls do not usually breed until age 6 (Meagher 1986, p. 4). Female wild plains bison typically breed as 2-year olds and have their first calf at 3 years (Gates *et al.* 2010, p. 49). Gestation is approximately 285 days (Meagher 1986, p. 4). Calving season is from mid-April through May, with one calf being born; twins are rare (Meagher 1986, p. 4). Females typically breed until at least 16 years of age, although they may not breed in every year (Gates *et al.* 2010, p. 49).

Wild plains bison are grazers throughout the year, taking mostly grasses and sedges (Meagher 1986, p. 5; Reynolds *et al.* 2003, p. 1034). Most free-ranging wild plains bison appear to be seasonally migratory (Meagher 1986, p. 5). Females of all ages, calves, and young males form herds (Meagher 1986, p. 6). Older bulls temporarily join these groups in late July to mid-August as rut approaches, but are otherwise found singly or in small groups (Meagher 1986, p. 6; Reynolds *et al.* 2003, p. 1020). It is likely that the vast historical plains bison herds had a considerable impact on vegetation within their traditional ranges, through grazing, nutrient cycling, and physical disturbance (Reynolds *et al.* 2003, p. 1037). Prairie dog colonies (*Cynomys spp.*) are preferentially grazed by wild plains bison and also are used for grooming and wallowing (Reynolds *et al.* 2003, p. 1039).

Distribution

Historically, habitat for the wild plains bison encompassed approximately 2.8 million square miles (mi^2) (7.2 million square kilometers (km^2), with approximately 1.9 million mi^2 (5.0 million km^2) west of the Mississippi River (Sanderson *et al.* 2008, p. 257). Wild plains bison were most abundant on the Great Plains, but their range also extended eastward into the Great Lakes region, beyond the Allegheny Mountains, and into Florida; westward into Nevada, the Cascade Mountains, and the Rocky Mountains; northward into mid-Alberta and Saskatchewan; and southward along the Gulf of Mexico into Mexico (Hornaday 1889, p. 377; Boyd 2003, p. 20; Reynolds *et al.* 2003, p. 1012; Gates *et al.* 2010, p. 56). Wild plains bison were eliminated west of the Rocky Mountains and east of the Mississippi River by the early 1800s (Halbert 2003, p. 4). By 1889, only a few wild plains bison remained in the Texas Panhandle, Colorado, Wyoming, Montana, and the western Dakotas, as well as a small number in captive herds (Hornaday 1889, p. 525). Today, wild plains bison occur in parks, preserves, other public lands, and on private lands throughout, and external to, their historical range.

Abundance

Historical estimates regarding numbers of wild plains bison range from 30 to 75 million (Shaw 1995, p. 149). At the close of the Civil War, wild plains bison probably numbered in the tens of millions (Shaw 1995, p. 150). Intensive market hunting for hides and meat occurred following the Civil War; by 1889, a minimum of 285 free-ranging wild plains bison and 256 captive plains bison were estimated to remain (Hornaday 1889, p. 525). Recent population estimates range from 400,000 to 500,000, with approximately 20,500 animals in 62 conservation herds (Gates *et al.* 2010, p. 57) and the remainder in approximately 6,400 commercial herds (Gates *et al.* 2010, p. 57).

Trends

In the 1800s, wild plains bison declined from approximately 30 million individuals rangewide to perhaps as few as 541. In the late 1800s, a few concerned individuals undertook independent efforts to conserve the remaining plains bison (Hornaday 1889, pp. 458–464; Freese *et al.* 2007, p. 176). The American Bison Society formed in 1905 and pressed Congress to establish public bison herds in several locations, including Wichita Mountains National Wildlife Refuge (NWR) in Oklahoma, National Bison Range in Montana, Sullys Hill National Game Preserve in North Dakota, and Fort Niobrara NWR in Nebraska (Boyd 2003, p. 23). Yellowstone National Park (NP) and Elk Island National Park in Alberta, Canada, also participated in early efforts to conserve the wild plains bison. By 1970, an estimated 30,000 plains bison occurred in North America, approximately half in public conservation herds and half in private commercial herds (Boyd 2003, p. 23). By 2003, the number of plains bison in commercial herds increased dramatically to approximately 300,000 to 500,000 (Boyd 2003, p. 23; Halbert 2003, p. iii), while wild plains bison in conservation herds increased modestly to approximately 19,200 (Boyd 2003, p. 23). In 2007, there were approximately 420,000 plains bison in commercial herds in the United States and Canada (National Bison Association 2010). In 2008, there were an estimated 20,500 wild plains bison in conservation herds (Gates *et al.* 2010, p. 57). Population trends for wild plains bison in conservation herds appear stable to slightly increasing in recent years. The petitioners also note that population trends for wild plains bison in conservation herds have been stable since the 1930s, based upon information presented by Freese *et al.* (2007, p. 177) (Bailey and Bailey 2009, p. 15).

The most recent information we have in our files regarding population status and trends of wild plains bison in conservation herds is presented in the following table. All information is from Boyd (2003, Appendix 1), with the exception of information for Rocky Mountain Arsenal NWR (Hastings 2011, pers. comm.) and House Rock Valley State Wildlife Area (Northern Arizona University 2009, p. 15).

TABLE 1—PLAINS BISON CONSERVATION HERD STATUS

[The Nature Conservancy is abbreviated TNC]

Herd	Jurisdiction	Population	Trend
Antelope Island State Park, UT	State	600	Stable.
Badlands NP, SD	Federal	750	Stable.
Bear River State Park, WY	State	8	Stable.
Blue Mounds State Park, MN	State	56	Stable.
Buffalo Pound Provincial Park, SK	Provincial (Canada)	33	Stable.
Caprock Canyons State Park, TX	State	40	Decreasing.
Chitina, AK	State	38	Stable.
Clymer Meadow Preserve, TX	TNC & Private	320	Stable.
Copper River, AK	State	108	Stable.
Cross Ranch Nature Preserve, ND	TNC	140	Increasing.
Custer State Park, SD	State	1100	Stable.
Daniels Park, CO	Municipal	26	Stable.
Delta Junction, AK	State	360	Stable.
Elk Island NP, AB	Federal (Canada)	430	Stable.
Farewell Lake, AK	State	400	Increasing.
Fermi National Accelerator Lab, IL	Federal	32	Stable.
Finney Game Refuge, KS	State	120	Stable.
Fort Niobrara NWR, NE	Federal	352	Stable.
Fort Robinson State Park, NE	State	500	Stable.
Genesee Park, CO	Municipal	26	Stable.
Grand Teton NP & National Elk Refuge, WY (Jackson Herd)	Federal & State	700	Increasing.
Henry Mountains, UT	State	279	Stable.
Hot Springs State Park, WY	State	11	Stable.
House Rock Valley State Wildlife Area, AZ	State	276	Increasing.
Konza Prairie Biological Station, KS	State & TNC	275	Stable.
Land Between the Lakes National Recreation Area, KY	Federal	130	Decreasing.
Maxwell Wildlife Refuge, KS	State	230	Stable.
Medano-Zapata Ranch, CO	TNC	1500	Decreasing.
National Bison Range, MT	Federal	400	Stable.
Neal Smith NWR, IA	Federal	35	Stable.
Niobrara Valley Preserve, NE	TNC	473	Stable.
Ordway Prairie Preserve, SD	TNC	255	Stable.
Pink Mountain, BC	Provincial (Canada)	1000	Stable.
Prairie State Park, MO	State	76	Stable.
Primrose Air Weapons Range, AB & SK	Provincial & Federal (Canada)	100	Increasing.
Prince Albert NP, SK	Federal (Canada)	310	Increasing.
Raymond Wildlife Area, AZ	State	72	Stable.
Riding Mountain NP, MB	Federal (Canada)	33	Increasing.
Rocky Mountain Arsenal NWR, CO	Federal	47	Increasing.

TABLE 1—PLAINS BISON CONSERVATION HERD STATUS—Continued

[The Nature Conservancy is abbreviated TNC]

Herd	Jurisdiction	Population	Trend
Sandhill Wildlife Area, WI	State	15	Stable.
Santa Catalina Island, CA	Catalina Island Conservancy	225	Increasing.
Smoky Valley Ranch, KS	TNC	45	Increasing.
Sullys Hill National Game Preserve, ND	Federal	37	Stable.
Tallgrass Prairie Preserve, OK	TNC	1500	Increasing.
Theodore Roosevelt NP, ND	Federal	850	Stable.
Wainwright Training Center, AB	Federal (Canada)	16	Stable.
Waterton Lakes NP, AB	Federal (Canada)	27	Stable.
Wichita Mountains NWR, OK	Federal	565	Stable.
Wildcat Hills State Recreation Area, NE	State	10	Stable.
Wind Cave NP, SD	Federal	375	Stable.
Yellowstone NP, WY, MT, ID	Federal	4000	Stable.

U.S. Department of the Interior's Bison Conservation Initiative

The U.S. Department of Interior (USDOI) Bison Conservation Initiative provides a framework for managing wild plains bison within the USDOI (USDOI 2008, p. 3). This initiative specifies that the USDOI will: (1) Manage wild plains bison on their lands based on the best available science, seeking to restore them on appropriate landscapes; (2) apply adaptive management principles; (3) seek to develop genetic tests to maximize genetic diversity in herds; (4) seek to develop new techniques to diagnose, prevent, and control contagious diseases; and (5) work with interested parties (USDOI 2008, p. 2). One priority of the Initiative is to actively seek opportunities to increase existing herds to 1,000 or more wild plains bison, or establish new herds that can reach that size (USDOI 2008, p. 2). This priority describes numeric goals and allows the other seven priorities, including genetic diversity, disease, and introgression with cattle genes, to also be addressed. This initiative addresses the major concerns of wild plains bison management on USDOI lands, including genetics, disease, introgression with cattle genes, and the number and size of herds.

Private Management

Forty-two wild plains bison conservation herds in the United States were described in 2003; of these, 22 are solely or jointly managed by States, 12 herds are solely or jointly managed by Federal agencies, 9 herds are solely or jointly managed by private organizations, and 2 herds are managed by municipalities (Boyd 2003, pp. 144–147). An additional eight herds are managed by Federal or provincial agencies in Canada (Boyd 2003, p. 147). Since 2003, 12 additional wild plains bison herds have been enumerated (Gates *et al.* 2010, p. 57). Initiatives for new wild herds also are under way, including herds managed by The Nature Conservancy (TNC) in Alberta and in South Dakota, by American Prairie Foundation and World Wildlife Fund in Montana, by the Cheyenne River Sioux Tribe in South Dakota, by the Lower Brule Sioux Tribe in South Dakota, and by Rosebud Sioux Tribe in South Dakota (Freese *et al.* 2007, p. 182). Management of wild plains bison for conservation purposes appears to be active in both the private and public sectors. An additional 6,400 herds are managed for commercial purposes (Gates *et al.* 2010, p. 57).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

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

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

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

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

In making this 90-day finding, we evaluated whether information regarding the threats to the wild plains bison, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act. We found no information to suggest that threats are acting on the wild plains bison such that the species may become extinct now or in the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petitioners note the historical destruction and modification of plains habitat due to conversion to cropland and development of grazing land for cattle (Bailey and Bailey 2009, p. 15). They assert that there are ongoing habitat impacts from dam construction, cattle grazing, cropland conversion, tree invasion, wetland drainage, absence of

fire, subdivision of land for housing and other construction, and energy development (Bailey and Bailey 2009, p. 16). They further assert that with the possible exceptions of cattle grazing and dam construction, all of these activities are expected to increase in the foreseeable future (Bailey and Bailey 2009, p. 16). The petitioners also assert that a lack of populations on a minimum range size of 500 mi² (1,300 km²) of habitat threatens the wild plains bison, and only the Yellowstone herd meets this standard (Bailey and Bailey 2009, p. 21). The petitioners contend that the lack of suitable habitat is evidenced by dramatic declines in grassland birds (Bailey and Bailey 2009, p. 22).

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

We agree that there have been historical destruction and modification of habitat due to conversion to cropland and development of grazing land for cattle. Information in our files indicates that cropland conversion, woody plant invasion, and cattle grazing have altered native grasslands (Ricketts *et al.* 2008, pp. 273–274), and cultivation has reduced the tallgrass portion of the Great Plains from approximately 168 million acres (ac) (68 million hectares (ha)) to less than 5 percent of that amount (Knapp *et al.* 1999, p. 39). American bison, including both plains bison and wood bison in conservation and commercial herds, currently occupy less than 1 percent of their historical range (Sanderson *et al.* 2008, p. 253).

The petitioners do not provide citations to support their assertions regarding the present or threatened destruction, modification, or curtailment of habitat or range. Their arguments seem to rely on the losses of individuals and habitat that occurred in the 1800s. We do not have information indicating that present or potential future impacts to habitat or range from dam construction, cattle grazing, cropland conversion, tree invasion, wetland drainage, absence of fire, subdivision, or energy development are threats to wild plains bison.

Despite the historical loss of grasslands, much suitable habitat remains available, and additional habitat has often been only degraded rather than converted. There is potential for rapid recovery of these degraded grasslands (Ricketts *et al.* 2008, p. 288). Boyd (2003, pp. 95, 148–151) states that a lack of suitable habitat is limiting wild plains bison recovery, but also notes that 25 out of 50 wild plains bison herds that she evaluated have potential for expansion. The petitioners note that wild plains bison restoration opportunities exist on public lands managed by the USDOI and the U.S. Department of Agriculture (USDA), often mixed with State public lands (Bailey and Bailey 2009, p. 10). National Grasslands managed by the U.S. Forest Service (USFS) account for nearly 4 million ac (1.6 million ha), with some parcels of suitable habitat currently large enough to maintain wild plains bison herds (Olson 1997, p. 4; Ricketts *et al.* 2008, p. 275). Native American Tribes also have large tracts of suitable habitat that could support wild plains bison (Boyd 2003, p. 106; Freese *et al.* 2007, p. 181).

When determining whether a species should be listed, we examine the current status of a species, which necessitates examining the species in its current range and analyzing current and future threats to the remainder of the species' distribution. The information the petitioner presented on lost historical range, by itself, does not provide substantial information that listing the wild plains bison may be warranted. However, loss of historical range may be relevant to the analysis of the current and future viability of the species, if the factors that caused the past decline are shown to be operating on populations within the current range. Once wild plains bison were protected from market hunting, beginning in the late 1800s, their numbers rapidly increased (Gates *et al.* 2010, p. 9). We do not believe that the market hunting that led to the precipitous decline of wild plains bison in the 1800s is likely to be repeated. Habitat is currently available to accommodate additional herds. Furthermore, recent stable-to-slightly increasing population trends in conservation herds do not indicate that habitat is a limiting factor for wild plains bison.

The petitioners did not provide any citations and we do not have any information in our files to support a proposed minimum of 500 mi² (1,300 km²) of habitat necessary to maintain an ecologically significant herd. The petitioners state that only the Yellowstone herd meets this proposed standard, and the Henry Mountain herd nearly meets it. We are aware of three additional wild plains bison herds that occupy more than 500 mi² (1,300 km;²) of habitat: Farewell Lake in Alaska, Pink Mountain in British Columbia, and Primrose Air Weapons Range in Alberta and Saskatchewan. The first two herds are outside of the historical range of the plains bison, and the Primrose herd is at the periphery of the historical range. Nevertheless, five herds meet or exceed 500 mi² (1,300 km²). We agree that, in general, the larger the extent of habitat available, the greater the ecological significance. However, we believe that herds residing on less than 500 mi² (1,300 km²) also can have ecological significance. We have no evidence that indicates that wild plains bison in herds occupying less than 500 mi² (1,300 km²) of habitat are threatened from lack of habitat. Most herds, whether occupying more or less than this amount, exhibit stable to increasing population trends. Therefore, we do not believe that there is substantial information indicating that listing may be warranted due to a lack of herds occupying at least 500 mi² (1,300 km²) of habitat.

The petitioners also contend that the lack of suitable habitat is evidenced by dramatic declines in grassland birds (Bailey and Bailey 2009, p. 22). Grassland bird abundance and diversity is one indicator of a healthy ecosystem, as the petitioners suggest, but addressing their population trends is beyond the scope of this document. We have no evidence that there is a relationship between grassland bird abundance and wild plains bison persistence.

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to present or threatened destruction, modification, or curtailment of habitat or range.

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

Information Provided in the Petition

The petitioners do not assert that overutilization is a threat to the wild plains bison. They do note that, historically, wild plains bison numbered in the tens of millions, but were subsequently reduced to near extinction (Bailey and Bailey 2009, p. 3). They also suggest that hunting may be an appropriate management tool (Bailey and Bailey 2009, p. 11).

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

We agree that there was a dramatic historical decline in numbers of wild plains bison due to market hunting and, to a lesser extent, subsistence hunting and recreational shooting (Hornaday 1889, pp. 499–525; Boyd 2003, p. 22; Freese *et al.* 2007, p. 176; IUCN 2008). However, market hunting for wild plains bison ended in 1884 (Hornaday

1889, p. 513) and is no longer a factor. We also agree that hunting can be an appropriate management tool. Limited authorized hunting of wild plains bison currently occurs on three public herds in the contiguous United States, four herds in Alaska, and five herds in Canada (Reynolds *et al.* 2003, pp. 1047–1048).

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Information Provided in the Petition

The petitioners note that wild plains bison in the Greater Yellowstone Ecosystem are infected with brucellosis (*Brucella abortus*), which they assert is a minor direct threat, but indirectly severely limits the herd because of limitations imposed by disease management (Bailey and Bailey 2009, pp. 8, 21). They note that management for brucellosis can involve capture, retention, handling, culling, hazing, and vaccination and assert that this interferes with natural selection, may enhance disease transmission, alters age structure, and limits herd numbers (Bailey and Bailey 2009, p. 21). They also contend that vaccinations in general subvert natural selection and promote domestication (Bailey and Bailey 2009, p. 21). The petitioners did not cite predation as a threat.

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

Brucellosis is a bacterial infection that occurs in cattle, bison, and other mammals (Cook *et al.* 2004, p. 254; Seabury *et al.* 2005, p. 104). It has been eradicated from all commercial bison herds and most wild bison herds in the United States through improved management (Seabury *et al.* 2005, p. 105).

Wild plains bison and elk (*Cervus elaphus*) in the Greater Yellowstone Area are the last remaining reservoirs of brucellosis in the United States (Aune *et al.* 2007, p. 205). Brucellosis is not a direct threat, because reproduction is only marginally limited, but wild plains bison can be indirectly affected by the potential risk that infected bison herds pose to the livestock industry. Wild plains bison leaving Yellowstone NP in the winter on the northern and western boundaries are subject to hazing, vaccination, radio-telemetry, capture, testing, and slaughter of animals that test positive for the disease (Aune *et al.* 2007, p. 206). Transmission of brucellosis from bison to cattle has been demonstrated in captive studies, but there are no confirmed cases of transmission in the wild (Boyd 2003, p. 80).

In December 2000, following more than 10 years of collaborative planning, the USDOI (NPS) and the USDA (Animal and Plant Health Inspection Service and USFS) signed a Record of Decision for a joint bison management plan for Yellowstone and the State of Montana (USDOI and USDA 2000, p. 3). The intent of this plan is to preserve Yellowstone's wild plains bison and minimize the potential risk of transmission of brucellosis from bison to cattle (USDOI and USDA 2000, p. 6). This separation is attempted through hazing of wild plains bison back into Yellowstone, followed by, when necessary, capture, testing, and slaughter or release of captured bison, depending on test results (USDOI and USDA 2000, p. 6). Agencies allow wild plains bison outside of Yellowstone in areas without cattle (USDOI and USDA 2000, p. 11). If severe winter conditions exist and wild plains bison numbers drop below 2,300, the agencies will temporarily halt slaughter of infected bison (USDOI and USDA 2000, pp. 13, 34). This plan is a comprehensive approach to protecting wild plains bison in the Park and minimizing the risk of brucellosis transmission to cattle grazing on adjacent lands. The NPS has recently proposed a remote vaccination program for wild plains bison in Yellowstone that would minimize capture and handling of bison (NPS 2010, p. iii).

Brucellosis has been eradicated from all wild plains bison herds in the United States, with the exception of the two herds in the Greater Yellowstone Area (Yellowstone and Jackson herds). The Jackson herd is jointly managed by Grand Teton National Park and the Service's National Elk Refuge. Disease management is ongoing in these two herds. The petitioners contend that the hazing, capture, vaccination, and culling that may occur subvert natural selection, may enhance disease transmission, alter age structure, and limit herd numbers (Bailey and Bailey 2009, p. 21). However, the petitioners did not provide evidence to support that these activities are a threat to the status of the species such that the species may warrant listing as threatened or endangered. Furthermore, recent stable-to-increasing population trends do not indicate that management for brucellosis is a limiting factor for wild plains bison in the Greater Yellowstone Area. Additionally, disease management is often an essential aspect of wildlife management.

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petitioners assert that existing Federal and State regulatory mechanisms for wild plains bison conservation are inadequate (Bailey and Bailey 2009, pp. 16–19). They cite the Interagency Bison Management Plan for Yellowstone NP, the USDOI's Bison Conservation Initiative, Charles M. Russell NWR, National Grasslands management, and legal designations by the States as examples of inadequate regulations where more could be done to restore wild plains bison. They also assert that management by private programs is inadequate (Bailey and Bailey 2009, p. 19).

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

We consider plans and initiatives to be voluntary agreements that provide guidance for better managing wild plains bison, rather than regulatory mechanisms. Therefore, we discuss the Interagency Bison Management Plan for Yellowstone under Factor C, because it focuses on disease. The USDOI's Bison Conservation Initiative and private programs are discussed under Background. Management of wild plains bison on NWRs and National Grasslands, and legal designations by States, are discussed under this factor. We evaluate the inadequacy of existing regulatory mechanisms from the standpoint of the other factors. If there is not substantial information that listing a species may be warranted due to another factor, then the regulations affecting that factor cannot be considered inadequate.

Charles M. Russell National Wildlife Refuge

The National Wildlife Refuge System Administration Act established the National Wildlife Refuge System and identified a primary mission of wildlife conservation. The Service manages over 500 National Wildlife Refuges and their satellites. Wild plains bison

conservation is a National Wildlife Refuge System priority (Jones and Roffe 2008, p. 5). Purposes of wild plains bison management include: (1) To fulfill a legal mandate as part of establishing a Refuge, (2) to conserve bison, (3) to provide education and recreation for the public, (4) to manage habitat, (5) to protect cultural or historic significance, and (6) to carry out research (Jones and Roffe 2008, p. 5). Charles M. Russell NWR is one of eight National Wildlife Refuges in the contiguous United States that include wild plains bison management among their priorities (Jones and Roffe 2008, p. 3). Wild plains bison management is at an early stage at Charles M. Russell NWR, with only a small number of bison currently present. The other refuges with wild plains bison are Wichita Mountains NWR in Oklahoma (herd founding date 1907), the National Bison Range in Montana (herd founding date 1908), Fort Niobrara NWR in Nebraska (two herds, founding dates 1913 and 1919), Sullys Hill National Game Preserve in North Dakota (herd founding date 2006), Neal Smith NWR in Iowa (herd founding date 1996), the National Elk Refuge in Wyoming (jointly managed with Grand Teton National Park; herd founding date 1948), and Rocky Mountain Arsenal NWR in Colorado (herd founding date 2007). The Service has a strong and active commitment to wild plains bison conservation and ecological restoration, and we do not believe that there is substantial information indicating that listing may be warranted due to perceived inadequacies in refuge planning at Charles M. Russell NWR.

National Grasslands Management

The USFS administers 20 National Grasslands consisting of approximately 3.8 million ac (1.6 million ha) in 13 States, but the grasslands are primarily in Colorado, North Dakota, South Dakota, and Wyoming (Olson 1997, p. 4). According to the Federal Land Policy and Management Act, these grasslands are to be administered under sound and progressive principles of land conservation and multiple use (36 CFR part 213). Approximately 189 million ac (77 million ha) of National Forests also are managed by the USFS. We believe that several National Grasslands and National Forests are of sufficient size and habitat type to support wild plains bison. Wild plains bison on USFS lands are typically the result of overflow from herds on NPS lands (such as the Yellowstone herd) (USDOI and USDA 2000, p. 3), or are State-owned herds (such as the House Rock Valley herd) (Northern Arizona University 2009, p. 1). These wild plains bison are adequately protected by Federal laws and regulations mandating how USFS lands are managed. We do not believe that there is substantial information indicating that listing may be warranted due to lack of actions on the part of the USFS.

Legal Designations

Plains bison fall into an unusual legal classification that can complicate understanding the management intent for a given herd (Freese *et al.* 2007, p. 181). Their legal status can be either domestic livestock or wildlife among various Federal, State, and provincial jurisdictions across North America (Gates *et al.* 2010, p. 66). Plains bison are managed as captive or free-ranging wildlife on National Parks and National Wildlife Refuges. They have dual status (herds may be considered domestic livestock or wildlife, depending on whether they are commercial or conservation herds) in Alaska; Arizona; Idaho; Utah; Missouri; Montana; New Mexico; South Dakota; Texas; Wyoming; British Columbia; Saskatchewan; and Chihuahua, Mexico (Gates *et al.* 2010, pp. 66–73). Plains bison are classified solely as domestic livestock in Colorado, Illinois, Iowa, Kansas, Louisiana, Minnesota, Nebraska, North Dakota, Nevada, Oklahoma, Alberta, and Manitoba, regardless of whether they are in commercial or conservation herds (Gates *et al.* 2010, pp. 66–73). Nevertheless, wild plains bison that are classified as domestic livestock and are in conservation herds are managed for purposes of wildlife conservation, and not for production of meat and other commodities. Therefore, they are not adversely affected by their legal designation. A more uniform and straightforward classification of plains bison could simplify the regulatory status by which they are managed, but we do not believe that there is substantial information indicating that listing may be warranted due to their legal status.

Summary of Factor D

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petitioners assert that loss of genetic diversity threatens the wild plains bison, and that a minimum herd size of 2,000 animals is required to provide genetic diversity, noting that only 1 herd (Yellowstone) fulfills this requirement (Bailey and Bailey 2009, p. 19). They contend that management activities such as roundups, culling, protection from predators, pasture rotation, supplemental feeding, and vaccination lead toward domestication and genomic extinction (Bailey and Bailey 2009, p. 20).

The petitioners assert that introgression (hybridization) with cattle genes threatens the wild plains bison, and that only seven herds have been found to be free of cattle genes (Bailey and Bailey 2009, p. 20). The petitioners also allude to impacts from climate change, noting that the presence of at least one wild plains bison herd in each of the four major ecotypes could provide redundancy, resiliency, and perhaps genetic adaptations in the event of global warming (Bailey and Bailey 2009, pp. 11–12).

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

Loss of Genetic Diversity

Preservation of genetic diversity in the wild plains bison is essential to its conservation (Boyd 2003, p. 60). Genetic diversity provides flexibility for evolutionary change and adaptation (Gardipee 2007, p. 1; Gates *et al.* 2010, p. 19). The population decline for wild plains bison was severe—from tens of millions to possibly as low as 541 animals. Demographic bottlenecks such as this, and resultant founder effects, genetic drift, and inbreeding, can reduce genetic diversity (Boyd 2003, p. 60). The consequences of a bottleneck depend on the severity of the decline and how quickly the population recovers (Boyd 2003, p. 60).

The small numbers of plains bison remaining after the bottleneck resulted in very few founders and the possibility for genetic drift, which involves the random change in gene frequencies leading to the loss of certain unique DNA sequences in a particular gene type (allele) from one generation to the next (Boyd 2003, pp. 60–61). Small populations also may experience inbreeding or highly skewed gender ratios, which can lead to the expression of deleterious alleles, the decreased presence of both dominant and

recessive alleles (decreased heterozygosity (decreased hybridization of genes; an indicator of poor genetic health), lower fecundity, and developmental defects (Boyd 2003, p. 61). However, the duration of the bottleneck for plains bison was relatively short (Halbert 2003, p. 52), and the population recovered quickly (Boyd 2003, p. 60). Pre-bottleneck wild plains bison numbers, movement, and distribution suggest widespread interbreeding and significant genetic homogeneity among continental populations. The selection of captive and wild plains bison used in early foundation herds represented a large portion of the historical range and, therefore, likely captured a large portion of pre-bottleneck genetic variation (Halbert 2003, p. 52). Today's wild plains bison have substantially greater genetic variation than reported for other mammalian species that have experienced similar bottlenecks (Halbert 2003, p. 51). In general, populations of wild plains bison that have been tested display a moderately high level of overall genetic diversity, with notable differences in overall allelic variation and heterozygosity (Halbert 2003, p. 60).

A minimum viable population (MVP) is the smallest population size that provides a high probability (typically 95 percent) of persistence for a given period of time (typically, 100 years) (Boyd 2003, p. 36). Large-bodied species with a long lifespan tend to experience less severe population fluctuations than smaller, short-lived species (Boyd 2003, p. 37). Consequently, a lower MVP is typical for large, long-lived species. The Canadian National Wood Bison Recovery Team uses a MVP of 400 for wood bison (Boyd 2003, p. 38). More recently, the IUCN considered wild plains bison populations to be viable if they were greater than 1,000 animals (IUCN 2008). Freese *et al.* (2007, p. 180) suggest that in consideration of exotic diseases and climate change, a prudent goal would be retention of at least 95-percent allelic diversity for 200 years, which would require a MVP of 2,000 animals. We are aware of 15 conservation herds with at least 400 wild plains bison, 4 conservation herds with at least 1,000 wild plains bison (Custer State Park in South Dakota, Medano-Zapata Ranch in Colorado, Pink Mountain in British Colombia, and Yellowstone), and 1 conservation herd with more than 2,000 wild plains bison (Yellowstone). Selectively moving animals in smaller herds from one herd to another as is still frequently done in conservation herds, and can counter the effects of genetic drift and maintain viability (Halbert 2003, p. 153; Jones and Roffe 2008, p. 8). The USDOI has a priority of increasing their existing herds to at least 1,000 animals, or establishing new herds that can reach that size (USDOI 2008, p. 2).

All wild plains bison herds have experienced some degree of management, ranging from initial establishment of the herd to more intensive management activities such as roundups, culling, protection from predators, pasture rotation, supplemental feeding, and vaccination. We recognize that maximizing the wildness of the plains bison is important for the maintenance of genetic diversity, but also believe that continued judicious management is necessary for long-term survival in the modern world. For example, in an effort to minimize capture and handling of wild plains bison in Yellowstone, the NPS is considering the use of air rifles to deliver brucellosis vaccines remotely (NPS 2010, p. iii).

Populations of wild plains bison that have been tested display a moderately high level of overall genetic diversity. Selective movement of animals between herds, as currently practiced, can help maintain that genetic diversity. We do not believe that there is substantial information indicating that listing may be warranted due to a loss of genetic diversity.

Introgression With Cattle Genes

Introgression was caused by hybridization between plains bison and cattle, followed by breeding of the hybrid offspring to at least one of their respective parental populations (Gates *et al.* 2010, p. 22). The introgressed or alien DNA replaced sections of the original DNA, thereby affecting the genetic integrity of the wild plains bison (Gates *et al.* 2010, p. 22). Most genetic studies we are aware of have been conducted on conservation herds (Polziehn *et al.* 1995, p. 1638; Ward *et al.* 1999, p. 52; Boyd 2003, p. 68; Halbert 2003, p. 70; Halbert *et al.* 2005, pp. 2349–2350).

When plains bison were at their lowest numbers in the late 1800s, a few individuals established small captive foundation herds that saved the subspecies from extinction. Each of these herds was, to some extent, used to either experimentally create bison-domestic cattle crosses, or supplemented with plains bison from herds involved in such experiments (Halbert *et al.* 2005, p. 2344). Controlled breeding of male plains bison to female domestic cattle has been recorded extensively, although the birth rate of first-generation offspring is very low (Halbert *et al.* 2005, p. 2344), and male offspring are usually sterile (Meagher 1986, p. 6). Behavioral constraints typically prevent domestic bulls from mating with female bison (Boyd 2003, p. 67). Due to the sterility of male offspring and the lack of domestic bulls that successfully breed with female bison, there is no evidence of male-linked or Y-chromosome cattle gene introgression in bison (Boyd 2003, p. 67). However, maternally inherited DNA, known as mitochondrial DNA (mtDNA), and nuclear DNA (contributed by either parent) introgression have been demonstrated (Polziehn *et al.* 1995, p. 1641; Ward *et al.* 1999, p. 51; Boyd 2003, p. 67; Halbert 2003, p. 13), which indicates that many plains bison contain some cattle DNA from experimental crosses conducted in the past.

The proportion of cattle DNA that has been measured in introgressed individuals and herds is typically quite low, ranging from 0.56 to 1.8 percent (Polziehn *et al.* 1995, p. 1642; Halbert *et al.* 2005, p. 2343). However, estimates based on extrapolation from portions of genomes sampled, to the entire genome, to all animals in a herd should be considered only as approximations (Roffe and Jones 2008, p. 1). The petitioners assert that seven herds have been found free of cattle genes (Bailey and Bailey 2009, p. 20). We are aware that very few herds lack evidence of at least some cattle allele introgression. Based upon the information currently available, the following wild plains bison conservation herds show no evidence of introgression: Elk Island National Park in Alberta, Jackson herd (Grand Teton National Park—National Elk Refuge) in Wyoming, Henry Mountains in Utah, Sullys Hill National Game Preserve in North Dakota, Wind Cave National Park in South Dakota, and Yellowstone (Halbert and Derr 2007, p. 8). One private herd, Castle Rock in New Mexico, also shows no evidence of introgression (Freese *et al.* 2007, p. 182). The Jackson and Sullys Hill herds have not been adequately sampled to allow for statistical confidence (Halbert and Derr 2007, p. 8), and many other herds have not yet been tested. As techniques improve and more extensive sampling occur, some herds previously without evidence of introgression may be found to contain introgressed alleles.

Some conservation herds known to have low levels of cattle introgression also contain unique or rare plains bison genetic diversity (Halbert 2003, p. 98; Gates *et al.* 2010, p. 23). To minimize genetic loss and not exacerbate the effects of the historical bottleneck on the wild plains bison, managers feel that

this unique genetic background should be conserved, while herds with no evidence of introgression should be maintained in isolation from introgressed populations (Halbert 2003, p. 94). Issues of introgression and unique genetic diversity are both considered in management of wild plains bison.

The presence of cattle DNA in the genetic makeup of wild plains bison appears widespread, but occurs at low levels. Conservation herds are managed according to their genetic background, so as to maintain genetic diversity and introgression-free herds. We expect the frequency of cattle DNA to remain low in conservation herds. Wild plains bison from introgressed herds conform morphologically, behaviorally, and ecologically to the scientific taxonomic description of the native subspecies. Some wild plains bison herds with evidence of cattle introgression also contain valuable genetic diversity that is not found elsewhere and should be conserved. We do not believe that there is substantial information indicating that listing may be warranted due to introgression with cattle genes.

Climate Change

No information on the direct relationship between climate change and wild plains bison was provided by the petitioners or is available in our files. According to the Intergovernmental Panel on Climate Change (IPCC 2007, p. 6), "warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level." Average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50-year period in the last 500 years, and likely the highest in at least the past 1,300 years (IPCC 2007, p. 6). It is very likely that over the past 50 years, cold days, cold nights, and frosts have become less frequent over most land areas, and hot days and hot nights have become more frequent (IPCC 2007, p. 6). It is likely that heat waves have become more frequent over most land areas, and the frequency of heavy precipitation events has increased over most areas (IPCC 2007, p. 6).

Changes in the global climate system during the 21st Century are likely to be larger than those observed during the 20th Century (IPCC 2007, p. 19). For the next 2 decades, a warming of about 0.2 °Celsius (°C) (0.4 °Fahrenheit (°F)) per decade is projected (IPCC 2007, p. 19). Afterward, temperature projections increasingly depend on specific emissions scenarios (IPCC 2007, p. 19). Various emissions scenarios suggest that by the end of the 21st Century, average global temperatures are expected to increase 0.6 to 4.0 °C (1.1 to 7.2 °F), with the greatest warming expected over land (IPCC 2007, p. 20). The IPCC (2007, pp. 22, 27) report outlines several scenarios that are virtually certain or very likely to occur in the 21st Century including: (1) Over most land, there will be warmer days and nights, and fewer cold days and nights, along with more frequent hot days and nights; (2) areas affected by drought will increase; and (3) the frequency of warm spells and heat waves over most land areas will likely increase. The IPCC predicts that the resiliency of many ecosystems is likely to be exceeded this century by an unprecedented combination of climate change, associated disturbances (e.g., flooding, drought, wildfire, and insects), and other global drivers. With medium confidence, IPCC predicts that approximately 20 to 30 percent of plant and animal species assessed so far are likely to be at an increased risk of extinction if increases in global average temperature exceed 1.5 to 2.5 °C (3 to 5 °F).

The wild plains bison had a very extensive historical range that extended nearly coast to coast and from central Canada to northern Mexico. Therefore, it would appear that it is adaptable to a wide variety of climatic conditions. We also believe that all four ecotypes described by the petitioners as potential distinct population segments will persist in the face of climate change. Consequently, we do not believe that there is substantial information indicating that listing may be warranted due to climate change.

Summary of Factor E

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to loss of genetic diversity, introgression with cattle genes, or climate change.

Summary of Five Factor Evaluation

We have carefully examined information from the petition and from our files regarding the status of wild plains bison. We also consulted with Service biologists and managers from NWRs that have wild plains bison. There have been several impacts to the wild plains bison; in particular, market hunting caused a precipitous decline in the mid- to late-1800s. Diligent efforts by a few individuals prevented extinction. However, subsequent attempts to crossbreed plains bison with cattle resulted in low-level, but widespread, presence of cattle DNA. Nevertheless, the wild plains bison appears to have retained much of its genetic diversity. However, the presence of both commercial herds and conservation herds has resulted in some conflicting legal designations. Brucellosis in the Greater Yellowstone Ecosystem requires special management. Despite these stressors, the numbers of plains bison have increased dramatically since the early 1900s, and population trends of wild plains bison in conservation herds appear to be stable to increasing in recent years. The number of conservation herds also continues to increase. In summary, the petition does not present substantial information that wild plains bison as a subspecies may require listing.

Distinct Vertebrate Population Segments

The petitioners requested that if we should determine that substantial information was not presented indicating that listing may be warranted, then each major ecotype of the subspecies should be listed as a "significant distinct population segment (DPS)." The petitioners specified four ecotypes (population segments) of wild plains bison: The northern Great Plains, the southern Great Plains, the Rocky Mountains, and the Great Basin-Colorado Plateau.

To interpret and implement the DPS provisions of the Act, the Service and the National Oceanic and Atmospheric Administration published the *Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act* in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS Policy, three elements are considered in the decision regarding the establishment and classification of a population of a vertebrate species as a possible DPS: (1) The discreteness of a population in relation to the remainder of the species to which it belongs, (2) the significance of the population segment to the species to which it belongs, and (3) the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification. Both discreteness and significance are required for a species population to meet our criteria for classification as a DPS. If any portion of a species' population is considered a potentially valid DPS, we may list, delist, or reclassify that DPS under the Act. We

address these elements with respect to the wild plains bison.

Discreteness

Under the DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Markedly Separated

The petitioners assert that the four proposed wild plains bison ecotypes or population segments are physically separated, and therefore discrete (Bailey and Bailey 2009, p. 11). While nearly all conservation herds are geographically separated, the available information indicates that the "markedly separated" criteria are not satisfied because the frequent interchange between herds that has occurred since the late 1800s has provided a physical connectivity between herds, and has maintained genetic homogeneity.

There is no evidence indicating that landscape features historically separated herds of plains bison. Prior to the population bottleneck in the late 1800s, the species likely experienced a high degree of genetic homogeneity, despite their extensive range (Gates *et al.* 2010, p. 20). Wild plains bison ranged over large areas, suggesting extensive animal movement and gene flow between populations (Gates *et al.* 2010, p. 20).

Separation should also be considered in the context of the more recent history of the four wild plains bison ecotypes or population segments. Several researchers have concluded that nearly all plains bison present today in both commercial and conservation herds descend from 76 to 84 individuals from 5 private foundation herds and no more than 30 wild bison in Yellowstone (Halbert 2003, p. 9). The private foundation herds originated from across a large portion of the species' range. Early federally owned herds were established from foundation herds and subsequently augmented with plains bison from multiple herds in disparate locations. For example, the current wild plains bison herd on the National Bison Range was started in 1908 with stock from three different foundation herds in Canada, Texas, and Montana (Halbert and Derr 2007, p. 2). This same herd was augmented in 1939 with plains bison from a private ranch of unknown origin; in 1952 with wild plains bison from Fort Niobrara NWR, Nebraska; in 1953 with wild plains bison from Yellowstone, Wyoming; and in 1984 with wild plains bison from Maxwell Wildlife Refuge, Kansas (Halbert and Derr 2007, p. 2). Similar histories exist for most other Federal herds (Halbert and Derr 2007, p. 2). In contrast, one State-owned herd, the Texas Caprock herd, has been a small, closed population for more than 120 years since its founding with five plains bison from the Goodnight foundation herd (Halbert 2003, p. 95). This herd suffers from lower birth rates and higher death rates than other captive herds (Halbert 2003, p. 95). The careful introduction of unrelated plains bison has been recommended to increase genetic diversity, reduce inbreeding, and increase fitness (Halbert 2003, p. 124).

The strategy for wild plains bison herds in the National Wildlife Refuge System is to manage bison as a metapopulation to maintain the genetic complement and minimize loss of diversity through low levels of carefully planned and monitored translocations between herds (Jones and Roffe 2008, p. 9). Similar translocations occur for other public herds (Halbert and Derr 2007, p. 2). Translocations are often between ecotypes, which further supports management as a metapopulation (Boyd 2003, Appendix 2).

The diverse origins of the early foundation herds, and subsequent translocations that were undertaken (and continue to be undertaken) to establish new herds and to later augment herds, have resulted in population segments that, despite their current geographic separation, are essentially one metapopulation where connectivity is maintained through management practices. Therefore, the four wild plains bison ecotypes or population segments are not markedly separate.

International Boundaries With Differences in Exploitation, Management, Status, or Regulations

Although wild plains bison herds also occur in Canada, each of the four plains bison ecotypes or population segments proposed by the petitioners occurs within the United States. Therefore, there are no international governmental boundaries to consider.

Conclusion

The historically wide-ranging nature of wild plains bison likely resulted in a high degree of genetic homogeneity for the species. The subsequent management of the wild plains bison has maintained that homogeneity through numerous translocations between various conservation herds. Additionally, there are no international boundaries between the four proposed population segments. Therefore, the discreteness criteria, as applied to the DPS policy, have not been met.

Significance

Because the petition does not present substantial information that any of the four wild plains bison ecotypes or population segments is discrete, we did not evaluate whether the information contained in the petition regarding significance was substantial. However, we note that the wild plains bison is a generalist with regard to its habitat requirements, as evidenced by its broad historical range, and none of the ecological settings of the four population segments is unique or unusual. Each of the population segments contains multiple herds managed under different Federal, State, municipal, or private regimes, and the complete loss of any population segment is very unlikely. No population segment represents the only surviving natural occurrence of the taxon. Lastly, due to multiple, diverse origins and subsequent translocations, no population segment is genetically, behaviorally, or ecologically unique.

We recognize that this conclusion differs to some extent from an earlier decision. In a previous negative 90-day finding published on August 15, 2007 (72 FR 45717), we determined that the Yellowstone plains bison herd may meet the criteria of discreteness and significance as defined by our policy on DPS. However, this finding and the previous 90-day finding differ in scope. The August 15, 2007, finding only addressed plains bison in the Yellowstone herd. The current finding addresses wild plains bison in all conservation herds.

The 2007 finding concluded that the Yellowstone herd may be discrete from other plains bison, because it was considered the only herd that has "remained in a wild state since prehistoric times" and because of physical distance and barriers. The best available information now indicates that the basis for our 2007 DPS determination was erroneous. We still use the term "wild plains bison" to describe the Yellowstone herd because

they are managed as a conservation herd, rather than as a commercial herd. However, we no longer consider the Yellowstone herd to have remained in more of a "wild" state than any other conservation herd. Specifically, these wild plains bison are no longer thought to have remained in an unaltered condition from prehistoric times, as implied in the previous determination. In 1902, no more than 30 wild plains bison remained in Yellowstone (Halbert 2003, p. 24). In the same year, 18 female plains bison from the captive Pablo-Allard herd in Montana and 3 bulls from the captive Goodnight herd in Texas were purchased to supplement the Yellowstone herd (Halbert 2003, pp. 24–25). Additionally, intensive management (supplemental feeding, roundups, and selective culling) of the Yellowstone herd occurred from the 1920s through the late 1960s (Gogan *et al.* 2005, p. 1719). Wild plains bison from Yellowstone also have been used to start or augment many later conservation herds (Halbert and Derr 2007, p. 2). Despite geographic separation, the Yellowstone herd is essentially part of one metapopulation and is not markedly separate from other herds.

Summary of the Distinct Population Segment Analysis

On the basis of the preceding discussion, we believe that the petition has not provided substantial information to conclude that each of the four population segments may be discrete. Therefore, we did not evaluate significance or conservation status of the four population segments within the meaning of the DPS Policy. In conclusion, we do not believe that any of the population segments may constitute a valid DPS.

However, even if we had concluded that the four population segments may be discrete and significant, the petition does not present substantial information that any of the stressors described under the above five factor analysis are concentrated within any one DPS to indicate that any of the DPSs would be more likely to be threatened or endangered than the species at large. Thus, there is no information indicating stressors rise to the level of a threat for any population segment.

Finding

In summary, the petition does not present substantial information that wild plains bison may require listing either as a subspecies or a DPS. The conclusion that impacts from the various factors discussed above may constitute a threat is not supported by the available information regarding distribution, abundance, and population trends of wild plains bison. Wild plains bison are distributed in parks, preserves, other public lands, and private lands throughout and external to their historical range. The current population of wild plains bison is estimated to be 20,500 animals in 62 conservation herds. Recent population trends appear stable to slightly increasing in conservation herds (as noted by the petitioners).

On the basis of our determination under section 4(b)(3)(A) of the Act, we conclude that the petition does not present substantial scientific or commercial information to indicate that listing the wild plains bison, or any of four proposed DPSs, under the Act as threatened or endangered may be warranted at this time. Although we will not review the status of the species at this time, we encourage interested parties to continue to gather data that will assist with conservation of the wild plains bison. If you wish to provide information regarding the wild plains bison, you may submit your information or materials to the Wyoming Field Supervisor (*see* **ADDRESSES**) at any time.

References Cited

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

Authors

The primary authors of this notice are staff members of the Mountain-Prairie Regional Office and the Wyoming Field Office (*see* **ADDRESSES**).

Authority

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

Rowan W. Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–4121 Filed 2–23–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2010–0078; MO 92210–0–0008 B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Unsilvered Fritillary Butterfly as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list the unsilvered fritillary butterfly (*Speyeria adiaste*) as threatened or endangered under the Endangered Species Act of 1973 (Act), as amended, and designate critical habitat. Based on our review, we find that the petition does not present substantial scientific or commercial information indicating that listing the unsilvered fritillary may be warranted. Therefore, we are not initiating a status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the unsilvered fritillary or its habitat at any time.

DATES: The finding announced in this document was made on February 24, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2010–0078 and at *http://www.fws.gov/ventura*. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Michael McCrary, Listing and Recovery Coordinator for Wildlife, Ventura Fish and Wildlife Office (*see* **ADDRESSES**), by telephone 805–644–1766, or by facsimile 805–644–3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On January 12, 2010, we received a petition, dated January 6, 2010, from WildEarth Guardians, requesting that the unsilvered fritillary butterfly be listed as threatened or endangered and critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). In a February 10, 2010, letter to the petitioner, we acknowledged receipt of the petition and stated that we had secured the funding to conduct the initial finding as to whether the petition contains substantial information indicating that the action may be warranted. We also stated that we determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. This finding addresses the petition.

Previous Federal Actions

On January 6, 1992, the Service received a petition from Drs. Dennis Murphy and Alan Launer of the Stanford University Center for Conservation Biology to list *Speyeria adiaste adiaste,* one of the three subspecies of unsilvered fritillary, as an endangered or threatened species. In our November 22, 1994, 90-day petition finding (59 FR 28741), we determined that, although the *S. adiaste adiaste* may be declining, existing information was not available to estimate the extent or rate of changes in habitat or population levels. We stated that further surveys were needed to adequately assess its distribution and population status, and beyond the information described above, the petitioner presented little else on the status of the animal. Therefore, the Service determined that the petition did not present substantial information that the requested action may be warranted.

Species Information

The unsilvered fritillary is a medium-sized, brush-footed butterfly limited to the central coast region of California (WildEarth Guardians 2010, p. 1). This butterfly has a 2–2.38-inch (5–6.1-centimeter (cm)) wingspan. The upper side of adult males is pale reddish-tan to bright red and the undersides are pale yellow to gray; females are larger and paler than males. The unsilvered fritillary has small, scattered, dark markings and a bold postmedian line. This species also has unsilvered hindwing spots that slightly contrast with background coloring, unlike the silvered markings of most *Speyeria* species (Butterflies and Moths of North America (BMNA) 2009, p. 1). Adults lay single eggs on fallen leaves and twigs near violets (*Viola* spp.). Caterpillars hibernate without feeding, but feed on violet leaves when they emerge in spring (NatureServe 2009, not paginated; BMNA 2009, p. 1). Adults have been observed feeding on the flowers of native and nonnative thistles (family *Asteraceae*) and California buckeye (*Aesculus californica*) (NatureServe 2009, not paginated). The unsilvered fritillary breeds once per year, with its adult butterfly stage occurring in June through July (flight period) (BMNA 2009, p. 1).

The unsilvered fritillary inhabits openings in conifer and redwood forests, as well as oak woodlands, chaparral, and grassy slopes (BMNA 2009, p. 2). Brittnacher *et al.* (1978, p. 200) considered it a xeric (adapted to an extremely dry habitat) *Speyeria* species that occurred in summer-dry locations.

Violets are the only known host plants for *Speyeria,* including the unsilvered fritillary, and the distribution of these plants limits the extent of available habitat the species can occupy (Brittnacher 1978, p. 199). Mattoon *et al.* (1971) (in Brittnacher *et al.* 1978, p. 199) found that all the North American violets they tested can adequately support larval growth, although some European ornamentals, such as sweet violet (*Viola odorata*), are toxic to most *Speyeria* species.

The petition states that there are 16 species in the *Speyeria* genus (WildEarth Guardians 2010, p. 4). Brittnacher *et al.* (1978, p. 199) state that there are at least 14 closely related *Speyeria* species, 10 of which occur in California. In the draft recovery plan for the Behren's silverspot (*S. zerene behrensii*), the Service (2003, p. 3) stated that the genus *Speyeria* is a member of a complex group of 10 species, having a polytypic (*i.e.,* having many forms) population structure, with over 100 geographic subspecies. There are three recognized subspecies of the unsilvered fritillary, *Speyeria adiaste adiaste* (*adiaste* subspecies), *S. a. clemencei* (*clemencei* subspecies), and *S. a. atossa* (*atossa* subspecies) (NatureServe 2009, not paginated); however, as discussed below, the *atossa* subspecies is considered extinct.

The historic range of the unsilvered fritillary covered much of the central and southern coastal region of California, extending from San Mateo County in the north to Los Angeles and Kern Counties in the south (BMNA 2009, p. 2). However, the current range is much smaller because the *atossa* subspecies is considered extinct (BMNA 2009, p. 2). Historically, the *atossa* subspecies was widely distributed in the Tehachapi Mountains, Tejon Mountains, and Mount Pinos region of Los Angeles and Kern Counties (Bruyea 2003, not paginated), living in open grasslands where violets, such as the pine violet (*Viola purpurea*), were abundant (Comstock 1927 in Hammond and McCorkle 1983, p. 220). The last known observations of the *atossa* subspecies occurred in 1959 just south of the town of Tehachapi and near Mount Pinos (Emmel and Emmel 1973 in Bruyea 2003, not paginated).

The two extant unsilvered fritillary subspecies occur in the central coast region of California from Santa Cruz County in the north to San Luis Obispo County in the south. The petition states that the *adiaste* subspecies is limited to the higher elevations of the Santa Cruz Mountains in San Mateo, Santa Cruz, and Santa Clara Counties (WildEarth Guardians 2010, p. 5). The *clemencei* subspecies has a more extensive range (BMNA 2009, p. 2), and the petition states that it occurs in the Santa Lucia Mountains in Monterey and San Luis Obispo Counties (WildEarth Guardians 2010, p. 5). The petition states that the unsilvered fritillary is distributed spottily within this range (WildEarth Guardians 2010, p. 6); however, the petition does not provide any other data on its abundance or distribution.

The California Natural Diversity Database (CNDDB) (2010, not paginated) has only two records for the *S. a. adiaste.* One location is in Big Basin Redwoods State Park in Santa Cruz County, which is specifically discussed in the petition. The second location is on private land on the border between Santa Clara and Santa Cruz Counties. There are no records of *S. a. clemencei* in the CNDDB.

NatureServe is cited frequently throughout the petition to support the assertion that the unsilvered fritillary should be listed under the Act. NatureServe is a nonprofit conservation organization that collects and manages data about the status and distribution of species and ecosystems of conservation concern and makes that information available to guide conservation, land-use planning, and natural resource management (NatureServe Web site 2009). As part of this service, NatureServe assesses and ranks the conservation status of species on a scale ranging from a "conservation status rank" of critically imperiled (1) to demonstrably secure (5). NatureServe ranks the unsilvered fritillary as G1G2, rounded to G1, "critically imperiled," meaning the species is at high risk of extinction due to extreme rarity or to a limited range. However, NatureServe states that more information on abundance and number of occurrences and metapopulation dynamics of the species would be necessary to further refine its rank. NatureServe indicates that the long-term trend for the species has been a large-to-substantial decline (50 to 90 percent). However, NatureServe does not indicate whether the range of the species has declined or the abundance of the species has declined or both, although it does note that there is not enough information to determine the abundance of the species. The loss of the *atossa* subspecies represents a large decline in the range of the species, but does not necessarily reflect the status of the *adiaste* or *clemencei* subspecies. Although NatureServe states that there is not enough information to determine the number of occurrences of the species, it estimates the number of occurrences at 1–20. NatureServe also ranks the three subspecies individually: *S. a. adiaste* is ranked as T1, critically imperiled in California; *S. a. clemencei* is ranked as T1T2, similar to the full species' rank of G1G2; and *S. a. atossa* is ranked as TX because it is presumed extinct. NatureServe (2009) states that populations of the *adiaste* subspecies "seem to have declined," but does not provide any information to support this observation. It should also be noted that NatureServe indicates on its Web site that conservation status ranks are neither a recommendation by the organization, nor an indication that a species requires legal status to assure its survival (NatureServe 2008, not paginated) and, in our view, should not be the sole basis for any decisions.

Furthermore, the CNDDB includes *S. a. adiaste* on its species-at-risk list, but the other two subspecies are not included. Similarly, the California Wildlife Action Plan includes *S. a. adiaste* as a species at risk in the central coast region based on the CNDDB classification.

Although the petition did not provide any information on the results of any surveys that may have been conducted to determine the status of the *atossa* subspecies, the information available at this time indicates that the *atossa* subspecies is considered extinct. We also agree with the petitioner and other organizations, including NatureServe, that the range of the remaining extant subspecies of the unsilvered fritillary is limited to the central coast of California. However, the range of the species as described in both the petition and by NatureServe includes at least the mountainous portions of five counties. Although only a portion of this area is suitable habitat for the species, the petition did not provide information on either the distribution of the species or on the extent or distribution of its habitat; information on either or both could be used to refine the range of the species beyond what is described in the petition. The petition also did not present any information that would indicate that the ranges of the remaining two subspecies have been reduced. Nor did the petition present any information on either the number of populations or overall abundance of the two subspecies, or any changes in these. The classification of the unsilvered fritillary as being critically imperiled by NatureServe is apparently based on the loss of the *atossa* subspecies and the limited range of the two extant subspecies, rather than information on their past or present distribution and abundance. Therefore, there is no information that shows that the range of the two remaining subspecies has been reduced or that the number of populations or abundance of either of them has declined or is declining.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

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

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

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

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

In making this 90-day finding, we evaluated whether information regarding threats to the unsilvered fritillary, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

It is the overall position of the petition that, of the three subspecies of the unsilvered fritillary, *Speyeria adiaste atossa* is considered extinct, *S. a. adiaste* is limited in range and declining, and *S. a. clemencei* has a more extensive range but faces multiple threats, and, therefore, the species in its entirety faces extinction or endangerment.

The petition states that the unsilvered fritillary has vanished from much of its range and asserts that this is due to human activities, including habitat loss and degradation due to burgeoning human populations, with resultant urban and suburban sprawl; increasing agriculture; extensive livestock grazing; off-road vehicle use; and other adverse land uses. The petition also asserts that climate change has taken and will take its toll through altered fire regimes, more severe and frequent droughts, and shifts in native plant distribution (WildEarth Guardians 2010, p. 12). The petition states that the Service should consider whether these threats intersect and act synergistically, thereby increasing the likelihood of extinction or endangerment of the unsilvered fritillary in the foreseeable future (WildEarth Guardians 2010, p. 16).

Additionally, the petition states that the Service should consider how the suite of threats identified for four Federally listed *Speyeria,* the Behren's silverspot (*Speyeria z. behrensii*), the Oregon silverspot (*S. z. hippolyta*), the Myrtle's silverspot (*S. z. myrtleae*), and the Callippe silverspot (*S. callippe callippe*), might likewise threaten the

unsilvered fritillary (WildEarth Guardians 2010, p. 11).

The endangered Behren's silverspot occurs at a single location near Point Arena, Mendocino County, California (Service 2003, p. iii). Threats identified in the recovery plan for this taxon are: Invasion by nonnative species, natural succession, fire suppression, residential development, and overcollection (Service 2003, pp. 12–16).

The threatened Oregon silverspot occurs at disjunct sites near the Pacific coast from Del Norte County, California, north to Long Beach Peninsula, Washington. Threats identified in the recovery plan for this taxon are: Invasion by nonnative species, fire suppression, land development, off-road vehicles, livestock grazing, erosion, roadkill, insecticides, and overcollection (Service 2001, pp. 18–20).

When listed, the endangered Myrtle's silverspot occurred in four areas in western Marin and southwestern Sonoma Counties, California, and the distribution and range have not significantly changed since listing in 1992 (Service 2009, p. 5). Threats identified in the recovery plan for this taxon are: Invasion by nonnative plants, loss of habitat from commercial and residential development, recreation, livestock grazing, agriculture, and over-collection (Service 1998, pp. 59–60).

The endangered Callippe silverspot occurs at San Bruno Mountain in San Mateo County and at Cordelia Hills in Sonoma County, California (Service 2009, p. 5). Threats identified in the listing rule for this taxon are: Habitat degradation due to human activities, off-road vehicles, invasion by nonnative plants, livestock grazing, and over-collection (December 5, 1997, 62 FR 64306, pp. 64311–64312).

The five factors discussed below are pertinent only in cases where the organism being proposed for listing may be a listable entity as defined by section 3(16) of the Act and is extant in the wild. The petition and its supporting information and information in our files indicate that the *atossa* subspecies is considered extinct. Because the *atossa* subspecies is considered extinct, the five factors are not analyzed for *atossa*. Therefore, the five factors are analyzed for the species of the unsilvered fritillary as a whole and for each of the two extant subspecies (*adiaste* and *clemencei*).

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The petition asserts that development, fire suppression, widespread fires, agriculture, overgrazing, and exotic vegetation are causing the loss or degradation of the unsilvered fritillary's habitat (WildEarth Guardians 2010, p. 8). Moreover, the petition claims that the extirpations and decline of the unsilvered fritillary indicate severe degradation of its habitat, and these activities are pushing this species' Central coast grassland and woodland ecosystems toward collapse (WildEarth Guardians 2010, pp. 7–8). The petition states that NatureServe (2009, not paginated) estimates that the unsilvered fritillary has undergone a large-to-substantial decline, on the order of 50 to 90 percent (WildEarth Guardians 2010, p. 7).

The petition also lists off-road vehicles as a threat to the unsilvered fritillary (WildEarth Guardians 2010, p. 9); however, it does not include any other information on either the operation of off-road vehicles in relation to unsilvered butterfly populations or the habitat of the species.

Development: Information in the Petition

As described in the petition, the various species of *Speyeria* butterflies are sensitive to human disturbance, and four species of *Speyeria* butterflies are listed as either threatened or endangered (WildEarth Guardians 2010, p. 11). Hammond and McCorkle (1983, p. 218) analyzed the general problem of declining *Speyeria* butterfly populations due to human-induced environmental disturbances and concluded that the fritillary butterflies of the genus *Speyeria* and their larval food plants, violets, are among the most sensitive organisms in native ecosystems, and are among the first to be exterminated as a result of widespread human disturbance.

Human disturbance has been particularly destructive to native ecological communities along the West Coast, and many forms of *Speyeria* have become extinct or are threatened with extinction in this region (Hammond and McCorkle 1983, p. 220). One example of this is the *atossa* subspecies, which, as mentioned earlier, is considered extinct. The *atossa* subspecies was once widely distributed and extremely abundant in the Sierra Madre, Tejon, and Tehachapi Mountains of southern California, where it occurred in open grasslands where violets, such as the pine violet (*Viola purpurea*), were abundant (Comstock 1927, in Hammond and McCorkle 1983, p. 220). According to Emmel and Emmel (1973, in Hammond and McCorkle 1983, p. 220), this subspecies is probably extinct today, with the last known specimen collected in 1959. Although the actual causes of the *atossa* subspecies' decline are still not clear (University of California Berkeley 2009, p. 1), it is thought that overgrazing by livestock, combined with drought, so greatly reduced the larval food plant that the butterfly could no longer survive (Orsak 1974, in Hammond and McCorkle 1983, p. 220). Wildfire suppression practices may also have contributed to the spread of nonnative vegetation in the area, which tends to outcompete native low-growing annuals, including potential unsilvered fritillary host plants (John Emmel, pers. comm. in Bruyea 2003, not paginated).

The petition states that population and urban growth and development are important stressors to wildlife in the central coast region of California, including the unsilvered fritillary, and that suburban development has reduced both the various *Speyeria* species of butterflies and violets, their primary food source (WildEarth Guardians 2010, p. 8). As stated in the petition, the human population in this region has increased extensively and is likely continuing to grow (WildEarth Guardians 2010, p. 8). According to the California Wildlife Action Plan (Bunn *et al.* 2007, p. 200), population pressures have increased in recent years, and growth and development have expanded from urban centers to adjacent farmlands and rural areas both on the coast and in the interior portions of the central coast. As pointed out in the petition, these developed areas and infrastructure corridors not only result in direct loss of habitat, but also fragment the natural landscape and degrade the quality of adjacent habitat (WildEarth Guardians 2010, p. 9). Fragmentation hinders ecological processes that require landscape connectivity, such as natural fire regimes, movement of wide-ranging species, and genetic exchange, and it makes remaining natural lands more vulnerable to pollution and invasion by exotic plants and animals (Soulé and Terborgh 1999, in Bunn *et al.* 2007, p. 208).

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

As noted in the petition, *Speyeria* are known to be sensitive to development, and development is considered to be a threat to the habitat of the four listed *Speyeria* butterflies. The primary threat to the Callippe (62 FR 64306), Behren's (62 FR 64306), Myrtle's (June 22, 1992, 57 FR 27848), and Oregon silverspot (July 2, 1980, 45 FR 44935) butterflies is the loss and degradation of habitat from human activities.

The petition asserts that urban and rural development is occurring within the range of the unsilvered fritillary and is negatively affecting it (WildEarth Guardians 2010, p. 8). We agree that the unsilvered fritillary is likely sensitive to development that removes or degrades its habitat; however, the petition only makes general assertions that development associated with population increases in the central coast is affecting the habitat of the unsilvered fritillary. The petition does not provide any information on the location of populations of the unsilvered fritillary or either of the two extant subspecies, except for the one occurrence of a protected population in Big Basin Redwoods State Park (WildEarth Guardians 2010, p. 11). The petition also does not provide any information regarding the amount of occupied habitat lost or degraded, nor does the petition identify areas within the unsilvered fritillary's range that are currently being developed or have plans for future development. As noted above in the Species Information section, only two records of the unsilvered fritillary are in the CNDDB, one of which is in Big Basin Redwoods State Park, where development, agriculture, and off-road vehicles are not permitted. The petition references NatureServe in indicating that "few to several" occupied locations are protected, but it does not include any further information, nor does the petition include any land ownership information, beyond the fact that one of the locations is in Big Basin Redwoods State Park (WildEarth Guardians 2010, p. 11). We have no information in our files regarding specific locations of unsilvered fritillary butterfly populations, suitable habitat, or potential development impacts to the habitat for the species or subspecies. However, based on maps in our files, there are six State parks (Butano, Portola, Castle Rock, Henry Cowell Redwoods, Forest of Nisene Marks, and Wilder Ranch State Park), the extensive San Francisco State Fish and Game Refuge, and several County parks (*e.g.,* San Pedro, Mt. Madonna, Uvas Canyon County Park) in the range of the species (Santa Cruz Mountains) that are not mentioned in the petition. Also, almost half of the range of the *clemencei* subspecies as identified in the petition (WildEarth Guardians 2010, p. 5) is public land, including the Los Padres National Forest, Ventana Wilderness Area, Hastings Natural History Reservation, and several State parks (*e.g.,* Pfeiffer Big Sur, Julia Pfeiffer Burns). Although we do not have any information as to the presence of populations or suitable habitat in these areas, they are all within the range of the fritillary and are protected from many types of impacts including development, agriculture, and, at least in the case of the Ventana Wilderness Area and State parks, off-road vehicles (Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*); *http://www.parks.ca.gov/*). Therefore, we have determined that the information provided in the petition and in our files concerning the effect of development on the unsilvered fritillary or either of its two subspecies does not present substantial information indicating that the petitioned action may be warranted.

Fire: Information in the Petition

The petition asserts that the unsilvered fritillary is a poor survivor of fires, but that the species also depends on fire to protect its habitat from brush and tree encroachment as well as to burn off dead thatch that can crowd out violets (WildEarth Guardians 2010, p. 8, citing Hammond and McCorkle 1983, p. 222; NatureServe 2009, not paginated). Wildfire suppression may also facilitate the spread of exotic vegetation (WildEarth Guardians 2010, p. 9, citing Bruyea 2003, not paginated). The petition states that the Service should consider how an altered fire regime may be a threat to this species' habitat, particularly given that the *clemencei* subspecies occurs in the fire-prone Santa Lucia range (WildEarth Guardians 2010, p. 8, citing NatureServe 2009, not paginated).

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

Periodic fires can be an important factor in maintaining the grassland and coastal prairie habitat of the Callippe and Behren's silverspot butterflies, because, without fire, succession will eliminate the food plants of the larvae of the two butterflies (Orsak 1980 and Hammond and McCorkle 1984 in 62 FR 64306, p. 64315). Hammond and McCorkle (1983, p. 222) pointed out that without fire to maintain the grasslands against brush and tree invasion along the Oregon and Washington coasts, most of the coastal grasslands gradually disappeared to salal and salmonberry brushland or Sitka spruce forest, and even without brush and tree invasion, the native grasslands experience a second ecological problem in the absence of fire. The dead grass from the previous year's growth does not decay quickly in the coastal environment and gradually accumulates to form a thick layer of thatch that smothers and crowds out the violets and other wildflowers that are important food sources for butterflies (Hammond and McCorkle 1983, p. 222). The reduction of historic disturbance regimes has probably accelerated expansion of several nonnative species which threaten Oregon silverspot populations, in addition to encouraging native shrub and tree growth. The spread of nonnative plants has reduced, degraded, or eliminated habitat for the Oregon silverspot at many sites (Service 2001, p. 16). The overgrowth of invasive plants remains one of the most serious present-day threats to the Myrtle's silverspot butterfly. It has been recognized as a threat to other listed butterflies as well (57 FR 27848; Service 1998; Adams 2004; Ehrlich and Hanski 2004; Severns 2007, in Service 2009, p. 15).

While the overgrowth and succession of the four *Speyeria* butterfly habitats may be ameliorated by periodic disturbance from fires that clear areas for *Speyeria* food plants, the effects on *Speyeria* larvae may be more severe. Although the larvae of these butterflies may survive fires that move rapidly through grassland habitats, hotter and slow-moving brush and woodland fires may kill them (Orsak 1980 and Hammond and McCorkle 1984 in 62 FR 64306, p. 64315). Under windy conditions, fast-moving grassland fires burn in patches that leave islands of unburned habitat where any butterflies present are not harmed.

The petition asserts that the unsilvered fritillary can be negatively or positively affected by both presence of fire and absence of fire (WildEarth Guardians 2010, p. 8). However, the petition does not provide any information on past or more-recent fire activity within the range of the unsilvered fritillary and does not provide any information on the location of populations of the unsilvered fritillary, including either of its two subspecies that may or could potentially be affected by fire. Similarly, the petition does not provide any information on past, present, or planned fire suppression activities within the range of the species. Moreover, the petition (WildEarth Guardians 2010, p. 8) and NatureServe (2009) state that the Santa Lucia Mountains are fire prone, but do not provide information regarding the past or more-recent fire history in the Santa Lucia Mountains that would indicate this area is more fire-prone or whether the *clemencei* subspecies' habitat is more prone to wildfire than other areas of California. We have no information for either the specific locations of the unsilvered fritillary populations that may be

affected by fire, or the areas within the range of the species that have altered fire regimes or have high fire danger. Therefore, we have determined that the information provided concerning wildfire and fire suppression for the unsilvered fritillary or either of its extant subspecies does not present substantial information indicating that the petitioned action may be warranted.

Agriculture and Grazing: Information Provided in the Petition

The petition lists agriculture and livestock grazing as threats to the unsilvered fritillary and asserts that livestock eat and trample violet food plants and can cause proliferation of noxious weeds that displace violets (WildEarth Guardians 2010, p. 9). The petition asserts that approximately 11 percent of the central coast region of California is used for agriculture and livestock grazing, which can lead to habitat fragmentation, erosion, sedimentation, and degradation from herbicides and insecticides (WildEarth Guardians 2010, p. 9). The petition states that intensive agriculture is increasing in the region; vineyard acreage increased approximately 36 percent between 1998 and 2001 (WildEarth Guardians 2010, p. 9, citing Bunn *et al.* 2007, p. 211). The petition (WildEarth Guardians 2010, p. 8) notes that overgrazing is suspected to have played a role in the extinction of the *atossa* subspecies (NatureServe 2009, not paginated).

The petition also states that *Speyeria* butterflies are known to be susceptible to insecticides (WildEarth Guardians 2010, p. 16, citing NatureServe 2009, not paginated), and given the increase in agriculture within the unsilvered fritillary's range, insecticide use is likely to be an escalating threat to this species (WildEarth Guardians 2010, p. 16).

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

The effect of grazing can be either beneficial or deleterious to native plants, depending on the grazing regime and the ecology of the plant species (DeVries and Raemakers 2001; Vogel *et al.* 2007, in Service 2009, p. 14). For the Callippe, Behren's, Myrtle's, and Oregon silverspots, livestock grazing was determined to be a threat if it occurred at levels such that the vegetation was overgrazed and the food plants and nectar sources of these butterflies were eliminated or reduced in abundance. However, light-to-moderate grazing can result in reduction of invasive woody plants and maintain early successional grassland habitats that are beneficial for butterfly host plants (Service 2001, p. 16; Service 2009, p. 14). In fact, the Myrtle's silverspot has coexisted with cattle grazing for over 100 years at Point Reyes National Seashore. Adams (2004, in Service 2009, p. 14) found that the moderate grazing regime at Point Reyes National Seashore did not negatively affect the density or diversity of nectar plants, and butterflies were found more frequently in the areas that were grazed. Inadvertent trampling of the Myrtle's silverspot host plants by grazing cattle may also be considered a relatively minor threat (Service 2009, p. 14). Other studies have shown that optimal grazing increases the density of native plants, which may support butterfly populations (Heitschmidt and Stuth 1991 in Service 2009, p. 14).

The petition asserts that because 11 percent of the central coast region is used for agriculture and grazing, and because intensive agriculture (*e.g.,* vineyards) is increasing in the region, the unsilvered fritillary is and will become even more negatively affected by these land uses (WildEarth Guardians 2010, p. 9). While conversion of suitable habitat containing *Viola* spp. host plants to intensive agriculture would most likely eliminate the unsilvered fritillary's habitat, the petition does not provide any information, nor do we have any information in our files, regarding the extent or intensity of existing agriculture and grazing land use or any planned land-use conversion to vineyards or other types of agriculture or grazing that would occur within the unsilvered fritillary's range. Also, although vineyard acreage has increased along the central coast, as pointed out in the petition (WildEarth Guardians 2010, p. 9), much of the increase has been south of the area where the unsilvered fritillary is currently believed to occur, in the Santa Cruz Mountains and the Santa Lucia Mountains. Vineyard acreage has increased in the area around Paso Robles in San Luis Obispo County and Santa Barbara County (Bunn *et al.* 2007, p. 211). The petition does not provide any information, nor do we have any information in our files, on the location of populations of the unsilvered fritillary that may be or could potentially be affected by agriculture or grazing, and, thus, we do not have information indicating that agriculture and grazing practices are negatively affecting, or are likely to negatively affect, the unsilvered fritillary. We have determined that the information presented in the petition and available in our files concerning potential habitat modification threats of agriculture and grazing to the habitat for the unsilvered fritillary or either of its extant subspecies does not present substantial information indicating that the petitioned action may be warranted.

Silverspot butterfly larvae are extremely sensitive to insecticides, and even the accumulation of runoff in the soil after spraying has proven lethal to the larvae of members of the genus *Speyeria* (Mattoon *et al.* 1971, in 62 FR 64306, p. 64314). In listing the Callippe and Behren's silverspot butterflies, the Service stated that the use of insecticides could threaten these butterflies if use occurred in proximity to occupied habitat (62 FR 64306, p. 64314). This petition, however, does not provide information regarding the use of insecticides within the unsilvered fritillary's range and simply asserts that insecticide use would increase as agriculture within the region increases. The petition also does not provide any information on the location of populations of the unsilvered fritillary that may or could potentially be affected by insecticides. The Service is not aware of plans to apply insecticides in or near the habitat occupied by the unsilvered fritillary, nor do we have any information in our files regarding areas of insecticide application relative to unsilvered fritillary habitat. Therefore, we have determined that the information presented in the petition and in our files concerning the potential threat of insecticides to the unsilvered fritillary or either of its extant subspecies does not present substantial information indicating that the petitioned action may be warranted.

Exotic (Nonnative) Vegetation: Information in the Petition

The petition states that exotic vegetation may have played a role in the extinction of the *atossa* subspecies and asserts that exotic vegetation could likewise threaten the extant subspecies of the unsilvered fritillary and the species as a whole (WildEarth Guardians 2010, p. 9). Citing Bruyea (2003, not paginated), the petition points to wildfire suppression as having facilitated the spread of exotic vegetation, which outcompeted native annuals, such as violets, and, in combination with other human disturbances, led to the extinction of the *atossa* subspecies (WildEarth Guardians 2010, p. 9).

The petition points out that in the listing rule for the Behren's and Callippe silverspot butterflies (62 FR 64306, pp. 64314–64315), the Service noted, "The invasion of California's native grassland and coastal prairie by

alien plants has adversely affected native flora and fauna. In the absence of control and eradication programs, invasive alien plants may eliminate the remaining native plants, including the host plants of Behren's and Callippe silverspot butterflies. Adequate levels of *Viola* spp. host plants are especially critical for the long-term survival of populations of these butterflies (S. Mattoon, *in litt.,* August 4, 1989, and November 22, 1992)." The petition states that this analysis likewise applies to the unsilvered fritillary (WildEarth Guardians 2010, p. 9).

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

We recognize that nonnative vegetation can reduce and degrade habitat for *Speyeria* butterflies (*e.g.,* Service 2001, p. 16; Service 2009, p. 15), and that nonnative vegetation has been recognized as an indirect threat to other listed butterflies as well (57 FR 27848; Service 1998; Adams 2004; Ehrlich and Hanski 2004; Severns 2007 in Service 2009, p. 15). In the absence of control and eradication programs, invasive alien plants may eliminate the remaining native plants, including the host plants of Behren's and Callippe silverspot butterflies. The petition generalized that because other *Speyeria* butterflies are negatively impacted by nonnative vegetation, the unsilvered fritillary is as well (WildEarth Guardians 2010, p. 9). However, the petition does not include any information on where nonnative vegetation is degrading the unsilvered fritillary's habitat or the location of populations of the unsilvered fritillary that may be or could potentially be affected by nonnative plants. In addition, we have no information in our files regarding negative impacts to the unsilvered fritillary due to nonnative vegetation. Therefore, we have determined that the information presented in the petition and in our files concerning the potential threat of nonnative plants to the habitat of the unsilvered fritillary or either of its extant subspecies does not present substantial information indicating that the petitioned action may be warranted.

Drought: Information Provided in the Petition

The petition states that drought is considered a threat to the unsilvered fritillary (WildEarth Guardians 2010, p. 14, citing NatureServe 2009, not paginated). Drought has been hypothesized, but not definitively proven, to be a factor in the extinction of the *atossa* subspecies, as well as being a threat to the *clemencei* subspecies (WildEarth Guardians 2010, p. 14, citing Davenport 2004, p. 16; NatureServe 2009, not paginated). The petition also asserts that climate change will result in more frequent and longer droughts (WildEarth Guardians 2010, p. 14).

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

The petition does not provide any information, nor do we have information in our files, to indicate that drought has or will negatively affect the habitat or the number and distribution of populations or the population sizes of the unsilvered fritillary. The petition cites sources that state generally that drought has been a severe problem in recent years (WildEarth Guardians 2010, p. 14, citing Davenport 2004, p. 16), but does not provide information specifically related to the effects of drought on the unsilvered fritillary. The cause of the extinction of the *atossa* subspecies is unclear, but it has been attributed to many different factors, including drought (Howe 1975, in Bruyea 2003, not paginated; Orzak 1974, in Hammond and McCorkle 1983, p. 220), overgrazing (Orzak 1974, in Hammond and McCorkle 1983, p. 220), disease (University of California Berkeley 2009, p. 1), invasion of nonnative species (Howe 1975, in Bruyea 2003, not paginated), and wildfire suppression (John Emmel, pers. comm., in Bruyea 2003, not paginated). Periodic droughts have been, and likely will continue to be, a normal part of the climate of California, and wildlife, including the unsilvered fritillary, have adapted to periodic droughts. Therefore, we have determined that the information presented in the petition and in our files concerning the potential threat of drought to the unsilvered fritillary or either of its extant subspecies does not present substantial information indicating that the petitioned action may be warranted.

Climate Change: Information Provided in the Petition

The petition asserts that climate change is having, and will continue to have, a multitude of effects on the unsilvered fritillary and its habitat, including more severe, longer, and more frequent droughts; increased catastrophic wildfire and alteration of natural fire regimes due to hotter conditions; and potential shifts in ranges of this species or the violet species on which it depends (WildEarth Guardians 2010, p. 12). The petition notes that recent warming in the southwestern United States is among the most rapid in the nation, significantly more rapid than the global average (WildEarth Guardians 2010, p. 12, citing Karl *et al.* 2009, pp. 129–132). Increasing temperature, drought, wildfire, and invasive species will accelerate transformation of the landscape; two-thirds of the more than 5,500 native plant species in California are projected to experience range reductions of up to 80 percent before the end of this century under projected warming (WildEarth Guardians 2010, p. 13, citing Karl *et al.* 2009, p. 132). The petition claims that such a shift in native ecosystems could adversely affect the unsilvered fritillary, given its narrow distribution (WildEarth Guardians 2010, p. 13).

The petition cites a recent United States Forest Service report regarding the intersection of climate and fire regimes (WildEarth Guardians 2010, p. 14, citing Westerling *et al.* 2006, in Keeley *et al.* 2009, p. 20). The report states that recent studies show correlations among warming temperatures, earlier springs, and increased numbers of large forest fires in some parts of the western United States. Anticipated warming trends as a consequence of greenhouse gas accumulation may lead to further increases in the numbers of large fires and total area burned in some regions (Brown *et al.* 2004; Flannigan *et al.* 2005; McKenzie *et al.* 2004, in Keeley *et al.* 2009, p. 20). Allen and Breshears (1998, in Keeley *et al.* 2009, p. 20) also predict that global climate change will produce large changes in vegetation distributions at unprecedented rates, particularly in semiarid, fire-prone ecosystems. These anticipated changes in fuel distribution could reduce fire activity in some regions and lead to unanticipated impacts on future fire regimes (Keeley *et al.* 2009, p. 20).

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

We recognize that global mean temperatures have increased over the last several decades and will almost certainly continue to increase in the future as a result of greenhouse gases. Although increasing temperature may have an effect on the unsilvered fritillary, the information presented in the petition or available in our files does not support a meaningful prediction as to whether the overall impact will be negative or positive, or some combination of negative and positive impacts. Increasing temperature could result in more severe and frequent drought, especially in the Southwest (Karl *et al.* 2009, p. 42). However, we are

not aware of any formal studies on the direct effect of rising global temperature on drought severity or frequency (Karl *et al.* 2009, p. 5). Also, drought severity and frequency are a function of a complex series of factors, such as El Niño intensity and duration and geographic variations in sea surface temperature, which may also be affected in some manner by increasing temperatures, thereby compounding the uncertainty associated with precipitation projections (Karl *et al.* 2009, p. 105). Uncertainty also arises when extrapolating from a larger scale (*e.g.,* North America or the Southwest) to the limited range of the unsilvered fritillary. A projected increase in mean temperatures in the Southwest does not necessarily equate to a similar degree of increase in local areas, such as the central coast of California, and both the degree and direction of changes in climate and weather will vary at the local level. More importantly, the response of plants and animals to climate change is uncertain and will likely vary locally and regionally. For example, citing Karl *et al.* (2009, p. 132), the petition states that the ranges of many California plants are projected to decline up to 80 percent due to climate change. However, this projection is only one of many projections. The 80-percent projection is a worst-case scenario in which the most severe degree of climate change was assumed, and in which plants were assumed to have no ability to shift their range in response to climate change. Other scenarios, where plants were assumed to be able to shift range, revealed that plant ranges in some areas were projected to increase, such as in the Central Western region which includes the range of the unsilvered fritillary (Loarie *et al.* 2008, Figure 4, p. 6). In addition, although the range of some types of vegetation may decline, grasslands are expected to increase (Karl p. 131), which may be beneficial for the unsilvered fritillary. Finally, we cannot meaningfully predict the impact on the unsilvered fritillary if drought severity and frequency were to increase in the central coast. For example, wildfires are likely to increase with worsening droughts (Karl *et al.* 2009, p. 43), but as pointed out in the petition, wildfires may have a positive as well as a negative effect on the unsilvered fritillary and its habitat. Therefore, we have determined that the information presented in the petition and in our files concerning the potential threat of climate change to the unsilvered fritillary or either of its extant subspecies does not present substantial information indicating that the petitioned action may be warranted.

Summary of Factor A

The petition lists development, agriculture, livestock grazing, insecticides, invasive plants, drought, and climate change as threats to the unsilvered fritillary. However, the petition provided only this general list of potential threats to the unsilvered fritillary, but did not provide information that these potential threats are acting on the habitat of the unsilvered fritillary. We recognize that other listed *Speyeria* butterflies have been reduced, some substantially, due to human-caused disturbances, but the petition does not cite any site-specific proposed development projects or land-use conversion projects that would occur within unsilvered fritillary habitat. In addition, the petition does not provide specific information on the location(s) of unsilvered fritillary populations. Therefore, it is not possible to determine if a development project would actually affect the unsilvered fritillary, given that we do not have recent data detailing where this species occurs. The best information that we have regarding the location of known populations is the two records in the CNDDB, one of which is in a State park and is protected by California State law (NatureServe 2009, not paginated). Also, a large portion of the *clemencei* subspecies' range is public land and therefore protected from many sources of habitat destruction and alteration. The petition also does not provide any information that any other threats to the unsilvered fritillary's habitat—including agriculture, livestock grazing, insecticides, or invasive plants—are occurring within the current range of the species and its two remaining subspecies, or are threatening the habitat of the species. There is ample evidence that global mean temperatures will likely increase in the future due to greenhouse gases; however, the petition does not present any information, nor do we have any information in our files, that indicates that the local climate and weather of the central coast is likely to change, the projected degree and nature of any change, or that drought is likely to increase in severity or frequency. Consequently, we find that the information provided in the petition and in our files does not present substantial scientific or commercial information indicating that listing the unsilvered fritillary or either of its extant subspecies may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range.

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

Information Provided in the Petition

The petition states that collection is not known to constitute a threat to the unsilvered fritillary; however, the rarity of the species makes it more attractive to collectors (WildEarth Guardians 2010, p. 9). The petition also states that butterfly populations that are small and easily accessible are especially vulnerable to overcollection (WildEarth Guardians 2010, p. 9).

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

The petition does not provide any information, nor do we have any information in our files, that would indicate that the unsilvered fritillary is a target of collectors or that it is threatened by collection. Although an extensive commercial trade has been documented for the Callippe silverspot and the Behren's silverspot butterflies, as well as for other imperiled and rare butterflies (U.S. Attorney's Office 1994, *United States* v. *Richard J. Skalski, Thomas W. Kral, and Marc L. Grinnell, Case No. CR932013, 1993,* in 62 FR 64306, p. 64313), insects are rarely affected by human overcollecting pressures, due to their high reproductive capabilities (Pyle, Bentzien, and Opler 1981, in Hammond and McCorkle 1983, p. 218).

In summary, we find that the information provided in the petition and available in our files does not present substantial scientific or commercial information indicating that listing the unsilvered fritillary or either of its extant subspecies may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Information Provided in the Petition

The petition states that adult and larval butterflies are subject to predation by a wide variety of vertebrate and invertebrate wildlife (*e.g.,* birds, reptiles, amphibians, and other insects) and that the small size of unsilvered fritillary populations increases their vulnerability to extirpation from disease or predation (WildEarth Guardians 2010, p. 10). The petition also states that scientists have suggested that disease could explain the extinction of the *atossa* subspecies; however, drought and overgrazing have also been mentioned as reasons for this subspecies' extinction (WildEarth

Guardians 2010, p. 9, citing Orzak 1974, in Hammond and McCorkle 1983, p. 220).

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

The petition does not provide any information that would indicate that disease or predation are threats to the unsilvered fritillary, nor do we have any information in our files that would indicate that disease or predation are threats to the species. Disease has been suggested as a potential cause of the extinction of the *atossa* subspecies (University of California Berkeley 2009, p. 1). However, the petition did not present any information that would substantiate that claim, and the extinction of the *atossa* subspecies has also been attributed to several other causes. The petition also did not provide any information on the types of diseases known to occur in the unsilvered fritillary or other *Speyeria* butterflies or any species of butterfly or their vulnerability to disease. Therefore, we find that the information provided in the petition and available in our files does not present substantial scientific or commercial information indicating that listing the unsilvered fritillary or either of its extant subspecies may be warranted due to disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition asserts that the unsilvered fritillary is not adequately protected by Federal or State laws or policies to prevent its endangerment or extinction (WildEarth Guardians 2010, p. 10). The unsilvered fritillary is not listed under the Act, nor are any of its subspecies. The species is also not listed under the California Endangered Species Act (CESA), because the CESA does not provide for the listing and protection of insects. The petition further states that while the various rankings of the unsilvered fritillary and its subspecies by NatureServe (*e.g.,* G1G2), CNDDB, and the California Wildlife Action Plan (*see* Species Information section) indicate biological imperilment, they do not provide any regulatory or policy mechanisms to protect the unsilvered fritillary (WildEarth Guardians 2010, p. 10). The petition provides no further information on any other State, Federal, or local regulations.

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

As discussed in the petition and in the Species Information section above, several sources express concern over the status of the unsilvered fritillary, and the species is included in the State's CNDDB list of at-risk species (WildEarth Guardians 2010, p. 11). However, contrary to the petition, we believe that the at-risk classification extends some level of consideration under the California Environmental Quality Act when project impacts are reviewed. Also, one of the two occurrences in the CNDDB is within Big Basin Redwoods State Park, and its habitat within the park is afforded a high degree of protection by State law and regulations. Additionally, information in our files indicates that a substantial portion of the putative range of the unsilvered fritillary, as identified in the petition (WildEarth Guardians 2010, p. 5), is public land (Ventana Wilderness, Los Padres National Forest, and State and County parks), where, if present, the species would be protected from many types of impacts (*e.g.,* development, agriculture, and, at least in the case of Ventana Wilderness and State parks, off-road vehicles) by Federal, State, and local laws and regulations. Therefore, we find that the information provided in the petition and available in our files does not present substantial scientific or commercial information indicating that listing the unsilvered fritillary or either of its extant subspecies may be warranted due to the inadequacy of existing regulatory mechanisms. There are no significant threats to the species as discussed in factors A, B, C, and E.

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

Biological Vulnerability: Information Provided in the Petition

The petition states that because the unsilvered fritillary's range was historically limited, has been further reduced by anthropogenic causes, and is vulnerable to weather events such as drought and catastrophic fires, the Service should consider this butterfly's narrow range itself as a threat to the taxon (WildEarth Guardians 2010, pp. 15–16). For example, loss of habitat and populations of another *Speyeria* species, the Regal fritillary (*Speyeria idalia*), have disrupted the gene flow between populations, and the species is consequently more prone to extinction due to genetic and demographic factors (WildEarth Guardians 2010, p. 16, citing Williams *et al.* 2003, p. 17). The petition further states that the Service has routinely recognized that small population size and restricted range increase the likelihood of extinction (WildEarth Guardians 2010, p. 15). The petition also lists human population growth (*see* factor A for a discussion of population growth and development), insecticide use (*see* factor A for a discussion of insecticide use), and nonnative thistle seed weevils (scientific name not provided in petition) as threats to the unsilvered fritillary. Finally, the petition asserts that the cumulative effects of grazing, development, agriculture, off-road vehicles, and climate change threaten the species.

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

We recognize the risks that stochastic (random chance) events may present to small populations, and we agree that the limited range of the unsilvered fritillary may exacerbate its vulnerability to these events. However, the mere fact that a rare species is potentially vulnerable to stochastic processes does not necessarily mean that it is reasonably likely to experience, or have its status affected by, a given stochastic process. There must be some information to indicate that the unsilvered fritillary and its habitat are at least susceptible to a threat or stochastic event, such as a severe, widespread disease among its host plants, and that the species would be negatively affected by the event. Typically, it is the combination of small size, the number of populations, and isolation of small populations, in conjunction with a threat or stochastic event (*e.g.,* catastrophic fire), that may pose a threat to a species. The petition, however, includes only very limited information on the number of populations and does not provide information on the distribution and size of populations or the presence or absence of connectivity between populations. Also, the mere fact that a species is rare does not necessarily equate to a threat. A species that has always been rare, yet continues to survive, could be well equipped to continue to exist into the future. Many naturally rare species have persisted for long periods within small geographic areas, and many naturally rare species exhibit traits that allow them to persist despite their small population sizes.

The petition states that "nonnative thistle seed weevils may also pose a threat to the unsilvered fritillary" (WildEarth Guardians 2010, p. 16, NatureServe 2009, not paginated). However, neither the petition nor

NatureServe provides any other information on thistle seed weevils or the impact they may have on the unsilvered fritillary. We assume that weevils can destroy thistles, which are one of the plants on which the unsilvered fritillary has been observed feeding (NatureServe 2009, not paginated). However, beyond that, we have no information in our files, and the petition did not provide any information that thistle seed weevils occur within the range of the unsilvered fritillary, or that they are destroying substantial numbers of thistles.

The information in the petition and in our files on the potential impacts of grazing, development, agriculture, off-road vehicles, and climate change are discussed in factor A. These potential impacts in combination could have a greater effect on the unsilvered fritillary than they would have individually. However, as summarized in factor A, the petition provided only this general list of potential threats to the unsilvered fritillary, but did not provide information that these potential threats are acting on the habitat of the unsilvered fritillary. The petition also did not provide any information that multiple potential threats are acting together on the habitat of the unsilvered fritillary.

In summary, we find that the information provided in the petition and available in our files does not present substantial scientific or commercial information indicating that listing the unsilvered fritillary or either of its extant subspecies may be warranted due to other natural or manmade factors affecting the species' continued existence.

Finding

In summary, the petition does not present substantial scientific or commercial information, because it does not provide any information on the location and magnitude of threats within the range of the species or specific threats to any occurrence or population of the species or either of its extant subspecies. The petition provides only very limited information on the number of populations within this area and no information on the distribution and size of populations, and we do not have this information in our files. The unsilvered fritillary is a rare butterfly occurring in the Santa Cruz Mountains of San Mateo, Santa Cruz, and Santa Clara Counties, and in the Santa Lucia Mountains of Monterey and San Luis Obispo Counties, California, which is an area encompassing thousands of square miles. The petition cites threats to other listed *Speyeria* butterflies and requests we consider those relative to the unsilvered fritillary. While four other *Speyeria* species are listed as either threatened or endangered, the fact that these species are listed under the Act does not in and of itself mean that the unsilvered fritillary or either of its extant subspecies is threatened or endangered.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information must contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act. We found no information to suggest that threats are acting on the unsilvered fritillary such that the species may become extinct now or in the foreseeable future.

On the basis of our determination under section 4(b)(3)(A) of the Act, we conclude that the petition does not present substantial scientific or commercial information to indicate that listing the unsilvered fritillary or either of its extant subspecies under the Act as threatened or endangered may be warranted at this time. Although we will not review the status of the species at this time, we encourage interested parties to continue to gather data that will assist with the conservation of the unsilvered fritillary or either of its extant subspecies. If you wish to provide information regarding the unsilvered fritillary or either of its extant subspecies, you may submit your information or materials to the Field Supervisor, Ventura Fish and Wildlife Office (*see* **ADDRESSES**), at any time.

References Cited

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

Author

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

Authority

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

Dated: February 7, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–4037 Filed 2–23–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 76, No. 37

Thursday, February 24, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee will meet by video-teleconference. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review project proposals and make project funding recommendations.

DATES: The meeting will be held on Saturday, March 12, 2011 from 8 a.m. to Noon.

ADDRESSES: Committee members will meet at the Wrangell Ranger District office at 525 Bennett Street in Wrangell, Alaska and at the Tongass National Forest Supervisor's Office at 123 Scow Bay Loop Road in Petersburg, Alaska. Written comments should be sent to Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929. Comments may also be sent via e-mail to *csavage@fs.fed.us,* or via facsimile to 907–772–5995.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District office at 12 North Nordic Drive or the Wrangell Ranger District office at 525 Bennett Street during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

FOR FURTHER INFORMATION CONTACT: Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, phone (907) 772–3871, e-mail *csavage@fs.fed.us,* or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *rdalrymple@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: evaluation of project proposals and recommendation of projects for funding. 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. A one-hour public input session will be provided beginning at 9 a.m. on March 12. Persons who wish to make public comment in person may do so at either the Wrangell or Petersburg locations.

Dated: February 15, 2011.

Christopher S. Savage,

District Ranger.

[FR Doc. 2011–4118 Filed 2–23–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

GMUG Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The GMUG RAC will meet in Delta, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to gather the appointed committee members together to review and recommend proposals for Title II Project funding within Garfield, Mesa, Delta, Gunnison and Montrose Counties, Colorado.

DATES: The meeting will be held Tuesday, April 12, 2011, at 1 p.m.

ADDRESSES: The meeting will be held at the Forest Supervisor's Office at 2250 Highway 50, Delta, Colorado in the South Spruce Conference Room. Written comments should be sent to *Attn:* GMUG RAC, 2250 Highway 50, Delta, CO 81416. Comments may also be sent via e-mail to *lloupe@fs.fed.us* or via facsimile to *Attn:* Lee Ann Loupe, RAC Coordinator at 970.874.6698.

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 *http://www.fs.fed.us/r2/gmug/* under "GMUG RAC Information." Visitors are encouraged to call ahead to Lee Ann Loupe, RAC Coordinator at 970.874.6717 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lee Ann Loupe, GMUG RAC Coordinator, 970.8874.6717 or *e-mail: lloupe@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: The appointed Committee members will manage any outstanding Committee business and receive updates on previously recommended projects; review and discuss the projects that were submitted to the Committee by February 28; and make recommendations for funding/approval of those projects to utilize Title II funds within Garfield, Mesa, Delta, Gunnison and Montrose Counties, Colorado.

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 April 5, 2010 will have the opportunity to address the Committee at those sessions.

Dated: February 7, 2011.

Sherry Hazelhurst,

Deputy Forest Supervisor/GMUG RAC DFO.

[FR Doc. 2011–4062 Filed 2–23–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Solicitation of Applications and Grant Application Deadlines

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications.

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces its Distance Learning and Telemedicine (DLT) grant program application window for Fiscal Year (FY) 2011 subject to the availability of funding. This notice is being issued prior to passage of a final appropriations act to allow potential applicants time to submit proposals and give the Agency time to process applications within the current fiscal year. RUS will publish a subsequent notice identifying the amount received in the final appropriations act, if any. Expenses incurred in developing applications will be at the applicant's risk. For FY 2010, Congress appropriated approximately $30 million. In addition to announcing the application window, RUS announces the minimum and maximum amounts for DLT grants applicable for the fiscal year and a change in scoring necessitated by changes in the Empowerment Zone (EZ), Enterprise Community (EC) and Champion Community (CC) designations. Finally, the Agency notes that the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) expressly added the category of libraries under Sec. 2333 (c)(1) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. Sec. 950aaa–2(a)(1)) in order to clearly establish that libraries are eligible to be recipients of DLT Loans and Grants. This confirms the longstanding Agency policy of considering libraries to be eligible entities under the DLT Program. The regulation for the DLT Grant Program can be found at 7 CFR part 1703, subpart E.

DATES: You may submit completed applications for grants on paper or electronically in accordance with the following deadlines:

- *Paper submissions:* Paper copies must be postmarked and mailed, shipped, or sent overnight *no later* than April 25, 2011 to be eligible for FY 2011 grant funding. Late or incomplete applications will not be eligible for FY 2011 grant funding.
- *Electronic submissions:* Electronic copies must be received by April 25, 2011 to be eligible for FY 2011 grant funding. Late or incomplete applications will not be eligible for FY 2011 grant funding.

ADDRESSES: Copies of the FY 2011 Application Guides and materials for the DLT grant program may be obtained at the following sources:

(1) The DLT Web site: *http://www.rurdev.usda.gov/UTP_DLTResources.html* and

(2) You may also request application guides and materials from RUS by contacting the DLT Program at 202–720–0413.

Completed applications may be submitted in the following ways:

(1) *Paper:* Paper applications are to be submitted to the Rural Utilities Service, Telecommunications Program, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Acting Director, Advanced Services Division."

(2) *Electronic:* Electronic applications may be submitted through Grants.gov. Information on how to submit applications electronically is available on the Grants.gov Web site (*http://www.grants.gov*). Applicants must successfully pre-register with Grants.gov to use the electronic applications option. Application information may be downloaded from Grants.gov without preregistration.

FOR FURTHER INFORMATION CONTACT: Acting Director, Advanced Services Division, Telecommunications Programs, Rural Utilities Service. Telephone: 202–720–0413, fax: 202–720–1051.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Distance Learning and Telemedicine Grants.

Announcement Type: Notice of Funds Availability.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.855.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight no later than April 25, 2011 to be eligible for FY 2011 grant funding. Late or incomplete applications are not eligible for FY 2011 grant funding.

Electronic copies must be received by April 25, 2011 to be eligible for FY 2011 grant funding. Late or incomplete applications are not eligible for FY 2011 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the DLT program.
II. Minimum and Maximum Application Amounts: Projected Available Funding.
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.
IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.
V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.
VI. Award Administration Information: Award notice information, award recipient reporting requirements.
VII. Agency Contacts: Web, phone, fax, e-mail, contact name.

I. Funding Opportunity

Distance learning and telemedicine grants are specifically designed to provide access to education, training and health care resources for people in rural America.

The Distance Learning and Telemedicine (DLT) Program provides financial assistance to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies to be used by students, teachers, medical professionals, and rural residents.

The grants, which are awarded through a competitive process, may be used to fund telecommunications-enabled information, audio and video equipment and related advanced technologies which extend educational and medical applications into rural locations. Grants are made for projects where the benefit is primarily delivered to end users that are not at the same location as the source of the education or health care service.

As in years past, the FY 2011 DLT Grant Application Guide has been updated based on Program experience. Details of changes from the FY 2010 Application Guide are highlighted throughout this Notice and are described in full in the FY 2011 Application Guide. All applicants must carefully review and *exactly* follow the FY 2011 Application Guide and sample materials when compiling a DLT grant application.

II. Maximum and Minimum Amount of Applications

Under 7 CFR 1703.124, the Administrator has determined the maximum amount of a grant to be made available to an application in FY 2011

is $500,000, and the minimum amount of a grant is $50,000.

The Agency will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants.

DLT grants cannot be renewed. Award documents specify the term of each award. The Agency will make awards and execute documents appropriate to the project prior to any advance of funds to successful applicants. Applications from existing DLT awardees are acceptable (grant applications must be submitted during the application window) and will be evaluated as new applications.

III. Eligibility Information

A. Who is eligible for a grant ? (See 7 CFR 1703.103.)

1. Only entities legally organized as one of the following are eligible for DLT financial assistance:

a. An incorporated organization or partnership,

b. An Indian Tribe or Tribal organization, as defined in 25 USC 450b (b) and (c),

c. A State or local unit of government,

d. A consortium, as defined in 7 CFR 1703.102, or

e. Other legal entity, including a private corporation organized on a for-profit or not-for-profit basis.

2. Individuals are not eligible for DLT program financial assistance directly.

3. Electric and telecommunications borrowers under the Rural Electrification Act of 1936 (7 U.S.C. 950aaa *et seq.*) are not eligible for grants.

B. What are the basic eligibility requirements for a project?

1. Required matching contributions for grants: *See* 7 CFR 1703.125(g) and the FY 2011 Application Guide for information on required matching contributions.

a. Grant applicants must demonstrate matching contributions, in cash or in kind (new, non-depreciated items), of at least fifteen (15) percent of the total amount of financial assistance requested. Matching contributions *must* be used for eligible purposes of DLT grant assistance (*see* 7 CFR 1703.121, paragraphs IV.H.1.b of this Notice and the FY 2011 Application Guide).

b. Greater amounts of eligible matching contributions may increase an applicant's score (*see* 7 CFR 1703.126(b)(4), paragraph V.B.2.c of this notice, and the FY 2011 Application Guide).

c. Applications that do not provide evidence of the required fifteen percent match will be declared ineligible and returned. *See* paragraphs IV.H.1.c and V.B.2.c of this Notice, and the FY 2011 Application Guide for specific information on documentation of matching contributions.

d. Applications that do not document all matching contributions in form and substance satisfactory to the Agency as described in the Application Guide are subject to budgetary adjustment by the Agency, which may result in rejection of an application as ineligible due to insufficient match.

2. The DLT grant program is designed to bring the benefits of distance learning and telemedicine to residents of rural America (*see* 7 CFR 1703.103(a)(2)). Therefore, in order to be eligible, applicants must:

a. Operate a rural community facility; or

b. Deliver distance learning or telemedicine services to entities that operate a rural community facility or to residents of rural areas, at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas.

3. Rurality.

a. All projects proposed for DLT grant assistance must meet a minimum rurality threshold, to ensure that benefits from the projects flow to rural residents. The minimum eligibility score is 20 points. Please *see* Section IV of this notice, 7 CFR 1703.126(a)(2), and the FY 2011 Application Guide for an explanation of the rurality scoring and eligibility criterion.

b. Each application must apply the following criteria to each of its end-user sites, and hubs that are also proposed as end-user sites, in order to determine a rurality score. The rurality score is the average of all end-user sites' rurality scores.

Criterion	Character	Population	DLT points
Exceptionally Rural Area	Area not within an Urbanized Area or Urban Cluster.	≤ 5,000	45
Rural Area	Area in an Urban Cluster	> 5,000 and ≤ 10,000	30
Mid-Rural Area	Area in an Urban Cluster	>10,000 and ≤ 20,000	15
Urban Area	Area in an Urbanized Area or Urban Cluster	> 20,000	0

c. The rurality score is one of the competitive scoring criteria applied to grant applications.

4. Projects located in areas covered by the Coastal Barrier Resources Act (16 U.S.C. 3501 *et seq.*) are not eligible for financial assistance from the DLT Program. Please *see* 7 CFR 1703.123(a)(11), 7 CFR 1703.132(a)(5), and 7 CFR 1703.142(b)(3).

C. Where To Find Full Discussion of a Complete Application

See Section IV of this Notice and the FY 2011 Application Guide for a discussion of the items that comprise a complete application. For requirements of completed applications you may also refer to 7 CFR 1703.125 for grant applications. The FY 2011 Application Guide provides specific, detailed instructions for each item that constitutes a complete application. The Agency strongly emphasizes the importance of *including every required item* (as explained in the FY 2011 Application Guide) and strongly encourages applicants to follow the instructions *carefully,* using the examples and illustrations in the FY 2011 Application Guide. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Scoring and eligibility information not provided by the application deadline will not be solicited or considered by the Agency. Applications that do not include all items necessary for scoring will be scored as is. Please *see* the FY 2011 Application Guide for a full discussion of each required item and for samples and illustrations.

IV. Application and Submission Information

A. Where To get Application Information

FY 2011 Application Guides, copies of necessary forms and samples, and the DLT Program regulation are available from these sources:

1. *The Internet: http://www.rurdev.usda.gov/UTP_DLTResources.html.*

2. *The DLT Program for paper copies of these materials:* 202–720–0413.

B. New and Emphasized in FY 2011

1. The USDA designation of Enterprise Community (EC) expired on December 31, 2009. The Champion Community designation ended in FY 2010. The Empowerment Zone designation was extended through December 31, 2011 on December 17, 2010 (*See* Pub. L. 111–312 at Sect. 753). As a consequence, points will be awarded only for sites located in USDA Empowerment Zones. Please refer to the FY 2011 Application Guide for complete details on this change.

2. Applicants are reminded that end user sites are to be rural facilities. *See* 7 CFR 1703.102, Definitions, "End User" and "End User Site." We have experienced an increase in the number of applications which attempt to include urban educational and medical facilities as end user sites. Urban facilities can serve as hub sites, but not end user sites. For projects with non-fixed end user sites, only those end user sites outside urban areas can be funded. The FY 2011 Application Guide again contains clarifying language to elaborate on this provision of the regulation.

3. If a grant application includes a site that is included in any other DLT grant application for FY 2011, or a site that has been included in any DLT grant funded in FY 2010 or FY 2009, the application should contain a detailed explanation of the related applications or grants. The Agency must make a nonduplication finding for each grant approved, and apparent but unexplained duplication of funding for a site can prevent such a finding.

C. What constitutes a completed application?

1. For DLT Grants:

a. Detailed information on each item in the table in paragraph IV.C.1.g. of this Notice can be found in the sections of the DLT Program regulation listed in the table, and the DLT grant Application Guide. Applicants are strongly encouraged to read and apply both the regulation and the Applications Guide, which elaborates and explains the regulation.

(1). When the table refers to a narrative, it means a written statement, description or other written material prepared by the applicant, for which no form exists. The Agency recognizes that each project is unique and requests narratives to allow applicants to explain their request for financial assistance.

(2). When documentation is requested, it means letters, certifications, legal documents or other third-party documentation that provide evidence that the applicant meets the listed requirement. For example, to confirm rurality scores, applicants use printouts from the official Census Web site. Leveraging documentation generally will be letters of commitment from the funding sources. In-kind matches must be items purchased after the application deadline date that are essential to the project and documentation from the donor must demonstrate the relationship of each item to the project's function. Evidence of legal existence is sometimes proven by submitting articles of incorporation. The examples here are not intended to limit the types of documentation that must be submitted to fulfill a requirement. DLT Program regulations and the Application Guide provide specific guidance on each of the items in the table.

b. The DLT Application Guide and ancillary materials provide all necessary sample forms and worksheets.

c. While the table in paragraph IV.C.1.g of this Notice includes all items of a completed application, the Agency may ask for additional or clarifying information for applications which, as submitted by the deadline, appear to clearly demonstrate that they meet eligibility requirements. The Agency will not solicit or accept eligibility or scoring information submitted after the application deadline.

d. Submit the required application items in the order provided in the FY 2011 Application Guide. The FY 2011 Application Guide specifies the format and order of all required items. Applications that are not assembled and tabbed in the order specified prevent timely determination of eligibility. Given the high volume of program interest, incorrectly assembled applications, and applications with inconsistency among submitted copies, will be returned as ineligible.

e. DUNS Number. As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please *see http://www.grants.gov/applicants/request_duns_number.jsp* for more information on how to obtain a DUNS number or how to verify your organization's number.

f. Central Contractor Registration (CCR).

(a) In accordance with 2 CFR part 25, applicants, whether applying electronically or by paper, must be registered in the CCR prior to submitting an application. Applicants may register for the CCR at *https://www.uscontractorregistration.com/* or by calling 1–877–252–2700. Completing the CCR registration process takes up to five business days, and applicants are strongly encouraged to begin the process well in advance of the deadline specified in this notice.

(b) The CCR registration must remain active, with current information, at all times during which an entity has an application under consideration by an agency or has an active Federal Award. To remain registered in the CCR database after the initial registration, the applicant is required to review and update, on an annual basis from the date of initial registration or subsequent updates, its information in the CCR database to ensure it is current, accurate and complete.

g. Compliance with other Federal statutes. The applicant must provide evidence of compliance with other Federal statutes and regulations, including, but not limited to the following:

(i) 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

(ii) 7 CFR part 3015—Uniform Federal Assistance Regulations.

(iii) 7 CFR part 3017—Government-wide Debarment and Suspension (Non-procurement).

(iv) 7 CFR part 3018—New Restrictions on Lobbying.

(v) 7 CFR part 3021—Government-wide Requirements for Drug-Free Workplace.

h. Table of Required Elements of a Completed Grant Application.

Application item	Required items	
	Grants (7 CFR 1703.125 and 7 CFR 1703.126)	Comment
SF–424 (Application for Federal Assistance form)	Yes	*Completely* filled out
Site Worksheet	Yes	Agency worksheet
Survey on Ensuring Equal Opportunity for Applicants	Optional	OMB Form
Evidence of Legal Authority to Contract with the Government.	Yes	Documentation
Evidence of Legal Existence	Yes	Documentation
Executive Summary	Yes	Narrative
Telecommunications System Plan and Scope of Work	Yes	Narrative & documentation such as maps and diagrams
Budget	Yes	Agency Worksheets with documentation
Financial Information/Sustainability	Yes	Narrative
Statement of Experience	Yes	Narrative 3-page, single-spaced limit
Rurality Worksheet	Yes	Agency worksheet with documentation
National School Lunch Program (NSLP) Worksheet	Yes	Agency worksheet with documentation
Leveraging Evidence and Funding Commitments from all Sources.	Yes	Agency worksheet and source documentation
Empowerment Zone designation	Yes	Documentation
Request for Additional NSLP	Optional	Agency Worksheet and narrative
Need for and Benefits derived from Project	Yes	Narrative & documentation
Innovativeness of the Project	Yes	Narrative & documentation
Cost Effectiveness of Project	Yes	Narrative & documentation
Consultation with the USDA State Director, Rural Development, and evidence that application conforms to State Strategic Plan, if any.	Yes	Documentation
Certifications:		
Equal Opportunity and Nondiscrimination	Yes	Recommend using Agency's sample form
Architectural Barriers	Yes	Recommend using Agency's sample form
Flood Hazard Area Precautions	Yes	Recommend using Agency's sample form
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.	Yes	Recommend using Agency's sample form
Drug-Free Workplace	Yes	Recommend using Agency's sample form
Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.	Yes	Recommend using Agency's sample form
Lobbying for Contracts, Grants, Loans, and Cooperative Agreements.	Yes	Recommend using Agency's sample form
Non-Duplication of Services	Yes	Recommend using Agency's sample form
Environmental Impact/Historic Preservation Certification	Yes	Recommend using Agency's sample form

D. How many copies of an application are required?

1. Applications submitted on paper.

a. Submit the original application and two (2) copies to RUS.

b. Submit one (1) additional copy to the State government single point of contact (SPOC) (if one has been designated) at the same time as you submit the application to the Agency. *See http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government single points of contact.

2. Electronically submitted applications. Grant applications may be submitted electronically. Please carefully read the FY 2011 Application Guide for guidance on submitting an electronic application. In particular, we ask that you identify and number each page in the same way you would a paper application so that we can assemble them as you intended.

a. The additional paper copies are not necessary if you submit the application electronically through Grants.gov.

b. Submit one (1) copy to the State government single point of contact (if one has been designated) at the same time as you submit the application to the Agency. *See http://www.whitehouse.gov/omb/grants/spoc.html* for an updated listing of State government single points of contact.

E. How and Where To Submit an Application

Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications to the Telecommunications Program, RUS, United States Department of Agriculture, 1400 Independence Ave., SW., Room 2845, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Acting Director, Advanced Services Division."

b. Paper grant applications must show proof of mailing or shipping by the deadline consisting of one of the following:

(i) A legibly dated U.S. Postal Service (USPS) postmark;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Due to screening procedures at the Department of Agriculture, packages arriving via regular mail through the USPS are irradiated, which can damage the contents and delay delivery to the DLT Program. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications.

a. Applications will not be accepted via fax or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. How to use Grants.gov.

(i) Grants.gov contains full instructions on all required passwords, credentialing and software.

(ii) Central Contractor Registry. Submitting an application through Grants.gov requires that you list your organization in the Central Contractor Registry (CCR). Setting up a CCR listing takes up to five business days, so the

Agency strongly recommends that you obtain your organization's DUNS number and CCR listing well in advance of the deadline specified in this notice.

(iii) Credentialing and authorization of applicants. Grants.gov will also require some credentialing and online authentication procedures. These procedures may take several business days to complete, further emphasizing the need for early action by applicants to complete the sign-up, credentialing and authorization procedures at Grants.gov before you submit an application at that Web site.

(iv) Some or all of the CCR and Grants.gov registration, credentialing and authorizations require updates. If you have previously registered at Grants.gov to submit applications electronically, please ensure that your registration, credentialing and authorizations are up to date well in advance of the grant application deadline.

d. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadlines.

e. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

F. Deadlines

1. Paper grant applications must be postmarked and mailed, shipped, or sent overnight no later than April 25, 2011 to be eligible for FY 2011 grant funding. Late applications, applications which do not include proof of mailing or shipping as described in paragraph IV.E.1.b., and incomplete applications are not eligible for FY 2011 grant funding.

2. Electronic grant applications must be received by April 25, 2011 to be eligible for FY 2011 funding. Late or incomplete applications will not be eligible for FY 2011 grant funding.

G. Intergovernmental Review

The DLT grant program is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." As stated in paragraph IV.D.1. of this Notice, a copy of a DLT grant application must be submitted to the State single point of contact if one has been designated. Please *see http://www.whitehouse.gov/omb/grants/spoc.html* to determine whether your State has a single point of contact.

H. Funding Restrictions

1. Eligible purposes.

a. For grants, rural end-user sites may receive financial assistance; hub sites (rural or non-rural) may also receive financial assistance if they are necessary to provide DLT services to end-user sites. Please *see* the Application Guide and 7 CFR 1703.101(h).

b. To fulfill the policy goals laid out for the DLT Program in 7 CFR 1703.101, the following table lists purposes for financial assistance and whether each purpose is generally considered to be eligible for the form of financial assistance. Please consult the FY 2011 Application Guide and the regulations (7 CFR 1703.102 for definitions, in combination with the portions of the regulation cited in the table) for detailed requirements for the items in the table. RUS *strongly* recommends that applicants exclude ineligible items from the grant and match portions of grant application budgets. However, some items ineligible for funding or matching contributions may be vital to the project. RUS encourages applicants to document those costs in the application's budget. Please *see* the FY 2011 Application Guide for a recommended budget format, and detailed budget compilation instructions.

	Grants
Lease or purchase of new eligible DLT equipment and facilities	Yes, equipment only.
Acquire new instructional programming that is capital asset	Yes.
Technical assistance, develop instructional programming that is a capital asset, engineering or environmental studies.	Yes, up to 10% of the grant.
Telemedicine or distance learning equipment or facilities necessary to the project	Yes.
Vehicles using distance learning or telemedicine technology to deliver services	No.
Teacher-student links located at the same facility	No.
Links between medical professionals located at the same facility	No.
Site development or building alteration	No.
Land of building purchase	No.
Building Construction	No.
Acquiring telecommunications transmission facilities	No.
Internet services, telecommunications services or other forms of connectivity	No.
Salaries, wages, benefits for medical or educational personnel	No.
Salaries or administrative expenses of applicant or project	No.
Recurring project costs or operating expenses	No, (equipment & facility leases are not recurring project costs).
Internet services, telecom services, and other forms of connectivity	No.
Equipment to be owned by the LEC or other telecommunications service provider, if the provider is the applicant.	No.
Duplicative distance learning or telemedicine services	No.
Any project that for its success depends on additional DLT financial assistance or other financial assistance that is not assured.	No.
Application Preparation Costs	No.
Other project costs not in regulation	No.
Cost (amount) of facilities providing distance learning broadcasting	No.
Reimburse applicants or others for costs incurred prior to RUS receipt of completed application	No.

c. Discounts. The DLT Program regulation has long stated that manufacturers' and service providers' discounts are not eligible matches. The Agency will not consider as eligible any proposed match from a vendor, manufacturer, or service provider whose products or services will be used in the DLT project as described in the application. In recent years, the Agency has noted a trend of vendors, manufacturers and other service providers offering their own products and services as in-kind matches for a project when their products or services

will also be purchased with either grant or cash match funds for that project. Such activity is a discount and is therefore not an eligible match. Similarly, if a vendor, manufacturer or other service provider proposes a cash match (or any in-kind match) when their products or services will be purchased with grant or match funds, such activity is a discount and is not an eligible match. The Agency actively discourages such matching proposals and will adjust budgets as necessary to remove any such matches, which may reduce an application's score or result in the application's ineligibility due to insufficient match.

2. Eligible Equipment & Facilities. Please *see* the FY 2011 Application Guide which supplies a wealth of information and examples of eligible and ineligible items. In addition, *see* 7 CFR 1703.102 for definitions of eligible equipment, eligible facilities and telecommunications transmission facilities as used in the table above.

3. Apportioning budget items. Many DLT applications propose to use items for a blend of specific DLT eligible project purposes and other purposes. RUS will now fund such items, if the applicants attribute the proportion (by percentage of use) of the costs of each item to the project's DLT purpose or to other purposes to enable consideration for a grant of the portion of the item that is for DLT usage. *See* the FY 2011 Application Guide for detailed information on how to apportion use and apportioning illustrations.

V. Application Review Information

A. Special Considerations or Preferences

1. American Samoa, Guam, Virgin Islands, and Northern Mariana Islands applications are exempt from the matching requirement up to a match amount of $200,000 (*see* 48 U.S.C. 1469a; 91 Stat. 1164).

2. 7 CFR 1703.112 directs that RUS Telecommunications Borrowers receive expedited consideration of a loan application or advance under the Rural Electrification Act of 1936 (7 U.S.C. 901–950aa, et. seq.) if the loan funds in question are to be used in conjunction with a DLT grant (*See* 7 CFR 1737 for loans and 7 CFR 1744 for advances).

B. Criteria

1. Grant application scoring criteria (total possible points: 215). *See* 7 CFR 1703.125 for the items that will be reviewed during scoring, and 7 CFR 1703.126 for scoring criteria.

2. Grant applications are scored competitively subject to the criteria listed below.

a. *Rurality* category—Rurality of the proposed service area (up to 45 points).

b. *NSLP* category—percentage of students eligible for the NSLP in the proposed service area (objectively demonstrates economic need of the area) (up to 35 points).

c. *Leveraging* category—matching funds above the required matching level (up to 35 points). Please *see* paragraph III.B of this Notice for a brief explanation of matching contributions.

d. *EZ* category—project overlap with Empowerment Zones (EZ) current as of the application deadline (up to 10 points), April 25, 2011. In the past, an applicant could earn up to 15 points in this category; 10 points for one or more sites located in either an EZ or Enterprise Community and 5 points for one or more sites located in a Champion Community. The USDA designation of Enterprise Community expired in 2009. The Champion Community designation expired in 2010. The Empowerment Zone designation was extended through December 31, 2011 on December 17, 2010. As a consequence, points will be awarded in this category only for sites located in an Empowerment Zone. Other USDA designations such as REAP zones are not eligible for points in this category. Please refer to the FY 2011 Application Guide for complete details on this change.

e. Need for services proposed in the application, and the benefits that will be derived if the application receives a grant (up to 55 points).

(i) *Additional NSLP* category—up to 10 of the possible 55 possible points are to recognize economic need not reflected in the project's National School Lunch Program (NSLP) score, and can be earned only by applications whose overall NSLP eligibility is less than 50%. To be eligible to receive points under this, the application must include an affirmative request for consideration of the possible 10 points, and compelling documentation of reasons why the NSLP eligibility percentage does not represent the economic need of the proposed project beneficiaries.

(ii) *Needs and Benefits* category—up to 45 of the 55 possible points under this criterion are available to all applicants. Points are awarded based on the required narrative crafted by the applicant. RUS encourages applicants to carefully read the cited portions of the Program regulation and the FY 2011 Application Guide for full discussions of this criterion.

f. Innovativeness category—level of innovation demonstrated by the project (up to 15 points).

g. Cost Effectiveness category—system cost-effectiveness (up to 35 points). As a clear indication of cost-effectiveness, the agency will give significant weight to cooperation and coordination with any of the Beacon Communities, which were established under the Beacon Community Collaborative Program by the Office of the National Coordinator to improve clinical outcomes, population health, and reduce health costs nationwide. Information on the Beacon Communities is available from *http://www.beaconcommunityprogram.com.*

C. Grant Review Standards

1. In addition to the scoring criteria that rank applications against each other, the Agency evaluates grant applications for possible awards on the following items, according to 7 CFR 1703.127:

a. Financial feasibility.

b. Technical considerations. If the application contains flaws that would prevent the successful implementation, operation or sustainability of a project, the Agency will not award a grant.

c. Other aspects of proposals that contain inadequacies that would undermine the ability of the project to comply with the policies of the DLT Program.

2. Applications which do not include all items that determine project eligibility and applicant eligibility by the application deadline will be returned as ineligible. Applications that do not include all items necessary for scoring will be scored as is. Please *see* the FY 2011 Application Guide for a full discussion of each required item and for samples and illustrations. The Agency will not solicit or consider eligibility or scoring information submitted after the application deadline.

3. The FY 2011 grant Application Guide specifies the format and order of all required items. Applications that are not assembled and tabbed in the order specified and incorrectly assembled applications will be returned as ineligible.

4. Most DLT grant projects contain numerous project sites. The Agency requires that site information be consistent throughout an application. Sites must be referred to by the same designation throughout all parts of an application. The Agency has provided a site worksheet that requests the necessary information, and can be used as a guide by applicants. RUS strongly recommends that applicants complete the site worksheet, listing all requested information for each site. Applications without consistent site information will be returned as ineligible.

5. DLT grant applications which have non-fixed end-user sites, such as ambulance and home health care services, are now scored using a simplified scoring method that finds the relative rurality of the applicant's entire service area. *See* the FY 2011 Application Guide for specific guidance on this method of scoring. When an application contains non-fixed sites, it must be scored using the non-fixed site scoring method.

D. Selection Process

1. Grants. Applications are ranked by final score, and by application purpose (education or medical). RUS selects applications based on those rankings, subject to the availability of funds. RUS may allocate grant awards between medical and educational purposes, but is not required to do so. In addition, the Agency has the authority to limit the number of applications selected in any one State, or for one project, during a fiscal year. *See* 7 CFR 1703.127.

VI. Award Administration Information

A. Award Notices

RUS generally notifies by mail applicants whose projects are selected for awards. The Agency follows the award letter with an agreement that contains all the terms and conditions for the grant. A copy of the standard agreement is posted on the RUS Web site at *http://www.rurdev.usda.gov/UTP_DLTResources.html.* The agreement will be updated for FY 2011 grants to incorporate new regulatory requirements for grant agreements pertaining to Central Contractor Registration and DUNS numbers (2 CFR Subtitle A, chapter 1, and part 25, Financial Assistance Use of Universal Identifier and Central Contractor Registration) and subawards and executive compensation (2 CFR part 170 RIN 0348–AB61, Requirements for Federal Funding Accountability and Transparency Act Implementation). An applicant must execute and return the agreement, accompanied by any additional items required by the agreement, within the number of days shown in the selection notice letter.

B. Administrative and National Policy Requirements

The items listed in Section IV of this notice, and the DLT Program regulation, FY 2011 Application Guide and accompanying materials implement the appropriate administrative and national policy requirements.

C. Reporting

1. Performance reporting. All recipients of DLT financial assistance must provide annual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last annual report. The final report must include an evaluation of the success of the project in meeting DLT Program objectives. *See* 7 CFR 1703.107.

2. Financial reporting. All recipients of DLT financial assistance must provide an annual audit, beginning with the first year in which a portion of the financial assistance is expended. Audits are governed by United States Department of Agriculture audit regulations. Please *see* 7 CFR 1703.108.

3. Recipient and Subrecipient Reporting.

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made.

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *http://www.ccr.gov* by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the subaward was made.

4. Record Keeping and Accounting. The grant contract will contain provisions relating to record keeping and accounting requirements.

VII. Agency Contacts

A. *Web site: http://www.rurdev.usda.gov/UTP_DLT.html.* The DLT Web site maintains up-to-date resources and contact information for DLT programs.

B. *Telephone:* 202–720–0423.

C. *Fax:* 202–720–1051.

D. *E-mail: dltinfo@wdc.usda.gov.*

E. *Main point of contact:* Acting Director, Advanced Services Division, Telecommunications Program, Rural Utilities Service.

Dated: February 15, 2011.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2011–4137 Filed 2–23–11; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 13–2011]

Foreign-Trade Zone 182—Fort Wayne, IN, Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Fort Wayne, grantee of FTZ 182, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 18, 2011.

FTZ 182 was approved by the Board on December 23, 1991 (Board Order 549, 57 FR 1450, 1/14/1992) and expanded on October 14, 1997 (Board Order 928, 62 FR 55573, 10/27/1997).

The current zone project includes the following sites: *Site 1* (0.37 acres)—315 E. Wallace Street, Fort Wayne (Allen County); *Site 2* (0.4 acres)—2122 Bremer Road, Fort Wayne (Allen County); *Site 3* (443 acres)—Fort Wayne International Airport, 3801 Ferguson Road, Fort Wayne (Allen County); and, *Site 4* (41 acres)—Riverfork Industrial Park, 1515 Riverfork Drive West, Huntington (Huntington County).

The grantee's proposed service area under the ASF would be Adams, Allen, DeKalb, Huntington, Noble, Wabash, Wells and Whitley Counties, Indiana, as described in the application. If approved, the grantee would be able to serve sites throughout the service area

based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Fort Wayne Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its zone project to include existing Site 3 as a "magnet" site and Site 1 as a "usage driven" site. The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 3 be so exempted. The applicant is also requesting that Sites 2 and 4 be removed from the zone project.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 25, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 10, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 18, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–4188 Filed 2–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1740]

Approval of Manufacturing Authority, Foreign-Trade Zone 134, Volkswagen Group of America Chattanooga Operations, LLC (Motor Vehicles), Chattanooga, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Chattanooga Chamber Foundation, grantee of FTZ 134, has requested manufacturing authority on behalf of Volkswagen Group of America Chattanooga Operations, LLC, within FTZ 134—Site 3, Chattanooga, Tennessee (FTZ Docket 35–2009, filed 8–19–2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 43670, 8–27–2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that the proposal would be in the public interest if subject to the restriction listed below;

Now, therefore, the Board hereby orders:

The application for manufacturing authority under zone procedures within FTZ 134 on behalf of Volkswagen Group of America Chattanooga Operations, LLC, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to the following condition:

VGACO must admit all foreign man-made fiber and cotton bags (HTSUS Subheadings 4202.12.8030, 4202.12.8070, 6305.20), netting (5608.19, 5608.90), sun blinds (6306.19), felt (5602.90) and cushions (9404.90) to the zone under privileged foreign status (19 CFR 146.41) or domestic (duty-paid) status (19 CFR 146.43).

Signed at Washington, DC, this 10th day of February 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST: _____

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–4175 Filed 2–23–11; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1743]

Grant of Authority for Subzone Status; Vestas Nacelles America, Inc. (Wind Turbine Nacelles, Hubs, Blades and Towers), Brighton, Denver, Pueblo, and Windsor, CO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City and County of Denver, grantee of Foreign-Trade Zone 123, has made application to the Board for authority to establish a special-purpose subzone at the wind turbine nacelle, hub, blade and tower manufacturing and warehousing facilities of Vestas Nacelles America, Inc., located in Brighton, Denver, Pueblo, and Windsor, Colorado (FTZ Docket 7–2010, filed 1–25–2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 5283, 2–2–2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and warehousing of wind turbine nacelles, hubs, blades and towers at the Vestas Nacelles America, Inc., facilities located in Brighton, Denver, Pueblo, and Windsor, Colorado (Subzone 123E), as described in the application and **Federal Register** notice, subject to the

FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 4th day of February 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–4185 Filed 2–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1742]

Reorganization and Expansion of Foreign-Trade Zone 144 Under Alternative Site Framework, Brunswick, GA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09; 75 FR 71069–71070, 11/22/10) as an option for the establishment or reorganization of general-purpose zones;

Whereas, the Brunswick and Glynn County Development Authority, grantee of Foreign-Trade Zone 144, submitted an application to the Board (FTZ Docket 25–2010, filed 04/01/2010) for authority to reorganize and expand under the ASF with a service area of Appling, Atkinson, Brantley, Camden, Charlton, Coffee, Glynn, Jeff Davis, McIntosh, Ware and Wayne Counties, Georgia, within and adjacent to the Brunswick Customs and Border Protection port of entry, FTZ 144's existing Sites 1 and 2 would be categorized as magnet sites, and the grantee proposes one initial usage-driven site (Site 3);

Whereas, notice inviting public comment was given in the **Federal Register** (75 FR 17898–17899, 04/08/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand and reorganize FTZ 144 under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, to the Board's standard 2,000-acre activation limit for the overall general-purpose zone project, to a five-year ASF sunset provision for magnet sites that would terminate authority for Site 2 if not activated by February 29, 2016, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 3 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by February 28, 2014.

Signed at Washington, DC, this 4th day of February 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2011–4178 Filed 2–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 12–2011]

Foreign-Trade Zone 3—San Francisco, California; Application for Subzone; Valero Refining Company—California (Oil Refinery), Benicia, California

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of San Francisco, grantee of FTZ 3, requesting special-purpose subzone status for the oil refining facilities of Valero Refining Company—California (Valero), located in Benicia, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 17, 2011.

The Valero facilities (511 employees, 153,000 barrel per day capacity) consist of 4 sites in Solano County: *Site 1* (510 acres) main refinery complex, located at 3400 East 2nd Street, Benicia; *Site 2* (53 acres) crude tank farm, located southeast of the main refinery complex, Benicia; *Site 3* (11.31 acres) crude dock, located on Pier 95, near the Benicia-Martinez Bridge, Benicia; and *Site 4* (1.34 acres) coke facilities, located on Pier 95, near the Benicia-Martinez Bridge, Benicia. The refinery is used to produce fuels and other petroleum products. Products include gasoline, diesel, jet fuel, propane, butane, fuel oil, residual oil, and asphalt. Some 40 percent of the crude oil is sourced from abroad.

Zone procedures would exempt the refinery from customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the customs duty rates that apply to certain petroleum products and refinery by-products (duty-free) by admitting incoming foreign crude in non-privileged foreign status. The duty rates on inputs range from 5.25 cents/barrel to 10.5 cents/barrel. FTZ designation would further allow Valero to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 25, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 10, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: February 17, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–4208 Filed 2–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request 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 January anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

DATES: *Effective Date:* February 24, 2011.

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 January anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order for honey from Argentina with respect to one exporter. The revocation request for honey from Argentina was inadvertently omitted from the initiation notice that published on January 28, 2011 (76 FR 5137). With respect to the antidumping duty order on wooden bedroom furniture from the People's Republic of China, the initiation of the antidumping duty administrative review for that case is being published in a separate initiation notice.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

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 must 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 1930, 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)(3)(ii), 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 seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

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 days after 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

[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.

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. We intend to issue the final results of these reviews not later than January 31, 2012.

	Period to be reviewed
Antidumping Duty Proceedings	
ARGENTINA: Honey,[3] A–357–812	12/01/09–11/30/10
A.G.L.H. S.A.	
Alogodonera Avellaneda, S.A.	
Compañia Apícola Argentina S.A.	
Compañia Inversora Platense S.A.	
Miel Ceta S.R.L.	
Patagonik S.A.	
Villamora S.A.	
Countervailing Duty Proceedings	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Oil Country Tubular Goods C–570–944	1/20/10–12/31/10
Angang Group New Steel Co., Ltd.	
Angang Steel Co. Ltd.	
Anhui Tianda Oil Pipe Co.	
Anshan Xin Yin Hong Petroleum and Gas Tubular Co.	
Anshan Zhongyou TIPO Pipe & Tubing Co., Ltd.	
Anton Tongao Technology Industry Co. Ltd.	
Anyang Iron & Steel Group Ltd.—Seamless	
Aofei Tele Dongying Import & Export Co., Ltd.	
Baoji Petroleum Steel Pipe (BSG)	
Baoji Sumitomo Metal Petroleum Steel Pipe	
Baolai Steel Pipe	
Baoshan Iron & Steel Co. Ltd.	
Baosteel Group Shanghai Steel Tube	
Baotou Found Petroleum Machinery Co. Ltd.	
Baotou Iron & Steel	
Bazhou Zhuofa Steel Pipe Co., Ltd.	
Beihai Steel Pipe Corporation	
Beijing Changxing Kaida Composite Material Development Co., Ltd.	
Beijing Shouhang Science-Technology Development Company	
Beijing Youlu Co., Ltd.	
Benxi Northern Steel Pipes Co., Ltd.	
Cangzhou City Baohai Petroleum Material Co., Ltd.	
Cangzhou City Shengdali Machinery Manufacture Co., Ltd.	
Cangzhou OCTG Company Limited of Huabei Oilfield	
Changshu Seamless Steel Tube	
Changzhou Bao-Steel Tube	
Changzhou Darun Steel Tube Co., Ltd.	
Changzhou Hong Ping Material Supply Co., Ltd.	
Changzhou Huixiang Petroleum Machinery Co., Ltd.	
Changzhou Shengde Seamless Pipe Co., Ltd.	
Changzhou Steel Pipe Factory	
ChangZhou TaoBang Petroleum Tube Co., Ltd.	
Changzhou Tongchuang Tube Industry Co., Ltd.	
Changzhou Tong Xing Steel Tube Co.	
Changzhou Yuan Yang Steel Tube Co.	
Chengdu Wanghui Petroleum Pipe Co., Ltd.	
China Hebei Xinyuantai Steel Pipe Co.	
China Oilfield Services Limited	
Chongqing Petroleum Special Pipeline Factory of CNPC Sichuan Petroleum Goods & Material Supply Corp.	
CNOOC Kingland Pipeline Corp.	
Dagang Oilfield Group New Century Machinery Manufacturing Co., Ltd.	
Dalipal Pipe Company	
Daqing High-Tech Zone Hua Rui Ke Pipe Manufacturing Co.	
Daqing Petroleum Equipment Group	
Daye Xinye Special Steel Company Limited	
De Zhou Guang Hua Petroleum Machinery Company Limited	
De Zhou United Petroleum Machinery Company Limited	
Dingbian County Huayou Trading Company Limited	

	Period to be reviewed
Dongying City Meiyang Petroleum Pipe & Fittings Co., Ltd.	
Dongying Heli Petroleum Machinery Company Limited	
Etco (China) International Trading Co., Ltd.	
Faray Petroleum Steel Pipe Co., Ltd.	
Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery, Zibo Branch	
The Freet Group	
Field Construction Bohai Equipment Services	
First Machinery Works of North China Petroleum	
General Machinery Plant of Shengli Petroleum Administration (Shengli Oil Field Shengli Petroleum Equipment Co., Ltd.)	
Grant Prideco	
Guanzheng Branch of Tangshan Jidong Petroleum Machinery Company, Ltd.	
Guangzhou Hongda Steel Tube	
Guangzhou Iron and Steel	
Guangzhou Juyi Steel Pipes Company Limited	
Haerbin City Weilian Mechanical Manufacturing Company Limited	
Haicheng Northern Steel Pipe Anti-Corrosion Company Limited	
Handan Precise Seamless Steel Pipes Co., Ltd.	
Hao Ying Qiqihaer in Northeast Special Steel Co., Ltd.	
Hebei ChangFeng Steel Tube Manufacture Group	
Hebei Litonglian Seamless Steel Pipe	
Hebei Puyang Iron and Steel Company Limited	
Hebei Xinlian Petroleum Machinery Company Limited	
Hebei Xinyuantai Steel Pipe Group Co., Ltd.	
Hebei Yi Xin Petroleum Pipe Company Limited	
Hebei Zhongyuan Steel Pipe Manufacturing Co., Ltd.	
Henan Nanyang Oilfield Machinery Manufacturing Company Limited	
Henan Zyzj Petroleum Equipment	
HengShui JingHua Steel Pipe Co.	
Heyi Steel Tube	
HG Tubulars Limited	
Highgrade Tubular Manufacturing (Tianjin) Co., Ltd.	
HillHead	
HSC (Chengdu) Seamless Steel Pipe Co., Ltd.	
Hong Kong Gallant Group Ltd.	
Huai'an Zhenda Steel Tube Manufacturing Co., Ltd.	
Hubei OCTG Machinery Co. (First)	
Huludao Steel Pipe Industrial Co., Ltd.	
Huludao City Steel Pipe Industrial Co.	
Hengyang Valin Steel Tube Co.	
Hengyang Valin MPM Tube Co., Ltd.	
Hengyang Steel Tube Group	
Jiangsu Benqiu Pipe Products Co.	
Jiangsu Changbao Steel Tube Co., Ltd.	
Jiangsu Changbao Precision Tube Co., Ltd.	
Jiangsu Chengde Steel Tube Share Co., Ltd.	
Jiangsu Fanli Steel Pipe Co.	
Jiangsu Huacheng Industry Group Co.	
Jiangsu Huashun Steel Pipe Co.	
Jiangsu Li'Ao Steel Tube Company Limited	
Jiangsu Shined Petroleum Equipment Manufacturing Company Limited	
Jiangsu Wuxi Steel Group	
Jiangsu Yulong Steel Pipe Company Limited	
Jiangsu ZhenDa Steel Tube Group Co., Ltd.	
Jiangyin Chuangxin Oil Pipe	
Jiangyin City Changjiang Steel Pipe Co., Ltd.	
Jiangyin City Seamless Steel Tube Factory	
Jiangyin Hengyang Petroleum Machinery Company Limited	
Jiangyin Jieda Shaped Tube Company Limited	
Jiangyin Yashen Petroleum Pipe Company Limited	
Jiangyin Yuhao Petroleum Pipe Company Limited	
Jilin Baotong Petroleum Steel Pipe Company Limited	
Jinan Iron and Steel Company Jigang Group Co., Ltd.	
Jinxi Steel Pipe Co.	
Jiuquan Iron and Steel Group (JISCO)	
Laiwu Iron and Steel Corporation	
Langfang OTSMAN Special Petroleum Pipe Manufacture Company Limited	
Liangshan Steel Pipe Company Limited	
Liaocheng Jialong Tube Manufacture Company Limited	
Liaoning Large-scale Steel Pipe Co., Ltd.	
Liaoning Northern Steel Pipe Co.	
Liaoning ShenYu Oil Pipe Manufacture Company Limited	
Lingyuan Iron & Steel Company Limited	
Linyi Sanyuan Steel Pipe Industry Company Limited	

	Period to be reviewed
Liuzhou Iron and Steel	
M&M Steel Pipe Co., Ltd.	
Machinery Factory of Jilin Petroleum Group Co., Ltd.	
Machinery Factory of Tuha Petroleum	
MCC Liaoning Dragon Pipe Industries Company Limited	
Nantong Hengte Tube Co., Ltd.	
Ning Xia D.M.S. OCTG Company Limited	
North China Petroleum Steel Pipe Co.	
Pancheng Yihong Pipe Company Limited	
Pangang Group Beihai Steel Pipe Corporation	
Pangang Group Chengdu Iron & Steel Co., Ltd.	
Panyu ChuKong Steel Pipe Co.	
Pipe and Tooling Center, Sinopec Southwest Company	
Precision Pipe Manufacturing Branch of Liaoning Tianyi Industry Company	
Puyang City Shuangfa Industry	
Qiqihaer Haoying Iron & Steel Co. of Northeast Special Steel Group	
Rizhao Steel Holding Group Co., Ltd.	
RiZhao ZhongShun Steel Pipe Manufacture Company Limited	
RongSheng Machinery Manufacture Limited of Huabei Oilfield	
Seamless Tube Mill of Baotou Steel Union	
Shaanxi Yangchang Petroleum Material Company	
Shandong Continental Petroleum Equipment Co., Ltd.	
Shandong Dongbao Steel Pipe Co., Ltd.	
Shandong Huabao Steel Pipe Co., Ltd.	
Shandong Luxing Steel Tube Co.	
Shandong Molong Petroleum Machinery Co., Ltd.	
Shandong Nine-Ring Petroleum Machinery Co., Ltd.	
Shandong Province Coalfield Geologic Drilling Tools Factory	
Shandong Shengdong Oilfield Machinery Co., Ltd.	
Shandong Shengli Tongxing Petroleum Pipe Manufacture Co., Ltd.	
Shandong Xinchi Steel Pipe Manufacture Co., Ltd.	
Shandong Zhao Yu Petroleum Pipe Manufacture Co., Ltd.	
Shanghai Baochen Oil Pipeline Materials Company Limited	
Shanghai Baoshun Steel Tube Co., Ltd.	
Shanghai Baoyi Industrial Company	
Shanghai Kangxin Oil Pipe Manufacturing Co., Ltd.	
Shanghai Mingsheng Industrial Co., Ltd.	
Shanghai Yueyuechao Manufacture Tube Co.	
Shanghai Zhongyou TIPO Steel Pipe Co., Ltd.	
Shanxi Hongli Steel Tube Share Company Limited	
Shanxi Guolian Pipe Industry Group Co., Ltd.	
Shanxi Yuci Guolian Steel Pipe Co., Ltd.	
Shengli General Engineering (The Thermal Recovery Equipment Manufactory of Shengli General Engineering)	
Shengli Oil Field Freet Petroleum Equipment Co., Ltd.	
Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.	
Shengli Oil Field Highland Petroleum Equipment Co., Ltd.	
Shengli Oilfield Shengji Petroleum Equipment Co., Ltd.	
Shengli Petroleum Administration General Machinery Plant	
Shenzhen Weisheng I.T.S. Petroleum Tubular & Equipment Co., Ltd.	
Sichuan ChengJiWeiYe Steel Pipe Co., Ltd.	
Sichuan Huagong Petroleum Steel Pipe Co., Ltd.	
Steel Pipe Works of North China Petroleum	
Suzhou Friend Tubing and Casing Pipe Co., Ltd.	
Suzhou Seamless Steel Tube Works	
Taizhou Shuangyang Precision Seamless Steel Tube Co., Ltd.	
Tangshan Sanjin Mingsheng Industry Development Co., Ltd.	
Thermal Recovery Equipment Manufacturer of Shengli Oil Field Freet Petroleum Equipment Co., Ltd.	
Tianjin City Jinghai County Baolai Industrial and Trade Co.	
Tianjin City Juncheng Seamless Tube Company Limited	
Tianjin City Tian Yi Seamless Steel Tube Company Limited	
Tianjin Coupling Heat Treatment Company Limited	
Tianjin DeHua Petroleum Equipment Manufacturing Company Limited	
Tianjin Hua Xin Premium Connections Pipe Co, Ltd.	
Tianjin Huilitong Steel Tube Co., Ltd.	
Tianjin Jingtong Seamless Steel Pipe Co., Ltd.	
Tianjin Lifengyuanda Steel Group Co., Ltd.	
Tianjin Liqiang Steel Pipe Co.	
Tianjin Pipe Group Corporation	
Tianjin Pipe Industry Development Company	
Tianjin Ring-Top Petroleum Manufacture Co., Ltd.	
Tianjin Seamless Steel Pipe Plant	
Tianjin Shengcaiyuan Steel Trading Co., Ltd.	
Tianjin Shenzhoutong Steel Pipe Co., Ltd.	

	Period to be reviewed
Tianjin Shuangjie Pipe Manufacturing Co., Ltd.	
Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.	
Tianjin Tianye Seamless Steel Pipe Plant Ltd.	
Tianjin Tubular Goods Machining	
Tianjin United Steel Pipe Co (UNISTEEL)	
Tianjin Xingyuda Steel Pipe Co., Ltd.	
Tianjin Zhongshun Industry Trade Co., Ltd.	
TianJin ZhongShun Petroleum Steel Pipe Co., Ltd.	
Tonghua Iron & Steel Group Panshi Seamless Steel Tube Company Limited	
Tuha Petroleum Machinery	
WSP Holdings Limited	
Wuhan Wugang Group Hanyang Steel Factory	
Wuxi Baoda Petroleum Special Pipe Manufacture Co., Ltd.	
Wuxi City DeRui Seamless Steel Pipe Co.	
Wuxi City DongQun Steel Tube Co.	
Wuxi Dingyuan Precision Cold-Drawn Steel Pipe Co.	
Wuxi Erquan Special Steel	
Wuxi Fanyong Liquid Presses Tube Company Limited	
Wuxi Fastube Dingyuan Precision Steel Pipe Co., Ltd.	
Wuxi Fastube Industry Co.	
Wuxi Horizon Petroleum Special Pipe Manufacture Company Limited	
Wuxi Huayou Special Steel Co., Ltd.	
Wuxi Huazin Petroleum Machine Company Limited	
Wuxi Precese Special Steel Co., Ltd.	
Wuxi Ruiyuan Special Steel Pipe Company Limited	
Wuxi Seamless Oil Pipe Co., Ltd.	
Wuxi SP, Steel Tube Manufacturing Co., Ltd.	
Wuxi Xijin Petroleum Equipment Fittings Manufacturing Co., Ltd.	
Wuxi Xingya Seamless Steel Tube	
Wuxi Zhen Dong Steel Pipe Works	
Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd.	
Xinjiang Petro Administration Bureau Machinery Manufacture General Company	
Xinjiang Ster Petroleum Tubes and Pipes Manufacturing Co., Ltd.	
Xigang Seamless Steel Tube Co., Ltd.	
XiNing Special Steel Co., Ltd.	
Xuzhou Guanghuan Steel Tube Co. Ltd.	
Yancheng Steel Tube Works Co., Ltd.	
Yancheng Teda Special Pipe Co., Ltd.	
Yangzhou Chengde Steel Tube	
Yangzhou Lontrin Steel Tube Co., Ltd.	
Yantai KIYOFO Seamless Steel Pipe Company Limited	
Yantai Steel Pipe Co., Ltd. of Laiwu Iron & Steel Group	
Yantai Yuanhua Steel Tubes Company Limited	
ZhangJiaGang ZhongYuan Pipe-Making Co.	
Zhejiang Jianli Enterprise Co., Ltd.	
Zhejiang Minghe Steel Pipe Co., Ltd.	
Zhonghsi Special Steel Tubes Co., Ltd.	
Zibo Hongyang Petroleum Equipment Co., Ltd.	
Zibo Pipe Manufacturing	

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 POR.

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 they meet the requirements of these procedures (*e.g.,* the filing of separate

[3] The company names listed were misspelled in the initiation notice that published on January 28, 2011 (76 FR 5137). The correct spelling of the company names are listed in this notice.

letters of appearance as discussed in 19 CFR 351.101(d)).

This 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: February 16, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4203 Filed 2–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Extension of Time Limit for Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 24, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, Lingjun Wang, or David Lindgren, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0780, (202) 482–2316, and (202) 482–3870, respectively.

Background

On December 23, 2009, the Department of Commerce (Department) published the initiation of the 2008–2009 administrative review of fresh garlic from the People's Republic of China. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 68229, 68230–68231 (December 23, 2009). On December 22, 2010, the Department published the preliminary results of this antidumping duty administrative review. *See Fresh Garlic from the People's Republic of China: Preliminary Results of, Partial Rescission of, and Intent to Rescind, in Part, the 15th Antidumping Duty Administrative Review,* 75 FR 80458 (December 22, 2010) (*Preliminary Results*). The period of review for this administrative review is November 1, 2008, through October 31, 2009. The final results are currently due on April 21, 2011.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the final results in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. However, the Department may extend the deadline for completion of the final results of an administrative review to 180 days if it determines it is not practicable to complete the review within the foregoing time period. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

The Department determines that it is not practicable to complete the final results of this administrative review by the current deadline of April 21, 2011. Specifically, the Department requires additional time to conduct verification and analyze issues raised by interested parties. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the final results from 120 days to 180 days; the final results will now be due no later than June 20, 2011.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 15, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4190 Filed 2–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–801]

Ball Bearings and Parts Thereof From Germany: Initiation of Antidumping Duty Changed-Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216 and 351.221(c)(3), the Department of Commerce (the Department) is initiating a changed-circumstances review of the antidumping duty order on ball bearings and parts thereof from Germany with respect to Schaeffler Technologies GmbH & Co. KG (Schaeffler Technologies).

DATES: *Effective Date:* February 24, 2011

FOR FURTHER INFORMATION: Thomas Schauer or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0410 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published an antidumping duty order on ball bearings and parts thereof from Germany on May 15, 1989. *See Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings and Parts Thereof From the Federal Republic of Germany,* 54 FR 20900 (May 15, 1989). On June 30, 2010, we initiated an administrative review of the order on ball bearings and parts thereof from Germany covering the period May 1, 2009, through April 30, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). After analysis of the quantity and value of the sales of ball bearings and parts thereof from Germany during the 2009–10 period of review, we selected Schaeffler KG as a respondent for individual examination. *See* the Memorandum to Laurie Parkhill entitled "Ball Bearings and Parts Thereof from Germany—Selection of Respondents" dated August 18, 2010, on the record of the 2009–10 review. On January 14, 2011, Schaeffler Technologies requested that the Department conduct a changed-circumstance review to determine that Schaeffler Technologies is the successor-in-interest to Schaeffler KG.

Scope of the Order

The products covered by the order are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8414.90.41.75, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70,

8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.40.00, 8708.99.49.60, 8708.99.58, 8708.99.80.15, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. The order covers all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the order. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the order are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the order. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of the order.

For a list of scope determinations which pertain to the order, see the "Memorandum to Laurie Parkhill" regarding scope determinations for the 2008–09 reviews, dated April 21, 2010, which is on file in the Central Records Unit of the main Department of Commerce building, room 7046, in the General Issues record (A–100–001).

Initiation of Changed-Circumstances Review

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), the Department will conduct a changed-circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Based on the information Schaeffler Technologies submitted in its January 14, 2011, letter, we find that we have received information which shows changed circumstances sufficient to warrant initiation of such a review in order to determine whether Schaeffler Technologies is the successor-in-interest to Schaeffler KG. See 19 CFR 351.216(d). Therefore, in accordance with the above-referenced statute and regulation, the Department is initiating a changed-circumstances review.

Because we are currently conducting the 2009–10 administrative review of this order and Schaeffler KG is subject to the review, we will conduct the changed-circumstances review in the context of the 2009–10 administrative review. We intend to issue the preliminary results of the changed-circumstances review when we issue the preliminary results of the 2009–10 administrative review; we intend to issue the final results of the changed-circumstances review when we issue the final results of the 2009–10 administrative review. During the course of this review, we will not change the cash-deposit requirements for the subject merchandise. The cash-deposit rate will be altered, if warranted, pursuant only to the final results of the changed-circumstances and/or administrative review.

This notice of initiation is in accordance with section 751(b)(1) of the Act and 19 CFR 351.221(b)(1).

Dated: February 16, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4189 Filed 2–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2009–2010 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Demitrios Kalogeropoulos, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–4295 or (202) 482–2623, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 28, 2010, the Department of Commerce ("the Department") initiated the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China ("PRC") for the period June 1, 2009, through May 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 75 FR 44224 (July 28, 2010). The preliminary results are currently due no later than March 2, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit of Preliminary Results

The Department finds it is not practicable to complete the preliminary results of this review within the original time limit because we require additional time to analyze questionnaire and supplemental questionnaire responses, to issue additional supplemental questionnaires if necessary, and to evaluate the most appropriate surrogate values on the administrative record to use in this segment of the proceeding. Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review by the full 120 days allowed under section 751(a)(3)(A) of the Act. An extension of 120 days from this revised deadline would result in a new deadline of June 30, 2011, for the publication of the preliminary results. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: February 15, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–4169 Filed 2–23–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

National Advisory Council on Minority Business Enterprises; Meeting

AGENCY: Minority Business Development Agency (MBDA), Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council for Minority Business Enterprise (NACMBE) will hold its inaugural meeting to provide an orientation of new committee members and future work products to fulfill the NACMBE's charter mandate. The meeting was originally scheduled on Wednesday, February 2, 2011 but was postponed due to inclement weather.

DATES: The meeting will be held on Friday, March 11, 2011, from 9 a.m. to 5 p.m. Eastern Standard Time (EST).

ADDRESSES: This meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230 in Room 4830.

FOR FURTHER INFORMATION CONTACT: Bria Bailey, Office of Legislative, Education and Intergovernmental Affairs, Minority Business Development Agency, U.S. Department of Commerce at (202) 482–2943; e-mail: *bbailey@mbda.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the NACMBE pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2) on April 28, 2010. The NACMBE is to provide the Secretary of Commerce with consensus advice from the private sector on a broad range of policy issues that affect minority businesses and their ability to successfully access the domestic and global marketplace.

Topics to be considered: The agenda for the March 11, 2011, NACMBE meeting is as follows:

1. Welcome and introduction of council members.
2. Discussion of NACMBE priorities.
3. Establish working groups.
4. Public comment period.

Public Participation: The meeting is open to the public. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Bria Bailey at the contact information above by 5 p.m. EST on Friday, March 4, 2011, in order to preregister for clearance into the building. Please specify any requests for reasonable accommodation at least five (5) business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill. A limited amount of time, from 4:15 p.m.–4:45 p.m. will be available for pertinent brief oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the NACMBE's affairs at *http://www.mbda.gov/main/nacmbe-submit-comments*. To be considered during the meeting, comments must be received no later than 5 p.m. EST on Friday, March, 4, 2011, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Bria Bailey, at (202) 482–2943, or bbailey@mbda.gov, at least five (5) days before the meeting date.

Copies of the NACMBE open meeting minutes will be available to the public upon request.

Dated: February 17, 2011.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2011–4069 Filed 2–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Notice of Solicitation of Nominations for Membership to National Advisory Council on Minority Business Enterprise (NACMBE)

AGENCY: Minority Business Development Agency, Department of Commerce.

ACTION: Notice.

SUMMARY: In March 2010, the Department of Commerce established the National Advisory Council on Minority Business Enterprise (Council) in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, and with the concurrence of the General Services Administration. The purpose of the Council is to advise the Secretary of Commerce (Secretary) on key issues pertaining to the growth and competitiveness of the nation's Minority Business Enterprises (MBEs). The Council's charter provides for not more than 25 members. In October 2010, 21 individuals accepted appointments from the Secretary to serve on the Council. The Department of Commerce is publishing this notice to solicit nominations for the four open Council membership positions for the 2-year charter term, which began in April 2010.

DATES: Complete nomination packages for the four open Council membership positions must be received by the Department of Commerce on or before March 30, 2011 at 5 p.m. Eastern Daylight Time (EDT). MBDA will continue to accept nominations on an ongoing basis and will consider nominations received after the due date if the four open Council membership positions are not filled and as future Council vacancies arise.

ADDRESSES: Nomination packages may be submitted through the mail or may be submitted electronically. Interested persons are encouraged to submit nominations electronically. The deadline is the same for nominations submitted through the mail and for nominations submitted electronically.

1. *Submission by Mail:* Nominations sent by mail should be addressed to the U.S. Department of Commerce, Minority Business Development Agency, Office of Legislative, Education and Intergovernmental Affairs, *Attn:* Bria Bailey, 1401 Constitution Avenue, NW., Room 5063, Washington, DC 20230. Applicants are advised that the Department of Commerce's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery due to security measures. Applicants may therefore wish to use a guaranteed overnight delivery service to ensure nomination packages are received by the Department of Commerce by the deadline set forth in this notice.

2. *Electronic Submission:* Nomination can be submitted online at: *www.mbda.gov/nacmbenominations*.

FOR FURTHER INFORMATION CONTACT: Bria Bailey, MBDA Office of Legislative, Education and Intergovernmental Affairs at *NACMBEnominations@mbda.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Council was established in the Department of Commerce as a discretionary advisory

committee in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, and with the concurrence of the General Services Administration. The Council will be administered primarily by MBDA. Twenty-one individuals were appointed to the Council by the Secretary in October 2010. The Department of Commerce is requesting nominations to fill the present vacancies on the Council.

Objectives and Scope of Activities: The Council will advise the Secretary on key issues pertaining to the growth and competitiveness of the nation's MBEs, as defined in Executive Order 11625, as amended, and 15 CFR 1400.1. NACMBE will provide advice and recommendations on a broad range of policy issues that affect minority businesses and their ability to successfully access the domestic and global marketplace. These policy issues may include, but are not limited to:

- Methods for increasing jobs in the health care, manufacturing, technology, and "green" industries;
- Global and domestic barriers and impediments;
- Global and domestic business opportunities;
- MBE capacity building;
- Institutionalizing global business curriculums at colleges and universities and facilitating the entry of MBEs into such programs;
- Identifying and leveraging pools of capital for MBEs;
- Methods for creating high value loan pools geared toward MBEs with size, scale and capacity;
- Strategies for collaboration amongst minority chambers, trade associations and nongovernmental organizations;
- Accuracy, availability and frequency of economic data concerning minority businesses;
- Methods for increasing global transactions with entities such as but not limited to the Export-Import Bank, OPIC and the IMF; and
- Requirements for a uniform and reciprocal MBE certification program.

The advice and recommendations provided by the Council may take the form of one or more written reports. The Council will also serve as a vehicle for an ongoing dialogue with the MBE community and with other stakeholders.

The Secretary has determined that the establishment of the Council is necessary and in the public interest in connection with MBDA's duties and responsibilities in advancing the growth and competitiveness of MBEs pursuant to Executive Order 11625, as amended.

Membership: The Council shall be composed of not more than 25 members. The Council members shall be distinguished individuals from the nonfederal sector appointed by the Secretary. The members shall be recognized leaders in their respective fields of endeavor and shall possess the necessary knowledge and experience to provide advice and recommendations on a broad range of policy issues that impact the ability of MBEs to successfully participate in the domestic and global marketplace. The Council shall have a balanced membership reflecting diversity of industries, ethnic backgrounds and geographical regions, and to the extent practicable, gender and persons with disabilities.

The Council members shall be appointed as Special Government Employees for no more than a two-year term and shall serve at the pleasure of the Secretary. Members may be re-appointed to additional two-year terms, without limitation. The Secretary may designate a member or members to serve as the Chairperson or Vice-Chairperson(s) of the Council. The Chairperson or Vice-Chairperson(s) shall serve at the pleasure of the Secretary.

The Council members will serve without compensation, but will be allowed reimbursement for reasonable travel expenses, including a per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, as amended, for persons serving intermittently in federal government service. The Council members will serve in a solely advisory capacity.

Eligibility: In addition to the above criterion, eligibility for the Council membership is limited to U.S. citizens who are not full-time employees of the Federal Government, are not registered with the U.S. Department of Justice under the Foreign Agents Registration Act and are not a federally-registered lobbyists pursuant to the Lobbying Disclosure Act of 1995, as amended, at the time of appointment to the Council.

Nomination Procedures and Selection of Members: The Department of Commerce is accepting nominations for NACMBE membership for the 2-year charter term that began in April 2010. Members shall serve until the Council charter expires in April 2012, although members may be re-appointed by the Secretary without limitation. Nominees will be evaluated consistent with the factors specified in this notice and their ability to successfully carryout the goals of the Council.

For consideration, a nominee must submit the following materials: (1) Resume, (2) personal statement of interest, including a summary of how the nominee's experience and expertise would support the Council objectives; (3) an affirmative statement that the nominee is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended, and (4) an affirmative statement that: (a) the nominee is not currently a federally-registered lobbyist and will not be a federally-registered lobbyist at the time of appointment and during his/her tenure as a Council member, or (b) if the nominee is currently a federally-registered lobbyist, that the nominee will no longer be a federally-registered lobbyist at the time of appointment to the Council and during his/her tenure as a Council member. All nomination information should be provided in a single, complete package by the deadline specified in this notice. Nominations packages should be submitted by either mail or electronically, but not by both methods. Self-nominations will be accepted.

Council members will be selected in accordance with applicable Department of Commerce guidelines and in a manner that ensures the Council has a balanced membership. In this respect, the Secretary seeks to appoint members who represent a diversity of industries, ethnic backgrounds and geographical regions, and to the extent practicable, gender and persons with disabilities.

All appointments shall be made without discrimination on the basis of age, ethnicity, gender, disability, sexual orientation, or cultural, religious, or socioeconomic status. All appointments shall also be made without regard to political affiliations.

Dated: February 11, 2011.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2011–4066 Filed 2–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management, National Ocean Service, Commerce.

ACTION: Notice of intent to evaluate and notice of availability of final findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate

the performance of the Mission-Aransas (Texas) National Estuarine Research Reserve.

The National Estuarine Research Reserve evaluation will be conducted pursuant to sections 312 and 315 of the CZMA and regulations at 15 CFR part 921, subpart E and part 923, subpart L. Evaluation of a National Estuarine Research Reserve requires findings concerning the extent to which a state has met the national objectives, adhered to its Reserve final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. A public meeting will be held as part of the site visit. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings. Notice is hereby given of the dates of the site visit for the listed evaluation and the date, local time, and location of the public meeting during the site visit.

Date and Time: The Mission-Aransas (Texas) National Estuarine Research Reserve evaluation site visit will be held April 11–15, 2011. One public meeting will be held during the week. The public meeting will be held on Wednesday, April 13, 2011, at 5 p.m. local time at the Bay Education Center, 121 Seabreeze Drive, Rockport, Texas.

ADDRESSES: Copies of the state's most recent performance reports, as well as OCRM's evaluation notification and supplemental information request letters to the state, are available upon request from OCRM. Written comments from interested parties regarding this Reserve are encouraged and will be accepted until 15 days after the public meeting held for the Reserve. Please direct written comments to Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the availability of the final evaluation findings for the Washington Coastal Management Program (CMP) and the Great Bay (New Hampshire) and Elkhorn Slough (California) National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal states with respect to approval of CMPs and the operation and management of NERRs.

The State of Washington was found to be implementing and enforcing its federally approved coastal management program, addressing the national coastal management objectives identified in CZMA Section 303(2)(A)–(K), and adhering to the programmatic terms of its financial assistance awards. The Great Bay and Elkhorn Slough NERRs were found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, or *Kate.Barba@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kate Barba, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, N/ORM7, Silver Spring, Maryland 20910, (301) 563–1182.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration

Dated: February 16, 2011.

Donna Wieting,

Director, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–4059 Filed 2–23–11; 8:45 am]

BILLING CODE 3510–08–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 11–C0004]

Ms. Bubbles, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e).[1] Published below is a provisionally-accepted Settlement Agreement with Ms. Bubbles, Inc., containing a civil penalty of $40,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by March 11, 2011.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11–C0004, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, General Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: February 16, 2011.

Todd A. Stevenson,

Secretary.

In the Matter of Ms. Bubbles, Inc.;

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Ms. Bubbles, Inc. ("Ms. Bubbles") and the staff ("Staff") of the United States Consumer Product Safety Commission ("Commission") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle the Staff's allegations set forth below.

PARTIES

2. The Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051—2089 ("CPSA").

3. Ms. Bubbles is a corporation organized and existing under the laws of California, with its principal offices located in Los Angeles, California. At all times relevant hereto, Ms. Bubbles sold apparel.

STAFF ALLEGATIONS

4. Beginning in May 2007, Ms. Bubbles imported and further distributed in commerce, through sale and/or holding for sale, girl's denim passport jackets with terrycloth and drawstrings (collectively, "Jackets").

5. Ms. Bubbles sold Jackets to retailers.

6. The Jackets are "consumer product[s]," and, at all times relevant hereto, Ms. Bubbles was a "manufacturer" of those consumer products, which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(5), (8), and (11), 15 U.S.C. § 2052(a)(5), (8), and (11).

[1] The Commission voted 5–0 to publish this notice of the provisional Settlement Agreement and Order. Commissioner Nord issued a statement, and the statement can be found at *http://www.cpsc.gov/pr/statements.html* .

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear ("Guidelines") to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816–97) that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act ("FHSA") section 15(c), 15 U.S.C. § 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Ms. Bubbles's distribution in commerce of the Jackets did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. On January 6, 2009, the Commission announced Ms. Bubbles's recall of the Jackets.

12. Ms. Bubbles had presumed and actual knowledge that the Jackets distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). Ms. Bubbles had obtained information that reasonably supported the conclusion that the Jackets contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), required Ms. Bubbles to immediately inform the Commission of the defect and risk.

13. Ms. Bubbles knowingly failed to immediately inform the Commission about the Jackets as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4), and as the term "knowingly" is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected Ms. Bubbles to civil penalties.

MS. BUBBLES'S RESPONSE

14. Ms. Bubbles denies the Staff's allegations above that Ms. Bubbles knowingly violated the CPSA or that the Jackets contained drawstrings.

AGREEMENT OF THE PARTIES

15. Under the CPSA, the Commission has jurisdiction over this matter and over Ms. Bubbles.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Ms. Bubbles, or a determination by the Commission, that Ms. Bubbles knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Ms. Bubbles shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00). The civil penalty shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury.

18. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Ms. Bubbles knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Ms. Bubbles failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Ms. Bubbles and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Ms. Bubbles and each of its successors and assigns to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Ms. Bubbles agree that severing the provision materially affects the purpose of the Agreement and the Order.

MS. BUBBLES, INC.

Dated: *January 4, 2011*

By: _____

Anil Chugh,
Controller, Ms. Bubbles, Inc., 2731 South Alameda Street, Los Angeles, CA 90058.

Dated: *January 10, 2011*

By: _____

John V. Tamborelli,
Esquire, Stone Rosenblatt Cha, 21550 Oxnard Street, Main Plaza, Suite 200, Woodland Hills, CA 91367, Counsel for Ms. Bubbles, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey,
General Counsel.

Ronald G. Yelenik,
Assistant General Counsel, Office of the General Counsel.

Dated: *01/10/2011* By: ___

Dennis C. Kacoyanis,
General Attorney, Division of Enforcement and Information, Office of the General Counsel.

ORDER

Upon consideration of the Settlement Agreement entered into between Ms. Bubbles, Inc. ("Ms. Bubbles") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Ms. Bubbles, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED, that the Settlement Agreement be, and hereby is, accepted; and it is

FURTHER ORDERED, that Ms. Bubbles shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Ms. Bubbles to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Ms. Bubbles at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

(continued on next page)

Provisionally accepted and provisional Order issued on the *11th* day of *February,* 2011.

BY ORDER OF THE COMMISSION:

_____

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–4068 Filed 2–23–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Notice of Meeting of the Air University Board of Visitors.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Air University Board of Visitors' meeting will take place on Monday, April 18th, 2011, from 8 a.m. to 5 p.m. and Tuesday, April 19th, 2011, from 8 a.m. to 5:30 p.m. The meeting will be held in the Air Force Institute of Technology conference room located in building 646, room 302. Please contact Mrs. Diana Bunch, 334–953–4547, for further details of the meeting location. The purpose of this meeting is to provide independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of Air University. The agenda will include topics relating to the policies, programs, and initiatives of Air University educational programs with a particular interest of the Air Force Institute of Technology. Additionally, four subcommittees will meet to discuss issues relating to academic affairs; research; future learning and technology; and institutional advancement. Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meeting will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors 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 paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Additionally, any member of the public wishing to attend this meeting should contact either person listed below at least five calendar days prior to the meeting for information on base entry passes.

FOR FURTHER INFORMATION CONTACT: Mrs. Diana Bunch, Alternate Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–4547.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2011–4159 Filed 2–23–11; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; Dakota Technologies, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Dakota Technologies, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-Owned invention(s) described in U.S. Patent No. 6630947—Method for Examining Subsurface Environments.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, no later than March 11, 2011.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St., Bldg. A33 Room 2305, San Diego, CA 92152–5001.

FOR FURTHER INFORMATION CONTACT: Brian Suh, Office of Research and Technology Applications, Space and Naval Warfare Systems Center Pacific, Code 72120, 53560 Hull St., Bldg. A33 Room 2305, San Diego, CA 92152–5001, telephone 619–553–5118, *E-Mail: brian.suh@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: February 16, 2011.

D.J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–4194 Filed 2–23–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11 a.m. to 12 p.m. on March 7, 2011, will include discussions of disciplinary matters, law enforcement investigations into allegations of criminal activity, and personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on March 7th, 2011, from 8 a.m. to 11 a.m. The closed session of this meeting will be the executive session held from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room of Alumni Hall, U.S. Naval Academy, Annapolis, Maryland. The meeting will be handicap accessible.

Due to internal DoD difficulties, beyond the control of the USNA Board of Visitors or its Designated Federal Officer, we were unable to process the **Federal Register** notice for the March 7, 2011, meeting of the USNA Board of Visitors as required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Travis Haire, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the

Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11 a.m. to 12 p.m. on March 7, 2011, will consist of discussions of law enforcement investigations into allegations of criminal activity, new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade, and personnel issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to 12 p.m. will be concerned with matters coming under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Dated: February 17, 2011.

H.E. Higgins,

Lieutenant, U.S. Navy, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 2011–4104 Filed 2–23–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 25, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 18, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Protection and Advocacy of Individual Rights.

OMB Control Number: 1820–0627.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 912.

Abstract: The Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report (Form RSA–509) will be used to analyze and evaluate the effectiveness of eligible systems within individual states in meeting annual priorities and objectives. These systems provide services to eligible individuals with disabilities to protect their legal and human rights. The Rehabilitation Services Administration (RSA) uses the form to meet specific data collection requirements of Section 509 of the Rehabilitation Act of 1973, as amended (the act), and its implementing federal regulations at 34 CFR part 381. PAIR programs must report annually using the form, which is due on or before December 30 each year. Form RSA–509 has enabled RSA to furnish the President and Congress with data on the provision of protection and advocacy services and has helped to establish a sound basis for future funding requests. These data also have been used to indicate trends in the provision of services from year to year.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4522. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–4213 Filed 2–23–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Availability of Fiscal Years 2011–2016 Draft Strategic Plan and Request for Public Comment

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability of DOE's Draft Strategic Plan and request for comment.

SUMMARY: The Department of Energy (DOE) invites the public to comment on the draft DOE 2011 Strategic Plan. The Government Performance and Modernization Act of 2010 requires that federal agencies revise and update their strategic plan at least every four years and, in doing so, solicit the views of interested members of the public during this process.

DATES: Submit comments on or before March 26, 2011.

ADDRESSES: Electronic mail comments may be submitted to: *strategicplan@hq.doe.gov*. Please include "DOE Strategic Plan" in the subject line. Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message.

Comments may also be submitted by surface mail to: Department of Energy, Office of Program Analysis and Evaluation (CF–20), 1000 Independence Ave., SW., Washington, DC 20585. Respondents are encouraged to submit comments electronically to ensure timely receipt.

The draft DOE 2011 Strategic Plan can be accessed at *http://www.energy.gov/about/budget.htm*.

FOR FURTHER INFORMATION CONTACT: David Abercrombie, DOE Program Analysis and Evaluation Office, at (202) 586–8664, or e-mail *david.abercrombie@hq.doe.gov*. Michael Holland, Office of the Under Secretary for Science at (202) 586–0505, or e-mail *mike.holland@science.doe.gov*.

SUPPLEMENTARY INFORMATION: The DOE was established in October 1977. The DOE administers over $182 billion in assets including 24 research laboratories and facilities and employs nearly 15,000 federal and just over 100,000 contractor employees with an annual budget of about $26 billion.

Since taking office, President Obama and DOE Secretary Chu have articulated clear goals for DOE's four main business lines: nuclear security, environmental clean-up, science and energy. Our first goal for transforming our energy systems is to catalyze the timely, material, and economic transformation of the nation's energy system and secure U.S. leadership in clean energy technologies. Our goal for our science and engineering enterprise is to maintain a vibrant U.S. effort in science and engineering as a cornerstone of our economic prosperity, with clear leadership in strategic areas of importance to the Department's missions. Our goal for securing our nation is to enhance nuclear security in defense, non-proliferation, nuclear power, and environmental safeguards. We also have a goal to pursue management excellence in all that we do, which requires us to achieve our mission by establishing an operational and adaptable framework that combines the best wisdom of all the DOE stakeholders.

The strategy behind these goals is explained in the draft DOE Strategic Plan. The plan outlines how the DOE will focus its world leading science and research and development programs on the nation's most pressing energy and security challenges. It is important to note that the draft strategic plan is not a national energy plan, since that is an inherently multi-agency effort.

The draft DOE Strategic Plan outlines the strategies the DOE intends to employ for best utilizing these resources. Once completed, the DOE Strategic Plan shall be a matter of public record and will be published on the DOE Web site at *http://www.energy.gov/about/budget.htm.*

While comments are invited on all aspects of the DOE Strategic Plan, DOE is particularly interested in: (a) Whether the plan is easy to read and understand; (b) whether the plan is complete, sufficiently covering topics of interest to the public; and (c) ways to enhance the quality of the information in the plan.

Public Participation Policy

It is the policy of the Department to ensure that public participation is an integral and effective part of DOE activities, and that decisions are made with the benefit of significant public perspectives.

The Department recognizes the many benefits to be derived from public participation for both stakeholders and DOE. Public participation provides a means for DOE to gather a diverse collection of opinions, perspectives, and values from the broadest spectrum of the public, enabling the Department to make more informed decisions. Public participation benefits stakeholders by creating an opportunity to provide input on decisions that affect their communities and our nation.

Issued in Washington, DC, on February 17, 2011.

Steven E. Koonin,

Under Secretary for Science, Department of Energy.

[FR Doc. 2011–4149 Filed 2–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register.**

DATES: Wednesday, March 9, 2011, 5 p.m.

ADDRESSES: Atomic Testing Museum, 755 East Flamingo Road, Las Vegas, Nevada 89119.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 657–9088; Fax (702) 295–5300 or E-mail: *ntscab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Recommendation Development—Fiscal Year 2013 Budget Prioritization.
2. Recommendation Development—Industrial Sites Corrective Action Unit 566 (rail cars).
3. Recommendation Development—Membership.
4. Groundwater Update.

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC on February 18, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–4148 Filed 2–23–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–78–000]

CenterPoint Energy Gas Transmission Company, LLC; Notice of Application

On February 3, 2011, CenterPoint Energy Gas Transmission Company, LLC (CEGT) filed with the Federal Energy Regulatory Commission (Commission) an application under section 7(b) & 7(c) of the Natural Gas Act (NGA), as amended, requesting authorization to abandon and replace certain facilities providing service to the Ashdown, Arkansas area. CEGT proposes to abandon segments of Line AM–46, AM–151 and AM–151–A all located in Howard, Hempstead, Sevier and Little River Counties Arkansas. The abandon segments would be replaced with the new Line AM–204, all as more fully detailed in the Application. CEGT also requests Commission approval of the application by July 15, 2011, so construction can commence by August 15, 2011 and to avoid winter construction.

Questions regarding the application may be directed to Michelle Willis, Manager, Regulatory and Compliance, CenterPoint Energy Gas Transmission Company, LLC, PO Box 21734, Shreveport, Louisiana 71151, or by calling (318) 429–3708.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental cementers will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental cementers will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free) or TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 9, 2011.

Dated: February 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4083 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2660–001.
Applicants: Southwestern Electric Power Company.
Description: Southwestern Electric Power Company submits tariff filing per 35.17(b): 20110214 Tex-La PDF Amendment to be effective 1/1/2011.
Filed Date: 02/14/2011.
Accession Number: 20110214–5166.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: ER11–2875–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): MOPR Reform to be effective 4/13/2011.
Filed Date: 02/11/2011.
Accession Number: 20110211–5121.
Comment Date: 5 p.m. Eastern Time on Friday, March 04, 2011.

Docket Numbers: ER11–2876–000.
Applicants: Entergy Arkansas, Inc.
Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii): OATT Ministerial Amendments to be effective 4/12/2011.
Filed Date: 02/11/2011.
Accession Number: 20110211–5122.
Comment Date: 5 p.m. Eastern Time on Friday, March 04, 2011.

Docket Numbers: ER11–2877–000.
Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): Amendments to Solar Partners LGIAs SA Nos. 73, 78 and 85 to be effective 1/26/2011.
Filed Date: 02/11/2011.
Accession Number: 20110211–5130.
Comment Date: 5 p.m. Eastern Time on Friday, March 04, 2011.

Docket Numbers: ER11–2878–000.
Applicants: ISO New England Inc., Vermont Electric Power Company, Inc.
Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Sch 21 VELCO Notice of Cancellation to be effective 2/14/2011.
Filed Date: 02/14/2011.
Accession Number: 20110214–5050.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: ER11–2879–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. 2010 4th Quarter Capital Budget.
Filed Date: 02/14/2011.
Accession Number: 20110214–5051
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: ER11–2880–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii): Service Agreement No. 310 between APS and Perrin Ranch Wind, LLC. to be effective 1/13/2011.
Filed Date: 02/14/2011.
Accession Number: 20110214–5144.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: ER11–2881–000.
Applicants: Southwest Power Pool, Inc.
Description: Notification of Tariff Implementation Error and Request for Limited Tariff Waiver of Southwest Power Pool, Inc.
Filed Date: 02/14/2011.
Accession Number: 20110214–5151.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM11–1–000.
Applicants: Public Service Electric and Gas Company.
Description: Application for relief from the mandatory purchase requirement contained in Section 292.303(a) of the Commission's Regulations of Public Service Electric and Gas Company.
Filed Date: 02/11/2011.
Accession Number: 20110211–5082.
Comment Date: 5 p.m. Eastern Time on Friday, March 11, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 14, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4111 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–44–000.
Applicants: Entegra Power, Gila River Power, L.P., Union Power Partners, L.P., Entegra Power Services LLC, EPG LLC, Entegra TC LLC.
Description: Request for Order Reauthorizing and Extending Existing Blanket Authorizations and Amending Conditions for Certain Future Transfers and Acquisitions of Equity Interests Under Section 203 of The Federal Power Act, and Request for Waiver.
Filed Date: 02/15/2011.
Accession Number: 20110215–5147.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1791–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Report of Midwest Independent Transmission System Operator, Inc.
Filed Date: 02/14/2011.
Accession Number: 20110214–5199.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: ER11–2275–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. amends the effective date of its December 1, 2010 filing to Revise the Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 02/15/2011.
Accession Number: 20110215–5135.
Comment Date: 5 p.m. Eastern Time on Tuesday, February 22, 2011.

Docket Numbers: ER11–2670–001.
Applicants: Occidental Chemical Corporation.
Description: Occidental Chemical Corporation submits tariff filing per 35.17(b): Amendment to MBR Tariff to be effective 1/13/2011.
Filed Date: 02/15/2011.
Accession Number: 20110215–5120.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: ER11–2887–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): BPA AC Intertie Agreement to be effective 4/17/2011.

Filed Date: 02/15/2011.
Accession Number: 20110215–5045.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: ER11–2888–000.
Applicants: Sierra Pacific Power Company.
Description: Sierra Pacific Power Company submits tariff filing per 35: Rate Schedule No. 62—Compliance to Fix Date of Concurrence to be effective 1/1/2011.
Filed Date: 02/15/2011.
Accession Number: 20110215–5046.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: ER11–2889–000.
Applicants: Cabrillo Power I LLC.
Description: Cabrillo Power I LLC submits tariff filing per 35.1: Cabrillo Power I LLC—Baseline Tariff to be effective 8/17/2010.
Filed Date: 02/16/2011.
Accession Number: 20110216–5000.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: ER11–2890–000.
Applicants: Cabrillo Power II LLC.
Description: Cabrillo Power II LLC submits tariff filing per 35.1: Cabrillo Power II LLC—Baseline Tariff to be effective 8/17/2010.
Filed Date: 02/16/2011.
Accession Number: 20110216–5001.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: ER11–2891–000.
Applicants: El Segundo Power LLC.
Description: El Segundo Power LLC submits tariff filing per 35.1: El Segundo Power—Baseline Tariff to be effective 8/17/2010.
Filed Date: 02/16/2011.
Accession Number: 20110216–5002.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: ER11–2892–000.
Applicants: Long Beach Generation LLC.
Description: Long Beach Generation LLC submits tariff filing per 35.1: Long Beach Generation LLC—Baseline Tariff to be effective 8/17/2010.
Filed Date: 02/16/2011.
Accession Number: 20110216–5003.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: ER11–2893–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Revised Rate Schedule No. 193 of Florida Power Corporation to be effective 1/1/2011.
Filed Date: 02/16/2011.
Accession Number: 20110216–5016.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: ER11–2894–000.
Applicants: Granite State Electric Company.
Description: Granite State Electric Company submits tariff filing per 35.1: Borderline Sales Tariff Rate Schedule Update Filing to be effective 2/17/2011.
Filed Date: 02/16/2011.
Accession Number: 20110216–5026.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: ER11–2895–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(1): Transmission Formula Rate Case to be effective 6/1/2011.
Filed Date: 02/16/2011.
Accession Number: 20110216–5043.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: ER11–2896–000.
Applicants: NorthWestern Corporation.
Description: NorthWestern Corporation submits tariff filing per 35.13(a)(2)(iii): Service Agreement No. 20–SD Engineering, Procurement and Construction Agreement to be effective 1/14/2011.
Filed Date: 02/16/2011.
Accession Number: 20110216–5071.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Docket Numbers: ER11–2897–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): R81 ISA, 2nd Rev. Service Agreement No. 2301, Fairless Energy & PECO to be effective 9/18/2009.
Filed Date: 02/16/2011.
Accession Number: 20110216–5073.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 09, 2011.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM11–1–000.
Applicants: Public Service Electric and Gas Company.
Description: Supplemental Information of Public Service Electric and Gas Company.
Filed Date: 02/16/2011.
Accession Number: 20110216–5074.
Comment Date: 5 p.m. Eastern Time on Wednesday, March 16, 2011.

Take notice that the Commission received the following electric reliability filings.

Docket Numbers: RD11–4–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of One Emergency Preparedness and Operations Reliability Standard EOP–008–1 and Retirement of One Existing Reliability Standard EOP–008–0.
Filed Date: 02/11/2011.
Accession Number: 20110211–5100.
Comment Date: 5 p.m. Eastern Time on Friday, March 04, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-

mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 16, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4110 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–43–000.
Applicants: KGEN Murray I and II LLC.
Description: Application for Order Authorizing the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action and Shortened Comment Period of KGEN Murray I and II LLC.
Filed Date: 02/11/2011.
Accession Number: 20110211–5102.
Comment Date: 5 p.m. Eastern Time on Friday, March 04, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–2872–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii): Revised IFA and SA for Victorville's SCLA Development to be effective 4/12/2011.
Filed Date: 02/10/2011.
Accession Number: 20110210–5161.
Comment Date: 5 p.m. Eastern Time on Thursday, March 03, 2011.

Docket Numbers: ER11–2873–000.
Applicants: FPL Energy South Dakota Wind, LLC.
Description: FPL Energy South Dakota Wind, LLC submits tariff filing per 35.15: ER10–1929 Cancellation of Tariff ID_FINAL to be effective 2/11/2011.
Filed Date: 02/10/2011.
Accession Number: 20110210–5164.
Comment Date: 5 p.m. Eastern Time on Thursday, March 03, 2011.

Docket Numbers: ER11–2874–000.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Allegheny Energy Supply Company, LLC submits request for authorization to make wholesale power sales to its affiliate *etc.*
Filed Date: 02/10/2011.
Accession Number: 20110211–0201.
Comment Date: 5 p.m. Eastern Time on Thursday, March 03, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 11, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4107 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–1947–029; ER00–3696–015; ER07–1000–008; ER10–450–003.
Applicants: Las Vegas Power Company, LLC, Griffith Energy LLC, LS Power Marketing, LLC, Arlington Valley, LLC.
Description: Second Supplement to Updated Market Power Analysis.
Filed Date: 02/11/2011.
Accession Number: 20110211–5137.
Comment Date: 5 p.m. Eastern Time on Friday, March 04, 2011.

Docket Numbers: ER10–2393–000; ER10–2393–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc's response to the Commission's letter dated January 11, 2011 seeking additional information and amendment to compliance filing dated 8/25/10.
Filed Date: 02/14/2011.
Accession Number: 20110214–5150.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: ER11–2496–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): Midwest ISO PJM JOA Amendment to be effective 9/17/2010.
Filed Date: 02/15/2011.
Accession Number: 20110215–5016.
Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: ER11–2882–000.
Applicants: ReEnergy Sterling CT Limited Partnership.
Description: ReEnergy Sterling CT Limited Partnership submits tariff filing per 35.1: ReEnergy Sterling CT LP Notice of Succession and Non-Material Change in Status to be effective 1/14/2011.
Filed Date: 02/14/2011.
Accession Number: 20110214–5185.
Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: ER11–2883–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2010–02–

14 CAISO's Service Agreement 1511 with Solar Partners I LGIA to be effective 7/28/2010.

Filed Date: 02/14/2011.

Accession Number: 20110214–5188.

Comment Date: 5 p.m. Eastern Time on Monday, March 07, 2011.

Docket Numbers: ER11–2885–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2011–02–15 CAISO's Amendments to BrightSource LGIA's to be effective 1/26/2011.

Filed Date: 02/15/2011.

Accession Number: 20110215–5042.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Docket Numbers: ER11–2886–000.

Applicants: Sierra Pacific Power Company.

Description: Sierra Pacific Power Company submits tariff filing per 35: Rate Schedule No. 61—Compliance to Fix Date of Concurrence to be effective 1/1/2011.

Filed Date: 02/15/2011.

Accession Number: 20110215–5044.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 08, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–4106 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–59–000]

Northwest Pipeline, GP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Molalla Capacity Replacement Project and Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

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 Molalla Capacity Replacement Project, which would involve pipeline and associated facility abandonment and the construction and operation of a new pipeline loop and associated facilities by Northwest Pipeline, GP (Northwest) in Marion and Clackamas Counties, Oregon. 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 March 18, 2011.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as follows: FERC Public Scoping Meeting, Molalla Capacity Replacement Project, March 1, 2011, 6:30 p.m. PST, St. Mary's Public Elementary School, 590 East College Street, Mount Angel, OR 97362.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about retirement of pipeline facilities or the acquisition of an easement to construct, operate, and maintain the proposed pipeline 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 Northwest 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

Northwest proposes to construct, modify, and operate below and aboveground facilities along its existing 2436 Camas/Eugene pipeline. According to Northwest, the Molalla Capacity Replacement Project would replace the capacity of an approximately 15-mile-long pipeline segment that is proposed for retirement with approximately 7.8 miles of new pipeline.

The Molalla Capacity Replacement Project would consist of the following activities:

• Abandon in-place approximately 15 miles of 16-inch-diameter pipeline;
• Relocate an existing pig [1] receiver from MP 41.02 to MP 48.04 and remove aboveground facilities, including a pig launcher, piping, and valves, to accommodate pipeline retirement;
• Install approximately 7.8 miles of new 20-inch diameter pipeline loop;[1] and
• Install new taps, block valves, and crossovers along new pipeline loop.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

The project would require approximately 117 acres of land for the modification, removal, retirement, and/or installation of aboveground facilities and the pipeline. Following construction, about 20.6 acres would be maintained for permanent operation of the project's below and aboveground facilities; the remaining acreage would be restored and allowed to revert to former uses. About 78 percent of the proposed loop pipeline route parallels existing pipeline, utility, or road rights-of-way.

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 [3] 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 and visual resources;
• Water resources, fisheries, and wetlands;
• Cultural resources;
• Vegetation and wildlife;
• Air quality and noise;
• Endangered and threatened species;
• Public safety; and
• Cumulative impacts

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 beginning on page 5.

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. Currently, no agencies have expressed their intention to participate as a cooperating agency in the preparation of the EA to satisfy their NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable 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.[4] 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.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.

• Agricultural land uses including hops, filberts, and other specialty crops;
• Residential structures;
• Construction noise;
• Waterbody and wetland crossings; and
• Federally-listed threatened and endangered species and their habitats.

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 Washington, DC on or before March 18, 2011.

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 (CP11–59–000) 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 We bsite at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons

[1] A "pig" is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes. A pipeline loop is constructed parallel to an existing pipeline to increase capacity.

[2] 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.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

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 website 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., CP11–59). 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.

Dated: February 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4082 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–46–000]

Kern River Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Mountain Pass Lateral Project, Request for Comments on Environmental Issues and Notice of Onsite Environmental Review

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 Mountain Pass Lateral Project involving construction and operation of facilities by Kern River Gas Transmission Company (Kern River) in San Bernardino County, California. This EA will be used by the Commission in its decisionmaking 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 March 18, 2011.

Site Visit

On March 8, 2011, the Office of Energy Projects (OEP) staff will conduct a site visit of the planned Mountain Pass Lateral Project. We will inspect accessible locations along the proposed pipeline route, as feasible. Examination of the proposed pipeline route will be by automobile, remote observation from vantage point(s) at higher elevations relative to the proposed route, and on foot. Representatives from BLM, Kern River and Molycorp will accompany the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation (vehicles with high clearance are required) and should meet at the following time and location: Tuesday, March 8, 2011, 10 a.m. (PST), Location: Primm Valley Golf Club, Directions: (Interstate 15 Exit #291, Yates Well Road, right at stop sign; follow signs; meet in parking lot past entrance gate).

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Kern River proposes to construct approximately 8.6 miles of 8-inch lateral pipeline in San Bernardino County, California extending from the existing Kern River mainline along the western edge of Ivanpah Valley and terminating at the active mining operation on property owned by Molycorp Minerals, LLC (Molycorp). The lateral pipeline would have a design capacity of 24.27 million standard cubic feet per day. According to Kern River, its project and the natural gas it delivers to the Molycorp facility would provide reliable power generation and steam production in order to facilitate

Molycorp's existing rare earth separations process.

The Mountain Pass Lateral Project would consist of the following facilities:

- Approximately 8.6 miles of 8-inch lateral pipeline;
- A tap assembly and pig launcher [1] within and adjacent to Kern River's existing mainline pipeline system right-of-way at milepost 585.77; and
- A new meter station and pig receiver on the existing Molycorp property.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 93.51 acres of land for the aboveground facilities and the pipeline. The majority of construction would occur on land managed by the U.S. Department of the Interior Bureau of Land Management (BLM); remaining construction would occur on property owned by Molycorp. Following construction, about 51.97 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.

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 [3] 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 beginning on page 4.

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. Currently, the BLM Needles Field Office has expressed its intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), 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.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) 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.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Kern River. This preliminary list of issues may be changed based on your comments and our analysis.

- Threatened endangered species (including desert tortoise) habitat
- Alternative pipeline routes
- Access road improvements

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 Washington, DC on or before March 18, 2011.

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 (CP11–46–000) 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

[1] A "pig" is a tool that is inserted into and moves through the pipeline, and is used for cleaning the pipeline, internal inspections, or other purposes.

[2] 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.

[3] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

feature, which is located on the Commission's website 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.

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 website.

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., CP11–46). 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, any additional 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.

Dated: February 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4081 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2641–000]

Duke Energy Carolinas, LLC; Notice of Filing

Take notice that, on February 10, 2011, Duke Energy Carolinas, LLC filed to supplement its filing, in the above captioned docket, with information required under the Commission's regulations. Such filing serves to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 23, 2011.

Dated: February 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4080 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6495–000]

Keyser, Michael J.; Notice of Filing

Take notice that on February 15, 2011, Michael J. Keyser submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2008), Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR part 45 and 45.8 (2010), and Commission Order No. 664, 112 FERC ¶ 61,298 (2005).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 8, 2011.

Dated: February 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4086 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM11–9–000]

Locational Exchanges of Wholesale Electric Power

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: In this Notice of Inquiry (NOI), the Commission seeks comment that would assist the Commission in providing guidance as to the circumstances under which locational exchanges of electric power should be permitted generically and circumstances under which the Commission should consider locational exchanges on a case-by-case basis.

DATES: Comments are due April 25, 2011.

ADDRESSES: Commenters may submit comments, identified by docket number by any of the following methods:

- *Agency Web Site: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Additional requirements can be found on the Commission's Web site, see, e.g., the "Quick Reference Guide for Paper Submissions," available at *http://www.ferc.gov/docs-filing/efiling.asp*, or via phone from FERC Online Support at 202–502–6652 or toll-free at 1–866–208–3676.

FOR FURTHER INFORMATION CONTACT:

Andrew Knudsen (Legal Information), Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–6527, *andrew.knudsen@ferc.gov*.

Andrew Weinstein (Legal Information), Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–6230, *andrew.weinstein@ferc.gov*.

Melissa Lozano (Technical Information), Federal Energy Regulatory Commission, Office of Energy Market Regulation, 888 First Street, NE., Washington, DC 20426, (202) 502–6267, *melissa.lozano@ferc.gov*.

Thomas Dautel (Technical Information), Federal Energy Regulatory Commission, Office of Energy Policy & Innovation, 888 First Street, NE., Washington, DC 20426, (202) 502–6196, *thomas.dautel@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Issued February 17, 2011.

1. The Commission seeks comment regarding circumstances in which locational exchanges of electric power should be permitted generically or considered by the Commission on a case-by-case basis. Because locational exchanges, in different circumstances, might look either like wholesale power transactions that make efficient use of the transmission system or like the functional equivalent of transmission service, we also seek comments as to whether and how different types of locational exchanges are consistent with our core principles that transmission service must be available on a transparent and not unduly discriminatory basis. While the Commission has spoken to locational exchanges in the past and that guidance continues to apply today, any policy determinations made in this proceeding will only be applied prospectively.

I. Background

A. Docket No. EL10–71–000

2. On June 4, 2010, Puget Sound Energy Inc. (Puget) filed a petition for declaratory order seeking a finding that a locational exchange is a wholesale power transaction and not transmission service subject to an open access transmission tariff (OATT). Puget defines a locational exchange as

> * * * a pair of simultaneously arranged wholesale power transactions between the same counterparties in which party A sells electricity to party B at one location, and party B sells the same volume of electricity to party A at a different location with the same delivery period, but not necessarily at the same price.[1]

3. In an order issuing contemporaneously with this NOI, the Commission finds that Puget's Petition raises significant policy issues for market participants in the electric industry and that the record in Docket No. EL10–71–000 provides insufficient basis to make the determination requested by Puget.[2] The Commission has initiated this proceeding to develop the record necessary to address the proper regulatory treatment of locational exchanges.

B. Prior Commission Policy

4. Prior to Puget's Petition, the Commission discussed transactions similar to locational exchanges in Order No. 888[3] and subsequent Commission orders. As part of its statutory obligation under sections 205 and 206 of the Federal Power Act[4] to remedy undue discrimination, the Commission adopted Order No. 888, which prohibits public utilities from using their monopoly power over transmission to engage in undue discrimination against others. In Order No. 888, the

[1] Puget, Petition for Declaratory Order, Docket No. EL10–71–000, at p. 1 (filed June 4, 2010) (Puget's Petition).

[2] 134 FERC ¶61,122 (2011).

[3] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888–A, FERC Stats. & Regs. ¶ 31,048, order on reh'g, Order No. 888–B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888–C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. *Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. *New York* v. *FERC,* 535 U.S. 1 (2002).

[4] 16 U.S.C. 824d.

Commission discussed certain "buy-sell arrangements" that could be used "to obfuscate the true transactions taking place and thereby allow parties to circumvent Commission regulation of transmission in interstate commerce." [5] The Commission further noted in Order No. 888–A that "[we] reserve our authorities to ensure that public utilities and their customers are not able to circumvent non-discriminatory transmission in interstate commerce." [6] Moreover, the Commission recognized that a wide range of existing programs and transactions might fall within a category of arrangements that look similar to buy-sells and indicated that it would address these on a case-by-case basis.[7]

5. Subsequent to Order No. 888, the Commission has considered exchanges of power resembling those proposed by Puget on at least two occasions. In *UAMPS,* the Commission prohibited an arrangement in which a transmission customer sold electricity to a transmission provider's merchant affiliate at one location, and the transmission provider's merchant affiliate sold the same volume of electricity to the transmission customer at a different location.[8] Prior to entering into the exchange, the transmission customer had sought to interconnect additional generation to the transmission provider's system. However, because this customer was operating under a grandfathered bilateral agreement and not the OATT adopted under Order No. 888, the transmission customer did not have a right to demand the redispatch necessary to place the generation on the transmission provider's network. As an alternative to obtaining redispatch, the customer entered into an exchange with the transmission provider's merchant affiliate. Subsequently, the customer filed a complaint with the Commission alleging that the transmission provider had failed to maintain functional separation between its transmission and merchant functions. The Commission prohibited this transaction, finding that it effectuated transmission service and violated the separation of functions between the merchant affiliate and the transmission provider. The Commission explained,

> The redispatch transaction offered by PacifiCorp's Merchant Function is, unquestionably, a transmission service; the sole result of the transaction is to deliver a Utah Municipal Systems resource from a receipt point on PacifiCorp's system to a delivery point on PacifiCorp's system.[9]

The Commission further explained that all transmission service must be provided under an OATT or under grandfathered bilateral arrangements. The Commission reiterated that the only permissible way for a customer to arrange transmission service on a transmission provider's system through the merchant affiliate is via re-assignment of point-to-point transmission service. On rehearing, the Commission affirmed the prohibition on the transaction in which a transmission provider's merchant function purchased power from a transmission customer at receipt points on the transmission provider's system and simultaneously sold the same amount of power to the transmission customer at delivery points again on the transmission provider's transmission system.[10] Characterizing the exchange as redispatch of generation resources that effectuated transmission service, the Commission emphasized that transmission service can only be provided under the OATT.

6. In *El Paso,* however, the Commission reached a different decision based on a different set of facts and found that the specific locational exchange proposed by El Paso and a counterparty (Phelps Dodge) was permissible.[11] In *El Paso,* the parties submitted their agreement to the Commission for approval and provided additional information in response to data requests from Commission staff. In permitting the exchange in *El Paso,* the Commission expressly distinguished the factual circumstances related to the exchange in *El Paso* from the exchange in *UAMPS.* The Commission observed that, unlike the facts presented in *UAMPS,* in *El Paso* (1) The generation substations at which the sales occurred and the lines interconnecting the substations were owned jointly by multiple parties, not just El Paso, and thus El Paso's counterparty could have obtained service from another source; (2) the counterparty had not requested redispatch, nor was redispatch needed to complete the transaction; (3) the counterparty was not an existing transmission customer of El Paso, so it was not paying twice for the same service and had not requested nor had it been denied transmission service; and (4) the swap could have been entered into with another power marketer instead of El Paso's merchant affiliate.[12]

II. Subject of the Notice of Inquiry

7. The Commission seeks comments regarding circumstances in which locational exchanges of electric power should be permitted generically or considered by the Commission on a case-by-case basis. The Commission specifically requests comments addressing the topics identified below, as well as any other relevant issues identified by interested parties.

A. General Information

8. The Commission seeks comment regarding the characteristics of locational exchanges and whether the definition set forth by Puget's Petition sufficiently accounts for those characteristics. Puget defined a locational exchange as "[a] pair of simultaneously arranged wholesale power transactions between the same counterparties in which party A sells electricity to party B at one location, and party B sells the same volume of electricity to party A at a different location with the same delivery period, but not necessarily at the same price." [13] Puget also describes the locational exchanges it is proposing as different from the buy-sell transactions discussed in Order No. 888. Puget explains that, in Order No. 888, the Commission was concerned about exchanges in which one party wanted to transmit power from one location to another location, and a second party with transmission capacity on that path simply purchased the power from the first party at the point of delivery, moved the power to the point of receipt using its transmission capacity, and sold the same power back to the first party at the point of receipt. In contrast to such buy-sell transactions, Puget explains, the parties to a locational exchange both have power at the respective sides of the transaction, which is exchanged bilaterally resulting in exchanges that "are simply symmetrical swaps of power

[5] Order No. 888, FERC Stats. & Regs. at 31,785. The Commission discussed a specific type of transaction in which "an end user arranges for the purchase of generation from a third-party supplier and a public utility transmits that energy in interstate commerce and re-sells it as part of a 'bundled' retail sale to the end user." *Notice of Proposed Rulemaking,* FERC Stats. & Regs. ¶ 32,514, at 33,082–83 (1995).

[6] Order No. 888–A, FERC Stats. & Regs. at 30,344.

[7] *Id.* The Commission has subsequently enforced this prohibition against "buy-sell" arrangements. *See New York State Electric and Gas Corporation,* 77 FERC ¶ 61,044 (1996), *reh'g denied,* 83 FERC ¶61,203 (1998).

[8] *Utah Associated Municipal Power Systems* v. *PacifiCorp,* 83 FERC ¶ 61,337, at 62,367 (1998) (*UAMPS I*), *reh'g denied and clarification granted,* 87 FERC ¶ 61,044, at 61,187–88 (1999) (*UAMPS II*) (collectively, *UAMPS*).

[9] *UAMPS I,* 83 FERC at 62,367.

[10] *UAMPS II,* 87 FERC at 61,188.

[11] *El Paso Electric Co.,* 115 FERC ¶ 61,312 (2006) (*El Paso*).

[12] *El Paso,* 115 FERC ¶ 61,312 at p. 18–22.

[13] Puget's Petition, at p. 1.

at two points."[14] We encourage commenters to identify other transactions that may be different in form from the types of transactions encompassed by Puget's proposal but should be considered by the Commission as part of this proceeding.

9. Moreover, the Commission understands that various parties, at least in the Northwest, believe that locational exchanges provide certain benefits, including the ability to streamline operations.[15] For example, as discussed more fully below, some parties assert that locational exchanges may reduce transmission congestion and improve system reliability by offering an alternative mechanism to serve load while avoiding the transmission of electricity over congested transmission paths. Parties also assert that locational exchanges (1) Facilitate access to distant energy resources, including wind power and other variable resources located far from native load; (2) allow market participants to take advantage of price spreads at different locations; (3) enable market participants to more efficiently utilize their existing transmission capacity rights; (4) ease scheduling burdens by eliminating the need for hourly and daily scheduling of transmission between the exchange points; and (5) allow entities such as power marketers the ability to avoid having to return small amounts of in-kind power to the transmission provider in order to manage transmission service-related imbalances.

10. Moreover, it is the Commission's understanding that locational exchanges typically occur outside of organized markets. To the extent that the exchange involves power located inside an organized market, the other side of the exchange typically involves power located outside of an organized market. The Commission also understands that locational exchanges may vary in duration, as many of them are for only a few hours or days whereas others may be for longer periods. The Commission understands that these exchanges may be arranged several months to several days in advance or shortly before the exchange is initiated.

11. The Commission seeks information regarding the characteristics of locational exchanges to help the Commission understand how market participants use and benefit from these arrangements, as well as how these arrangements affect the electric power system. In particular, the Commission encourages commenters to address the following questions:

(1) How common are locational exchanges?

(2) What types of parties use locational exchanges (affiliate, marketer, generator)? How common is it for an affiliate of the transmission provider to be one of the parties to a locational exchange?

(3) In what regions of the country and in what types of organized and non-organized markets are locational exchanges used?

(4) In a typical locational exchange how much power (in megawatts) is being exchanged? To the extent the amount of power varies significantly, please give a range.

(5) Do locational exchanges typically involve short-term or long-term contracts? How many days in advance is a locational exchange typically arranged?

(6) Under what circumstances, and for what purposes are locational exchanges used? How are locational exchanges arranged (bilateral negotiation via e-mail, phone call, or instant message; broker; electronic exchange)?

(7) What are the benefits of locational exchanges? In identifying the benefits of these arrangements, please describe the type of circumstances in which the locational exchange provides this benefit and why the locational exchange serves as a means to achieve the specified benefit. The Commission also urges commenters to provide specific examples demonstrating particular benefits.

B. Effects of Locational Exchanges on System Congestion

12. The Commission understands that some parties believe that certain types of locational exchanges may relieve physical congestion. In cases such as those contemplated in Puget's Petition,[16] it would seem that the locations and magnitudes of the generation sources and load sinks on the system remain unchanged. Thus, although the parties to the locational exchange may eliminate their own risks of curtailment due to congestion over that path, the distribution of power flows on the transmission system before and after the locational exchange transactions appears to remain unchanged. The Commission seeks comment on this and on whether other types of locational exchanges (for example, as described in the example below and depicted in Figure 1, where one party replaces a source of power with a new source, rather than simply swapping pre-existing generator output) may actually increase congestion. Thus, the Commission encourages parties to comment on the effect of locational exchanges on system congestion and to provide examples of how these arrangements do or do not reduce system congestion.

C. Merchant Affiliate Issues

13. In both *UAMPS* and *El Paso,* the Commission focused specifically on locational exchanges involving a merchant affiliate as one of the parties to the exchange. In *UAMPS,* the Commission rejected the proposed locational exchange, finding that "[a] public utility's merchant function may not provide transmission service."[17] In *El Paso,* however, the Commission accepted the locational exchange involving a merchant affiliate as a permissible marketbased rate wholesale power sale due to the factual distinctions described previously.

14. The Commission seeks comment as to whether locational exchanges may offer opportunities for transmission providers and their merchant affiliates to discriminate unduly against or between non-affiliate transmission customers. We seek comment on whether a merchant affiliate of a transmission provider is uniquely positioned, due to its access to network transmission service, to provide locational exchanges on its affiliated transmission provider's system, and whether, in some cases, may be the only counterparty available for a customer seeking to enter into a locational exchange. We seek comment on whether, under these circumstances, the merchant affiliate of a transmission provider (or its parent company) could benefit from revenues that flow from the locational exchange, while the transmission provider continues to recover its transmission cost-of-service, effectively shifting costs to network and native load customers due to decreased use of point-to-point transmission service pursuant to the OATT. Thus, the Commission seeks comment regarding potential concerns involving locational exchanges executed by a merchant affiliate on its affiliated transmission provider's system.

[14] Puget Petition at p. 15. Puget elaborates that "Party A has power at Point X and wants to market or use it at Point Y and Party B has power at Point Y and wants to market or use it at Point X." *Id.* at 14–15.

[15] *E.g.,* Puget's Petition; Xcel Energy Services Inc., Comments, Docket No. EL10–71–000, (filed July 6, 2010); Portland General Electric Co., Docket No. EL10–71–000 (filed July 6, 2010); Financial Institutions Energy Group, Comments, Docket No. EL10–71–000 (filed July 6, 2010).

[16] Puget's Petition, Figure 1, 3, and 4. For instance, in Figure 3, both generators output is the same with and without a locational exchange. The benefit cited by Puget appears to be that Puget avoids the need to use a constrained transmission path.

[17] *UAMPS II,* 87 FERC at 61,188.

15. Recognizing that there may be safeguards to address concerns regarding affiliate transactions, the Commission seeks comment on how industry participants now assure that such activities do not violate Commission policies. For example, do tagging obligations, Electric Quarterly Report (EQR) filings, standards of conduct rules and market-based rates rules provide sufficient protections and transparency to mitigate against the possible risks related to locational exchanges involving a merchant affiliate transacting on its affiliated transmission provider's system? The Commission would also welcome comment on whether any additional regulatory safeguards are necessary.

D. Flexible Use of Network Transmission Service to Effectuate Locational Exchanges

16. The Commission seeks comment on whether locational exchanges could interact with network service rights in a manner that is inconsistent with the Commission's open access principles. One potential such transaction, shown in Figure 1 below, could involve an arrangement in which Party A operates expensive generation at Location X to serve its load at Location X. Party A wishes to replace its expensive generation with inexpensive generation it owns at Location Y, but the Y-to-X path is congested. Party A's solution is to enter into a locational exchange with Party B, which has network transmission service, network resources, and load straddling Locations X and Y. Parties A and B enter an agreement in which Party A sells its inexpensive generation at Location Y to Party B, and Party B sells to Party A some of its generation that is closer to Location X and unaffected by the constraint on the Y-to-X path.[18] In this example, Party A's reduction in resources at Location X and Party B's new purchase of generation at Location Y may effectively transfer to Party A the inherent flexibility afforded to Party B as a network customer. The Commission further notes that this transaction has the effect of physically sending more power over the already congested Y-to-X path and onto Party A's load. More generally, the Commission is inquiring whether the interaction between network service rights and locational exchanges could create a risk that parties will be able to engage in the effective provision of transmission service in a non-transparent manner outside of an OATT.

17. Thus, the Commission seeks comment whether a party with network transmission rights could use locational exchanges to circumvent the Commission's open access principles.

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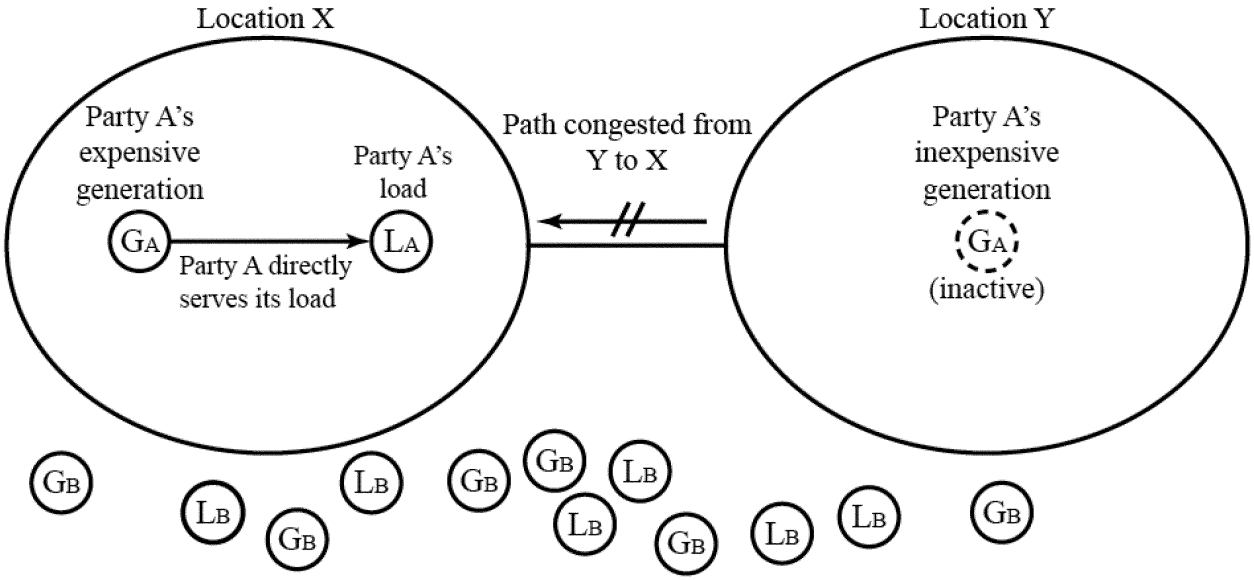
[18] In this example, Party B undesignates as a network resource the capacity it sells to Party A, and instead uses the generation at Location Y it has purchased from Party A.

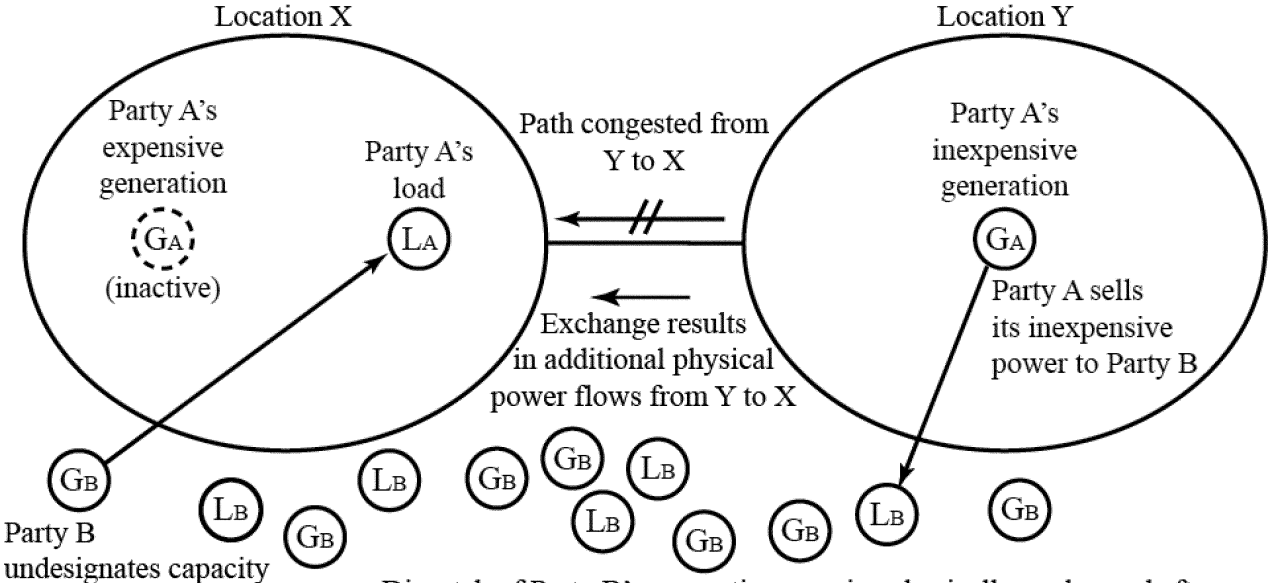
Figure 1

Before locational exchange:



Party B serves multiple network loads from multiple network resources straddling locations X and Y

After locational exchange:



Party B undesignates capacity from a generator on the import-constrained side of the Y-to-X path and sells it to Party A.

Dispatch of Party B's generation remains physically unchanged after exchange, despite the sale of capacity from Party B to Party A. The only physical changes to the system after the locational exchange are the inactivation of Party A's expensive generation and the activation of Party A's inexpensive generation.

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E. Potential Discriminatory Effects

18. The Commission seeks comment as to whether locational exchanges allow some parties to obtain the functional equivalent of transmission service on more favorable terms or rates than those available to other parties. The Commission also seeks comment regarding the potential distortive effects of locational exchanges on billing determinants and how such distortions may affect transmission rates. Transmission rates are determined by distributing transmission costs among different transmission services (such as point-to-point and network service) and dividing those costs by billing determinants calculated based upon the power amounts served by each transmission service.[19] If locational exchanges are not considered transmission service and are therefore not included in the billing determinants used to set transmission rates, locational exchanges that serve as an alternative to transmission service may increase transmission rates for remaining customers. Thus, the Commission seeks comment as to whether locational exchanges could increase charges for remaining transmission customers while allowing those entering into locational exchanges to avoid transmission charges.

19. The Commission seeks comments as to whether and, if so, how locational exchanges affect billing determinants or create other such potential market distortions. Moreover, if locational exchanges have an effect on billing determinants and the distribution of costs, the Commission seeks comment on whether certain types of customers are less likely to be able to enter into locational exchanges and thus may be forced to pay potentially increased transmission costs that result from the distorted billing determinants.

F. Price Reporting

20. The Commission seeks comment as to whether the current EQR procedures and requirements are sufficient to ensure appropriate locational exchange data reporting. Under § 35.10b of the Commission's regulations, sellers of power are required to report data to the Commission's EQR system covering all services provided under part 35 of the Commission's regulations. The EQR data dictionary provides for a category of services called "exchanges" within which "the receiver accepts delivery of energy for a supplier's account and returns energy at times, rates, and amounts as mutually agreed if the receiver is not an RTO/ISO."[20] However, there is no rule describing whether an exchange transaction must be reported in EQR as an exchange, or whether an exchange transaction may alternatively be reported in EQR as two separate power sale transactions (one report by each seller).

21. Because of the structure of a locational exchange, the price per megawatt hour at each side of the transaction does not appear to be of any immediate financial interest to the parties, except as those prices determine the price of the entire locational exchange position (or the spread). Thus, if an exchange were reported in EQR as two separate power sale transactions, parties may not have any financial incentive to establish and report realistic prices for the power at each location. For instance, parties would be indifferent between reporting prices of $5 and $10 versus $400 and $405, since in both cases the spread is $5. As a result, such reports could have the effect of distorting price data in the Commission's EQR system. With respect to this issue, we encourage parties to respond to the following questions:

(1) How are locational exchanges typically reported to the EQR today?

(2) Are additional rules needed to ensure that locational exchanges are reported in EQR as exchanges, and not reported as two separate power sales?[21]

G. System Reliability

22. The Commission inquires as to whether locational exchanges affect the ability of system operators and any other relevant entities to obtain information or perform other functions necessary to maintain adequate system reliability. The Commission also seeks comment on the effects and implications of locational exchanges on the transmission system(s) and the operator's ability to comply with Commission approved North American Electric Reliability Corp. (NERC) reliability standards.

23. Parties should describe (1) The potential effect of locational exchanges on system performance including inadvertent power flows and the availability of information regarding power flows to the transmission provider and other reliability entities; (2) how locational exchanges interact with scheduling and tagging requirements; and (3) how locational exchanges affect short-term and long-term system planning. The Commission also seeks information associated with the relationship between locational exchanges and curtailment issues and procedures.

24. As parties provide this information, the Commission urges them to consider scenarios where a locational exchange is effectuated, including but not limited to, (a) within one balancing authority area; (b) within more than one balancing authority area; (c) over short distances as compared to long distances; (d) involving small amounts of MWs as opposed to large amounts of MWs; and (e) involving more than two points of exchanges in the context of the different scenarios listed in (a) through (d).

H. Pricing of Locational Exchanges

25. If the Commission determines that a locational exchange is transmission service subject to an OATT, the Commission seeks comment as to whether there is an appropriate existing transmission pricing policy that should apply specifically to these types of arrangements. In the alternative, the Commission urges parties to propose a pricing mechanism that would efficiently price those exchanges that make use of the transmission system.

I. Commission Review of Locational Exchanges

26. In addition, the Commission seeks comment regarding the potential effect of requiring parties to seek prior Commission approval for locational exchanges on a case-by-case basis.[22] In particular, the Commission urges parties

[19] Network service is priced based on the load ratio allocation method. "Because network service is load based, it is reasonable to allocate costs on the basis of load for purposes of pricing network service." Order No. 888, FERC Stats. & Regs. at 31,736. *Pro forma* OATT, section 34. For firm and non-firm point-to-point service, the transmission customer will be billed for its reserved capacity under terms of schedule 7 and 8, respectively. *Pro forma* OATT, section 25; schedules 7 and 8. The transmission customer's reserved capacity is the maximum amount of capacity and energy that the transmission provider agrees to transmit for the transmission customer between the point of receipt and the point of delivery. *Pro forma* OATT, section 1.42.

[20] *Revised Public Utility Filing Requirements for Electric Quarterly Reports,* Order No. 2001–I, 125 FERC 61,103, at Appendix A. The Commission has stated that the definition of "exchange" includes simultaneous trades at different locations. *Revised Public Utility Filing Requirements for Electric Quarterly Reports,* Order No. 2001–G, 120 FERC ¶ 61,270, at P 53, *order on reh'g and clarification,* Order No. 2001–H, 121 FERC ¶ 61,289 (2007).

[21] We note that the Commission's rules provide that data for exchange transactions are not to be reported to developers of price indices. As such, there appears to be no concern related to locational exchanges affecting the accuracy of price indices. *See* 18 CFR 35.41(c) and *Commission's Policy Statement on Natural Gas and Electric Price Indices,* 104 FERC ¶ 61,121, at P 34 (2003).

[22] For example, in *El Paso,* the Commission accepted a particular locational exchange after the parties filed the agreement and provided additional data to the Commission. *El Paso,* 115 FERC ¶ 61,312.

to comment as to whether such a requirement would impose undue delays and other administrative burdens affecting the ability of market participants to use locational exchanges.

27. The Commission seeks comment regarding circumstances in which locational exchanges of electric power should be permitted generically. In this regard, the Commission seeks comment regarding criteria that might define a safe harbor within which a locational exchange would be deemed a permissible wholesale power transaction without prior Commission review of that transaction. Under this approach, those parties seeking to enter into exchanges that do not satisfy the safe harbor criteria could seek Commission approval on a case-by-case basis. To the extent that there are circumstances in which locational exchanges are permitted on a generic basis, the Commission seeks comment regarding any additional rules that may be necessary to regulate the exchanges.

J. Comment Procedures

28. The Commission invites interested persons to submit comments, and other information on the matters, issues, and specific questions identified in this notice. Comments are due April 25, 2011. Comments must refer to Docket No. RM11–9–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

29. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

30. Commenters that are not able to file comments electronically must send an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426. The current copy requirements are specified on the Commission's Web site, see, e.g., the "Quick Reference Guide for Paper Submissions," available at *http://ww.ferc.gov.docs-filing/efiling.asp,* or via phone from FERC Online Support at 202–502–6652 or toll-free at1–866–208–3676.

31. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

K. Document Availability

32. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

33. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

34. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4079 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL11–22–000, QF11–115–001, QF11–116–001, et al.]

OREG 1, Inc., OREG 2, Inc., OREG 3, Inc., OREG 4, Inc.; Notice of Petition for Declaratory Order

	Docket Nos.
OREG 1, Inc.	EL11–22–000
OREG 2, Inc.	QF11–115–001
OREG 3, Inc.	QF11–116–001
OREG 4, Inc.	QF11–117–001
	QF11–118–001
	QF11–119–001
	QF11–120–001
	QF11–121–001
	QF11–122–001
	QF11–123–001
	QF11–124–001

Take notice that on February 14, 2011, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2010), OREG 1, Inc., OREG 2, Inc., OREG 3, Inc., and OREG 4, Inc., filed a Petition for Declaratory Order (Petition) requesting that the Commission grant their request for limited waivers from the filing requirements applicable to small power production facilities set forth in section 292.203(a)(3) of the Commission's Regulation's, 18 CFR 292.203(a)(3) (2010).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 16, 2011.

Dated: February 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4085 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–21–000]

Central Transmission LLC; Notice of Petition for Declaratory Order

Take notice that on February 8, 2011, pursuant to section 219 of the Federal Power Act,[1] Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, and Order No. 679,[2] Central Transmission LLC filed a Petition for Declaratory Order (Petition) requesting that the Commission grant their request for incentive rate treatments, as more fully described in its Petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 10, 2011.

Dated: February 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4084 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824s (2007); Energy Policy Act of 2005, Pub. L. 109–58, 1241, 119 Stat. 594,961–62 (2005) (EPAct 2005), amended the FPA by adding section 219.

[2] *Promoting Transmission Investment through Pricing Reform,* Order No. 679, 2006–2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,222, *order on reh'g,* Order No. 679–A, 2006–2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,236 (2006), *order on reh'g,* Order No. 679–A, 119 FERC ¶ 61,062 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13850–000]

Qualified Hydro 25, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On September 30, 2010, Qualified Hydro 25, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Easton Diversion Dam Hydroelectric Project (Easton Dam project) to be located on the Yakima River near Easton in Kittitas County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing 66-foot-high, 248-foot-long concrete gravity dam on the Yakima River which is owned and operated by the U.S. Bureau of Reclamation; (2) an existing gated outlet with a 1,320 cubic feet per second capacity; (3) a new 20-foot-wide concrete intake structure with trash racks and intake gates; (4) a new 325-foot-long, 72-inch-diameter steel penstock from the intake structure to the powerhouse; (5) a 50-foot by 40-foot reinforced concrete powerhouse containing one Kaplan turbine with a capacity of 1.2 megawatts; (6) a new substation; (7) a new approximately 1,400-foot-long, 34.5–69 kilovolt transmission line which will tie into an undetermined interconnection; and (8) appurtenant facilities. The estimated annual generation of the Easton Dam project would be 5.0 gigawatt-hours.

Applicant Contact: Ramya Swaminthan, Qualified Hydro 25, LLC, 33 Commercial St., Gloucester, MA 01930; phone: (978) 283–2822.

FERC Contact: Ryan Hansen (202) 502–8074 or by e-mail at *ryan.hansen@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13850–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 16, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–4087 Filed 2–23–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8864–8]

Access to Confidential Business Information by Guident Technologies Inc. and Its Identified Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Guident Technologies, Inc. of Herndon, VA and Its Identified Subcontractors, to access information which has been submitted to EPA under

all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than March 3, 2011.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8956; *fax number:* (202) 564–8955; *e-mail address: moseley.pamela@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA contract number GS–35F–0799M, Order Number EP11D000021, contractor Guident Technologies, Inc. of 198 Van Buren St., Herndon, VA; Impact Innovations Systems, Inc. of 9720 Capital Court, Suite 403, Manassas, VA; and Logistics Management Institute of 2000 Corporate Ridge, McLean, VA will assist the Office of Pollution Prevention and Toxics (OPPT) by developing/modifying the scanning capability for MTS Phase 1. Development will be transferred (Captiva) from the development environment to the EPA confidential business environment. They will also provide maintenance support of production-level CBITS application. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–35F–0799M, Order Number EP11D000021, Guident and Its Identified Subcontractors will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Guident and Its Identified Subcontractors' personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Guident and Its Identified Subcontractors access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until October 24, 2011. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Guident and Its Identified Subcontractors' personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: February 17, 2011.

Matthew Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–4141 Filed 2–23–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9270–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Anadarko Petroleum Corporation—Frederick Compressor Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has denied the November 5, 2010 Petition, submitted by WildEarth Guardians (WEG), to object to the July 14, 2010 response of the CDPHE, Air Pollution Control Division to the October 8, 2009 Order by EPA objecting to the issuance of the renewed title V permit for Anadarko Petroleum Corporation's Frederick Compressor Station, Permit Number 95OPWE035 issued on January 1, 2007.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioners may seek judicial review of those portions of the petitions, which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA Region 8 Office, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the final order, the petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at

least 24 hours before visiting day. Additionally, the final order for Anadarko Petroleum Corporation, Frederick Compressor Station, is available electronically at: *http://www.epa.gov/region07/air/title5/petitiondb/petitions/anadarko_response2010.pdf.*

FOR FURTHER INFORMATION CONTACT: Donald Law, Office of Partnerships and Regulatory Assistance, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7015, *law.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and object to, as appropriate, a title V operating permit proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator, within 60 days after the expiration of this review period, to object to a title V operating permit if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

EPA received a petition on November 5, 2010 from WEG. In its petition, WEG requested that EPA object to the issuance of the renewed title V permit for Anadarko Petroleum Corporation's Frederick Compressor Station, issued by the CDPHE on January 1, 2007. Specifically, WEG objected to CDPHE's July 14, 2010 response to the Administrator's October 8, 2009 Order arguing it failed to appropriately assess whether oil and gas wells and other pollutant emitting activities should be aggregated together with the Frederick Compressor Station as a single stationary source for PSD and title V permitting purposes. In addition, WEG alleged that prior EPA statements demonstrate oil and gas sources can be aggregated. Finally, WEG alleged that the State inappropriately relied on section 112 of the Act.

On February 2, 2011, the Administrator issued an order denying the petition. The order explains the reasons behind EPA's conclusions.

Dated: February 16, 2011.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2011–4145 Filed 2–23–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety and Homeland Security Bureau; Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Communications Security, Reliability, and Interoperability Council (CSRIC) will hold its final meeting on March 14, 2011, at 9 a.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street, SW., Washington, DC 20554.

DATES: March 14, 2011.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer of the FCC's CSRIC, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (e-mail); or Lauren Kravetz, Deputy Designated Federal Officer of the FCC's CSRIC, (202) 418–7944 (voice) or *lauren.kravetz@fcc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The CSRIC is a Federal Advisory Committee that provides recommendations to the FCC regarding best practices and actions the FCC can take to ensure optimal security, reliability, and interoperability of communications systems. On March 19, 2009, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years, through March 18, 2011.

Working Group members will submit final reports that detail recommendations to the Commission on topics including cybersecurity best practices, media security and reliability best practices, transition to Next Generation 9–1–1, technical options for E9–1–1 location accuracy, and best practices implementation. The Council may take action on these final reports.

Members of the general public may attend the meeting. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Jeffery Goldthorp, the FCC's Designated Federal Officer for the CSRIC by e-mail to *jeffery.goldthorp@fcc.gov* or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Chief for Cybersecurity and Communications Reliability Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs at (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation requested. In addition, please include a way the FCC may contact you if it needs more information. Please allow at least five days' advance notice; last minute requests will be accepted, but may be impossible to fill.

Additional information regarding the CSRIC can be found at: *http://www.fcc.gov/pshs/advisory/csric/.*

Federal Communications Commission.

Jeffery Goldthorp,

Associate Chief for Cybersecurity and Communications Reliability.

[FR Doc. 2011–4211 Filed 2–23–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the

identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: February 14, 2011.

Pamela Johnson,

Regulatory Editing Specialist, Federal Deposit Insurance Corporation.

INSTITUTIONS IN LIQUIDATION

[in alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10339	Badger State Bank	Cassville	WI	2/11/2011
10340	Canyon National Bank	Palm Springs	CA	2/11/2011
10341	Peoples State Bank	Hamtramck	MI	2/11/2011
10342	Sunshine State Community Bank	Port Orange	FL	2/11/2011

[FR Doc. 2011–4073 Filed 2–23–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, March 1, 2011, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2011–4282 Filed 2–22–11; 4:15 pm]

BILLING CODE 6715–01–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 (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012100–001.

Title: CMA CGM/CSAV Gulf Bridge Express Vessel Sharing Agreement.

Parties: CMA CGM S.A.; CMA CGM Antilles Guyane; and Compania Sud American de Vapores S.A.

Filing Party: Draughn Arbona, Esq.; Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive, Norfolk, VA 23502.

Synopsis: The amendment allows the parties to increase the number and size of vessels operated under the agreement.

Agreement No.: 012118–000.

Title: CMA CGM/OOCL Victory Bridge Space Charter Agreement.

Parties: CMA CGM S.A. and Orient Overseas Container Line Limited.

Filing Party: Draughn Arbona, Esq.; Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive, Norfolk, VA 23502.

Synopsis: The agreement authorizes CMA to charter space to OOCL in the trade between U.S. Atlantic and Gulf Coast ports and ports in Europe and Mexico.

Agreement No.: 201199–001.

Title: Port Fee Services Agreement.

Parties: City of Los Angeles; City of Long Beach; Port Check LLC; APM Terminals Pacific Ltd.; Eagle Marine Services, Ltd.; Long Beach Container Terminal, Inc.; Total Terminals International; California United Terminals, Inc.; International Transportation Service, Inc.; Seaside Transportation Service, LLC; West Basin Container Terminal LLC; Pacific Maritime Services, LLC; SSA Terminal (Long Beach), LLC; Trans Pacific Container Service Corporation; SSA Terminals, LLC; and Yusen Terminals, Inc.

Filing Party: David F. Smith, Esq. and Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW, Suite 1100, Washington, DC 20006.

Synopsis: The amendment revises the ports' payment of vendor operating costs.

By Order of the Federal Maritime Commission.

Dated: February 18, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–4144 Filed 2–23–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

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 shares of 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 offices 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 March 9, 2011.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Michael Fayne Rosinus,* Winnetka, Illinois, as part of a group acting in concert with Lightyear Capital, LLC, New York, New York; to acquire .11 percent of the voting shares of Cascade Bancorp, and thereby indirectly acquire voting shares of Bank of the Cascades, both of Bend, Oregon.

Board of Governors of the Federal Reserve System, February 17, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–4053 Filed 2–23–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of January 25–26, 2011

In accordance with Section 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on January 25–26, 2011.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long-run objectives, the Committee seeks conditions in reserve markets consistent with Federal funds trading in a range from 0 to ¼ percent. The Committee directs the Desk to execute purchases of longer-term Treasury securities in order to increase the total face value of domestic securities held in the System Open Market Account to approximately $2.6 trillion by the end of June 2011. The Committee also directs the Desk to reinvest principal payments from agency debt and agency mortgage-backed securities in longer term Treasury securities. The System Open Market Account Manager and the Secretary will keep the Committee informed of ongoing developments regarding the System's balance sheet that could affect the attainment over time of the Committee's objectives of maximum employment and price stability.

By order of the Federal Open Market Committee, February 17, 2011.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2011–4124 Filed 2–23–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request, Grants.gov

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, to *Ed.Calimag@hhs.gov,* or call the Reports Clearance Office on (202) 205–1193. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the Grants.gov OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: The SF–424D Assurances—Construction Programs—OMB No. 4040–0009—Reinstatement with Change-Grants.gov Office.

Abstract: Grants.gov is requesting OMB approval to reinstate with change the previously approved the SF–424D Assurances—Construction Programs (SF–424D) form (4040–0009) for three years. The change will be to the legal citations which have been updated to reflect changes in location within the United States Code. The "Trafficking Victims Protection Act of 2000 (Section 106)", as amended (22 U.S.C. 7104 (g) has been added in Section 19.

The SF–424D is used to provide information on required assurances when applying for construction Federal grants. The Federal awarding agencies use information reported on the form for the evaluation of award and general management of Federal assistance program awards. The only information collected on the form is the applicant signature, title and date submitted.

ESTIMATED ANNUALIZED BURDEN TABLE

Agency	SF–424D number of annual respondents	Number of responses per respondent	Total annual responses	Average burden on respondent per response in hours	Total burden hours
CNCS	0	1	0	30/60	0
COMMERCE	1908	1	1908	30/60	954
DHS	1421	1	1421	30/60	711
DOD	1	1	1	30/60	1
DOE	0	1	0	30/60	0
DOI	77	1	77	30/60	39
DOL	0	1	0	30/60	0
DOT	55	1	55	30/60	28
ED	0	1	0	30/60	0
EPA	0	1	0	30/60	0
HHS	52	1	52	30/60	26
HUD	0	1	0	30/60	0
IMLS	0	1	0	30/60	0
NARA	0	1	0	30/60	0
NASA	0	1	0	30/60	0
NEA	0	1	0	30/60	0

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on January 25–26, 2011, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, DC 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's Annual Report.

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Agency	SF–424D number of annual respondents	Number of responses per respondent	Total annual responses	Average burden on respondent per response in hours	Total burden hours
NEH	0	1	0	30/60	0
NIST	193	1	193	30/60	97
NRC	0	1	0	30/60	0
NSF	0	1	0	30/60	0
SBA	26	1	26	30/60	13
SSA	0	1	0	30/60	0
STATE	0	1	0	30/60	0
TREASURY	0	1	0	30/60	0
USAID	289	1	289	30/60	145
USDA	727	1	727	30/60	364
USDOJ	0	1	0	30/60	0
VA	391	1	391	30/60	196
Total					2,574

Seleda Perryman,

Office of the Secretary, HHS PRA Reports Clearance Officer.

[FR Doc. 2011–4112 Filed 2–23–11; 8:45 am]

BILLING CODE 4151–AE–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Evaluation of the Effectiveness of an Educational Interactive Video on Research Integrity—OMB No. 0990–New–Office of Research Integrity.

Abstract: The Office of Research Integrity (ORI) proposes to conduct a nine-month evaluation study of the effectiveness of an educational interactive video on research integrity.

The study seeks to answer two questions: (a) Objectively, is the Educational Interactive Video for Research Integrity (EIVRI) effective in achieving learning outcomes? (b) Subjectively, do learners and teachers perceive the video simulation as effective in helping them learn and teach research integrity? To answer the first question, a pretest-posttest control group experimental design is used to assess the effectiveness of individual learning of research integrity principles and concepts through the use of the video simulation. The video simulation instruction will be incorporated into an existing syllabus for a research integrity or research ethics course for the treatment group. The control group will use the existing syllabus with no video simulation in class. Participants will be graduate students enrolled in these ethics courses to learn and apply the responsible conduct of research at educational institutions. Participants will fill out a demographics form to discern if they have had prior training experience in research integrity. Those who have prior training experience and those who do not have prior training experience will be randomly assigned to either the treatment group or the control group. The random assignment will be done by picking the last digit of each individual's social security number for the two groups. The video simulation will be approximately four-hour long total. All students will take a pre-test quiz when they fill out the demographics form. Once the treatment is completed, all students will be asked to take a post-test quiz and answer a post-viewing questionnaire to capture their perceptions of the video simulation.

To answer the second question, the study will collect qualitative data from semi-structured interviews as well as focus groups. The semi-structured interviews will be conducted twice with faculty who teach the courses in the first part of the study, in person or on the phone, before and after he/she uses the video simulation. Participants for the focus groups will be selected from the students who participate in the first part of the study. The focus group will last one hour.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Demographics form	Graduate students	200	1	20/60	67
Pre-test questions	Graduate students	200	1	30/60	100
Ethics Instruction	Graduate students	200	1	4	800
Post-test questions	Graduate students	200	1	30/60	100
Post-viewing questionnaire	Graduate students	200	1	5/60	17
Interview before use of video	Faculty	10	1	6/60	1
Interview after use of video	Faculty	10	1	6/60	1
Focus groups	Graduate students	9	1	1	9
Total					1,095

Seleda Perryman,

Office of the Secretary, HHS PRA Clearance Officer.

[FR Doc. 2011–4114 Filed 2–23–11; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: Provide Services for the Dissemination of CER to Patients and Providers To Increase Adoption—OMB No. 0990–New–Office Within OS—Assistant Secretary for Planning and Evaluation (ASPE).

Abstract:

This research leverages best practices in behavior change, interaction design, and service innovation to increase the understanding and adoption of Comparative Effectiveness Research (CER) information by physicians and patients. By truly understanding the desires, behaviors and attitudes of patients and care providers across various segments, this project can significantly improve the dissemination, translation, and adoption of evidence-based, outcomes-oriented CER findings.

Comparative Effectiveness Research (CER) aims to provide patients and their doctors with the best available evidence that has been gathered from scientific research to make effective healthcare decisions. CER provides the latest thinking and recommendations on the risks and benefits of treatment and diagnostics as well as the confidence of those recommendations. In addition, it addresses individual patient factors such as quality of life and lifestyle that are included when making decisions about medical options. Widespread adoption of CER would lead to better outcomes for medical treatment and, in some cases, reduced cost.

The purpose of this project is "to strengthen the link between evidence production and strategies for conveying this information in ways that encourage evidence-based behavior change among providers and patients. The central question is how best to get CER information to physicians and patients in a way they understand. This task is considered critical to capitalizing on the Department's CER investment." This will be a one year generic clearance request.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Practice	Form A: Demographics for target population and colon cancer screening rates.	10	2	4	80
Healthcare Providers (Physicians, Nurse Practitioners, Physician Assistants and Nurses).	Form B: Tallies when use dashboard and/or show Web-based tool to patient in office.	40	563	1/60	375
Individual/patients	Form C: Experience Survey on web-based tool.	4750	1	3/60	238

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Healthcare Providers (Physicians, Nurse Practitioners, Physician Assistants, Nurses).	Form D: Experience Survey	40	4	1/60	3
Healthcare Providers (Physicians, Nurse Practitioners, Physician Assistants, Nurses).	Discussion Group	32	2	2	128
Individual/patients	Discussion Group	48	2	2	192
Total					1016

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–4113 Filed 2–23–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-day Notice]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Research Evaluation and Impact Assessment of ARRA Comparative Effectiveness Research Portfolio (New)—OMB No. 0990–NEW–Assistant Secretary Planning and Evaluation (ASPE).

Abstract: Researchers and policymakers have emphasized the need for research on effectiveness of health care interventions under real-world conditions in diverse populations and clinical practice settings, that is, comparative effectiveness research (CER). The American Reinvestment and Recovery Act of 2009 (ARRA) expanded Federal resources devoted to CER by directing $1.1 billion to the U.S. Department of Health and Human Services (HHS) for such research.

ARRA also called for a report to Congress and the Secretary of HHS on priority CER topics by the Institute of Medicine (IOM). The report presented priority CER topics and recommendations to support a robust and sustainable CER enterprise. In addition, ARRA established the Federal Coordinating Council on Comparative Effectiveness Research (FCCCER) to help coordinate and minimize duplicative efforts of Federally sponsored CER across multiple agencies and to advise the President and Congress on how to allocate Federal CER expenditures.

This project seeks to evaluate and assess the products and outcomes of ARRA-funded CER investments and the impacts of those investments on the priority topics recommended by IOM and on the categories and themes of the FCCCER framework. The primary goals of this evaluation are to (1) conduct an initial assessment of the ARRA CER portfolio, cataloguing how CER funding was invested to achieve the vision of the FCCCER and assessing initial impact from the perspective of various stakeholders; and (2) lay the groundwork for future CER investments by identifying investment opportunities, evidence gaps and lessons learned.

ESTIMATED ANNUALIZED BURDEN TABLE

Instrument	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
PSLA Web-based PI/PD survey	Principal investigators and project directors.	730	1	20/60	243
PSLA in-depth interviews	Principal investigators and project directors.	50	1	1	50
SSLA Web-based key stakeholder survey.	Key stakeholders: health care providers, health care organization administrators, and patients/consumers.	3,600	1	15/60	900
SSLA focus groups	Members of the general public	120	1	2	240

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Instrument	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
SSLA in-depth interviews	Stakeholders: health care providers, health care organization administrators, patients/consumers, employers and payers, researchers, and developers of health innovations.	60	1	1	60
Total		4,560			1,493

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011–4115 Filed 2–23–11; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–0445]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

School Health Policies and Practices Study 2012 (formerly titled School Health Policies and Programs Study, OMB No. 0920–0445, exp. 11/30/2008)—Reinstatement with Changes—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

A limited number of preventable behaviors, usually established during youth and often extended into adulthood, contribute substantially to the leading causes of mortality and morbidity during youth and adulthood. These risk behaviors include those that result in unintentional injuries and violence; tobacco use; alcohol and other drug use; sexual behaviors that contribute to HIV infection, other STDs, and unintended pregnancies; unhealthy dietary behaviors; and physical inactivity.

School-based instruction on health topics offers the most systematic and efficient means of enabling young people to avoid the health risk behaviors that lead to such problems. CDC has previously examined the role that schools play in addressing health risk behaviors through the School Health Policies and Programs Study (SHPPS, OMB No. 0920–0445), a series of data collections conducted at the state, district, school, and classroom levels in 1994 (OMB No. 0920–0340, exp. 1/31/1995), 2000 (OMB No. 0920–0445, exp. 10/31/2002), and 2006 (OMB No. 0920–0445, exp. 11/30/2008).

CDC plans to reinstate data collection in 2012 with changes. SHPPS 2012 will collect information to assess the characteristics of eight components of school health programs at the elementary, middle, and high school levels: health education, physical education, health services, mental health and social services, nutrition services, healthy and safe school environment, faculty and staff health promotion, and family and community involvement. Twenty-two questionnaires will be used: six at the state level, seven at the district level, seven at the school level, and two at the classroom level. Minor modifications, such as question wording, will be made to the SHPPS 2006 questionnaires to improve clarity and to reflect a change in the mode of administration. State- and district-level data collection in 2006 was conducted via computer-assisted telephone interviewing; in 2012 this data collection will be self-administered via the Internet. A new component to the SHPPS 2012 study is the inclusion of vending machine observation, which will yield the only nationally representative dataset of snack and beverage offerings available to students through school vending machines. Finally, state-level questionnaires will be revised to reduce redundancy in CDC-sponsored data collections.

The 2012 SHPPS data collection will have significant implications for policy and program development for school health programs nationwide. The results will be used by Federal agencies, state and local education and health agencies, the private sector, and others to support school health programs; monitor progress toward achieving health and education goals and objectives; develop educational programs, demonstration efforts, and professional education/training; and initiate other relevant research initiatives to contribute to the reduction of health risk behaviors among our nation's youth. SHPPS 2012 data will also be used to provide measures for 14 Healthy People 2020 national health objectives. No other national source of data exists for these objectives.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Officials	State Health Education	51	1	30/60	26
	State Physical Education	51	1	30/60	26
	State Health Services	51	1	30/60	26
	State Nutrition Services	51	1	30/60	26
	State Healthy and Safe School Environment.	51	1	30/60	26
	State Mental Health and Social Services	51	1	30/60	26
	Assist with identifying state-level respondents and with recruiting districts and schools).	51	1	1	51
District Officials	District Health Education	685	1	30/60	343
	District Physical Education	685	1	40/60	457
	District Health Services	685	1	40/60	457
	District Nutrition Services	685	1	30/60	343
	District Healthy and Safe School Environment.	685	1	1	685
	District Mental Health and Social Services	685	1	30/60	343
	District Faculty and Staff Health Promotion	685	1	20/60	228
	Assist with identifying district-level respondents and with recruiting schools.	685	1	1	685
Principals, secretaries or designees.	Assist with identifying and scheduling school-level respondents.	1,043	1	1	1,043
Health education lead teachers, principals, or designees.	School Health Education	1,043	1	20/60	348
Physical education lead teachers, principals, or designees.	School Physical Education	1,043	1	40/60	695
School nurses, principals, or designees.	School Health Services	1,043	1	50/60	869
Food service managers, principals, or designees.	School Nutrition Services	1,043	1	40/60	695
Principals or designee	School Healthy and Safe School Environment.	1,043	1	1.25	1,304
Counselors, principals, or designees.	School Mental Health and Social Services	1,043	1	30/60	522
Principals or designees	School Faculty and Staff Health Promotion	1,043	1	20/60	348
Health education teachers	Classroom Health Education	2,002	1	50/60	1,668
Physical education teachers	Classroom Physical Education	2,002	1	40/60	1,335
Total					12,575

Dated: February 17, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–4167 Filed 2–23–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–11–0020]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Coal Workers' Health Surveillance Program (CWHSP)–OMB 0920–0020, exp. 4/31/2011—Revision The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This submission will incorporate the National Coal Workers' X-Ray Surveillance Program 42 CFR part 37 (0920–0020) and National Coal Workers' Autopsy Study 42 CFR 37.204 (0920–

0021) into one complete package which will be called the Coal Workers' Health Surveillance Program (CWHSP). Upon OMB approval, 0920–0021 will be discontinued. CWHSP is a congressionally-mandated medical examination program for monitoring the health of underground coal miners, established under the Federal Coal Mine Health and Safety Act of 1969, as amended in 1977 and 2006, Public Law 95–164 (the Act). The Act provides the regulatory authority for the administration of the CWHSP. This Program, which includes both a health surveillance and an autopsy component, has been useful in providing tools for protecting the health of miners (whose participation is entirely voluntary), and also in documenting trends and patterns in the prevalence of coal workers' pneumoconiosis ('black lung' disease) among miners employed in U.S. coal mines. During the early 1970s, one out of every three miners examined through the CWHSP who had worked at least 25 years underground had evidence of pneumoconiosis on their chest x-ray. An analysis among over 25,000 miners who participated in the x-ray Programs from 1996 to 2002 indicated that the proportion of affected individuals had decreased to about one in 20. However, recent surveillance analyses and research studies have confirmed that the prevalence of 'black lung' disease is increasing, there is regional clustering of rapidly progressive pneumoconiosis cases, and coal miners have a higher risk of disease if they perform certain jobs, work in smaller mines, or are from certain geographic areas. Importantly, young coal miners are developing the disabling and lethal forms of 'black lung'.

Coal Workers' Health Surveillance Program (CWHSP)

Demographic and logistical information is gathered from coal mine operators and participating x-ray facilities. Participating miners also provide health and work histories, and participating physicians report radiographic findings. The Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health, Division of Respiratory Disease Studies, 1095 Willowdale Road, Morgantown, WV 26505, also called the Appalachian Laboratory for Occupational Safety and Health (ALOSH), is charged with administration of this Program.

From October 1, 1999 through September 30, 2002, the Mine Safety and Health Administration (MSHA), in consultation with NIOSH, conducted a pilot health surveillance program for both underground and surface miners (The Miners' Choice Program). The Miners' Choice Program has been continued as an extension of the CWHSP (currently called the Enhanced Coal Workers' Health Surveillance Program—ECWHSP). This extension of the CWHSP currently operates utilizing a mobile examination unit which travels to mining regions to provide locally accessible and more comprehensive health surveillance, including chest radiography, spirometry, and blood pressure screening.

Under the Act, the provision of periodic chest x-ray examinations is specifically mandated, and the x-rays are to be supplemented by such other tests as the Secretary deems necessary. In addition to radiographically-apparent pneumoconiosis, miners are at risk for the development of chronic obstructive pulmonary disease (COPD). Chest radiographs alone cannot provide a measure of airflow obstruction and therefore often miss important lung disease. For this reason, spirometry, a simple breathing test, is an additional component that is particularly useful for the health assessment of miners. Periodic medical history and spirometry tests have been recommended by NIOSH for both surface and underground coal miners since 1995, to facilitate preventive actions, increase miners' participation in programs for early detection of disease, and improve the derivation of representative estimates of the burden, distribution, and determinants of occupational lung disease in relation to coal mining in the U.S. Finally, unrecognized hypertension has previously been observed among many miners, and the ECWHSP offers blood pressure screening as a safe, simple, and inexpensive test, which can help target initiation of proven health conserving medications.

The National Coal Workers' Autopsy Study (NCWAS) provides standardized lung specimens for ongoing scientific research as well as information to the next-of-kin regarding the presence and extent of coal workers' pneumoconiosis (black lung) in the lungs of the deceased miner. The Consent Release and History Form is primarily used to obtain written authorization from the next-of-kin to perform an autopsy on the deceased miner. Because a basic reason for the post-mortem examination is research (both epidemiological and clinical), a minimum of essential information is collected regarding the deceased miner, including occupational history and smoking history. The data collected are used by scientists for research purposes in defining the diagnostic criteria for pneumoconiosis and in correlating pathologic changes with exposures and x-ray findings.

There are no costs of the NCWAS to respondents other than their time. Overall, there are no direct costs to CWHSP participants.

The total estimated annualized burden hours is 4120.

This estimate is based on the following:

- Pathologist Invoice—It is estimated that only 5 minutes is required for the pathologist to put a statement on the invoice affirming that no other compensation is received for the autopsy.
- Pathologist Report—Since an autopsy report is routinely completed by a pathologist, the only additional burden is the specific request of abstract of terminal illness and final diagnosis relating to pneumoconiosis. Therefore, only 5 minutes of additional burden is estimated for the autopsy report.
- Consent, Release and History Form (2.6)—From past experience, it is estimated that 15 minutes is required for the next-of-kin to complete this form.
- Roentgenographic Interpretation Form (2.8)—Physicians (B Readers) fill out this form regarding their interpretations of the x-rays (each x-ray has at least two separate interpretations). Based on prior practice it takes the physician approximately 3 minutes per form.
- Interpreting Physician Certification Document (2.12)—Physicians taking the B Reader Examination are asked to complete this registration form that takes approximately 10 minutes.
- Miner Identification Document (2.9)—Miners who elect to participate in either the CWHSP must fill out this document which requires approximately 20 minutes. The actual shooting of the chest image takes approximately 15 minutes.
- Miners participating in the ECWHSP portion of the Program are asked to perform a spirometry test which requires no additional paperwork, but does require approximately 15 to 20 minutes for the test itself. The 2500 respondents listed in the burden table below account for about ½ of the total participants.
- Coal Mine Operators Plan (2.10)—Mine operators are required to file a Mine X-ray Plan with NIOSH every 3 years. To complete this form with all requested information (including a roster of current employees) takes approximately 30 minutes.
- Facility Certification Document (2.11)—X-ray facilities seeking NIOSH-approval to provide miner x-rays under the CWHSP must complete an approval packet. It is anticipated that since the

CWHSP will soon be accepting digital images as well as the traditional analog x-ray films, the number of x-ray facilities participating will increase over the next several years. This increase is reflected in this submission. The forms associated with this approval process require approximately 30 minutes for completion.

ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents	Number of responses per respondent	Average burden/ response (in hrs)	Total burden (in hrs)
Invoice-Pathologist	50	1	5/60	4
Report-Pathologist	50	1	5/60	4
Consent, Release and History Form—Next-of-Kin (Form 2.6)	50	1	15/60	13
Roentgenographic Interpretation Form—Physicians (Form 2.8)	10,000	1	3/60	500
Interpreting Physician Certification Document—Physicians (Form 2.12)	300	1	10/60	50
Miner Identification Document—Coal Miners (Form 2.9)	5,000	1	20/60	1,666
Spirometry Test—Coal Miners	2,500	1	20/60	833
X-ray—Coal Miners	5000	1	15/60	750
Coal Mine Operators Plan—Mine Operators (Form 2.10)	200	1	30/60	100
Facility Certification Document—X-ray Facilities (Form 2.11)	100	1	30/60	200
Total				4,120

Dated: February 16, 2011.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–4165 Filed 2–23–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control

Special Emphasis Panel: Occupational Safety and Health Training Project Grant, Program Announcement PAR 10–288, initial review.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Times and Dates: 8:30 a.m.–5 p.m., March 17, 2011 (Closed).

Place: Courtyard Marriott, 2700 Eisenhower Avenue, Alexandria, Virginia 22314–4553, Telephone (703) 329–2323.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of "Occupational Safety and Health Training Project Grant, PAR 10–288."

Contact Person for More Information: M. Chris Langub, PhD, Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E74, Atlanta, Georgia 30333, Telephone (404) 498–2543.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 14, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2011–4197 Filed 2–23–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0622]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Color Additive Certification Requests and Recordkeeping

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 28, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0216. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance. Color Additive Certification Requests and Recordkeeping—21 CFR part 80 (OMB Control Number 0910–0216)—Extension.

FDA has regulatory oversight for color additives used in foods, drugs, cosmetics, and medical devices. Section 721(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless it

meets the requirements of a listing regulation, including any requirement for batch certification, and is used in accordance with the regulation. FDA lists color additives that have been shown to be safe for their intended uses in Title 21 of the Code of Federal Regulations (CFR). FDA requires batch certification for all color additives listed in 21 CFR part 74 and for all color additives provisionally listed in 21 CFR part 82. Color additives listed in 21 CFR part 73 are exempted from certification.

The requirements for color additive certification are described in part 80 (21 CFR part 80). In the certification procedure, a representative sample of a new batch of color additive, accompanied by a "request for certification" that provides information about the batch, must be submitted to FDA's Office of Cosmetics and Colors. FDA personnel perform chemical and other analyses of the representative sample and, providing the sample satisfies all certification requirements, issue a certification lot number for the batch. FDA charges a fee for certification based on the batch weight and requires manufacturers to keep records of the batch pending and after certification.

Under § 80.21, a request for certification must include: Name of color additive, manufacturer's batch number and weight in pounds, name and address of manufacturer, storage conditions, statement of use(s), certification fee, and signature of person requesting certification. Under § 80.22, a request for certification must include a sample of the batch of color additive that is the subject of the request. The sample must be labeled to show: Name of color additive, manufacturer's batch number and quantity, and name and address of person requesting certification. Under § 80.39, the person to whom a certificate is issued must keep complete records showing the disposal of all the color additive covered by the certificate. Such records are to be made available upon request to any accredited representative of FDA until at least 2 years after disposal of all of the color additive.

The purpose for collecting this information is to help FDA assure that only safe color additives will be used in foods, drugs, cosmetics, and medical devices sold in the United States. The required information is unique to the batch of color additive that is the subject of a request for certification. The manufacturer's batch number is used for temporarily identifying a batch of color additive until FDA issues a certification lot number and for identifying a certified batch during inspections. The manufacturer's batch number also aids in tracing the disposal of a certified batch or a batch that has been denied certification for noncompliance with the color additive regulations. The manufacturer's batch weight is used for assessing the certification fee. The batch weight also is used to account for the disposal of a batch of certified or certification-denied color additive. The batch weight can be used in a recall to determine whether all unused color additive in the batch has been recalled. The manufacturer's name and address and the name and address of the person requesting certification are used to contact the person responsible should a question arise concerning compliance with the color additive regulations. Information on storage conditions pending certification is used to evaluate whether a batch of certified color additive is inadvertently or intentionally altered in a manner that would make the sample submitted for certification analysis unrepresentative of the batch. FDA checks storage information during inspections. Information on intended uses for a batch of color additive is used to assure that a batch of certified color additive will be used in accordance with the requirements of its listing regulation. The statement of the fee on a certification request is used for accounting purposes so that a person requesting certification can be notified promptly of any discrepancies.

In the **Federal Register** of December 13, 2010 (75 FR 77645), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
80.21	32	185	5,920	0.17	1,006
80.22	32	185	5,920	0.05	296
Total				0.22	1,302

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Annual frequency per record-keeping	Total annual records	Hours per record	Total hours
80.39	32	185	5,920	0.25	1,480
Total					1,480

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA bases its estimate on its review of the certification requests received over the past 3 fiscal years (FY). The annual burden estimate for this information collection is 2,782 hours. The estimated reporting burden for this information collection is 1,302 hours and the estimated recordkeeping burden for this information collection is 1,480 hours. From FY 2008 to FY 2010, FDA processed an average of 5,932 responses (requests for certification of batches of color additives) per year. There were 32 different respondents, corresponding to an average of approximately 185 responses from each respondent per year. Using information from industry personnel, FDA estimates that an average of 0.22 hour per response is required for reporting (preparing certification requests and accompanying

samples) and an average of 0.25 hour per response is required for recordkeeping.

FDA's Web-based color certification information system allows certifiers to request color certification online, follow their submissions through the process, and obtain information on account status. The system sends back the certification results electronically, allowing certifiers to sell their certified color before receiving hard copy certificates. Any delays in the system result only from shipment of color additive samples to FDA's Office of Cosmetics and Colors for analysis. FDA has estimated a reduction in the hour burden for reporting from use of the Web-based system.

Dated: February 17, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–4155 Filed 2–23–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Patient Navigator Outreach and Chronic Disease Prevention Demonstration Program (OMB No. 0915–NEW)—[NEW]

The Patient Navigator Outreach and Chronic Disease Prevention Demonstration Program (PNDP) authorizes funds for the development and operation of projects to provide patient navigator services to improve health outcomes for individuals with cancer and other chronic diseases, with a specific emphasis on health disparities populations. Award recipients are to use grant funds to recruit, assign, train, and employ patient navigators who have direct knowledge of the communities they serve to facilitate the care of those who are at risk for or who have cancer or other chronic diseases, including conducting outreach to health disparities populations.

As authorized by the statute, an evaluation of the outcomes of the program must be submitted to Congress. The purpose of these data collection instruments, including navigated patient data intake, VR–12 health status, patient navigator survey, patient navigator encounter/tracking log, patient medical record and clinic data, clinic rates (baseline measures), and quarterly reports is to provide data to inform and support the Report to Congress for: the quantitative analysis of baseline and benchmark measures; aggregate information about the patients served and program activities, and; recommendations on whether patient navigator programs could be used to improve patient outcomes in other public health areas.

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Navigated Patient Data Intake Form	6,327	1	6,327	0.5	3,163.5
VR–12 Health Status Form	6,327	2	12,654	.12	1,519
SubTotal—Patient Burden	*6,327*	*3*	*18,981*	*.62*	*4,682.5*
The annual estimate of burden is as follows:					
Patient Navigator Survey	46	1	46	0.2	9.2
Patient Navigator Encounter/Tracking Log	46	825.3	37,962	0.2	7,592.4
SubTotal—Patient Navigator Burden	*46*	*826.3*	*38,008*	*0.4*	*7,601.6*
Patient Medical Record and Clinic Data	10	632.7	6,327	.17	2,151.2
Clinic Rates (Baseline Measures)	10	1	10	10	100
Quarterly Report	10	4	40	1	40
SubTotal—Grantee Burden	*30*	*637.7*	*6,377*	*11.17*	*2,291.2*
Totals	6,403	.....	63,366	.....	14,575.3
Total Average Annual Burden	.....	.....	.....	.....	14,575.3

Anticipated Number of Patients per Site:

	Over 3 years
Clinica Sierra Vista	2,280
CMAP	1,000
New River	7,200
Project Concern	450
Queens Medical Center	500
South County	600
Texas Tech	200
University of Utah	1,350
Vista	3,000

	Over 3 years
William F. Ryan	2,400
Total	18,980

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 17, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–4162 Filed 2–23–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

LightCensor: A Detecting and Control Program That Guarantees That a Mobile Device Be Used Only in Appropriate Lighting Conditions When Displaying Medical Images

Description of Invention: The invention provides algorithm that when used in a mobile device (*e.g.* smartphone) can enhance the capabilities of mobile devices to be used by medical professionals for medical imaging.

Thanks to its swiftly improved display quality, the smartphone has been advocated by the medical imaging vendors for viewing medical images in specific conditions that require urgency of the read or when full-size workstation displays are not readily available. However, as a hand-held device, the viewing conditions of a smartphone (*e.g.* ambient light and hand shaking) are not predictable and may adversely affect the perceived image quality. The present invention proposes the use of the built-in sensors in iPhone-like mobile devices to detect and adapt to the viewing conditions and hand shaking. The built-in camera can be used to capture the ambient light for determining the adaptation level, which affects the brightness, contrast and color perception. The built-in accelerometers can be used to detect orientation and moving velocity of the display, which affect the perceived spatial resolution. The execution of critical tasks can be then censored based on the detected scenario. If the viewing conditions are not suitable for reading medical images, for example, then the program could halt until the viewing conditions improve.

This invention can be used by consumer-grade mobile devices which were not originally designed for medical purposes to show medical images with improved perceived image quality.

Applications

- Biomedical imaging.
- Radiology.

Advantages: Improved image quality of mobile devices that minimizes issues related to inadequate light conditions or hand movement.

Development Status

- Algorithm developed.
- Prototype is being built.

Inventors: Wei-Chung Cheng and Aldo G. Badano (FDA).

Patent Status: HHS Reference No. E–284–2010/0—Research Tool/Software. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contacts

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*.
- Michael Shmilovich, Esq.; 301–435–5019; *ShmilovichM@mail.nih.gov*.

A Novel MRI Phantom for Breast Imaging

Description of Invention: The invention offered for licensing is in the field of breast cancer imaging. More specifically it relates to novel breast phantoms that can be used as reference in breast imaging. The anthropomorphic breast phantoms described in the invention comprise a combination of adipose tissue mimicking components and fibroglandular tissue mimicking components. Typically, x-ray attenuation coefficients or magnetic resonance relaxation times T1 and T2 are selected that are sufficiently similar to actual patient tissues. The mimicking components are distributed within the phantom such that images of the phantom contain features similar to those of patient tissues. A breast phantom can be based on a lard/egg white combination that is shaped to approximate a human breast, or a compressed human breast as prepared for mammography. The phantoms can include lesion chambers that permit the introduction of contrast agents to simulate benign or malignant lesions, and contrast agent concentration can be time varied to produce washout curves.

Applications: Imaging of breast cancer as well as calibration and optimization of related instrumentation.

Advantages: The breast phantoms of the invention precisely mimics human breast in several of their characteristics as mentioned above. Furthermore, they can be utilized in conjunction with x-ray mammography and/or with MRI. The phantoms may therefore be used to enhance the accuracy and quality of diagnostic breast imaging, and thus avoid unnecessary procedures. In addition, wide-spread use of the breast phantoms will lead to improved standardization in the field of breast imaging.

Development Status: The methods of making the phantoms have been established. Clinical usefulness has to be established.

Inventors: Melanie Freed and Aldo Badano (FDA).

Patent Status

- U.S. Provisional Application No. 61/385,929 filed 23 Sep 2010 (HHS Reference No. E–126–2010/0–US–01), entitled "Evaluation of Breast Dynamic Contrast-enhanced Magnetic Resonance Imaging".
- U.S. Provisional Application No. 61/424,495 filed 17 Dec 2010 (HHS Reference No. E–126–2010/1–US–01), entitled "Anthropomorphic, X-ray and Dynamic Contrast-Enhanced Magnetic Resonance Imaging Phantom for Quantitative Evaluation of Breast Imaging Techniques".

Licensing Status: Available for licensing.

Licensing Contacts

- Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov*.
- John Stansberry, PhD; 301–435–5236; *Stansbej@mail.nih.gov*.

Meningococcal and Pneumococcal Conjugate Vaccine and Method of Using Same

Description of Invention: Pneumococcal diseases are a major public health problem all over the world. The etiological agent, *Streptococcus pneumoniae* (the pneumococcus) is surrounded by a polysaccharide capsule. Differences in the composition of this capsule permit serological differentiation between about 90 capsular types, some of which are frequently associated with pneumococcal disease, others rarely. Invasive pneumococcal infections include pneumonia, meningitis and febrile bacteremia; among the common non-invasive manifestations are otitis media, sinusitis and bronchitis. At least 1 million children die of pneumococcal disease every year, most of these being young children in developing countries. Vaccination is the only available tool to prevent pneumococcal disease. The recent development of widespread microbial resistance to essential antibiotics underlines the urgent need for more efficient pneumococcal vaccines.

Meningococcal disease is a contagious bacterial disease caused by the meningococcus (*Neisseria meningitidis*). It is spread by person-to-person contact through respiratory droplets of infected people. There are 3 main clinical forms of the disease: the meningeal syndrome, the septic form and pneumonia. The onset of symptoms is sudden and death can follow within hours. In as many as 10–15% of survivors, there are persistent neurological defects, including hearing loss, speech disorders, loss of limbs, mental retardation and paralysis. Up to 5–10% of a population may be asymptomatic carriers. These carriers are crucial to the spread of the disease as most cases are acquired through exposure to asymptomatic carriers. Waning immunity among the population against a particular strain favors epidemics, as do overcrowding and climatic conditions such as dry seasons or prolonged drought and dust storms. The disease mainly affects young children, but is also common in older children and young adults. The disease occurs sporadically throughout the world with seasonal variations and accounts for a proportion of endemic bacterial meningitis. However, the highest burden of the disease is due to the cyclic epidemics occurring in the African meningitis belt.

With the burden of *S. pneumoniae* and *N. meningitidis* infection on the public health system at a global scale, it is desirable to have a single vaccine that is effective to prevent disease resulting from the infection of both pathogens. This application claims immunogenic compositions for inducing an immune response to two different microorganisms, *S. pneumoniae* and *N. meningitidis.* The application also claims conjugate vaccines comprising at least one *N. meningitidis* capsular polysaccharide conjugated to a recombinant pneumococcal protein.

Applications: Conjugate vaccine for the prevention and/or therapy of meningococcal and pneumococcal infections.

Advantages

- Rapid production time.
- Higher-yielding manufacturing method.
- Low manufacturing cost.

Development Status: Preclinical studies have been conducted by the inventors.

Inventors

- Stanley S. Tai (Howard University).
- Che-Hung Robert Lee (FDA).

Patent Status: HHS Reference No. E–030–2010/0—

- U.S. Patent Application No. 12/425,232 filed 16 Apr 2009.
- PCT/US2010/031083 filed 14 Apr 2010.

Licensing Status: Available for licensing.

Licensing Contact: Daniel G. McCabe; Associate General Counsel for Business Transactions; Howard University, Office of the General Counsel; 2400 6th Street, NW., Suite 321; Washington, DC 20059; Office: (202) 806–2650; Fax: (202) 806–6357; E-mail: *dmccabe@howard.edu*.

Dated: February 16, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–4171 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Terahertz Spatial Light Modulator System for Adaptive Near-Field Imaging

Description of Technology: The invention offered for licensing is in the field of imaging microscopes and relates to a terahertz light modulator system, and in particular to a terahertz spatial light modulator system for adaptive near-field imaging.

More specifically, the invention relates to a spatial light modulator system for adaptive near-field imaging having an optical source for transmitting an optical beam through a filter which is controlled to convert the optical light beam into a filtered optical light beam to define one or more transmission pathways through a photoconductive material. The system further includes a terahertz light source for transmitting a terahertz beam through one or more transmission pathways defined by the filtered optical light beam through the photoconductive material for illuminating and scanning the sample without the use of moving structural components. The device would allow micron-scale spatial resolution, would remove the need to mechanically scan a sample, and would allow automatic adjustment of image resolution and transmitted terahertz power. The near-field terahertz microscope of the invention could have a compact, fiber-coupled sensor head with no moving parts—ideal for scientific, medical, and industrial applications like crystal growth optimization, skin cancer diagnosis, and semiconductor chip inspection. In one application, such as "one-cut" surgery, the compact sensor

head of the terahertz imaging system has the capability of distinguishing healthy cells from cancerous cells with micron-scale spatial resolution by immediately identifying a skin cancer margin without the need for laboratory work or additional surgery. In another application, the terahertz imaging system may be used in nondestructive semiconductor chip inspection since the terahertz imaging system provides micron-scale spatial resolution.

Applications:

• Biomedical research applications (living tissues have distinctive terahertz absorption signals)

• Clinical applications like diagnostics of skin cancer (skin cancer and normal skin reflect terahertz radiation differently)

• Industrial applications like crystal growth optimization

• Industrial applications like semiconductor chip inspection.

Advantages: The system provides micron-scale spatial resolution, while removing any need to mechanically scan samples (it is equipped with a fiber-coupled sensor head), and at the same time allows automatic adjustment of image resolution and transmitted terahertz power.

Development Status: In development. Prototype is being built.

Inventors: Hari Shroff et al. (NIBIB).

Relevant Publications:

1. Mair S, Gompf B, Dressel M. Microspectroscopy and imaging in the THz range using coherent CW radiation. Phys Med Biol. 2002 Nov 7;47(21):3719–3725. [PubMed: 12452559]

2. Chen Q, Jiang Z, Xu GX, Zhang XC. Near-field terahertz imaging with a dynamic aperture. Opt Lett. 2000 Aug 1;25(15):1122–1124. [PubMed: 18064291]

3. Wallace VP, Fitzgerald AJ, Shankar S, Flanagan N, Pye R, Cluff J, Arnone DD. Terahertz pulsed imaging of basal cell carcinoma ex vivo and in vivo. Br J Dermatol. 2004 Aug;151(2):424–432. [PubMed: 15327550]

4. Hu BB, Nuss MC. Imaging with terahertz waves. Opt Lett. 1995 Aug 15;20(16):1716–1718.

Patent Status: U.S. Provisional Application No. 61/425,007 filed 20 Dec 2010 (HHS Reference No. E–243–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact:

• Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*

• Michael Shmilovich, Esq.; 301–435–5019; *ShmilovichM@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Biomedical Imaging and Bioengineering is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Hari Shroff at *hari.shroff@nih.gov* or 301–435–1995 for more information.

Versatile Melanoma Antigen Family A3 (MAGE–A3) Specific Human T Cell Receptors To Treat Cancer That Also Recognize Other MAGE–A Antigen Superfamily Members

Description of Technology: Current approaches for treating cancer can also generate harsh side effects in patients and many cancer patients do not respond to generalized chemotherapy and radiation. New and improved therapeutic strategies need to be characterized by reduced side-effects and enhancements in specific anti-tumor activity in individual patients. Adoptive immunotherapy is a promising new approach to cancer treatment that engineers an individual's innate and adaptive immune system to fight against specific diseases, such as cancer. Scientists are aiming to improve cell transfer therapies by targeting an increasing collection of tumor antigens with more effective immune cell cultures.

T cell receptors (TCRs) are specialized proteins that recognize antigens in the context of infected or transformed cells and activate T cells to mediate an immune response and destroy abnormal cells. TCRs consist of a variable domain that recognizes the antigen and a constant region that anchors the TCR to the membrane and transmits recognition signals by interacting with other proteins. When a TCR is activated by recognizing its antigen, such as a tumor antigen, signaling pathways are triggered in the cell to produce cytokines that mediate the immune response.

Scientists at the National Institutes of Health (NIH) have developed T cells genetically engineered to recognize melanoma antigen family A3 (MAGE–A3) peptide antigens. MAGE–A superfamily antigens, including MAGE–A3, are expressed primarily by tumor cells from a variety of cancers. Other than germ cells of the testis, normal cells do not express MAGE–A3 and other MAGE–A proteins, which makes these antigens ideal targets for developing cancer immunotherapies. There are twelve (12) known MAGE–A genes designated A1–A12. The normal function of MAGE–A3 is not completely known, but in cancerous cells it appears to mediate fibronectin-controlled tumor growth and spreading. MAGE–A3 is one of the most widely expressed cancer testis antigens (CTAs) on human tumors and its expression increases as the cancer progresses to more advanced stages. The T cell receptors (TCRs) developed by these NIH scientists have specificity for MAGE–A3 and MAGE–A12 and deliver a robust immune response when they encounter tumor cells expressing these antigens. These TCRs also recognize MAGE–A2 and/or MAGE–A6, but to a lesser extent that MAGE–A3 and MAGE–A12. The ability to recognize antigens from multiple MAGE–A family members could allow these TCRs to be utilized in the treatment of multiple types of cancer in a wide array of cancer patients. Infusing cancer patients with MAGE–A3 specific T cells via adoptive immunotherapy could prove to be a powerful approach for selectively attacking tumors without generating toxicity against noncancerous cells.

Applications:

• Immunotherapeutics to treat and/or prevent the recurrence of a variety of human cancers, including melanoma, lung cancers, head and neck cancers, liver cancers, and multiple myeloma, by adoptively transferring the gene-modified T cells into patients whose tumors express a MAGE–A family member protein recognized by this TCR.

• A drug component of a combination immunotherapy regimen aimed at targeting specific tumor-associated antigens, including MAGE–A3, MAGE–A12, and MAGE–A2 and/or MAGE–A6 expressed by cancer cells within individual patients.

• A research tool to investigate signaling pathways in MAGE–A antigen expressing cancer cells.

• An *in vitro* diagnostic tool to screen for cells expressing a MAGE–A antigens.

Advantages:

• *Selective toxicity for tumor cells*—MAGE–A3 and other MAGE–A proteins are only expressed on testis germ cells and tumor cells. Thus, infused cells expressing an anti-MAGE–A3 TCR should target MAGE–A3-expressing tumor cells with little or no toxicity to normal cells. Immunotherapy with these T cells should yield little or no harsh side effects to patients.

• *Ability to recognize multiple MAGE–A antigens*—Since these MAGE–A3 directed TCRs can also recognize up to three (3) additional MAGE–A antigens (MAGE–A12, A2, and A6), cells expressing these TCRs are expected to be able to fight a larger range of tumor types. During treatment, if an infused anti-MAGE–A3 T cell culture encounters tumor cells expressing other recognized MAGE–A antigens, these T cells would not only

be capable of eliminating the MAGE–A3 expressing tumor cells, but MAGE–A12, MAGE–A2, and MAGE–A6 expressing cells as well. This versatility should allow these TCRs to be utilized to treat a broader range of cancer patients.

• *Expression on a majority of tumors* —MAGE–A3 is one of the most highly expressed cancer testis antigens (CTAs) on human tumors. For example, over half of melanoma tumors and non-small cell lung cancer cells express MAGE–A3. A large spectrum of cancer patients should be eligible for treatment with these MAGE–A3 TCRs should they prove successful in clinical studies.

Development Status: This technology is in an early clinical stage of development.

Inventors: Richard A. Morgan, *et al.* (NCI).

Publications:

1. N Chinnasamy *et al.* A TCR Targeting the HLA–A*0201–Restricted Epitope of MAGE–A3 Recognizes Multiple Epitopes of the MAGE–A Antigen Superfamily in Several Types of Cancer. J Immunol. 2011 Jan 15;186(2):685–696. [PubMed: 21149604]

2. V Cesson et al. MAGE–A3 and MAGE–A4 specific CD4(+) T cells in head and neck cancer patients: Detection of naturally acquired responses and identification of new epitopes. Cancer Immunol Immunother. 2010 Sept. 21, E-pub ahead of print, doi: 10.1007/s00262–010–0916-z. [PubMed: 20857101]

Patent Status: U.S. Provisional Application No. 61/405,668 filed 22 October 2010 (HHS Reference No. E–236–2010/0–US–01).

Related Technologies: T cell receptor technologies developed against other CTAs: E–304–2006/0 and E–312–2007/1 (anti-NY–ESO–1) and E–269–2010/0 (anti-SSX–2).

Licensing Status: Available for licensing.

Licensing Contact: Samuel E. Bish, PhD; 301–435–5282; *bishse@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Surgery Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the use of anti-MAGE–A T-cell receptors for the adoptive immunotherapy of cancer. Please contact John Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Selective 12–Human Lipoxygenase Inhibitors for the Treatment of Diabetes and Clotting

Description of Technology: This invention discloses small molecule inhibitors of human 12-lipoxygenase (12-hLO). 12-lipoxygenase expression, activation, and lipid metabolites have been implicated in type 1 and type 2 diabetes, cardiovascular disease, hypertension, Alzheimer's, and Parkinson's disease. The development of 12-hLO inhibitors may be a potent intracellular approach to decreasing the ability of platelets to form large clots in response to vessel injury or activation of the coagulation pathway. Thus, 12-hLO inhibition has the potential to attenuate platelet-mediated clot formation caused by diabetes and/or cardiovascular disease and significantly decrease the occurrence of myocardial infarction and death. Moreover, Type 1 and Type 2 diabetes are serious disorders that can lead to major complications and reduced lifespan. An unmet medical need is to identify new ways to protect beta cells in these metabolic disorders. A selective 12-hLO inhibitor could provide a new therapeutic approach to prevent or treat either form of diabetes.

Applications:

• Therapeutic developments (blood clots; Type 1 and Type 2 diabetes, cardiovascular disease, and neurodegenerative diseases)

• Inflammatory responses

Advantages:

• Small molecule (series of analogs can be derived in search of improved performances and/or different functions)

• Selective inhibitor of human 12-lipoxygenase

Market:

• Metabolic disorders

• Neurodegeneration

• Research tool—screening for 12-lipoxygenase-mediated responses in various human cell lines

Development Status: Pre-clinical; no animal data.

Inventors: David J Maloney (NHGRI); Ajit Jadhav (NHGRI); Ganesha Rai (NHGRI); Anton Simeonov (NHGRI); Theodore Holman (University California Santa Cruz); Jerry Nadler (Eastern Virginia Medical School); Michael Holinstat (Thomas Jefferson University).

Patent Status: U.S. Provisional Application No. 61/345,708 filled 18 May 2010 (HHS Reference No. E–134–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Steven H. Standley, PhD 301–435–4074; *sstand@mail.nih.gov*.

Gene Expressed in Prostate Cancer and Methods of Use

Description of Technology: Prostate cancer is the second leading cause of cancer-related deaths among males in the United States. There are approximately two hundred and fifteen thousand (215,000) newly diagnosed cases of prostate cancer and thirty thousand (30,000) prostate cancer-related deaths each year, underscoring the importance of addressing this deadly disease. Although there are diagnostic tests in place for identifying the potential for developing prostate cancer, even the most widely accepted diagnostic for detecting cancer (prostate-specific antigen or PSA) is capable of producing a false negative result. Furthermore, current treatments are invasive and may produce deleterious side-effects. Therefore, there is a clear need to identify and develop new and effective diagnostics and treatments for prostate cancer.

This technology concerns the identification of a novel protein that is specifically expressed on prostate tissue: Novel Gene Expressed in Prostate (NGEP). Because of its selective expression on prostate tissue, NGEP represents a potential target in the fight against prostate cancer. Monoclonal antibodies that specifically recognize NGEP have been developed in conjunction with the identification of the protein. These antibodies can be used as both diagnostic agents and therapeutic agents.

Applications:

• Antibodies to NGEP can be used as diagnostic agents to identify metastatic prostate tissue, either alone or in combination with other diagnostic antibodies

• Antibodies to NGEP can also be used therapeutically to specifically target cytotoxic agents to prostate cancer cells or to induce antibody-dependent cell-mediated cytotoxicity (ADCC)

• Antibodies to NGEP can be used as research reagents for identifying prostate tissue, including cancerous tissue

Advantages:

• The selective expression of NGEP allows the specific detection and recognition of prostate tissue, which is useful in both diagnostic and therapeutic applications

• Combining the detection of NGEP with other prostate cancer diagnostic agents may reduce the incidence of a false negative diagnosis

• The use of NGEP antibodies in targeted therapy can decrease the non-specific killing of non-cancerous cells, thereby decreasing side-effects

associated with current prostate cancer therapies

Development Status: Preclinical stage of development.

Inventors: Pastan (NCI) *et al.*

Patent Status:

• US Patent 7,816,087 (E–005–2002/0–US–03)—Issued

• US Patent Application 12/193,604 (E–005–2002/0–US–05)—Allowed

• EP Patent Application 02795643.2 (E–005–2002/0–EP–04)—Pending

For more information, see:

• Das *et al.* "Topology of NGEP, a prostate-specific cell:cell junction protein widely expressed in many cancers of different grade level." *Cancer Res.* 2008 Aug 1; 68(15):6306–12

• Das *et al.* "NGEP, a prostate-specific plasma membrane protein that promotes the association of LNCaP cells." *Cancer Res.* 2007 Feb 15; 67(4):1594–601

• Bera *et al.* "NGEP, a gene encoding a membrane protein detected only in prostate cancer and normal prostate." *Proc Natl Acad Sci U S A.* 2004 Mar 2; 101(9):3059–64.

Licensing Status: Available for licensing

Licensing Contact: David A. Lambertson, PhD; 301–435–4632; *lambertsond@mail.nih.gov*.

Stem Cells That Transform To Beating Cardiomyocytes

Description of Technology: Many people die each year of congestive heart failure occurring from a variety of causes including cardiomyopathy, myocardial ischemia, congenital heart disease and valvular heart disease resulting in cardiac cell death and myocardial dysfunction. When cardiomyocytes are not replaced in adult myocardial tissue, physiologic demands on existing, healthy cardiomyocytes can lead to hypertrophy. Heart transplants have been the only recourse for patients in end-stage heart disease however this is complicated by lack of donors, tissue incompatibility and high cost.

An alternative approach to heart transplantation is to generate cardiomyocytes from stem cells *in vitro* that can be used in the treatment of cardiac diseases characterized by myocardial cell death or dysfunction.

This invention discloses a novel isolated population of stem cells, called spoc cells, isolated from skeletal muscle, that can be induced, either *in vivo* or *in vitro,* to differentiate into cardiomyocytes. Spoc cells may be differentiated and utilized for screening agents that affect cardiomyocytes and as therapeutic agents in the treatment of cardiac MI.

Potential Applications and Advantages: This invention is an alternative approach to heart transplantation which is typically complicated by lack of donors, tissue incompatibility and high cost.

Inventors: Neal D. Epstein (NHLBI), *et al.*

Related Publication: SO Winitsky, *et al.* Adult murine skeletal muscle contains cells that can differentiate into beating cardiomyocytes in vitro. PLoS Biol. 2005 Apr;3(4):e87, doi:10.1371/journal.pbio.0030087. [PubMed: 15757365]

Patent Status:

• Issued Australian Patent No. 2002337949 (HHS Ref. No. E–329–2001/0–AU–03)

• Issued Japanese Patent No. 4377690 (HHS Ref. No. E–329–2001/0–JP–04)

• Allowed Canadian Patent Appl. No. 2464088 (HHS Ref. No. E–329–2001/0–CA–05)

Licensing Status: Available for licensing.

Licensing Contact: Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov*.

Dated: February 16, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–4170 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Recombinant BoCPB: An Enzymatic Reagent for Removing Disordered, Positively Charged C-terminal Residues From Recombinant Proteins

Description of Technology: Affinity tags are commonly used to facilitate the purification of recombinant proteins, but concerns about the potential impact of the tags on the biological activity of the target proteins makes it necessary to remove them in most cases. Proteases with high sequence specificity, such as tobacco etch virus (TEV) protease, are typically used for this purpose. Affinity tags on the amino-terminus (N-terminal tag) can be cleaved by TEV protease to yield a recombinant protein product with only one nonnative residues on its C-terminus (usually G or S). In contrast, removal by TEV protease of tags added to the carboxy-terminus (C-terminal tag) of proteins has proven to be somewhat problematic, yielding a recombinant protein product with six nonnative residues on its C-terminus (ENLYFQ). Since C-terminal affinity tags are potentially very useful, particularly when used in combination with N-terminal tags in an "affinity sandwich" format, it would be very desirable to have a reagent to remove the C-terminal affinity tags without leaving extra nonnative residues behind.

Previously, the NIH inventors created a tagged version of a fungal carboxypeptidase from *Metarhizium anisopliae* (MeCPA) that is capable of removing histidine residues and many other types of amino acids from the C-termini of recombinant proteins. The only limitation of the MeCPA enzyme is that it does not remove positively charged residues (arginine and lysine). To overcome this drawback of MeCPA, the NIH inventors have now cloned, expressed and purified bovine carboxypeptidase B (BoCPB), which is specific for the removal of these positively charged residues. Like the genetically engineered MeCPA, the recombinant BoCPB has a C-terminal polyhistidine tag. This feature facilitates the purification of the enzyme, and, because this His-tag as been engineered to be immune to the action of MeCPA and BoCPB, it can be used to separate the enzymes from the products of a carboxypeptidase digest. By using a mixture of MeCPA and BoCPB, it should be possible to remove any short affinity tag along with disordered C-terminal residues of a recombinant protein with the exception of proline, which can be used as a "stop sign" to facilitate the

production of a digestion product with a homogeneous C-terminus.

Applications

• Removal short C-terminal affinity tags from recombinant proteins without leaving any nonnative residues behind when used in combination with MeCPA.

• Identification and removal of disordered residues from the C-termini of native (untagged) proteins, thereby increasing their propensity to crystallize.

Inventors: David Waugh *et al.* (NCI)

Related Publications: None.

Patent Status: HHS Reference No. E–027–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; hastingw@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute, Protein Engineering Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize recombinant BoCPB and/or similar enzymes. Please contact John Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A DsbC Expression Vector for the Production of Proteins With Disulfide Bonds in the Cytosol of *E. coli*

Description of Technology: Many proteins of biomedical importance contain disulfide bonds and such proteins are notoriously difficult to produce in *Escherichia coli.* Current methods to address this problem either export the protein to the periplasmic space, which is a more favorable redox environment for disulfide bond formation, or utilize genetically modified strains of *E. coli* to alter the redox potential of the cytosol (such as "Origami" or "Shuffle" cells). Unfortunately, these methods generally result in very low yields of the desired product, thus emphasizing the need for a novel method.

The NIH inventors have designed a DsbC expression vector that can be used to improve the yield of correctly oxidized recombinant proteins in the cytosol of *E. coli.* By overproducing DsbC on a separate plasmid and coexpressing it with carboxypeptidases in the cytosol of *E. coli,* the inventors were able to increase the amount of properly oxidized, active carboxypeptidases that could be recovered from the cytosol by at least 4-fold. Further, they believe that co-expression of DsbC from a multicopy plasmid vector will also improve the yield of other disulfide bond-containing proteins in *E. coli.*

Applications: Improving the yield of correctly oxidized recombinant proteins in the cytosol of *E. coli.*

Advantages: Substantial increase in the amount of active carboxypeptidases recovered from the cytosol and improved yield of disulfide bond-containing proteins in *E. coli.*

Inventors: David Waugh *et al.* (NCI)

Related Publications

1. Prinz WA, Aslund F, Holmgren A, Beckwith J. The role of the thioredoxin and glutaredoxin pathways in reducing protein disulfide bonds in the *Escherichia coli* cytoplasm. J Biol Chem. 1997 Jun 20;272(25):15661–15667. [PubMed: 9188456]

2. Levy R, Weiss R, Chen G, Iverson BL, Georgiou G. Production of correctly folded Fab antibody fragment in the cytoplasm of *Escherichia coli* trxB gor mutants via the coexpression of molecular chaperones. Protein Expr Purif. 2001 Nov;23(2):338–347. [PubMed: 11676610]

Patent Status: HHS Reference No. E–028–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing.

Licensing Contact: Whitney Hastings; 301–451–7337; *hastingw@mail.nih.gov*.

Dated: February 16, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–4168 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Laboratory Animal Welfare: Proposed Adoption and Implementation of the Eighth Edition of the Guide for the Care and Use of Laboratory Animals

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) requests public comments on (1) NIH's adoption of the eighth edition of the *Guide for the Care and Use of Laboratory Animals (Guide)* as a basis for evaluation of institutional programs receiving or proposing to receive Public Health Service (PHS) support for activities involving animals; and (2) if NIH decides to adopt the eighth edition of the *Guide,* NIH's proposed implementation plan, which would require that institutions complete at least one semiannual program and facility evaluation using the eighth edition of the *Guide* as the basis for evaluation by March 31, 2012. NIH will consider comments on (1) the adoption of the *Guide* and (2) the implementation plan.

DATES: Written comments on the adoption and implementation of the eighth edition of the *Guide* must be received by NIH within 30 days of the date of publication of this notice in order to be considered.

ADDRESSES: Public comments may be entered at *http://grants.nih.gov/grants/olaw/2011guidecomments/add.htm.* Comments will be made publicly available. Personally identifiable information (except organizational affiliations) will be removed prior to making comments publicly available.

FOR FURTHER INFORMATION CONTACT: Office of Laboratory Animal Welfare, Office of Extramural Research, National Institutes of Health, RKL1, Suite 360, 6705 Rockledge Drive, Bethesda, MD 20892–7982; telephone 301–496–7163.

SUPPLEMENTARY INFORMATION:

I. Background

The *Guide,* first published in 1963, is a widely accepted primary reference on animal care and use. Recommendations in the *Guide* are based on published data, scientific principles, expert opinion, and experience with methods and practices that are determined to be consistent with high quality, humane animal care and use. The eighth edition of the *Guide* was published in January 2011 following a study by the Institute for Laboratory Animal Research of the National Academy of Sciences (NAS). The NAS study process began in 2008 and followed the requirements of Section 15 of the Federal Advisory Committee Act. The NAS study process is described at the NAS Web site: *http://www.nationalacademies.org/studyprocess/index.html.*

Since 1985, the PHS Policy on Humane Care and Use of Laboratory Animals, authorized by Public Law 99–158, 42 U.S.C. 289d, and incorporated by reference at 42 CFR 52.8 and 42 CFR 52a.8, has required that institutions receiving PHS support for animal activities base their animal care and use programs on the current edition of the *Guide* and comply, as applicable, with the Animal Welfare Act and other Federal statutes and regulations relating

to animal activities. The PHS Policy is applicable to all PHS-conducted or -supported activities (including research, research training, experimentation, biological testing, or related purposes) involving live vertebrate animals.

The eighth edition of the *Guide* contains substantive changes and additions from the previous edition. To gain insight from institutions on the impact of changes to the *Guide* on their animal care and use programs, NIH seeks comments on whether it should adopt the eighth edition of the *Guide.* NIH simultaneously proposes an implementation plan for the eighth edition of the *Guide* and seeks comments on the proposed plan.

The implementation plan proposed by NIH would require institutions to complete at least one semiannual program and facility evaluation, using the eighth edition of the *Guide* as the basis for evaluation, by March 31, 2012. For such an evaluation to be considered complete by NIH, it would need to include reasonable and specific plans and schedules for corrections of deficiencies where appropriate.

II. Electronic Access

The eighth edition of the *Guide* is available on the NIH Office of Laboratory Animal Welfare Web site at *http://olaw.nih.gov.*

Dated: February 16, 2011.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2011–4172 Filed 2–23–11; 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 a meeting of the Interagency Autism Coordinating Committee (IACC) Subcommittee on Safety.

The IACC Subcommittee on Safety will be having a conference call on Wednesday, March 16, 2011. The subcommittee plans to discuss safety issues related to autism spectrum disorder (ASD). This meeting will be accessible to the public through a conference call.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of meeting: Subcommittee on Safety.

Date: March 16, 2011.

Time: 9 a.m. to 10:30 a.m. Eastern Time.

Agenda: The subcommittee plans to discuss safety issues related to autism spectrum disorder.

Place: No in-person meeting; conference call only.

Conference Call Access: Dial: 888–390–3417. Access code: 4684708.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8185a, Rockville, MD 20852, Phone: 301–443–6040, E-mail: *IACCPublicInquiries@mail.nih.gov.*

Please Note: The conference call will be accessible to the public through a conference call-in number and access code. 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 conference call, please e-mail *IACCTechSupport@acclaroresearch.com* or call the IACC Technical Support Help Line at 443–680–0098.

Individuals who participate by using this electronic service 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.

Schedule subject to change.

Information about the IACC and a registration link for this meeting are available on the Web site: *http://www.iacc.hhs.gov.*

Dated: February 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4164 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; National Cooperative Drug Discovery Development Groups.

Date: March 10, 2011.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Viral and Host Genetics in NeuroAIDS.

Date: March 16, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David W Miller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive BLVD, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 17, 2011.

Jennifer S. Spaeth

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4166 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, NIGMS Special Emphasis Panel MORE–4 IN.

Date: March 23, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mona R. Trempe, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892. 301–594–3998. *trempemo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862,Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 17, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4187 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Genetics and Cell Biology.

Date: March 21–22, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12, Bethesda, MD 20892, 301–594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 17, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4186 Filed 2–23–11; 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) Cycle 7.

Date: April 13, 2011.

Time: 8:30 a.m.–4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: Marriott North Conference Center, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: Dr. Barbara Mroczkowski, Executive Secretary, NCI Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20892, (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: February 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4184 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Medicinal Chemistry.

Date: February 28, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Phillip F. Wiethorn, Scientific Review Officer, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, 301–496–5388, *Wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 17, 201.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4182 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Stroke Clinical Trials.

Date: March 25, 2011.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Richard D. Crosland, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *Rc218u@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4180 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Changing Parental Relationships and Child Well-Being.

Date: March 22, 2011.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4179 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Musculoskeletal, Oral, and Skin Systems.

Date: March 15, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7812, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Epidemiology.

Date: March 15–16, 2011.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnosis and Detection.

Date: March 15–16, 2011.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6195D, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR: 10–276 Research in Biomedicine and Agriculture: Infectious Diseases, Immunology and the Circulatory System.

Date: March 21, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard G. Kostriken, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Special Topics.

Date: March 30, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, 301–996–7702, *jacobsonrh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Technology Development.

Date: March 31, 2011.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ross D. Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7849, Bethesda, MD 20892, 301–435–2786, *shonatr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Bioengineering Sciences and Technologies.

Date: March 31, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Amy L. Rubinstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4177 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Acquired Immunodeficiency Syndrome Research Review Committee.

Date: March 17–18, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Sujata Vijh, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616. 301–594–0985. vijhs@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4176 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Immune Defense Mechanisms at the Mucosa Cooperative Study Group.

Date: March 14–15, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Wendy F. Davidson, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–402–8399, *davidsonw@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Genomics of Transplantation Cooperative Research Program.

Date: March 21–22, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel–Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Maryam Feili-Hariri, PhD, Scientific Review Officer, Immunology Review Branch, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–3243, *haririmf@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4174 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Allergy and Infectious Diseases Council, September 19, 2011, 8:30 a.m. to September 19, 2011, 5 p.m., National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD, 20892 which was published in the **Federal Register** on February 7, 2011, 76 FR 6627.

The afternoon meeting of the Acquired Immunodeficiency Syndrome Subcommittee will be open to the public from 1 p.m. to adjournment. It was erroneously published as a closed meeting.

Dated: February 17, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–4173 Filed 2–23–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Regulation on Agency Protests

AGENCY: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

ACTION: 30-Day Notice and request for comments; Extension without Change, 1600–0004.

SUMMARY: The Department of Homeland Security, Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on November 15, 2010 at 75 FR 219, for a 60-day public comment period. No comments were received by DHS. DHS would also like to correct the Total Burden Cost (capital/startup): $4,104.00 that was indicated in the 60-Day **Federal Register** Notice. The cost that was indicated is the estimated annualized cost to the respondents for the hour burden for collecting the information, using the appropriate wage categories. The purpose of this notice is to allow additional 30-days for public comments and to correct the cost from $4,104.00 to zero.

DATES: Comments are encouraged and will be accepted until March 28, 2011. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to 202–395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS Attn.: Camara Francis, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3114, Washington, DC 20528, *Camara.Francis@hq.dhs.gov,* 202–447–5904.

SUPPLEMENTARY INFORMATION: The Federal Acquisition Regulation (FAR); 48 CFR Chapter 1 provides general procedures on handling protests submitted by contractors to Federal agencies. This regulation provides detailed guidance for contractors doing business with acquisition offices within the Department of Homeland Security (DHS) to implement the FAR. FAR Part 33.103, Protests, Disputes, and Appeals prescribe policies and procedures for filing protests and for processing contract disputes and appeals. DHS will not be asking for anything outside of what is already required in the FAR. Should anything outside the FAR arise, DHS will submit a request for Office of Management and Budget (OMB) approval. The information being collected will be obtained from contractors as part of their submissions whenever they file a bid protest with the Department's Components. The information will be used by DHS officials in deciding how the protest should be resolved. Failure to collect this information would result in delayed resolution of agency protests.

According to FPDS, the number of protest has increased each year over the past two years in annual respondent and burden hours. This increase in current protest activity is not the result of a deliberate program change, but from a new estimate of actions that are not controllable by the Federal government. Although, the number of protest has increased, there has not been any change in the information being collected.

Analysis

Agency: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

Title: Regulation on Agency Protests.

OMB Number: 1600–0004.

Frequency: Annually.

Affected Public: Private Sector.

Number of Respondents: 75.

Estimated Time Per Respondent: 2 hours.

Total Burden Hours: 150.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Dated: February 14, 2011.

Richard Spires,

Chief Information Officer.

[FR Doc. 2011–4132 Filed 2–23–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Various Contract Related Forms That Will be Included in the Homeland Security Acquisition Regulation, DHS FORM 0700–01, DHS FORM 0700–02, DHS FORM 0700–03, DHS FORM 0700–04

AGENCY: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

ACTION: 30-Day Notice and request for comments; Extension without Change, 1600–0002.

SUMMARY: The Department of Homeland Security, Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on November 15, 2010 at 75 FR 219, for a 60-day public comment period. No comments were received by DHS. DHS would also like to correct the Total Burden Cost (capital/startup): $236,253.60 that was indicated in the 60-Day **Federal Register** Notice. The cost that was indicated is the estimated annualized cost to the respondents for the hour burden for collecting the information, using the appropriate wage categories. The purpose of this notice is to allow additional 30-days for public comments and to correct the cost from $236,253.00 to zero.

DATES: Comments are encouraged and will be accepted until March 28, 2011. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to 202–395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS Attn.: Camara Francis, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3114, Washington, DC 20528, *Camara.Francis@hq.dhs.gov,* 202–447–5904.

SUPPLEMENTARY INFORMATION: This information collection under the HSAR is necessary in order to implement applicable parts of the FAR (48 CFR). The four forms under this collection of information request are used by offerors, contractors, and the general public to comply with requirements in contracts awarded by the Department of Homeland Security (DHS). The four forms are DHS Form 0700–01, Cumulative Claim and Reconciliation Statement; DHS Form 0700–02, Contractor's Assignment of Refund, Rebates, Credits and Other Amounts; DHS Form 0700–03, Contractor's Release; and DHS Form 0700–04, Employee Claim for Wage Restitution. These four forms will be used by contractors and/or contract employees during contract administration. The information will be used by DHS contracting officers to ensure compliance with terms and conditions of DHS contracts and to complete reports required by other Federal agencies such as the General Services Administration and the Department of Labor. If this information is not collected, the DHS could inadvertently violate statutory or regulatory requirements and the DHS's interest concerning inventions and contractor's claims would not be protected. There has been an increase in the estimated annual burden hours previously reported for this collection. An adjustment in annual burden is necessary at this time in the amount of 1534 actions and hours. The initial annual burden was based on a lower number of contract actions which related to the fact that DHS was a new agency with consolidated acquisition procedures, processes, and policies. Although, there is an increase in the estimated burdened hours, there is no change in the information being collected.

Analysis

Agency: Office of Chief Procurement Officer, Acquisition Policy and Legislation Office, DHS.

Title: Various contract related forms that will be included in the Homeland Security Acquisition Regulation.

OMB Number: 1600–0002.

Frequency: On Occasion.

Affected Public: Private Sector.

Number of Respondents: 8,635.

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 8,635.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Dated: February 14, 2011.

Richard Spires,

Chief Information Officer.

[FR Doc. 2011–4136 Filed 2–23–11; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0087]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0106

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0106, Unauthorized Entry into Cuban Territorial Waters. Our ICR describe the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before April 25, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0087] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

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

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn. Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St, SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2011–0087], and must be received by April 25, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. *Please see* the "Privacy Act" paragraph below.

Submitting comments:

If you submit a comment, please include the docket number [USCG–2011–0087], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (*via http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type "USCG–2011–0087" in the "Keyword" box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0087" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

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

Information Collection Request

1. *Title:* Unauthorized entry into Cuban territorial waters.

OMB Control Number: 1625–0106.

Summary: The Coast Guard, pursuant to Presidential proclamation and order of the Secretary of Homeland Security, is requiring U.S. vessels, and vessels without nationality, less than 100 meters, located within the internal waters or the 12 nautical mile territorial sea of the United States, that thereafter enter Cuban territorial waters, to apply for and receive a Coast Guard permit. This permit is required by 33 CFR 107.215, Unauthorized Entry Into Cuban Territorial Waters, issued under authority of 50 U.S.C. 191, 192, 194, 195; 14 U.S.C. 141; Presidential Proclamations 6867, and 7757; and Secretary of Homeland Security Order 2004–001.

Need: The information is collected to regulate departure from U.S. territorial

waters of U.S. vessels, and vessels without nationality, and entry thereafter into Cuban territorial waters. The need to regulate this vessel traffic supports ongoing efforts to enforce the Cuban embargo, which is designed to bring about an end to the current government and a peaceful transition to democracy. Accordingly, only applicants that demonstrate prior U.S. government approval for exports to and transactions with Cuba will be issued a Coast Guard permit.

Forms: CG–3300.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden remains 1 hour per year.

Dated: February 16, 2011.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–4139 Filed 2–23–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–929; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant; OMB Control No. 1615–0106.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 25, 2011.

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 Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0106 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–929; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. Form I–929 is necessary for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2000 annual burden hours.

If you need a copy of this information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: February 18, 2011.

Stephen Tarragon,

Senior Management Analyst, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–4127 Filed 2–23–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5388–N–02]

Annual Indexing of Basic Statutory Mortgage Limits for Multifamily Housing Programs

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with Section 206A of the National Housing Act, HUD has adjusted the Basic Statutory Mortgage Limits for Multifamily Housing Programs for Calendar Year 2011.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph A. Sealey, Director, Technical Support Division, Office of Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 402–2559 (this is not a toll-free number). Hearing or speech-impaired individuals may access

this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The FHA Downpayment Simplification Act of 2002 (Pub. L. 107–326, approved December 4, 2002) amended the National Housing Act by adding a new Section 206A (12 U.S.C. 1712a). Under Section 206A, the following are affected:

(1) Section 207(c)(3)(A) (12 U.S.C. 1713(c)(3)(A));

(2) Section 213(b)(2)(A) (12 U.S.C. 1715e (b)(2)(A));

(3) Section 220(d)(3)(B)(iii)(I) (12 U.S.C. 1715k (d)(3)(B)(iii)(I));

(4) Section 221(d)(3)(ii)(I) (12 U.S.C. 1715l (d)(3)(ii)(I));

(5) Section 221(d)(4)(ii)(I) (12 U.S.C. 1715l(d)(4)(ii)(I));

(6) Section 231(c)(2)(A) (12 U.S.C. 1715v(c)(2)(A)); and

(7) Section 234(e)(3)(A) (12 U.S.C. 1715y(e)(3)(A)).

The Dollar Amounts in these sections, which are collectively referred to as the 'Dollar Amounts,' shall be adjusted annually (commencing in 2004) on the effective date of the Federal Reserve Board's adjustment of the $400 figure in the Home Ownership and Equity Protection Act of 1994 (HOEPA) (Pub. L. 103–325, approved September 23, 1994). The adjustment of the Dollar Amounts shall be calculated using the percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) as applied by the Federal Reserve Board for purposes of the above-described HOEPA adjustment.

HUD has been notified of the percentage change in the CPI–U used for the HOEPA adjustment and the effective date of the HOEPA adjustment. The percentage change in the CPI–U is 2.2 percent and the effective date of the HOEPA adjustment is January 1, 2011. The Dollar Amounts have been adjusted correspondingly and have an effective date of January 1, 2011.

The adjusted Dollar Amounts for Calendar Year 2011 are shown below:

Basic Statutory Mortgage Limits for Calendar Year 2011

Multifamily Loan Program

- Section 207—Multifamily Housing
- Section 207 pursuant to Section 223(f)—Purchase or Refinance Housing
- Section 220—Housing in Urban Renewal Areas

Bedrooms	Non-elevator	Elevator
0	$46,079	53,171
1	51,043	59,551
2	60,969	73,022
3	75,149	91,456
4+	85,077	103,410

- Section 213—Cooperatives

Bedrooms	Non-elevator	Elevator
0	$49,937	53,171
1	57,577	60,242
2	69,440	73,253
3	88,884	94,766
4+	99,022	104,026

- Section 221(d)(3)—Moderate Income Housing
- Section 234—Condominium Housing

Bedrooms	Non-elevator	Elevator
0	$50,956	53,624
1	58,752	61,471
2	70,857	74,749
3	90,699	96,700
4+	101,042	106,147

- Section 221(d)(4)—Moderate Income Housing

Bedrooms	Non-elevator	Elevator
0	$45,858	49,536
1	52,055	56,787
2	62,921	69,052
3	78,977	89,330
4+	89,495	98,058

- Section 231—Housing for the Elderly

Bedrooms	Non-elevator	Elevator
0	$43,600	49,536
1	48,741	56,787
2	58,203	69,052
3	70,044	89,330
4+	82,348	98,058

- Section 207—Manufactured Home Parks

Per Space $21,155

Dated: January 12, 2011.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–4146 Filed 2–23–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK910000 L13100000.DB0000 LXSINSSI0000]

Notice of Public Meeting, North Slope Science Initiative—Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP) will meet as indicated below:

DATES: The meeting will be held March 28 through April 1, 2011, in Barrow, Alaska. The meeting will begin at 1 p.m. on March 28, 2011, at the Inupiat Heritage Center. On March 29 through April 1, 2011, the meeting will begin at 8:30 a.m. Public comment will be received between 3 and 4 p.m. on Monday, March 28 2011.

FOR FURTHER INFORMATION CONTACT: John F. Payne, Executive Director, North Slope Science Initiative, AK–910, c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271–3431 or e-mail *john_f_payne@blm.gov.*

SUPPLEMENTARY INFORMATION: The NSSI–STAP provides advice and recommendations to the NSSI Oversight Group regarding priority information needs for management decisions across the North Slope of Alaska. These priority information needs may include recommendations on inventory, monitoring, and research activities that contribute to informed land management decisions. This meeting will include a workshop entitled "Science, Natural Resources, and Subsistence in Alaska's Arctic Lands and Waters: A Continuing Dialogue on Working Together to Understand our Changing Arctic." Additional information on this workshop is available at *http://www.northslope.org.*

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative.

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: February 16, 2011.

Julia Dougan,

Acting Alaska State Director.

[FR Doc. 2011–4163 Filed 2–23–11; 8:45 am]

BILLING CODE 1310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT922200–11–L13100000–FI0000–P;MTM 96122]

Notice of Proposed Reinstatement of Terminated Oil and Gas lease MTM 96122

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), Oasis Petroleum North America LLC timely filed a petition for reinstatement of competitive oil and gas lease MTM 96122, Richland County, Montana. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent. The lessee paid the $500 administration fee for the reinstatement of the lease and $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091.

Teri Bakken,

Chief, Fluids Adjudication Section.

[FR Doc. 2011–4125 Filed 2–23–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM910000 L10200000.PH0000]

Reopening the Call for Nominations for the New Mexico Albuquerque and Farmington District Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the nomination period for the Bureau of Land Management's (BLM) Albuquerque, New Mexico, and Farmington, New Mexico, Resource Advisory Councils (RAC). The RACs provide advice and recommendations to the BLM on land use planning and management of the public lands within the Albuquerque and Farmington Districts. The Farmington, New Mexico, RAC is only seeking applicants who meet the criteria for elected official in Category Three.

DATES: All nominations must be received no later than March 28, 2011.

ADDRESSES: Contact Edwin Singleton, Albuquerque District Office, BLM, 435 Montano NE, Albuquerque, New Mexico 87107, (505) 761–8700, or Steve Henke, Farmington District Office, BLM, 1235 La Plata Highway, Farmington, New Mexico 87401, (505) 599–8900.

FOR FURTHER INFORMATION CONTACT: Contact Edwin Singleton, Albuquerque District Office, BLM, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 761–8700, or Steve Henke, Farmington District Office, BLM, 1235 La Plata Highway, Farmington, New Mexico 87401, (505) 599–8900.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1739) directs the Secretary of the Interior (Secretary) to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). The rules governing RACs are found at 43 CFR subpart 1784. As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

Category One—Holders of Federal grazing permits or leases within the area for which the council is organized, and representatives of organizations associated with energy and mineral development, commercial timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historical organizations, dispersed recreational activities, and nationally or regionally recognized wild horse and burro interest groups; and

Category Three—Representatives of State, county, or local elected office; representatives and employees of a State agency responsible for management of natural resources, land or water; representatives of Indian tribes within or adjacent to the area for which the council is organized; representatives of academia who are employed in natural resource management or the natural sciences; and representatives of the affected public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the BLM district in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees, or councils. An individual may not serve concurrently on more than one RAC. The following must accompany all nominations:

—Letters of reference from represented interests or organizations;

—A completed background information nomination form; and

—Any other information that addresses the nominee's qualifications.

If you have already submitted your nomination materials for 2010, you will not need to resubmit.

Certification Statement: I hereby certify that the BLM's New Mexico RACs are necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Linda S.C. Rundell,

State Director.

[FR Doc. 2011–4123 Filed 2–23–11; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that on February 16, 2011, a proposed Consent Decree in *United States* v. *Beazer East, Inc. et al.,* Civil Action No. 11–cv–1124, was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed Consent Decree is between the United States on behalf of the United States Environmental Protection Agency ("EPA") and Beazer East, Inc., Keystone Coke Co., Vesper Holdings, LLC, Swedeland Road Corp., RAGM Settlement Corp., RT Option Corp., RAGM Holding Company, and Crater Resources, Inc. (collectively, "Defendants") The proposed Consent Decree resolves claims against Defendants under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, related to the Crater Resources Superfund Site ("Site") located in Upper Merion Township, Montgomery County, Pennsylvania. Under the proposed Consent Decree, Defendants agree to pay $1,380,000 to resolve the United States' claim for response costs incurred at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Beazer East, Inc., et al.,* Civ. No. 11-cv-1124 (E.D.Pa.), D.J. Ref. 90–11–2–1283/3.

During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–4076 Filed 2–23–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Pursuant to the Clean Water Act

Pursuant to 28 CFR 50.7, notice is hereby given that on February 15, 2011, a proposed consent decree in *United States* v. *Eastwood Construction, LLC, et. al,* Civil Action No. 3:11-cv-83, was lodged with the United States District Court for the Western District of North Carolina.

The Consent Decree resolves the claims of the United States against Eastwood Construction, LLC and Eastwood Homes, Inc. (collectively "Eastwood Companies") for violations of the federal Clean Water Act and state permits issued in North Carolina and South Carolina. Under the proposed Consent Decree, the Eastwood Companies will undertake compliance programs consisting of, among other things: inspections, training, and enchanced recordkeeping to reduce the threat of discharges of storm water from its residential construction sites. The Eastwood Companies will also collectively pay to the United States a civil penalty of $60,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to the Consent Decree between the United States and Eastwood Construction, LLC and Eastwood Homes, Inc., DOJ Ref. No. 90–5–1–1–08694.

The Decree may be examined at EPA's Region 4 office, 61 Forsyth Street, Atlanta, Georgia and at the office of the United States Attorney for the Western District of North Carolina, Carillon Building, 227 W. Trade Street, Suite 1650, Charlotte, NC 28202. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.25 (25 cents per page reproduction cost) (including Appendices) or $12.25.00 (excluding Appendices) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 2011–4077 Filed 2–23–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0001]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Report of Theft or Loss of Controlled Substances; DEA Form 106

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting 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. Comments are encouraged and will be accepted until April 25, 2011. 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 Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; 202–307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy A. Gallagher at 202–307–7297 or the DOJ Desk Officer at 202–395–3176.

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 agencies 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 Information Collection 1117–0001

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Theft or Loss of Controlled Substances (DEA Form 106)

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*
Form number: DEA Form 106.
Component: 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: Not-for-profit, State, local or tribal government.
Abstract: Title 21 CFR, 1301.74(c) & 1301.76(b) require DEA registrants to complete and submit DEA–106 upon discovery of a theft or significant loss of controlled substances. This provides accurate accountability and allows DEA to monitor substances diverted for illicit purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 7,677 registrants submit 15,162 forms (12,933 electronically, 2,229 paper) annually for this collection, taking .33 hours (20 minutes) to complete each form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,054 annual burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: February 17, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–4065 Filed 2–23–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0003]

Agency Information Collection Activities: Proposed Collection; Comments Requested: ARCOS Transaction Reporting; DEA Form 333

ACTION: 60-Day notice of information collection under review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting 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. Comments are encouraged and will be accepted until April 25, 2011. 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; (202) 307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8-digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Mark W. Caverly at (202) 307–7297 or the DOJ Desk Officer at 202–395–3176.

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 agencies 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

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* ARCOS Transaction Reporting—DEA Form 333.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 333. Office of Diversion Control, Drug Enforcement Administration, United States 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: Controlled substances Manufacturers and distributors must report acquisition/distribution transactions to DEA to comply with Federal law and international treaty obligations. This information helps to ensure a closed system of distribution for these substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 1,186 respondents, with 6,856 responses annually to this collection. DEA estimates that it takes 1 hour to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates this collection has a public burden of 6,856 hours annually.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: February 17, 2011.

Lynn Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–4064 Filed 2–23–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0007]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review; Registrants' Inventory of Drugs Surrendered—DEA Form 41.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting 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. Comments are encouraged and will be accepted until April 25, 2011. 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 Cathy A. Gallagher, Acting Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; 202–307–7297.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Cathy A. Gallagher at 202–307–7297 or the DOJ Desk Officer at 202–395–3176.

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 Information Collection 1117–0007

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Registrants' Inventory of Drugs Surrendered—DEA Form 41.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: DEA Form 41.

Component: Office of Diversion Control, Drug Enforcement Administration, U.S. 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: Not-for-profit institutions, Federal government, State, local or Tribal government.

Abstract: Title 21 CFR 1307.21 requires that any registrant desiring to voluntarily dispose of controlled substances shall list these controlled substances on DEA Form 41 and submit the form to the nearest DEA office. The DEA Form 41 is used to account for destroyed controlled substances, and its use is mandatory.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 22,500 respondents will respond annually, taking 30 minutes to complete each form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 11,250 annual burden hours.

If additional information is required contact: Lynn Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: February 17, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–4067 Filed 2–23–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Proposed Quarterly Census of Employment and Wages Green Goods and Services Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the proposed Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "Quarterly Census of Employment and Wages Green Goods and Services Survey," to the Office of Management

and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before March 28, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7314/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The proposed Quarterly Census of Employment and Wages Green Goods and Services Survey is intended to collect data on green goods and services sector industry employment. The data collection will measure employment in green industries. It will help policymakers understand the size and growth opportunities in this developing sector of jobs and will be key to analyzing workforce trends in this area.

This proposed information collection is subject to OMB approval under the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on November 10, 2010 (75 FR 69128).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference ICR Reference Number 201011–1220–002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Quarterly Census of Employment and Wages Green Goods and Services Survey.

ICR Reference Number: 201011–1220–002.

Affected Public: Federal Government; Private sector—businesses or other for-profits, not-for-profit institutions, and farms; and State local, and tribal governments.

Total Estimated Number of Respondents: 120,000.

Total Estimated Number of Responses: 120,000.

Total Estimated Annual Burden Hours: 31,000

Total Estimated Annual Costs Burden: $0.

Dated: February 3, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–4052 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Disclosures to Workers Under the Migrant and Seasonal Agricultural Worker Protection Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, "Disclosures to Workers under the Migrant and Seasonal Agricultural Worker Protection Act," to the Office of Management and Budget (OMB) for review and approval for continued use, as revised, in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before March 28, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the U.S. Department of Labor, Wage and Hour Division (WHD), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail:* *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by *e-mail* at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: This information collection is for the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) required disclosure of employment terms and conditions, wage statements, and housing terms and conditions that agricultural employers and associations and farm labor contractors make to migrant/seasonal agricultural workers. This request is categorized as a revision, because the DOL is making a discretionary change to obtain approval

for all of the MSPA worker disclosures under one OMB Control Number. Specifically, in order to improve its management of the information collections, the DOL seeks to combine Control Numbers 1235–0002, 1235–0009, and 1235–0010. The DOL is not otherwise changing the information to be disclosed and retained.

These information collections are subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays the OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The current OMB approval for Control Number 1235–0002 is scheduled to expire on February 28, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. Control Number 1235–0009 expires June 30, 2012, and 1235–0010 expires July 31, 2011. The DOL will seek to cancel these latter Control Numbers upon OMB approval of the current request to combine the information collection authorizations. For additional information, see the related notice published in the **Federal Register** on September 20, 2010 (75 FR 57296).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure appropriate consideration, comments should reference OMB Control Number 1235–0002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Wage and Hour Division (WHD).

Title of Collection: Disclosures to Workers under the Migrant and Seasonal Agricultural Worker Protection Act.

OMB Control Number: 1235–0002 (as proposed to be merged with 1235–0009 and 1235–0010).

Affected Public: Private sector—farms.

Total Estimated Number of Respondents: 206,891.

Total Estimated Number of Responses: 84,206,505.

Total Estimated Annual Burden Hours: 1,417,436.

Total Estimated Annual Costs Burden: $3,368,260.

Dated: February 16, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–4057 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,890]

Ohio Decorative Products, Inc., Including On-Site Leased Workers From Custom Staffing, Spencerville, OH; 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 January 7, 2011, applicable to workers of Ohio Decorative Products, Inc., Spencerville, Ohio. The workers are engaged in employment related to the production of decorative metal products for appliances. The Notice was published in the **Federal Register** on January 26, 2011 (76 FR 4728).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The subject firm reports that the workers leased from Custom Staffing were employed on-site at the Spencerville, Ohio location of Ohio Decorative Products, Inc. The Department has determined that these workers were sufficiently under the control of Ohio Decorative Products, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Custom Staffing working on-site at the Spencerville, Ohio location of Ohio Decorative Products, Inc.

The amended notice applicable to TA–W–74,890 is hereby issued as follows:

All workers of Ohio Decorative Products, Inc., including on-site leased workers from Custom Staffing, Spencerville, Ohio, who became totally or partially separated from employment on or after November 11, 2009, through January 7, 2013, 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 10th day of February, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–4100 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,466; TA–W–74,466J]

Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, Including Leased Workers From Qflex, North America Logistics, and UPS, Headquartered in Palo Alto, CA, Teleworkers Across California and Workers On-Site in Roseville, CA; Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, Including Leased Workers From Qflex, North America Logistics, and UPS, Teleworkers Across Maine; 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 September 10, 2010, applicable to workers of Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, including leased workers from QFlex, North America Logistics, and UPS, Palo Alto, California. The Department's

Notice was published in the **Federal Register** on September 23, 2010 (75 FR 57982). The Notice was amended on November 12, 2010 to include teleworkers across many states. The Department's Notice of amended certification was published in the **Federal Register** November 23, 2010 (75 FR 71457–71458).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the supply of design services and sales compensation operations for Hewlett Packard Company.

New findings show that worker separations occurred during the relevant time period involving employees of Hewlett Packard, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, working off-site in Maine. These workers meet the criteria under Section 222(a) of the Act.

Based on these findings, the Department is amending this certification to include workers of the Palo Alto, California facility of the subject firm working off-site in Maine.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by Hewlett Packard's decision to shift the supply of like or directly competitive services to foreign countries.

The amended notice, applicable to TA–W–74,466, is hereby issued as follows:

All workers of Hewlett Packard Company, Enterprise Business Division, Technical Services America, Global Parts Supply Chain Group, including leased workers from QFlex, North America Logistics, and UPS, Palo Alto, California, including teleworkers across California and workers on-site in Roseville, California (TA–W–74,466); teleworkers across Arizona (TA–W–74,466A); teleworkers across Florida (TA–W–74,466B); teleworkers across Massachusetts and workers on-site in Andover, Massachusetts (TA–W–74,466C); workers on-site in Minnetonka, Minnesota (TA–W–74,466D); teleworkers across New Hampshire (TA–W–74,466E); teleworkers across New York (TA–W–74,466F); workers on-site in Charlotte, North Carolina (TA–W–74,466G); teleworkers across Ohio (TA–W–74,466H); teleworkers across Texas and workers on-site in Houston, Texas (TA–W–74,466I); and teleworkers across Maine (TA–W–74,466J), who became totally or partially separated from employment on or after June 22, 2009, through September 10, 2012, and all workers in the group threatened with total or partial separation from employment on June 22, 2009, through September 10, 2012, 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 10th day of February, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–4099 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,464]

BreconRidge Manufacturing Solutions, Now Known as Sanmina-SCI Corporation, Division Optoelectronic and Microelectronic Design and Manufacturing, a Subsidiary of Sanmina-SCI Corporation, Including On-Site Leased Workers From Kelly Services, Penski, Inc., and Whitney Enterprises, Ogdensburg, NY; 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 September 30, 2010, applicable to workers of BreconRidge Manufacturing Solutions, now known as Sanmina-SCI Corporation, Division Optoelectronic and Microelectronic Design and Manufacturing, a subsidiary of Sanmina-SCI Corporation, including on-site leased workers from Kelly Services and Penski, Inc., Ogdensburg, New York. The workers are engaged in activities related to the assembling of electrical components. The notice was published in the **Federal Register** on October 15, 2010 (75 FR 63511).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Whitney Enterprises were employed on-site at the Ogdensburg, New York location of BreconRidge Manufacturing Solutions, now known as Sanmina-SCI Corporation, Division Optoelectronic and Microelectronic Design and Manufacturing, a subsidiary of Sanmina-SCI Corporation. The Department has determined that these workers were sufficiently under the control of BreconRidge Manufacturing Solutions, now known as Sanmina-SCI Corporation, Division Optoelectronic and Microelectronic Design and Manufacturing, a subsidiary of Sanmina-SCI Corporation to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Whitney Enterprises working on-site at the Ogdensburg, New York location of BreconRidge Manufacturing Solutions, now known as Sanmina-SCI Corporation, Division Optoelectronic and Microelectronic Design and Manufacturing, a subsidiary of Sanmina-SCI Corporation.

The amended notice applicable to TA–W–74,464 is hereby issued as follows:

All workers of BreconRidge Manufacturing Solutions, now known as Sanmina-SCI Corporation, Division Optoelectronic and Microelectronic Design and Manufacturing, a subsidiary of Sanmina-SCI Corporation, including on-site leased workers from Kelly Services, Penski, Inc., and Whitney Enterprises, Ogdensburg, New York, who became totally or partially separated from employment on or after July 29, 2009, through September 30, 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 10th day of February 2011.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2011–4098 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,900A]

First American Title Insurance Company, Including Workers Whose Wages Were Reported Under National Default Title Services, Including On-Site Leased Workers From Workway Professional Staffing and Remedy/Select, Waterloo, IA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 12, 2010, applicable to workers of First American Title Insurance Company, including workers whose wages were reported under National Default Title Services, including on-site leased workers from, Remedy/Select, Waterloo, Iowa. The workers supplied administrative,

document preparation, recording, and mail processing services. The notice was published in the **Federal Register** on November 23, 2010 (75 FR 71460).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Workway Professional Staffing were employed on-site at the Waterloo, Iowa location of First American Title Insurance Company, including workers whose wages were reported under National Default Title Services. The Department has determined that these workers were sufficiently under the control of National Default Title Service to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Workway Professional Staffing working on-site at the Waterloo, Iowa location of First American Title Insurance Company, including workers whose wages were reported under National Default Title Services.

The amended notice applicable to TA–W–73,900A is hereby issued as follows:

All workers of First American Title Insurance Company including workers whose wages were reported under National Default Title Services working on-site at GMAC Mortgage LLC, including on-site leased workers from Workway Professional Staffing Santa Ana, California (TA–W–73,900) and workers of First American Title Insurance Company including workers whose wages were reported under National Default Title Services working on-site at GMAC Mortgage LLC, including on-site leased workers from Workway Professional Staffing and Remedy/Select, Waterloo, Iowa (TA–W–73,900A), who became totally or partially separated from employment on or after April 9, 2009, through two years from the date of certification, 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 in Washington, DC, this 4th day of February, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–4097 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,748]

New United Motor Manufacturing, Inc., Formerly a Joint Venture of General Motors Corporation and Toyota Motor Corporation, Including On-Site Leased Workers From Corestaff, ABM Janitorial, Toyota Engineering and Manufacturing North America, NPA Coatings, Inc., Premier Manufacturing, Maclellan Integrated Services, Inc., and Allied Barton Security and On-Site Workers From Dupont Performance Coatings, Fremont, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on November 19, 2009, applicable to workers of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation, including on-site leased workers from Corestaff, Fremont, California. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3938). The notice was amended on April 27, 2010, May 11, 2010, June 24, 2010, July 26, 2010, and September 29, 2010 to include on-site leased workers. The notices were published in the **Federal Register** on May 12, 2010 (75 FR 26794) May 21, 2010 (75 FR 28656–28657), July 7, 2010 (75 FR 39045–39046), August 6, 2010 (75 FR 47632), and October 8, 2010 (75 FR 62424–62425), respectively.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers assemble the Toyota Corolla and the Toyota Tacoma and used to assemble the Pontiac Vibe.

Information shows that workers leased from Allied Barton Security were employed on-site at the Fremont, California location of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation. The Department has determined that these workers were sufficiently under the control of New United Motor Manufacturing, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Allied Barton Security working on-site at the Fremont, California location of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation.

The amended notice applicable to TA–W–72,748 is hereby issued as follows:

All workers of New United Motor Manufacturing, Inc., formerly a joint venture of General Motors Corporation and Toyota Motor Corporation, including on-site leased workers from Corestaff, ABM Janitorial, Toyota Engineering and Manufacturing North America, NPA Coatings, Inc., Premier Manufacturing, MacLellan Integrated Services, Inc.; and Allied Barton Security; and also on-site workers from DuPont Performance Coatings, Fremont, California, who became totally or partially separated from employment on or after October 29, 2008, through November 19, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 10th day of February 2011.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2011–4094 Filed 2–23–11; 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 January 31, 2011 through February 4, 2011.

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
74,157	Home Fashions International, LLC	Taylorsville, NC	May 22, 2009.
74,764	3 Sons Manufacturing	Hayden, ID	October 20, 2009.
74,839	St. John Knits, Inc.	Irvine, CA	November 3, 2009.
74,849	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Washington, etc.	Federal Way, Spokane and Tacoma, WA.	October 24, 2009.
74,849A	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Alabama.	All Locations Across Alabama, AL.	October 24, 2009.
74,849AA	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Oklahoma.	All Locations Across Oklahoma, OK.	October 24, 2009.

TA–W No.	Subject firm	Location	Impact date
74,849B	ILevel By Weyerhaeuser, Residential Sales, Workers on-site in Phoenix, Arizona.	Phoenix, AZ	October 24, 2009.
74,849BB	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Oregon.	Beaverton and Eugene, OR	October 24, 2009.
74,849C	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across California.	Carlsbad, Fontana, Fresno, Irvine, Long Beach, etc., CA.	October 24, 2009.
74,849CC	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Pennsylvania.	Easton and Murrysville, PA	October 24, 2009.
74,849D	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Colorado.	Henderson, CO	October 24, 2009.
74,849DD	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across South Carolina.	All Locations Across South Carolina, SC.	October 24, 2009.
74,849E	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Connecticut.	All Locations Across Connecticut, CT.	October 24, 2009.
74,849EE	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Texas.	Carrollton, Houston and Selma, TX.	October 24, 2009.
74,849F	ILevel By Weyerhaeuser, Residential Sales, Workers on-site in Jacksonville and Tampa.	Jacksonville and Tampa, FL	October 24, 2009.
74,849FF	ILevel By Weyerhaeuser, Residential Sales, Workers on-site in Smyrna.	Smyrna, TN	October 24, 2009.
74,849G	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Georgia.	Dacula and Duluth, GA	October 24, 2009.
74,849GG	ILevel By Weyerhaeuser, Residential Sales, Workers on-site in Salt Lake City, Utah.	Salt Lake City, UT	October 24, 2009.
74,849H	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Illinois.	Naperville, IL	October 24, 2009.
74,849HH	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Vermont.	All Locations Across Vermont, VT.	October 24, 2009.
74,849I	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Indiana.	All Locations Across Indiana, IN.	October 24, 2009.
74,849II	ILevel By Weyerhaeuser, Residential Sales, Workers on-site in Richmond, Virginia.	Richmond, VA	October 24, 2009.
74,849J	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Iowa.	All Locations Across Iowa, IA	October 24, 2009.
74,849JJ	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across West Virginia.	All Locations Across West Virginia, WV.	October 24, 2009.
74,849K	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Kansas.	Lenexa, KS	October 24, 2009.
74,849KK	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Wisconsin.	All Locations Across Wisconsin, WI.	October 24, 2009.
74,849L	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Louisiana.	All Locations Across Louisiana, LA.	October 24, 2009.
74,849M	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Maryland.	Baltimore, MD	October 24, 2009.
74,849N	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Massachusetts.	All Locations Across Massachusetts, MA.	October 24, 2009.
74,849O	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Michigan.	All Locations Across Michigan, MI.	October 24, 2009.
74,849P	ILevel By Weyerhaeuser, Residential Sales, Workers on-site in Edina and St. Paul.	Edina and St. Paul, MN	October 24, 2009.
74,849Q	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Mississippi.	Long Beach, MS	October 24, 2009.
74,849R	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Missouri.	All Locations Across Missouri, MO.	October 24, 2009.
74,849S	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Montana.	All Locations Across Montana, MT.	October 24, 2009.
74,849T	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across Nebraska.	Omaha, NE	October 24, 2009.
74,849U	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across New Hampshire.	Bedford, NH	October 24, 2009.
74,849V	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across New Jersey.	Marlton, NJ	October 24, 2009.
74,849W	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across New Mexico.	Albuquerque, NM	October 24, 2009.
74,849X	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across New York.	All Locations Across New York, NY.	October 24, 2009.
74,849Y	ILevel By Weyerhaeuser, Residential Sales, Teleworkers Across North Carolina.	Charlotte, NC	October 24, 2009.
74,849Z	ILevel By Weyerhaeuser, Residential Sales, Workers on-site in Worthington.	Worthington, OH	October 24, 2009.
75,112	Gam Manufacturing Company	Lancaster, PA	January 17, 2010.

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
74,672	Dell, Inc., Formerly Perot Systems; Insurance Solutions Operations.	Lincoln, NE	September 7, 2009.
74,716	Dell, Inc., Dell Financial Services Fraud Prevention Operations	Austin, TX	October 8, 2009.
74,944	Kop-Flex, Inc., Subsidiary of Emerson Power Transmission	Hanover, MD	November 1, 2009.
74,971	Seton Company, Johnson Controls, Inc.	Saxton, PA	December 6, 2009.
74,989	J. M. Smucker Company, The Folgers Coffee Company	Sherman, TX	December 13, 2009.
75,015	Optima, Inc., Subsidiary of Washi Beam Company, Ltd	Stratford, CT	December 17, 2009.
75,022	Carole Hochman Design Group, Inc., Charles Komar & Sons, Inc.; Leased Workers from Spherion.	Williamsport, PA	December 17, 2009.
75,047	JPMorgan Chase and Company, Retail Financial Services, Production Assurance Center.	Columbus, OH	December 27, 2009.
75,056	Ericsson Services, Inc., Ericsson, Inc., Service Assurance, Deployment, IS/IT.	Overland Park, KS	December 29, 2009.
75,120	Steelcase Inc., North America Division, Leased Workers of Manpower, Inc.	Grand Prairie, TX	January 18, 2010.
75,120A	Steelcase Inc., North America Division, Manpower, Inc.	Grand Rapids, MI	January 18, 2010.
75,122	Imation Corporation, Research and Development and Engineering, Pilot Plant.	Oakdale, MN	January 18, 2010.

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
74,224	DRS Mobile Environmental Systems Company, DRS Technologies, Inc.; Leased Workers Express Employment Professionals, etc.	Cincinnati, OH	June 10, 2009.
75,142	Oak Creek Consolidated, Inc.	Yorktown, VA	January 25, 2010.

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
73,842	CCCi Workers, Employed On-Site at Bank of America	Addison, TX	
74,262	Analogic Corporation, OEM Medical Group; Analogic Corporation Consolidated.	Peabody, MA	
74,262A	Analogic Corporation, Security Imaging Systems Division; Analogic Corporation Consolidated.	Peabody, MA	
74,664	Joseph T. Ryerson and Son, Inc.	Chicago, IL	
74,708	Caire, Inc., Biomedical Group	Plainfield, IN	
74,749	Alorica	Manhattan, KS	
74,923	Martinrea Heavy Stamping, Martinrea International Division	Shelbyville, KY	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
74,843	Sundance Spas, Inc.	Chino Hills, CA	
74,922	Hendricks Furniture Group, Classic Moving and Storage	Conover, NC	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve

no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
74,439	Bruss North America, Inc.	Russell Springs, KY	
75,109	DATROSE, Working on-site at International Business Machines	Endicott, NY	

I hereby certify that the aforementioned determinations were issued during the period of January 31, 2011 through February 4, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov*. These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: February 9, 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–4091 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Funding Opportunity and Solicitation for Grant Application (SGA) for Green Jobs Innovation Fund

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY 10–07.

SUMMARY: Through this notice, the Department of Labor's Employment and Training Administration (ETA) announces the availability of approximately $40 million in grant funds authorized by the Workforce Investment Act of 1998, Title I, Subtitle D, Section 171(d), Public Law 105–220 for the Green Jobs Innovation Fund (GJIF) to increase the number of individuals completing training programs who receive industry-recognized credentials and to increase the number of individuals completing training programs for employment in green jobs. ETA proposes to fund approximately five to eight grants to national and statewide organizations with local affiliates with existing career training programs to provide technical and basic skills training that lead to green job opportunities in at least six communities per grant with this SGA. With these grants, the Department is emphasizing critical steps along green career pathways by: (1) Forging linkages between Registered Apprenticeship and pre-apprenticeship programs, and/or (2) integrating the delivery of technical and basic skills training through community-based partnerships.

The complete SGA and any subsequent SGA amendments, in connection with Workforce Investment Act of 1998, Title I, Subtitle D, Section 171(d), Public Law 105–220 for the Green Jobs Innovation Fund (GJIF) is described in further detail on ETA's Web site at *http://www.doleta.gov* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is March 29, 2011.

FOR FURTHER INFORMATION CONTACT: Kia Mason, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210; *telephone:* 202–693–2606.

Signed at Washington, DC, this 17th day of February, 2010.

Donna Kelly,

Grant Officer, Employment and Training Administration.

[FR Doc. 2011–4181 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 7, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 7, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of February 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[33 TAA petitions instituted between 1/31/11 and 2/4/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
75147	Elkay Manufacturing (Company)	Broadview, IL	01/31/11	01/28/11
75148	UPS (Company)	Des Moines, IA	01/31/11	01/28/11
75149	Loparex (Union)	Cullman, AL	01/31/11	01/28/11
75150	International Brake Industries, Inc. (Compan)	Lima, OH	01/31/11	01/28/11
75151	International Truck and Engine Corporation (Workers)	Fort Wayne, IN	01/31/11	01/30/11
75152	Pratt and Whitney (Union)	Cheshire, CT	01/31/11	01/11/11
75153	HSBC (State/One-Stop)	Tigard, OR	01/31/11	01/27/11
75154	Apex Tool Group (Workers)	Monroe, NC	02/01/11	01/24/11
75155	Hitachi Global Storage Technologies, Inc. (Company)	San Jose, CA	02/01/11	01/31/11
75156	Abbott Point of Care (Workers)	Princeton, NJ	02/01/11	01/31/11
75157	Patch Products, Inc. (Company)	Smethport, PA	02/01/11	01/28/11
75158	Penske Logistics, LLC (Workers)	El Paso, TX	02/01/11	01/31/11
75159	BAE Systems (Workers)	Lemont Furnace, PA	02/01/11	01/31/11
75160	ITR Concession Company, LLC (Workers)	Granger, IN	02/01/11	01/25/11
75161	Continental Plastics Company, Fraser. MI; incl. Chesterfield Township, MI (Company).	Fraser, MI	02/01/11	01/31/11
75162	Pisgah Yarn & Dyeing, Inc. (Company)	Old Fort, NC	02/02/11	01/28/11
75163	Capgemini America (Workers)	Chicago, IL	02/02/11	01/31/11
75164	Rosemount Analytical (Workers)	Irvine, CA	02/02/11	01/31/11
75165	The Hartford Financial Services Group, Inc. (Company)	Hartford, CT	02/02/11	01/31/11
75166	Hewlett-Packard Company (State/One-Stop)	Minnetonka, MN	02/02/11	01/26/11
75167	Sun Printing of Ohio, Inc. (Workers)	Mansfield, OH	02/02/11	01/03/11
75168	Hearth & Home Technologies (Workers)	Colville, WA	02/02/11	01/28/11
75169	Elkay Manufacturing (Company)	Ogden, UT	02/03/11	02/01/11
75170A	Somanentics (Company)	Gainesville, FL	02/03/11	01/24/11
75170	Somanentics (Company)	Troy, MI	02/03/11	01/24/11
75171	Dex One (Company)	Cary, NC	02/03/11	02/02/11
75172	Dex One (Company)	Cary, NC	02/03/11	02/02/11
75173	HireRight, Inc. (Company)	Irvine, CA	02/03/11	01/28/11
75174	Wells Fargo (Workers)	Wilkesboro, NC	02/03/11	02/01/11
75175	Equitrac Corporation (State/One-Stop)	St. Louis, MO	02/03/11	02/02/11
75176	Lynx Medical Systems (State/One-Stop)	Bellevue, WA	02/04/11	02/03/11
75177	Digital Networking, LLC (Company)	Denver, CO	02/04/11	02/03/11
75178	Simpson Door Company (State/One-Stop)	McCleary, WA	02/04/11	02/03/11

[FR Doc. 2011–4090 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 7, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 7, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of February 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[66 TAA petitions instituted between 2/7/11 and 2/11/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
75179	Stratus Technologies (State/One-Stop)	Maynard, MA	02/07/11	02/03/11
75180	CPL (Company)	Buffalo, NY	02/07/11	02/04/11
75181	Sony DADC (State/One-Stop)	Pitman, NJ	02/08/11	02/07/11

APPENDIX—Continued

[66 TAA petitions instituted between 2/7/11 and 2/11/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
75182	Union Apparel, Inc. (Workers)	Norvelt, PA	02/08/11	02/04/11
75183	Reynolds Food Packaging (Workers)	Grove City, PA	02/08/11	01/26/11
75184	Maine Military Authority (Workers)	Augusta, ME	02/08/11	02/03/11
75185	ZEPF Community Mental Health (Workers)	Toledo, OH	02/08/11	02/07/11
75186	Stanley Black & Decker (Company)	Jackson, TN	02/08/11	02/07/11
75187	Dex One (Workers)	Morrisville, NC	02/08/11	02/03/11
75188	Dell (Workers)	Tulsa, OK	02/08/11	02/07/11
75189	Roche Carolina, Inc. (Company)	Florence, SC	02/08/11	02/07/11
75190	Compucredit Corporation (Company)	Atlanta, GA	02/09/11	02/08/11
75191	Faribault Woolen Mill Company (State/One-Stop)	Faribault, MN	02/09/11	02/08/11
75192	Core Industries Inc. (Company)	Irvine, CA	02/09/11	02/08/11
75193	TydenBrooks Security Product Group (Workers)	Newton, NJ	02/09/11	02/08/11
75194	Weyerhaeuser Company NR (Company)	Zwolle, LA	02/09/11	02/07/11
75195	Weyerhaeuser Company (Company)	Albany, OR	02/09/11	02/07/11
75196	PriceWaterhouseCoopers, LLC (State/One-Stop)	St. Louis, MO	02/09/11	02/08/11
75197	Regence Blue Cross Blue Shield (State/One-Stop)	Salt Lake City, UT	02/09/11	02/08/11
75198	ACS Outsourcing, Inc. (Workers)	Pittsburgh, PA	02/09/11	02/08/11
75199	Dell Incorporated (Workers)	Round Rock, TX	02/09/11	02/08/11
75200	RBC Manufacturing Corporation (Company)	West Plains, MO	02/10/11	02/09/11
75201	Abbott Laboratories (State/One-Stop)	Irving, TX	02/10/11	02/09/11
75202	Welco Technologies (Workers)	Maysville, KY	02/10/11	02/09/11
75203	Sigue Corporation (Company)	Sylmar, CA	02/10/11	02/07/11
75204	ArcelorMittal Harriman (Union)	Harriman, TN	02/10/11	02/09/11
75205	The Connection (State/One-Stop)	Holdrege, NE	02/10/11	02/04/11
75206	Hewlett Packard (State/One-Stop)	Paducah, KY	02/10/11	02/08/11
75207	The Pierce Company (Company)	Upland, IN	02/10/11	02/09/11
75208	Apex Industries, Inc. (Company)	Spokane Valley, WA	02/10/11	02/08/11
75209	Rayon Fabrics Corporation (Company)	Allentown, PA	02/10/11	02/09/11
75210	PricewaterhouseCoopers, LLC (Worker)	Tampa, FL	02/10/11	02/08/11
75211	USAirways (Workers)	Cheektowaga, NY	02/10/11	02/09/11
75212	Burnand & Co. Incorporated (Workers)	Nogales, AZ	02/10/11	02/09/11
75213	The Hartford Financial Services (Workers)	Hartford, CT	02/11/11	02/04/11
75214	Foodswing, Inc. (State/One-Stop)	Cambridge, MD	02/11/11	02/10/11
75215	Fidelity (State/One-Stop)	Westlake, TX	02/11/11	02/10/11
75216	Russell Newman Brands (Company)	New York, NY	02/11/11	02/10/11
75217	MEMC Electronic Materials (State/One-Stop)	St. Peters, MO	02/11/11	02/10/11
75218	International Automotive Components, North America (Union).	Lebanon, VA	02/11/11	02/09/11
75219	United Parcel Service (Company)	West Columbia, SC	02/11/11	02/08/11
75220	Tinder Box Trading Co. (Company)	Mayfield, KY	02/11/11	02/10/11
75221	Quad Graphics (State/One-Stop)	Lebanon, OH	02/11/11	02/10/11
75222	American Standard America, Inc. (Union)	Salem, OH	02/11/11	02/09/11
75223	Global Suspension Systems (Workers)	Bryan, OH	02/11/11	02/07/11
75224	Tetra Pak, Inc. (State/One-Stop)	Minneapolis, MN	02/11/11	02/10/11
75225	ECI Telecom (Workers)	Pittsburgh, PA	02/11/11	02/03/11
75226	Wells Fargo & Company (State/One-Stop)	Kansas City, MO	02/11/11	02/09/11
75227	Dana Corporation (State/One-Stop)	Longview, TX	02/11/11	02/10/11
75228	Funtees (Company)	Concord, NC	02/11/11	02/10/11
75229	HC Starck (CST) (Workers)	Coldwater, MI	02/11/11	02/04/11
75230	Evergreen Solar (State/One-Stop)	Marlborough, MA	02/11/11	02/10/11
75231	Comcast Corporation (Workers)	Nashville, TN	02/11/11	02/10/11
75232	Travelers Insurance (Workers)	Knoxville, TN	02/11/11	02/10/11
75233	Peak Oilfield Service Company (Company)	Anchorage, AK	02/11/11	02/10/11
75234	Stanley Black & Decker (Company)	Jackson, TN	02/11/11	02/08/11
75235	Verizon Business (State/One-Stop)	Ashburn, VA	02/11/11	02/10/11
75236	Silberline Manufacturing Company, Inc. (Company)	Tamaqua, PA	02/11/11	02/09/11
75237	ComDel Innovation (Company)	Wahpeton, ND	02/11/11	02/09/11
75238	NcNeil (Workers)	Fort Washington, PA	02/11/11	01/11/11
75239	Superior Fibers (Workers)	Bremen, OH	02/11/11	02/01/11
75240	IBM Corporation (State/One-Stop)	Milwaukee, WI	02/11/11	02/10/11
75241	Tyco Electronics (State/One-Stop)	Eden Prairie, MN	02/11/11	02/10/11
75242	Sensomatic Electronics, LLC (Company)	Boca Raton, FL	02/11/11	02/10/11
75243	Ansley Inc. (Company)	Bonners Ferry, ID	02/11/11	02/10/11
75244	Carrier Corporation (Union)	Tyler, TX	02/11/11	02/10/11

[FR Doc. 2011–4089 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,949]

Western Digital Technologies, Inc., Coporate Headquaters/Hard Drive Development Division, Lake Forest, CA; Notice of Negative Determination on Reconsideration

On October 7, 2010, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Western Digital Technologies, Inc., Corporate Headquarters/Hard Drive Development Division, Lake Forest, California (Western Digital Technologies). The Department's Notice was published in the **Federal Register** on October 25, 2010 (75 FR 65517). The subject workers supply engineering (development) services in support of hard drive (also known as disk drive) manufacturing.

The initial negative determination was based on the Department's findings that that the subject firm did not increase imports of like or directly competitive services and did not shift to a foreign country the supply of these services. The investigation also revealed that the subject firm does not supply services that were directly used in the production of an article by a firm that employed a worker group eligible to apply for TAA. Because the services were supplied internally, no customer survey was conducted.

The request for reconsideration alleges that increased imports of articles that were produced directly using the services supplied by the subject workers contributed importantly to separations at the subject firm.

Information obtained during the reconsideration investigation confirmed that, during the relevant period, the workers' firm did not shift to a foreign country the supply of services like or directly competitive with the engineering services supplied by the workers nor has there has been an acquisition by the subject firm from a foreign country of like or directly competitive services; that the subject firm did not increase services like or directly competitive with the engineering services supplied by the workers; and the subject firm did not increase imports of articles that were produced directly using services supplied by the subject workers.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Western Digital Technologies, Inc., Corporate Headquarters/Hard Drive Development Division, Lake Forest, California.

Signed in Washington, DC, on this 4th day of February, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–4095 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,554]

General Motors Company, Pontiac Assembly; Pontiac, MI; Notice of Negative Determination on Reconsideration

On October 7, 2010, the Department of Labor (Department) issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of General Motors Company, Pontiac Assembly, Pontiac, Michigan (GM–Pontiac). The Department's Notice of determination was published in the **Federal Register** on October 25, 2010 (75 FR 65513). Workers at GM–Pontiac are engaged in employment related to the production of the GMC Sierra and Chevrolet Silverado vehicles.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the finding that there was no increase in imports by the subject firm or its customers or a shift to/acquisition from a foreign country by the workers' firm of articles like or directly competitive with the automobiles produced by the workers. The investigation also revealed that the workers did not produce a component part that was used by a firm that both employed workers eligible to apply for Trade Adjustment Assistance and directly incorporated the component parts into the article that was the basis for the TAA certification.

In the request for reconsideration, the International Union of United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) stated that production of standard cab and extended cab GMC Sierra and Chevrolet Silverado vehicles shifted to an affiliated GM facility in Mexico ("Pontiac Assembly ceased producing * * * production from Pontiac * * * shifted, at least in part, to Silao, Mexico."

Information obtained during the reconsideration investigation confirmed that the subject firm did not shift to/acquire from an affiliated facility in Mexico or any other foreign country the production of standard cab and extended cab GMC Sierra and Chevrolet Silverado vehicles (or like or directly competitive articles). The company official also confirmed that production of the aforementioned vehicles was shifted to affiliated locations within the United States.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of General Motors, Pontiac Assembly, Pontiac, Michigan.

Signed in Washington, DC, on this 4th day of February, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–4093 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,488]

Hewlett Packard (HP), Global Product Development, Engineering Workstation Refresh Team, Working On-Site at General Motors Corporation, Milford, MI; Notice of Revised Determination on Reconsideration

On June 8, 2010, the Department issued a Notice of Termination of Investigation, stating that the petitioning worker group is part of an on-going investigation (TA–W–72,851). On June 30, 2010, the Department issued a Notice of Revised Termination of

Investigation because the certification of TA–W–72,851 (issued on June 23, 2010) did not include workers of Hewlett Packard, and began an investigation to determine whether workers and former workers of Hewlett Packard, Global Product Development, working on-site at General Motors Corporation, Milford, Michigan, are eligible to apply for TAA.

Information obtained by the Department revealed that Hewlett Packard's Global Product Development unit consists of three separately identifiable worker groups: The Non-Information Technology Business Development Team, the Engineering Application Support Team, and the Engineering Workstation Refresh Team.

On February 2, 2011, the Department issued an amended certification of TA–W–72,851 that included workers of Hewlett Packard, Global Product Development, Non-Information Technology Business Development Team and Engineering Application Support Team, working on-site at General Motors Corporation, Milford, Michigan. Because workers of Hewlett Packard, Global Product Development, Engineering Workstation Refresh Team (HP–EWRT) are not covered by the amendment, the Department continued with the investigation.

The Department has determined that the workers of HP–EWRT, who are engaged in employment related to the supply of information technology (IT) services, meet the criteria as Suppliers for secondary worker certification.

Criterion I has been met because a significant number or proportion of the workers of HP–EWRT has become totally or partially separated, or are threatened with separation.

Criterion II has been met because workers of HP–EWRT supplied services to a firm that employed a worker group eligible to apply for TAA and the services supplied are related to the article or service that was the basis for the TAA certification.

Criterion III has been met because the loss of business by HP–EWRT with the aforementioned firm, with respect to IT services supplied to the firm, contributed importantly to subject worker separations at HP–EWRT, Milford, Michigan.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Hewlett Packard, Global Product Development, Engineering Workstation Refresh Team, Milford, Michigan, who are engaged in employment related to the supply of information technology (IT) services, meet the worker group certification criteria under Section 222(c) of the Act, 19 U.S.C. 2272(c). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

"All workers of Hewlett Packard, Global Product Development, Engineering Workstation Refresh Team, working on-site at General Motors Corporation, Milford, Michigan, who became totally or partially separated from employment on or after February 9, 2009, through two years from the date of this revised certification, 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 4th day of February, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–4096 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,261]

Stimson Lumber Company Clatskanie, OR; Notice of Revised Determination on Remand

On November 15, 2010, the United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand to conduct further investigation in *Former Employees of Stimson Lumber Company* v. *United States Secretary of Labor,* Court No. 10–00278.

On May 18, 2009, the International Association of Machinists and Woodworkers, Local Lodge W–536 (Union) filed a petition for Trade Adjustment Assistance (TAA) with the Department of Labor (Department) on behalf of workers and former workers of Stimson Lumber Company, Clatskanie, Oregon (subject firm). Workers at the subject firm (subject worker group) are engaged in the production of softwood lumber products. The worker group does not include on-site leased workers.

On February 19, 2010, the Department issued a Negative Determination regarding eligibility to apply for TAA applicable to workers and former workers of the subject firm. The Department's Notice of determination was published in the **Federal Register** on March 12, 2010 (75 FR 11925).

The Department's initial findings revealed that the subject firm did not import articles like or directly competitive with those produced by the workers, shift the production of these articles abroad, or acquire these articles from a foreign country during the period under investigation. The survey conducted of the subject firm's major declining customers revealed a decline in imports when compared to purchases made from the subject firm.

The Department had also reviewed aggregate data that confirmed that U.S. imports of softwood lumber products like or directly competitive with those produced by the subject worker group declined when compared to domestic production. Consequently, the Department determined that the group eligibility requirements under Section 222 of the Trade Act, as amended, had not been met.

By application dated March 11, 2010, the Union requested administrative reconsideration on the Department's negative determination. The request for reconsideration stated that the worker separations in the subject worker group were a result of competition with Canadian imports. The Union also alleged that because Hampton Lumber Mills-Washington, Inc., Morton Division, Morton, Washington, whose workers are eligible to apply for TAA as primary workers under TA–W–72,129, is an upstream supplier of Stimson Lumber Company, workers at the subject firm are eligible to apply for TAA as adversely affected secondary workers.

Section 222(d) of the Act, 19 U.S.C. 2272(d), defines the term "Supplier" as "a firm that produces and supplies directly to another firm component parts for articles, or services used in the production of articles or in the supply of services, as the case may be, that were the basis for a certification of eligibility under subsection (a) [of Section 222 of the Act] of a group of workers employed by such other firm."

During the investigation regarding the application for reconsideration, the Department confirmed that the subject worker group did not qualify as secondarily affected workers because the products manufactured at the subject firm were not used as a component part in the production of lumber that was the basis of the primary certification that is applicable to workers at Hampton Lumber Mills-Washington, Inc., Morton Division, Morton, Washington.

Because the petitioner did not provide information that had not been previously considered, the Department issued a Negative Determination Regarding Application for Reconsideration applicable to workers at the subject firm on July 8, 2010. The

Department's Notice was published in the **Federal Register** on July 16, 2010 (75 FR 41529).

In the complaint to the USCIT, dated August 4, 2010, the Plaintiffs claimed that workers at the subject firm were impacted by Canadian imports of articles like or directly competitive with those produced by the subject firm. The Plaintiffs also claimed that "the main competitors of the Stimson Mill are TAA certified because of foreign competition from the Canadian softwood dimensional lumber imports."

On November 8, 2010, the Department requested voluntary remand to conduct further investigation to address the allegations made by the Plaintiffs, to determine whether the subject worker group is eligible to apply for TAA, and to issue an appropriate determination. On November 15, 2010, the USCIT granted the Department's Motion for voluntary remand.

For a worker group to be certified eligible to apply for TAA based on increased imports, all of the following criteria must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision.

During the remand investigation, the Department carefully reviewed previously submitted information, obtained additional information from the subject firm, solicited input from the Plaintiffs, collected and reviewed additional U.S. import aggregate data on softwood lumber, and conducted an extensive customer survey.

The Department's findings on remand confirmed that the subject firm did not shift to a foreign country the production of articles like or directly competitive with those produced by the subject worker group, acquire these products from foreign sources, or import these articles or articles like or directly competitive with those produced by the subject worker group during the relevant time period.

During the remand investigation, the Department surveyed a significant proportion of the subject firm's declining customers regarding import purchases of large wood products, such as timbers, cross arms, and crane mats and like or directly competitive articles with those produced at the subject firm during 2008, 2009, and 2010. The Department also considered in conducting the survey any overlapping customers between the subject firm and firms that produce like or directly competitive products that, according to the Plaintiffs, are competitors of the subject firm.

The expanded customer survey revealed that imports of articles like or directly competitive with the softwood lumber articles produced at the subject firm declined in the first period under investigation. However, customers' purchases made from the subject firm also declined during the same time period but at a faster rate. During the second period under investigation, customers' import purchases increased significantly compared to purchases made from the subject firm. Overall, the surveyed customers displayed an increased reliance on import purchases of articles like or directly competitive with the softwood lumber products manufactured by the subject worker group relative to purchases made from the subject firm during the period under investigation.

Based on the new information obtained during the remand investigation, the Department determines that an increased reliance on imports by customers of the subject firm, of articles like or directly competitive with softwood lumber products manufactured by the subject firm, contributed importantly to the separations in the subject worker group and to the decline in subject firm sales and production.

Conclusion

After careful review of the information obtained during the remand investigation, I determine that increased imports of articles like or directly competitive with softwood lumber products manufactured by the subject firm contributed importantly to the total separation of a significant number or proportion of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Stimson Lumber Company, Clatskanie, Oregon, who became totally or partially separated from employment on or after May 18, 2008, through two years from the date of this revised certification, 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 14th day of February, 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–4092 Filed 2–23–11; 8:45 am]

BILLING CODE 4510–FN–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2010–4]

Federal Copyright Protection of Sound Recordings Fixed Before February 15, 1972

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry: Extension of reply comment period.

SUMMARY: The Copyright Office of the Library of Congress is extending the deadline for filing reply comments in response to its Notice of Inquiry requesting public input on the desirability and means of bringing sound recordings fixed before February 15, 1972 under federal jurisdiction. Initial comments are available for review on the Copyright Office Web site.

DATES: Reply comments must be received in the Office of the General Counsel of the Copyright Office no later than April 13, 2011.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/sound/comments/comment-submission-index.html.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, each comment must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted on the Copyright Office Web site, along with names and organizations.

If electronic submission of comments is not feasible, comments may be delivered in hard copy. If hand delivered by a private party, an original

and five copies of a comment or reply comment should be brought to the Library of Congress, U.S. Copyright Office, Room LM–401, James Madison Building, 101 Independence Ave., SE., Washington, DC 20559, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site ("CCAS") located at 2nd and D Streets, SE., Washington, DC between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM–403, James Madison Building, 101 Independence Avenue, SE., Washington, DC 20559. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Chris Weston, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. *Telephone:* (202) 707–8380. *Telefax:* (202) 707–8366.

SUPPLEMENTARY INFORMATION: To assist in the preparation of its study on federal protection for pre-1972 sound recordings, the Office published a Notice of Inquiry seeking comments on many detailed questions regarding various aspects of the study. *See* 75 FR 67777 (November 3, 2010). Initial comments, which were due on January 31, 2011, have been received and are posted on the Copyright Office Web site at *http://www.copyright.gov/docs/sound/comments/initial/.* Reply comments were due to be filed by March 2, 2011.

The Copyright Office has received a request from the Association of Recorded Sound Collections (ARSC) to extend the reply comment period by 42 days in order to allow sufficient time to provide the Office with comprehensive comments on issues relating to copyright law, licensing, and the marketing of sound recordings raised by the initial comments. ARSC points out that at the request of another commenter, the deadline for initial comments was extended by 42 days, and that the initial comments raised "[m]any complex issues relating to copyright law, licensing, and the marketing of sound recordings." ARSC states that a 42-day extension of the deadline for submission of reply comments would assure that all parties have ample time to craft responses.

Given the complexity of the issues addressed by the initial comments, and in the interest in developing a thorough record, the Office has decided to extend the deadline for filing reply comments by a period of 42 days, making reply comments due by April 13, 2011.

The Office received one initial comment after the January 31 deadline. Because of the extension of the deadline for reply comments, the Office has decided to accept that comment, which has been posted on the Copyright Office Web site at *http://www.copyright.gov/docs/sound/comments/initial/* as Comment Number 59.

Dated: February 18, 2011.

Maria Pallante,

Acting Register of Copyrights.

[FR Doc. 2011–4126 Filed 2–23–11; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before March 28, 2011 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on November 12, 2010 (75 FR 69474). No comments were received. NARA has submitted the described information collection to OMB for approval. In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Application and Permit for Use of Space in Presidential Library and Grounds.

OMB number: 3095–0024.

Agency form number: NA Form 16011.

Type of review: Regular.

Affected public: Private organizations.

Estimated number of respondents: 1,000.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 333 hours.

Abstract: The information collection is prescribed by 36 CFR 1280.94. The application is submitted to a Presidential library to request the use of space in the library for a privately sponsored activity. NARA uses the information to determine whether use will meet the criteria in 36 CFR 1280.94 and to schedule the date.

Dated: February 17, 2011.

Charles K. Piercy,

Acting Assistant Archivist for Information Services.

[FR Doc. 2011–4256 Filed 2–23–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 28, 2011. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *request.schedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Animal and Plant Health Inspection Service (N1–463–09–9, 1 item, 1 temporary item). Master files of an electronic information system containing license, registration, and inspection data on businesses and organizations that buy, sell, exhibit, transport, or conduct research on animals.

2. Department of Agriculture, Farm Service Agency (N1–145–11–1, 1 item, 1 temporary item). Master files of an electronic information system used to track and disperse operating expense funds to farmers, vendors, and service center offices.

3. Department of Agriculture, Risk Management Agency (N1–258–10–2, 1 item, 1 temporary item). Master files of an electronic information system used to control the maintenance, use, and disposition of agency records to facilitate preservation, retrieval and use.

4. Department of the Army, Agency-wide (N1–AU–10–99, 1 item, 1 temporary item). Master files of an electronic information system that enables web-based ordering and tracking of subscriptions and Army publications.

5. Department of Commerce, Bureau of the Census (N1–29–10–1, 12 items, 10 temporary items). Records relating to the conduct of the Survey of Business Owners and Self-Employed Persons, including data processing records, special tabulations, correspondences, operation files, monthly activity reports, and working papers. Proposed for permanent retention are file documentation for electronic files designated as permanent and publications derived from survey data.

6. Department of Commerce, Bureau of Economic Analysis (N1–375–10–4, 10 items, 7 temporary items). Records of the National Income and Wealth Division, including general correspondence, data files, spreadsheets, secondary source materials, review packages, supporting papers, and processed materials. Proposed for permanent retention are program records documenting mission-related activities including memoranda, statement of procedures, data system documentation, special studies, and reports.

7. Department of Commerce, National Telecommunications and Information Administration (N1–417–10–1), 51 items, 47 temporary items). Records of agency program offices, including invitations, website updates, budget files, formulation files, submissions, subject files, chronological files, schedule books, calendars, and working

papers. Proposed for permanent retention are agency publications, high-level speeches and testimonies of agency officials, and Institute for Telecommunication Sciences history records.

8. Department of Commerce, National Institute of Standards and Technology (N1–167–11–2, 2 items, 2 temporary items). Records of the Construction Grant Program, including proposal packages, merit reviews, initial letters of intent, budget information, applicant correspondence, final selection outcomes, and the master files of an electronic information system used as a central repository for competition-specific data.

9. Department of Commerce, Office of Inspector General (N1–40–10–1, 8 items, 7 temporary items). Records of the Office of Counsel, including case files, opinions, interpretations, chronological files, audit review files, review files, subpoena logs, and routine office correspondence files. Proposed for permanent retention are legal opinions and interpretations.

10. Department of Commerce, Office of the Inspector General, (N1–40–10–2, 2 items, 1 temporary item). Chronological files of the Immediate Office of the Inspector General. Proposed for permanent retention are subject program operations files and correspondence.

11. Department of Defense, Office of the Secretary of Defense, (N1–330–10–4, 3 items, 3 temporary items). Records relating to Pentagon force protection projects including contracts, cost estimates, budget requests, and program objective memoranda.

12. Department of Defense, Office of the Secretary of Defense, (N1–330–10–5, 2 items, 2 temporary items). Records relating to fraud, waste, and abuse hotline investigative case files including general correspondence, interviews, and reports of findings.

13. Department of Defense, Office of the Secretary of Defense, (N1–330–10–6, 5 items, 1 temporary item). Records relating to the Special Inspector General For Iraq Reconstruction, including routine hotline investigative case files pertaining to waste, fraud, and abuse, general correspondence, notes, and working files. Proposed for permanent retention are investigative case files of historical significance.

14. Department of Defense, Office of the Secretary of Defense (N1–330–10–7, 1 item, 1 temporary item). Master files of an electronic information system containing records relating to civilian personnel injury claims including applications, examinations, treatment histories, and investigative files.

15. Department of Defense, Office of the Secretary of Defense (N1–330–10–8, 1 item, 1 temporary item). Master files of an electronic information system containing profile data on military dependent schools including number of student enrollments, demographic data, testing results, and staff background information.

16. Department of Education, Office of Postsecondary Education, (N1–441–09–24, 2 items, 2 temporary items). Records relating to the Department of Education's Organizational Assessment. Records include strategic plans; principal office improvement plans and contingency plans; progress reports; surveys and interviews; communication plans; and documentation of scores, results, priorities, and measures. Also included are master files of an electronic information system used to support the assessment process containing survey and interview results, agency reports, and strategic plans.

17. Department of Energy, Federal Energy Regulatory Commission (N1–138–11–1, 3 items, 2 temporary items). Master files of an electronic information system and associated records relating to drafts and revisions to agency orders, including process selections, administrative detail, participant lists and related information. Proposed for permanent retention are outputs from the system containing final orders, voting logs, and associated records.

18. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–09–4, 4 items, 4 temporary items). Master files of electronic systems used to support the Medicare Part D program (prescription drug coverage), containing beneficiary information, prescription drug records, claims, and capitation rate records. Permanent records are captured in the Integrated Data Repository system.

19. Department of Homeland Security, Immigration and Customs Enforcement (N1–567–11–7, 1 item, 1 temporary item). Master files of an electronic information system containing information on the custody status of detainees.

20. Department of Justice, Agency-wide (N1–60–10–12, 5 items, 2 temporary items). Routine event recordings and photographs of agency events and programs. Proposed for permanent retention are photographs and video recordings that document significant actions relating to the agency's mission and the actions of the Attorney General.

21. Department of Justice, Federal Bureau of Investigation (N1–65–10–38, 4 items, 4 temporary items). Master files and related records of an electronic information system used to track and manage information on visitors to the agency's facilities.

22. Department of Justice, Federal Bureau of Investigation (N1–65–10–39, 2 items, 2 temporary items). Audit logs recording activities of users in the agency's electronic systems.

23. Department of Justice, Federal Bureau of Investigation (N1–65–11–3, 3 items, 3 temporary items). This schedule increases the retention period from 50 years to 110 years for data files maintained in the National Crime Information Center. Also included are requests for access to the system and a database of originating agencies.

24. Department of Justice, Federal Bureau of Investigation (N1–65–11–10, 1 item, 1 temporary item). File Review Sheets used to track caseload workflow and performance deadlines.

25. Department of Justice, Justice Management Division (N1–60–11–9, 3 items, 3 temporary items). Human resource policy records, including compensation waivers, records relating to salary determination, and position coverage determinations.

26. Department of Justice, Office of the Attorney General (N1–60–11–10, 3 items, 3 temporary items.) Incomplete microfilm copies of paper records scheduled as permanent under N1–60–94–2.

27. Department of Justice, Office of General Counsel (N1–60–11–7, 1 item, 1 temporary item). Master files of an electronic information system used to track the status of incoming correspondence and other items for review.

28. Department of State, Bureau of Democracy, Human Rights, and Labor (N1–059–09–38, 1 item, 1 temporary item). Master files of an electronic information system used to vet training requests for foreign security forces.

29. Department of State, Bureau of Diplomatic Security (N1–84–10–1, 25 items, 25 temporary items). Records of the Office of Diplomatic Courier Service relating to the delivery of diplomatic pouches such as courier checklists, pouch invoices, transportation request files, vendor contract files, and vehicle registration files.

30. Department of State, Bureau of Diplomatic Security (N1–59–10–24, 3 items, 2 temporary items). Records include regional and geographic assessments of threats against Americans; U.S. diplomatic and consular personnel and facilities; and a list of categories of security threats by country. Proposed for permanent retention are annual reports on political violence against Americans.

31. Department of State, Bureau of Diplomatic Security (N1–59–10–25, 2 items, 2 temporary items). Records of the Diplomatic Security Command Center's initial reporting on domestic and overseas security incidents, including brief summaries of possible security incidents and daily multiple-source synopses of events and concerns in countries around the world. Permanent, substantive reports on security concerns and incidents are captured elsewhere in the bureau's records.

32. Department of Transportation, Federal Highway Administration (N1–406–09–26, 22 items, 20 temporary items). Planning and program development records of the Federal Aid program, including airport access files, annual statistical data, Appalachian development highway system program records, certification of public mileage, coastal zone management files, coal haul road study files, smart growth files, economic studies and surveys, State-wide transportation improvement program and transportation improvement plans files, Federal Aid system files, map files, metropolitan planning organizations files, State-wide planning and research status reports, public transportation files, non-motorized needs files, State obligations, highway systems correspondence, State traffic count data and size and weight program files. Proposed for permanent retention are planning and research subject files and National Scenic Byways studies.

33. Environmental Protection Agency, Agency-wide (N1–412–10–2, 2 items, 2 temporary items). Case files of the Environmental Alternative Dispute Resolution Program.

34. Export-Import Bank of the United States, Agency-wide (N1–275–10–7, 1 item, 1 temporary item). Copies of Department of State cables used by the agency for informational purposes.

35. National Aeronautics and Space Administration, Agency-wide (N1–255–09–2, 1 item, 1 temporary item). Records relating to general employee suggestions including background papers, suggestions, approvals, disapprovals, and review processes.

36. National Aeronautics and Space Administration, Agency-wide (N1–255–10–3, 6 items, 5 temporary items). Records relating to the agency's education programs including education packages, project descriptions, funding sources, participant records, and survey responses. Proposed for permanent retention are curriculum materials.

Dated: February 17, 2011.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2011–4264 Filed 2–23–11; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; NRC–2010–0253]

License No. NPF–3; FirstEnergy Nuclear Operating Company Notice of Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation of the U.S. Nuclear Regulatory Commission (NRC), has issued a Director's Decision with regard to a petition dated April 5, 2010, filed by David Lochbaum, hereafter referred to as the "Petitioner." The petition concerns the operation of the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS).

The petition requested that the NRC issue a Show Cause Order, or comparable enforcement action, preventing the DBNPS from restarting following the shutdown in February 2010, until adequate protection standards were met.

As the basis for the April 5, 2010, request, the Petitioner states that FirstEnergy Nuclear Operating Company (the licensee for DBNPS) has violated Federal regulations and the explicit conditions of its operating license by operating for longer than 6 hours with pressure boundary leakage. The Petitioner considers such operation to be potentially unsafe and to be in violation of Federal regulations. To support the Petitioner's belief that the facility is prohibited from operating longer than 6 hours with pressure boundary leakage, the petition references the facility operating license; the technical specifications for DBNPS; Title 10 of the Code of Federal Regulations (10 CFR) part 50, "Domestic Licensing of Production and Utilization Facilities," Appendix A, "General Design Criteria for Nuclear Power Plants"; and the Standard Technical Specifications.

The petition of April 5, 2010, states that the licensee for DBNPS has repeatedly violated Federal regulations and the explicit conditions of its operating license by operating the reactor longer than 6 hours with pressure boundary leakage. In doing so, the Petitioner states that the public was exposed to elevated and undue risk. The NRC's regulations and the operating license the NRC issued for DBNPS define adequate protection standards, which include zero reactor coolant pressure boundary leakage during operation, with the requirement to shut down the reactor within 6 hours if such leakage exists. The Petitioner states that with regard to the DBNPS, evidence demonstrates that the adequate protection standard was not met on multiple occasions and that it is imperative for the NRC to act now to protect the public.

The NRC sent a copy of the proposed Director's Decision to the Petitioner and to the licensee on November 10, 2010. The Petitioner responded with comments on November 23, 2010, and the licensee did not provide comments. The final Director's Decision includes a summary of the comments and the NRC staff's response to them.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to issue a Show Cause Order or comparable enforcement-related action to the licensee for DBNPS is denied. The Director's Decision [DD–11–02] pursuant to 10 CFR 2.206, "Requests for Action under This Subpart," explains the reasons for this decision. The complete text of the Director's Decision is available for inspection in the Agencywide Documents Access and Management System at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS Public Library component on the NRC's Web site, *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room), ADAMS Accession No. ML110250189).

In summary, the NRC has completed a rigorous Special Inspection and determined that enforcement is not required for this matter and that the NRC has reasonable assurance that adequate protection standards have been met and will continue to be met at DBNPS. NRC Region III Inspection Report 05000346/2010–008, dated October 22, 2010, focused on these concerns. The NRC Special Inspection Team was chartered to assess the circumstances surrounding the identification of the flaws in the reactor pressure vessel head control rod drive mechanism (CRDM) nozzle penetrations at DBNPS. The NRC has reviewed in detail the CDRM nozzle cracking, as well as the circumstances surrounding the causes of this cracking and previous opportunities for identification and intervention. The NRC's inspection determined that the public health and safety have not been, nor are likely to

be, adversely affected. The inspection determined that the licensee conformed to the subject NRC regulatory requirements pertinent in this circumstance and applicable to assessing the cause and effect of the CRDM nozzle cracking conditions.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision within that time.

Dated at Rockville, Maryland, this 15th day of February 2011.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–4147 Filed 2–23–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of February 21, 28, March 7, 14, 21, 28, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 21, 2011

Thursday, February 24, 2011

9 a.m. Briefing on Groundwater Task Force (Public Meeting) (Contact: Margie Kotzalas, 301–415–1727)

This meeting will be webcast live at the Web address—*http://www.nrc.gov,*

Week of February 28, 2011—Tentative

Tuesday, March 1, 2011

9 a.m. Briefing on Reactor Materials Aging Management Issues (Public Meeting) (Contact: Allen Hiser, 301–415–5650)

This meeting will be webcast live at the Web address—*http://www.nrc.gov,*

Week of March 7, 2011—Tentative

There are no meetings scheduled for the week of March 7, 2011.

Week of March 14, 2011—Tentative

There are no meetings scheduled for the week of March 14, 2011.

Week of March 21, 2011—Tentative

There are no meetings scheduled for the week of March 21, 2011.

Week of March 28, 2011—Tentative

Tuesday, March 29, 2011

9 a.m. Briefing on Small Modular Reactors (Public Meeting) (Contact: Stephanie Coffin, 301–415–6877)

This meeting will be webcast live at the Web address—*http://www.nrc.gov,*

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html,*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: February 17, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–4150 Filed 2–22–11; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2011–21 and CP2011–59; Order No. 674]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add International Business Reply Service (IBRS) Competitive Contract 3 to the competitive product list. The Postal Service also states that it has entered into an additional IBRS contract, which is the successor to an IBRS 2 contract.

DATES: *Comments are Due:* February 22, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On February 11, 2011, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add International Business Reply Service (IBRS) Competitive Contract 3 to the competitive product list and announcing that it has entered into an additional IBRS contract, which is the successor to an IBRS 2 contract.[1] The Postal Service asserts that the new IBRS Competitive Contract 3 product is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2011–21.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment 2. The contract is assigned Docket No. CP2011–59.

[1] Request of the United States Postal Service to Add International Business Reply Service Competitive Contract 3 to the Competitive Products List and Notice of Filing of Contract (Under Seal), February 11, 2011 (Request).

The Postal Service uses IBRS contracts for customers that sell lightweight articles to foreign consumers and desire to offer their customers a way to return the articles to the United States for recycling, refurbishment, repair, or value-added processing. *Id.* at 4–5.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 290.[2] The term of the instant contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received. The agreement expires 1 year after the effective date unless the parties agree to an earlier termination. The Postal Service states that the instant contract is the successor agreement to the IBRS Competitive Contract 2 contract in Docket No. CP2010–21 for the same mailer.[3] Request at 3. The Postal Service notes that the current contract expires on February 28, 2011 and its intent is to have the instant contract begin March 1, 2011. *Id.* at 4.

In support of its Request, the Postal Service filed the following attachments:

- Attachment 1—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment 2—a redacted copy of the contract;
- Attachment 3—a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 4—Governors' Decision No. 08–24 which establishes prices and classifications for the IBRS Contracts product; and includes Mail Classification Schedule (MCS) language for IBRS contracts, formulas for pricing along with an analysis, certification of the Governors vote, and certification of compliance with 39 U.S.C. 3633 (a); and
- Attachment 5—an application for non-public treatment of materials to maintain the redacted portions of the contract, customer identifying information and related financial information under seal.

In the Statement of Supporting Justification, Jo Ann Miller, former Director, Global Business Development, asserts that the services to be provided under the instant contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of total institutional costs charged to competitive products.[4] *Id.* Attachment 1. Thus, Ms. Miller contends there will be no issue of subsidization of competitive products by market dominant products as a result of these contracts. *Id.*

Baseline agreement. The Postal Service requests that the instant contract be deemed the new baseline agreement for functional equivalency analyses of the IBRS product.[5] *Id.* at 2–4. The Postal Service asserts that the instant contract is essentially the same as the IBRS contracts filed previously. *Id.* at 4. The Postal Service represents that prices and classifications "not of general applicability" for IBRS contracts were established by Governors' Decision No. 08–24 filed in Docket Nos. MC2009–14 and CP2009–20.[6] It also identifies the instant contract as fitting within the MCS language for IBRS contracts included as an attachment to Governors' Decision No. 08–24. *Id.* at 2.

The Request advances reasons why IBRS Competitive Contracts 3 should be added to the competitive product list and fits within the MCS language for IBRS contracts. *Id.* at 4–5. The Postal Service also explains that a redacted version of the supporting financial documentation is included with this filing as a separate Excel file. *Id.* at 3.

The Postal Service asserts that the instant contract is in compliance with 39 U.S.C. 3633, is functionally equivalent to other IBRS agreements, fits within the MCS language for IBRS contracts, will serve as the new baseline contract for the proposed product, and should be added to the competitive product list included within the IBRS Competitive Contracts 3 product. *Id.* at 5–6. Accordingly, it urges the Commission to add the proposed IBRS Competitive Contract 3 to the competitive product list along with the instant contract as the baseline agreement within the product. *Id.* at 6.

II. Notice of Filing

The Commission establishes Docket Nos. MC2011–21 and CP2011–59 for consideration of matters identified in the Postal Service's Request.

The Commission appoints Diane K. Monaco to serve as Public Representative in these dockets.

Comments. Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633 or 3642 and 39 CFR part 3015 and 39 CFR part 3020 subpart B. Comments are due no later than February 22, 2011. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2011–21 and CP2011–59 for consideration of the matters raised in these dockets.
2. Pursuant to 39 U.S.C. 505, Diane K. Monaco is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than February 22, 2011.
4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2011–4055 Filed 2–23–11; 8:45 am]

BILLING CODE 7710–FW–P

[2] *See* Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

[3] *See* Docket Nos. MC2010–18, CP2010–21 and CP2010–22, Notice of the United States Postal Service of Filing Two Functionally Equivalent IBRS Contracts and Request to Establish Successor Instruments as Baseline International Business Reply Service Competitive Contract 2, February 9, 2010.

[4] The Postal Service states that the statement provided by Jo Ann Miller, originally filed in Docket No. MC2009–14 is applicable to the instant proceeding and supports the addition of IBRS Competitive Contract 3 to the competitive product list.

[5] The Postal Service states that it does not intend to remove the IBRS Competitive Contract 2 from the competitive product list at this time.

[6] *See* Order No. 178, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, Docket Nos. MC2009–14 and CP2009–14, February 5, 2009.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Electronic Data Collection System; OMB Control No. 3235–0672; SEC File No. 270–621.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit an extension for this current collection of information to the Office of Management and Budget for approval.

The Securities and Exchange Commission has begun the design of a new Electronic Data Collection System database (the Database) and invites comment on the Database that will support information provided by the general public that would like to file a tip or complaint with the SEC. The Database will be a web based e-filed dynamic report based on technology that pre-populates and establishes a series of questions based on the data that the individual enters. The individual will then complete specific information on the subject(s) and nature of the suspicious activity, using the data elements appropriate to the type of complaint or subject. The information collection is voluntary. The first phase of the Database is scheduled to be released as a pilot in February 2011. Any public suggestions that are received during the pilot phase will be reviewed and changes will be considered. Phase 2 is currently scheduled to be released in the Fall of 2011. There are no costs associated with this collection. The public interface to the Database will be available using the agency's Web site *http://www.sec.gov*. Information is voluntary.

Estimated number of annual responses = 25,000.

Estimated annual reporting burden = 12,500 hours (30 minutes per submission).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication. Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

February 18, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4134 Filed 2–23–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63927; File No. SR–CBOE–2011–008]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change To Permit the Listing of $0.50 and $1 Strike Price Increments on Certain Options Used To Calculate Volatility Indexes

February 17, 2011.

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 February 4, 2011, the Chicago Board Options Exchange, Incorporated ("CBOE" 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rules 5.5 and 24.9 to permit the listing of strike prices in $0.50 intervals where the strike price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to permit the Exchange to list strike prices in $0.50 intervals where the strike price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series [3] used to calculate volatility indexes.

To effect this change, the Exchange is proposing to add new Interpretation and Policy .19 to Rule 5.5, *Series of Option Contracts Open for Trading,* and new Interpretation and Policy .12 to Rule 24.9, *Terms of Index Option Contracts.* These new provisions will permit the listing of strike prices in $0.50 intervals where the strike price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes. The Exchange is also proposing to amend Interpretation and Policy .08 to Rule 5.5 to permit $0.50 strike price intervals for options on exchange-traded funds that are used to calculate a volatility index by cross-referencing Rule 5.5.19.

The CBOE Volatility Index ("VIX") is widely recognized as a benchmark measure of the expected volatility of the S&P 500 Index. In less than four years of trading, VIX options have become the second most actively traded index option class in the U.S., averaging 248,000 contracts per day in 2010. Combined trading activity in listed VIX options and futures in 2010 accounted for over $42 million of "vega" (the unit of trading commonly used for over-the-counter ("OTC") volatility contracts) per day, which represents a significant portion of all volatility trading executed in both listed and OTC markets.

The VIX methodology is derived from a body of research showing that it is possible to create pure exposure to volatility by assembling a special portfolio of options. While the price of a single option depends on both the underlying price *and* volatility, this special portfolio is constructed, in the aggregate, to eliminate the stock price dependence. In theory, this option portfolio would be comprised of an

[3] For example, CBOE calculates the CBOE Gold ETF Volatility Index ("GVZ"), which is based on the VIX methodology applied to options on the SPDR Gold Trust ("GLD"). The current filing would permit $0.50 strike price intervals for GLD options where the strike price is $75 or less. CBOE is currently permitted to list strike prices in $1 intervals for GLD options (where the strike price is $200 or less), as well as for other exchange-traded fund ("ETF") options. *See* Rule 5.5.08.

infinite number of options with continuous strike prices. In practice, however, the options that are used to calculate VIX—as well as other volatility indexes—are finite in number and are subject to a minimum interval between strike prices. As such, the VIX methodology was designed to accommodate certain limitations inherent in "real-world" options trading, such as a limited number of available options.

CBOE and CBOE Futures Exchange, LLC ("CFE") list options and futures on the VIX, which is calculated using S&P 500 Index ("SPX") options. The Exchange believes that one of the reasons for the success of products based on the VIX is a widespread recognition that VIX is an accurate and reliable measure of expected volatility. CBOE has found that both the range of strike prices for option series used in the VIX calculation and the interval between the strike prices (measured as a percentage of the underlying SPX value) of those options are important factors contributing to the calculation of a meaningful index value. The Exchange notes that the minimum strike price interval for SPX options is $5.00, which is 0.4% of the underlying index level of 1286.12 as of January 31, 2011. The permissible strike price interval for SPX options allows approximately 200 to 250 SPX series to be included in the VIX calculation on a typical day. Additionally, CBOE endeavors to list enough SPX options to ensure that the actual option listings do not deviate too far from the theoretical assumptions underpinning the VIX methodology.

As CBOE seeks to apply the VIX methodology to options on ETFs and individual equity securities, the Exchange believes that it is appropriate to use option series that are comparable, in terms of strike price range and strike price interval, to SPX option series in order to calculate volatility index values that are recognized to be as accurate and reliable as the VIX values. The Exchange believes that allowing equivalent strike price intervals for options overlying single stocks, ETFs and indexes with prices of $150 or less, will allow the Exchange to calculate volatility indexes that are better estimates of the expected volatility of option classes with underlying prices that are low relative to the level of the S&P 500. For example, the minimum strike price interval for United States Oil Fund, LP ("USO") options, the underlying for the CBOE Crude Oil ETF Volatility Index ("OVX"), is $1. When this is measured in absolute terms it appears to be five times narrower than the minimum strike interval for SPX options. However, the relevant measurement for a volatility index is the strike price interval as a percentage of the price of underlying; by applying this metric, the strike price interval for USO options is 2.6%,[4] more than six times *wider* than SPX. Due to the limited permissible strike price interval for USO options, only about 40 to 60 USO options are used to calculate OVX on a typical day. This is despite covering a wider range of strike prices than the strike price range of SPX options that are used to calculate VIX. The Exchange notes that the SPX-equivalent strike price interval for a $100 stock or ETF would be approximately $0.40, less than the $0.50 or $1.00 intervals contemplated in this proposal.

The Exchange believes that its proposal will limit the expansion of strike prices because it will only apply to options that are used to calculate a volatility index. Further limiting the expansion of strike prices, the Exchange is proposing to list series in $0.50 intervals only for strike prices less than $75 and $1.00 intervals for strike prices between $75 and $150.

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing strike prices in $0.50 intervals where the strike price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes that would result from the current rule filing.

2. Statutory Basis

The Exchange believes this rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest, and believes that the proposed limited expansion of strike prices will enable the calculation of volatility indexes that are recognized to be as accurate and reliable as VIX values. While this proposal will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is restricted to a limited number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is restricted to a limited number of classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

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 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[4] The closing price for USO shares on January 31, 2011 was $38.61.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–008 and should be submitted on or before March 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63930; File No. SR–EDGX–2010–17]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Disapprove a Proposed Rule Change as Modified by Amendment No. 2 to Amend EDGX Rules 11.9 and 11.5 Regarding Step-up Orders

February 18, 2011.

I. Introduction

On November 8, 2010, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend EDGX Rule 11.9 regarding the description of the Step-up order type[3] and modify Exchange Rule 11.5(c)(7) to allow Mid-Point Match orders[4] entered in response to Step-up orders to be processed pursuant to Exchange Rule 11.9. The proposed rule change was published for comment in the **Federal Register** on November 24, 2010.[5] On November 23, 2010, the Exchange submitted Amendment No. 1 to the proposed rule change. On December 14, 2010, the Exchange submitted Amendment No. 2 to the proposed rule change, which was published for comment in the **Federal Register** on December 23, 2010.[6] The Commission received one comment letter on the proposal,[7] and received the Exchange's response to the comment letter.[8] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change, as modified by Amendment No. 2. Institution of disapproval proceedings, however, does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.[9]

II. Description of the Proposal

Exchange Rule 11.5(c)(11) defines a "Step-up" order as a "market or limit order with the instruction that the System display the order to Users at or within the NBBO price pursuant to Rule 11.9(b)(1)(C)." Exchange Rule 11.9(b)(1)(C), in turn, states that Step-up orders shall be displayed to Users (hereinafter referred to as "Members"),[10] in a manner that is separately identifiable from other Exchange orders, at or within the NBBO price for a period of time not to exceed five hundred milliseconds, as determined by the Exchange (the "Step-up Display Period"). Step-up orders are intended to permit a Member to initiate a price auction of such orders by displaying order solicitation information to other Members simultaneously, provided such other Members have elected to receive such order information. Under the current rules, the first responsive Member order would execute against the Step-up order.

The Exchange proposes to specify the Step-up Display Period as 10 milliseconds, and eliminate the discretion afforded to the Exchange in its existing Rule to vary the length of the Step-up Display Period. In addition, the Exchange proposes to amend Exchange Rule 11.9(b)(1)(C) to provide that, at the conclusion of the Step-up Display Period, the Step-up order shall execute against responsive Member orders priced at or within the NBBO on a price/time priority basis consistent with Exchange Rule 11.8(a)(1) and (2). The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 11.5(c)(11) defines a "Step-up" order as a "market or limit order with the instruction that the System display the order to Users at or within the NBBO price pursuant to Rule 11.9(b)(1)(C)."

[4] Exchange Rule 11.5(c)(7) defines a "Mid-Point Match" order as an "order with an instruction to execute it at the midpoint of the NBBO."

[5] *See* Securities Exchange Act Release No. 63336 (November 18, 2010), 75 FR 71781.

[6] Amendment No. 2 replaced in its entirety the original filing and Amendment No. 1. *See* Securities Exchange Act Release No. 63574 (December 17, 2010), 75 FR 80876.

[7] *See* Letter dated December 15, 2010, from Janet L. McGuinness, Senior Vice President—Legal and Corporate Secretary, Legal & Government Affairs, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission ("NYSE Euronext Letter"). The NYSE Euronext Letter opposes the proposed rule change and, in so doing, expresses support for the Commission's recent proposal that would eliminate the exception for "flash orders" from Rule 602 of Regulation NMS. *See* Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632 (September 23, 2009) (the "Flash Order Proposed Rulemaking").

[8] *See* Letter dated January 18, 2011, from Eric Hess, General Counsel, DirectEdge Holdings, LLC ("Direct Edge"), to Elizabeth M. Murphy, Secretary, Commission.

[9] As noted above, the Commission has issued a proposed rulemaking that, if adopted, could impact the permissibility of the Step-up orders of the Exchange that are the subject of the proposed rule change. *See* Flash Order Proposed Rulemaking, *supra* note 7. The Commission emphasizes that this institution of proceedings to determine whether to disapprove the proposed rule change in no way prejudges or otherwise determines what action, if any, the Commission may take with respect to the Flash Order Proposed Rulemaking.

[10] Exchange Rule 1.5(cc) defines a User as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." Exchange Rule 11.9(b)(1) provides that (prior to display of an order to a User), an incoming order shall first attempt to be matched for execution against orders in the EDGX Book.

Exchange further proposes that, commencing on the six month anniversary of a Commission approval order, the orders eligible for executing against Step-up orders shall be expanded to include Member orders priced better but not outside the NBBO at the end of the Step-up Display Period that may have entered the Exchange book outside the Step-up process (such orders, "Eligible Book Orders").[11]

The Exchange also proposes to amend Exchange Rule 11.5(c)(7) to allow Mid-Point Match orders that are entered in response to Step-up orders to participate in the price auction. The Exchange will not accept orders priced in subpennies during Step-up auctions. The Exchange believes a midpoint response will provide an additional mechanism for a Member that is willing to offer price improvement, but is unwilling to cross the spread between the NBBO, to do so. By providing this option, the Exchange believes that a greater proportion of Step-up orders will receive price improvement.

The Step-up order process will not generate an execution if the market is crossed for the security that is the subject of a Step-up order. If the market is crossed, or if there are no responsive Member orders at or within the NBBO, at the end of the Step-up Display Period, the Step-up process shall terminate and the Step-up order shall be cancelled or routed in accordance with the Member's instructions.

III. Summary of Comments

In its comment letter on the original filing, NYSE Euronext opposes the proposed rule change on several grounds. NYSE Euronext argues that the Step-up auction mechanism will increase the number of orders whose execution is artificially delayed, including both Step-up orders and those responding to them, and thus increase the number of orders missing execution opportunities in other markets. NYSE Euronext also believes that, by proposing to ultimately make Eligible Book Orders eligible for execution against Step-up orders, the proposed rule change would eliminate an Exchange member's choice as to whether its orders will interact with Step-up orders. Finally, NYSE Euronext expresses concern that allowing Mid-Point Match orders to be submitted in response to a Step-up order "further expands the use of [the Exchange's] flash mechanism."[12]

Direct Edge, on behalf of the Exchange, responds that it is not offering an expansion of the flash order type, but rather an auction process that has significant similarities to those used by the NYSE, and notes that the duration of its auction will be the shortest in the securities markets.[13] Direct Edge further argues that the Step-up auction process creates meaningful price improvement opportunities for investors while helping brokers to satisfy their best execution obligations. Direct Edge also believes that expanding participation in the auction to both Eligible Book Orders and Mid-Point Match orders will both increase price competition and expand member choice.[14]

IV. Proceedings To Determine Whether To Disapprove SR–EDGX–2010–17 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Act[15] to determine whether the Exchange's proposed rule change should be disapproved. Pursuant to Section 19(b)(2)(B) of the Act,[16] the Commission is providing notice of the grounds for disapproval under consideration. Under the proposal, the Exchange would create a 10 millisecond auction for responding to Step-up orders and would expand the order types able to interact with Step-up orders during the Step-up auction process. The Act and the rules thereunder require, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to not permit unfair discrimination among broker-dealers and customers and, in general, to protect investors and the public interest.[17] The Commission is concerned that the Exchange's proposal may be inconsistent with these standards. Specifically, the Commission is concerned about the extent to which a 10 millisecond auction would provide a meaningful opportunity for price improvement, or would materially increase the risk that a Step-Up order will miss an execution. The Commission notes that the Exchange has not provided any data with respect to the impact of its proposed 10 millisecond auction on these issues. The Commission is also concerned about the potential implications of the Step-Up auction process, because Eligible Book Orders would not be able to participate in the Step-Up auction for six-months from the date of a Commission approval order.

In view of the issues raised by the proposal, the Commission has determined to institute disapproval proceedings at this time to determine whether the Commission should disapprove the proposed rule change. Institution of disapproval proceedings does not indicate, however, that the Commission has reached any conclusions with respect to the issues involved. The sections of the Act and the rules thereunder that are applicable to the proposed rule change include:

- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;[18] and
- Section 11A(a) of the Act, in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure "economically efficient execution of securities transactions," "fair competition among brokers and dealers and among exchange markets," "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities," and "the practicability of brokers executing investors' orders in the best market."[19]

V. Procedure: Request for Written Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by April

[11] Responses are accumulated for the Step-up Display Period by the Exchange, rather than processed at arrival time. Eligible Book Orders will continue to be eligible for execution against the EDGX Book during the Step-up Display Period, as they do currently.

[12] NYSE Euronext Letter, *supra* note 7, at p. 3. As noted above, NYSE Euronext also expresses support for the Flash Order Proposed Rulemaking. This order addresses only those portions of the NYSE Euronext Letter that specifically address the Exchange's proposed rule change.

[13] Direct Edge Letter, *supra* note 8, at p. 2.

[14] *See id.* at p. 3–4.

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[15] *See* 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C)(i)–(iv).

11, 2011. Rebuttal comments should be submitted by April 25, 2011. Although there do not appear to be any issues relevant to disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[20]

The Commission asks that commenters address the merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2010–17 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–EDGX–2010–17. The 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR–EDGX–2010–17 and should be submitted on or before April 11, 2011. Rebuttal comments should be submitted by April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

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[20] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[21] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63929; File No. SR–EDGA–2010–18]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Disapprove a Proposed Rule Change as Modified by Amendment No. 2 to Amend EDGA Rules 11.9 and 11.5 Regarding Step-up Orders

February 18, 2011.

I. Introduction

On November 8, 2010, EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend EDGA Rule 11.9 regarding the description of the Step-up order type[3] and add Exchange Rule 11.5(c)(7) to allow Mid-Point Match orders[4] entered in response to Step-up orders to be processed pursuant to Exchange Rule 11.9. The proposed rule change was published for comment in the **Federal Register** on November 24, 2010.[5] On November 23, 2010, the Exchange submitted Amendment No. 1 to the proposed rule change. On December 14, 2010, the Exchange submitted Amendment No. 2 to the proposed rule change, which was published for comment in the **Federal Register** on December 23, 2010.[6] The Commission received one comment letter on the proposal,[7] and received the Exchange's response to the comment letter.[8] This order institutes proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether to disapprove the proposed rule change, as modified by Amendment No. 2. Institution of disapproval proceedings, however, does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.[9]

II. Description of the Proposal

Exchange Rule 11.5(c)(11) defines a "Step-up" order as a "market or limit order with the instruction that the System display the order to Users at or within the NBBO price pursuant to Rule 11.9(b)(1)(C)." Exchange Rule 11.9(b)(1)(C), in turn, states that Step-up orders shall be displayed to Users (hereinafter referred to as "Members"),[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Exchange Rule 11.5(c)(11) defines a "Step-up" order as a "market or limit order with the instruction that the System display the order to Users at or within the NBBO price pursuant to Rule 11.9(b)(1)(C)."

[4] The Exchange proposes to define a "Mid-Point Match" order as an "order entered in response to a Step-up Order * * * with an instruction to execute it at the midpoint of the NBBO."

[5] *See* Securities Exchange Act Release No. 63335 (November 18, 2010), 75 FR 71783.

[6] Amendment No. 2 replaced in its entirety the original filing and Amendment No. 1. *See* Securities Exchange Act Release No. 63572 (December 17, 2010), 75 FR 80873.

[7] *See* Letter dated December 15, 2010, from Janet L. McGuinness, Senior Vice President—Legal and Corporate Secretary, Legal & Government Affairs, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission ("NYSE Euronext Letter"). The NYSE Euronext Letter opposes the proposed rule change and, in so doing, expresses support for the Commission's recent proposal that would eliminate the exception for "flash orders" from Rule 602 of Regulation NMS. *See* Securities Exchange Act Release No. 60684 (September 18, 2009), 74 FR 48632 (September 23, 2009) (the "Flash Order Proposed Rulemaking").

[8] *See* Letter dated January 18, 2011, from Eric Hess, General Counsel, DirectEdge Holdings, LLC ("Direct Edge"), to Elizabeth M. Murphy, Secretary, Commission.

[9] As noted above, the Commission has issued a proposed rulemaking that, if adopted, could impact the permissibility of the Step-up orders of the Exchange that are the subject of the proposed rule change. *See* Flash Order Proposed Rulemaking, *supra* note 7. The Commission emphasizes that this institution of proceedings to determine whether to disapprove the proposed rule change in no way prejudges or otherwise determines what action, if any, the Commission may take with respect to the Flash Order Proposed Rulemaking.

[10] Exchange Rule 1.5(cc) defines a User as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." Exchange Rule 11.9(b)(1) provides that (prior to display of an order to a User), an incoming order shall first attempt to be matched for execution against orders in the EDGA Book.

in a manner that is separately identifiable from other Exchange orders, at or within the NBBO price for a period of time not to exceed five hundred milliseconds, as determined by the Exchange (the "Step-up Display Period"). Step-up orders are intended to permit a Member to initiate a price auction of such orders by displaying order solicitation information to other Members simultaneously, provided such other Members have elected to receive such order information. Under the current rules, the first responsive Member order would execute against the Step-up order.

The Exchange proposes to specify the Step-up Display Period as 10 milliseconds, and eliminate the discretion afforded to the Exchange in its existing Rule to vary the length of the Step-up Display Period. In addition, the Exchange proposes to amend Exchange Rule 11.9(b)(1)(C) to provide that, at the conclusion of the Step-up Display Period, the Step-up order shall execute against responsive Member orders priced at or within the NBBO on a price/time priority basis consistent with Exchange Rule 11.8(a)(1) and (2). The Exchange further proposes that, commencing on the six month anniversary of a Commission approval order, the orders eligible for executing against Step-up orders shall be expanded to include Member orders priced better but not outside the NBBO at the end of the Step-up Display Period that may have entered the Exchange book outside the Step-up process (such orders, "Eligible Book Orders").[11]

The Exchange also proposes to add Exchange Rule 11.5(c)(7) to allow Mid-Point Match orders that are entered in response to Step-up orders to participate in the price auction. The Exchange will not accept orders priced in subpennies during Step-up auctions. The Exchange believes a midpoint response will provide an additional mechanism for a Member that is willing to offer price improvement, but is unwilling to cross the spread between the NBBO, to do so. By providing this option, the Exchange believes that a greater proportion of Step-up orders will receive price improvement.

The Step-up order process will not generate an execution if the market is crossed for the security that is the subject of a Step-up order. If the market is crossed, or if there are no responsive Member orders at or within the NBBO, at the end of the Step-up Display Period, the Step-up process shall terminate and the Step-up order shall be cancelled or routed in accordance with the Member's instructions.

The Exchange finally proposes to make conforming changes to the numbering of current rules as a result of the insertion of the Mid-Point Match order type in Rule 11.5(c)(7), as described above. Similarly, the references to the newly numbered rules are also proposed to be amended in Rule 11.5(c) and Rule 11.8(a)(2)(C).

III. Summary of Comments

In its comment letter on the original filing, NYSE Euronext opposes the proposed rule change on several grounds. NYSE Euronext argues that the Step-up auction mechanism will increase the number of orders whose execution is artificially delayed, including both Step-up orders and those responding to them, and thus increase the number of orders missing execution opportunities in other markets. NYSE Euronext also believes that, by proposing to ultimately make Eligible Book Orders eligible for execution against Step-up orders, the proposed rule change would eliminate an Exchange member's choice as to whether its orders will interact with Step-up orders. Finally, NYSE Euronext expresses concern that allowing Mid-Point Match orders to be submitted in response to a Step-up order "further expands the use of [the Exchange's] flash mechanism."[12]

Direct Edge, on behalf of the Exchange, responds that it is not offering an expansion of the flash order type, but rather an auction process that has significant similarities to those used by the NYSE, and notes that the duration of its auction will be the shortest in the securities markets.[13] Direct Edge further argues that the Step-up auction process creates meaningful price improvement opportunities for investors while helping brokers to satisfy their best execution obligations. Direct Edge also believes that expanding participation in the auction to both Eligible Book Orders and Mid-Point Match orders will both increase price competition and expand member choice.[14]

IV. Proceedings To Determine Whether To Disapprove SR–EDGA–2010–18 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2) of the Act[15] to determine whether the Exchange's proposed rule change should be disapproved. Pursuant to Section 19(b)(2)(B) of the Act,[16] the Commission is providing notice of the grounds for disapproval under consideration. Under the proposal, the Exchange would create a 10 millisecond auction for responding to Step-up orders and would expand the order types able to interact with Step-up orders during the Step-up auction process. The Act and the rules thereunder require, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to not permit unfair discrimination among broker-dealers and customers and, in general, to protect investors and the public interest.[17] The Commission is concerned that the Exchange's proposal may be inconsistent with these standards. Specifically, the Commission is concerned about the extent to which a 10 millisecond auction would provide a meaningful opportunity for price improvement, or would materially increase the risk that a Step-up order will miss an execution. The Commission notes that the Exchange has not provided any data with respect to the impact of its proposed 10 millisecond auction on these issues. The Commission is also concerned about the potential implications of the Step-up auction process, because Eligible Book Orders would not be able to participate in the Step-up auction for six-months from the date of a Commission approval order.

In view of the issues raised by the proposal, the Commission has determined to institute disapproval proceedings at this time to determine whether the Commission should disapprove the proposed rule change. Institution of disapproval proceedings does not indicate, however, that the Commission has reached any conclusions with respect to the issues involved. The sections of the Act and

[11] Responses are accumulated for the Step-up Display Period by the Exchange, rather than processed at arrival time. Eligible Book Orders will continue to be eligible for execution against the EDGA Book during the Step-up Display Period, as they do currently.

[12] NYSE Euronext Letter, *supra* note 7, at p. 3. As noted above, NYSE Euronext also expresses support for the Flash Order Proposed Rulemaking. This order addresses only those portions of the NYSE Euronext Letter that specifically address the Exchange's proposed rule change.

[13] Direct Edge Letter, *supra* note 8, at p. 2.

[14] *See id.* at p. 3–4.

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[17] *See* 15 U.S.C. 78f(b)(5).

the rules thereunder that are applicable to the proposed rule change include:

• Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; [18] and

• Section 11A(a) of the Act, in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure "economically efficient execution of securities transactions," "fair competition among brokers and dealers and among exchange markets," "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities," and "the practicability of brokers executing investors' orders in the best market." [19]

V. Procedure: Request for Written Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by April 11, 2011. Rebuttal comments should be submitted by April 25, 2011. Although there do not appear to be any issues relevant to disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[20]

The Commission asks that commenters address the merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, 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/other.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2010–18 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–EDGA–2010–18. The 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR–EDGA–2010–18 and should be submitted on or before April 11, 2011. Rebuttal comments should be submitted by April 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4158 Filed 2–23–11; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78k–1(a)(1)(C)(i)–(iv).

[20] 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[21] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63925; File No. SR–NASDAQ–2011–025]

Self-Regulatory Organizations; NASDAQ Stock Market, LLC; Notice of Filing of Proposed Rule Change To Amend The NASDAQ OMX Group, Inc. By-Laws

February 17, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 8, 2011, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASDAQ. 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 NASDAQ Stock Market LLC proposes to amend the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX").

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these 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,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX is proposing to make certain clarifying amendments to its By-Laws. Specifically, NASDAQ OMX is proposing to amend: (i) The name of the Nominating Committee to the "Nominating & Governance Committee"; (ii) a NASDAQ OMX PHLX, Inc. reference to reflect a recent conversion to a limited liability company; and (iii) By-Law Article IV, Section 4.4 to clarify that broker nonvotes are not counted as a vote cast either "for" or "against" a Director.

Currently, NASDAQ OMX By-Laws provide for a Nominating Committee which Committee is appointed pursuant to the By-Laws. The Exchange is proposing to name this Committee the "Nominating & Governance Committee." The Exchange proposes to amend the By-Laws to change all references to "Nominating Committee" to state "Nominating & Governance Committee." The Exchange is proposing to rename the Nominating Committee in order that all of its current functions are reflected in the title of the committee. The current functions of the Nominating Committee encompass certain functions that are deemed governance functions.

By way of example, and in addition to the responsibilities listed in By-Law Article IV, Section 4.13(h), the Nominating Committee consults with the Board and the management of the Company to determine the characteristics, skills and experience desired for the Board as a whole and for its individual members, with the objective of having a Board that reflects diverse backgrounds. The Non-Executive Chairman of the Board and the Nominating Committee is also responsible for overseeing the annual director evaluation. As part of the annual process of determining director representation on the corporate committees, the Non-Executive Chairman solicits input from each committee chair and Board members on the effectiveness of the committee, the committee chair and the individual Board member. The Nominating Committee receives the results and reviews the overall effectiveness of the Board.

This proposed amendment to rename the Nominating Committee does not change the function of this committee. This proposal is merely to clarify the current function of this committee and its governance role with respect to the Board selection process.

Second, NASDAQ OMX PHLX, Inc. recently filed a rule change to convert NASDAQ OMX PHLX from a Delaware corporation to a Delaware limited liability company agreement.[3] At this time NASDAQ OMX proposes to amend the definitions at Article 1, specifically section (o) to change the reference to "NASDAQ OMX PHLX, Inc." to "NASDAQ OMX PHLX LLC." This amendment is not substantive and merely seeks to correct the name of a NASDAQ OMX subsidiary.

Finally, NASDAQ OMX proposes to add the words "and broker nonvotes" to By-Law Article IV, Section 4–4 [sic] to clarify that broker nonvotes are not counted as a vote cast either "for" or "against" that Director's election.

In 2009, New York Stock Exchange LLC ("NYSE") Rule 452 was amended to eliminate broker discretionary voting for the election of Directors with one exception.[4] Previously, NYSE Rule 452 permitted brokers to vote without voting instructions from the beneficial owner[5] on uncontested elections of directors. The rule change requires instructions from the beneficial owner to give a proxy to vote for a director with an exception for companies registered under the Investment Company Act of 1940.[6] Therefore, when brokers do not have discretion to vote uninstructed shares on a particular proposal, the stockholder's failure to instruct the broker will result in a "broker nonvote."

Under Delaware case law, broker non-votes are not considered as votes cast for or against a proposal or director nominee.[7] In its election of directors, NASDAQ OMX is proposing to clarify its current practice of not counting a broker nonvote as a vote cast either for or against a director's election. In 2010, NASDAQ OMX amended its By-Laws to state that in an uncontested election, a majority voting standard would apply to the election of its directors.[8] This requires directors to be elected by the holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present in an uncontested election. A plurality standard still remains in a contested election. The practice of not counting a broker nonvote as a vote cast either for or against a director's election remains unchanged by the amendment to a majority vote standard. The Exchange is proposing to retain its current practice and codify such practice in its By-Laws at Article IV, Section 4.4. This Section 4.4 currently specifies that abstentions[9] are similarly not counted as a vote cast either for or against the director's election.[10]

This proposal is non-substantive and merely clarifies the existing practice of counting broker non votes [sic]. The Exchange believes that this additional language to Article IV, Section 4.4 will assist shareholders in understanding the manor [sic] in which directors are elected pursuant to NASDAQ OMX's By-Laws.

2. Statutory Basis

The NASDAQ Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Sections 6(b)(5) of the Act,[12] in particular, in that the proposal enables the NASDAQ Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

[3] *See* Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR–Phlx–2010–104).

[4] *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92) (a rule change to eliminate broker discretionary voting for all elections of directors at shareholder meetings held on or after January 1, 2010, whether contested or not, except for companies registered under the 1940 Act).

[5] A shareholder of a public company may hold shares either directly, as the record holder, or indirectly, as the beneficial holder, with the shares held in the name of the beneficial shareholder's broker-dealer, bank nominee, or custodian ("securities intermediary"), which is the record holder. The latter generally is referred to as holding securities in "street name." Securities intermediaries, on behalf of beneficial owners, hold a substantial majority of exchange securities.

[6] *See* NYSE Rule 452.10(3) [sic]. The Commission notes that the correct reference is NYSE Rule 452.11(19).

[7] *See Berlin* v. *Emerald Partners,* Del Supr. 552 A.2d 482 (1988).

[8] *See* Securities Exchange Act Release No. 61876 (April 8, 2010), 75 FR 19436 (April 8, 2010) [sic] (SR–NASDAQ–2010–025).

[9] An abstention is the voluntary act of not voting by a stockholder who is present at a meeting and entitled to vote.

[10] In either a majority or plurality election, broker non-votes and abstentions are considered for purposes of establishing a quorum. A quorum is a majority of the shares entitled to vote, present in person or by proxy.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(2), [sic] (5).

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 amendments are clarifying amendments or are non-substantive. The proposals would provide the proper Committee and entity names, with respect to the proposals to change the Nominating Committee and NASDAQ OMX PHLX names, and in the case of the broker nonvote proposal, would provide additional information to shareholders. The Exchange believes that these proposed amendments protect investors and the public interest, including NASDAQ OMX shareholders, in that the proposed changes would serve to clarify NASDAQ OMX's By-Laws and processes for its annual election.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–025. 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 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 No. SR–NASDAQ–2011–025 and should be submitted on or before March 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–4117 Filed 2–23–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Delegation of Authority

AGENCY: U.S. Small Business Administration.

ACTION: Notice of delegation of authority.

SUMMARY: This document provides the public notice of the delegation of authority for certain investment activities by the Administrator of the Small Business Administration (SBA) to the Agency Licensing Committee.

FOR FURTHER INFORMATION CONTACT: Sean Greene, Associate Administrator for Investment, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; (202) 205–2227 or *sbic@sba.gov.*

SUPPLEMENTARY INFORMATION: This document provides the public notice of the Administrator's delegation of authority to the Agency Licensing Committee to review and recommend to the Administrator for approval applications for licenses to operate as a small business investment company under the Small Business Investment Act of 1958, as amended.

This delegation of authority reads as follows:

Pursuant to the authority vested in me pursuant to section 301 of the Small Business Investment Act of 1958, as amended, the authority to take any and all actions necessary to review applications for licensing under section 301 of the Small Business Investment Act of 1958, as amended, and to recommend to the Administrator which such applications should be approved is delegated to the Agency Licensing Committee.

The Agency Licensing Committee shall be composed of the following members: Deputy Administrator, Chair; Associate Administrator for Capital Access; Associate Administrator for Investment; General Counsel; Deputy General Counsel; Chief Financial Officer.

This authority revokes all other authorities granted by the Administrator to recommend and approve applications for a license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended. This authority may not be re-delegated; however, in the event that the person serving in one of the positions listed as a member of the Agency Licensing Committee is absent from the office, as defined in SBA Standard Operating Procedure 00 01 2, Chapter 3, paragraph 2, or is unable to perform the functions and duties of his or her position, the individual serving in an acting capacity, pursuant to a written and established line of succession, shall serve on the Committee during such absence or inability. In addition, if one of the positions listed as a member of the

Agency Licensing Committee is vacant, the individual serving in that position in an acting capacity shall serve on the Agency Licensing Committee. This authority will remain in effect until revoked in writing by the Administrator or by operation of law.

Dated: February 17, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–4122 Filed 2–23–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 7345]

60–Day Notice of Proposed Information Collection: DS–5513, Biographical Questionnaire for U.S. Passport, 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Biographical Questionnaire for U.S. Passport.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Project Management and Operational Support, Workforce Management (CA/PPT/PMO/WM)
- *Form Number:* DS–5513.
- *Respondents:* Individuals applying for a U.S. passport.
- *Estimated Number of Respondents:* 74,021.
- *Estimated Number of Responses:* 74,021.
- *Average Hours Per Response:* 45 Minutes.
- *Total Estimated Burden:* 55,516.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from February 24, 2011.

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

- *E-mail: GarciaAA@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Alexys Garcia, U.S. Department of State, 2100 Pennsylvania Ave., NW., Room 3031, Washington, DC 20037.
- *Fax:* 202–736–9202.
- *Hand Delivery or Courier:* Alexys Garcia, U.S. Department of State, 2100 Pennsylvania Ave., NW., Room 3031, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, Alexys Garcia, U.S. Department of State, 2100 Pennsylvania Ave., NW., Room 3031, Washington, DC 20037, who may be reached on 202–736–9216 or at *GarciaAA@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The primary purpose for soliciting this information is to establish citizenship, identity, and eligibility for a U.S. Passport Book or Passport Card. The information may also be used in connection with issuing other travel documents or evidence of citizenship, and in furtherance of the Secretary's responsibility for the protection of U.S. nationals abroad.

Methodology: The Biographical Questionnaire for a U.S. Passport is submitted in conjunction with an application for a U.S. passport.

Dated: February 10, 2011.

Brenda Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–4154 Filed 2–23–11; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 7300]

60-Day Notice of Proposed Information Collection DS–573, DS–574, DS–575, and DS–576, Overseas Schools—Grant Request Automated Submissions Program (GRASP), OMB Control No. 1405–0036

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Overseas Schools Grant Request Automated Submissions Program (GRASP).
- *OMB Control Number:* 1405–0036.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Administration, A/OPR/OS.
- *Form Number:* DS–573, DS–574, DS–575, and DS–576.
- *Respondents:* Recipients of grants.
- *Estimated Number of Respondents:* 196.
- *Estimated Number of Responses:* 196.
- *Average Hours per Response:* 90 minutes.
- *Total Estimated Burden:* 294.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Obtain a benefit.

DATES: The Department will accept comments from the public up to 60 days from February 24, 2011.

ADDRESSES: Public comments, or requests for additional information, regarding the collection listed in this notice, should be directed to Keith D. Miller, Office of Overseas Schools. You may submit comments by any of the following methods:

- *E-mail: millerkd2@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Keith D. Miller, Office of Overseas Schools, U.S. Department of State, Room H–328, 2301 C Street, NW., Washington, DC 20522–0132.
- *Fax:* 202–261–8224.
- *Hand Delivery or Courier:* Keith D. Miller, Office of Overseas Schools, U.S. Department of State, Room H–328, 2401 E Street, NW., Washington, DC 20037.

You must include the DS form number (if applicable), information collection

title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Keith D. Miller, Office of Overseas Schools, U.S. Department of State, Room H–328, 2301 C Street, NW., Washington, DC 20522–0132, who may be reached on 202–261–8200 or at *millerkd2@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

The Office of Overseas Schools of the Department of State (A/OPR/OS) is responsible for determining that adequate educational opportunities exist at Foreign Service posts for dependents of U.S. Government personnel stationed abroad and for assisting American-sponsored overseas schools to demonstrate U.S. educational philosophy and practice. The information gathered enables A/OPR/OS to advise the Department and other foreign affairs agencies regarding current and constantly changing conditions, and enables A/OPR/OS to make judgments regarding assistance to schools for the improvement of educational opportunities.

Methodology:

Information is collected via electronic media.

Additional Information:

Dated: February 18, 2011.

Matthew Klimow,

Acting Executive Director, Bureau of Administration, Department of State.

[FR Doc. 2011–4156 Filed 2–23–11; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 7341]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Youth Leadership Program With Sub-Saharan Africa

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C/PY–11–31.

Catalog of Federal Domestic Assistance Number: 19.415

Application Deadline: April 14, 2011.

Executive Summary

The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for the Youth Leadership Program with Sub-Saharan Africa. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to provide youth and adult participants with three-week exchanges focused on civic education, community service, and youth leadership development, and to support follow-on projects in their home communities. U.S. Embassies in the participating countries will recruit, screen, and select the participants. ECA anticipates awarding one or two cooperative agreements that will support approximately 100 participants from 10 countries. Exchanges for participants from Anglophone countries will be conducted in English, and exchanges for participants from Francophone countries will be conducted in French. The awards will be contingent upon the availability of FY–2011 funds.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Overview

The Youth Leadership Program with Sub-Saharan Africa is a three-week exchange for high school youth and adult educators focused on civic education, community service, and youth leadership development. Subthemes that explore these overarching themes may be added, such as business and entrepreneurship, the environment, public health, or other topics relevant to the participating African countries. Participants engage in a variety of activities such as workshops on leadership and service, community site visits related to the program themes and subthemes, interactive training, presentations, visits to high schools, local cultural activities, and other activities designed to achieve the program's stated goals. Multiple opportunities for participants to interact meaningfully with their American peers must be included. Follow-on activities with the participants are an integral part of the program, as the students apply the knowledge and skills they have acquired by planning service projects in their home communities.

The goals of the program are to:

(1) Promote mutual understanding between the people of the United States and the people of Africa;

(2) Prepare youth leaders to become responsible citizens and contributing members of their communities; and

(3) Foster relationships among youth from different ethnic, religious, and national groups.

The objectives of the program are for participants to:

(1) Demonstrate a better understanding of the elements of a participatory democracy as practiced in the United States;

(2) Demonstrate critical thinking and leadership skills; and

(3) Demonstrate skill at developing project ideas and planning a course of action to bring the projects to fruition.

The primary themes of the program are:

(1) Civic Education (Citizen Participation, Grassroots Democracy and Rule of Law);

(2) Community Service; and

(3) Youth Leadership Development.

For each project, applicant organizations must focus on these primary themes. Secondary themes, such as business and entrepreneurship, the environment, public health, or other topics relevant to the participating African countries, will serve to illustrate the more abstract concepts of the

primary themes. For example, the secondary theme of the environment can be used to examine how a group of individuals with an idea can start a recycling campaign in their community.

Using these goals, objectives, and themes, applicant organizations should identify their own specific and measurable outputs and outcomes based on the project specifications provided in this solicitation. Proposals should indicate how recipients will achieve the short-term program objectives, and how these objectives will contribute to the achievement of the stated long-term goals.

Project Options

The amount of funding available is approximately $550,000, pending the availability of funds. ECA anticipates awarding one or two cooperative agreements for the management of the Youth Leadership Program with Sub-Saharan Africa. One project will be conducted in English for 40 participants from four Anglophone countries of Kenya, Nigeria, South Africa and Tanzania; one project will be conducted in French for 60 participants from six Francophone countries of Burkina Faso, Chad, Cote D'Ivoire, Mali, Mauritania, and Niger. The Bureau reserves the right to reduce, revise, or increase proposal project configurations, budgets, and participant numbers in accordance with the needs of the program and the availability of funds. In addition, the Bureau reserves the right to adjust the participating countries should conditions change in the partner country or if other countries are identified as Department priorities. Organizations may apply for the Anglophone countries project, the Francophone countries project, or for both project options, but must submit only one proposal under this competition. Multiple submissions will be declared technically ineligible and will not be considered further in the review process. Please note the approximate funding for each option. The Bureau suggests a per capita cost between $5,000 and $6,000 for this program (applicants need not budget for participant international airfare). The Francophone countries project per capita costs may fall in the upper range due to the added cost for French interpretation.

Option 1: Anglophone Countries (Approximately $220,000)

A regional project conducted in English for 40 participants from Kenya, Nigeria, South Africa, and Tanzania. Approximately 10 participants (8 youth and 2 adults) from each participating country will travel to the United States.

Option 2: Francophone Countries (Approximately $330,000)

A regional project conducted in French for 60 participants from Burkina Faso, Chad, Cote D'Ivoire, Mali, Mauritania, and Niger. Approximately 10 participants (8 youth and 2 adults) from each participating country will travel to the United States. French language interpreters must be provided for U.S. programming.

For Both Options

Regional projects should include activities where participants from several countries interact to share ideas and work on program themes during the U.S. exchange. However, not all delegations must travel to the United States at the same time. It is suitable to break them up into smaller sub-groups, but should keep a mix of participants from several countries. Applicants who propose to host a large delegation in the United States at one time must propose a plan to break it into smaller cohorts for most of the exchange activities. Applicants are encouraged to be creative and flexible in making arrangements that will help meet our program goals.

Participants

U.S. Embassies in the participating countries will recruit, screen, and select the participants; the award recipient will not be involved in participant selection. The youth participants will be high school students aged 15 to 18 years old with at least one semester of high school remaining. The adult participants may be teachers, trainers, school administrators, and/or community leaders who work with youth. They will have the dual role of both exchange participant and chaperone. The Anglophone participants will be proficient in the English language. The Francophone participants will not be required to have English proficiency; the award recipient must provide French language interpretation and place the participants in host families where at least one member speaks French. Where possible, U.S. Embassy staff will seek adult educators with some English ability.

Organizational Capacity

Applicant organizations must demonstrate their capacity for conducting international youth exchanges, focusing on three areas of competency: (1) Provision of projects that address the goals, objectives, and themes outlined in this document; (2) age-appropriate programming for youth; and (3) previous experience working on programs in the region. Applicants need not have organizational capacity in the participating countries, as the U.S. Embassies will serve as the in-country partner.

U.S. Embassy Involvement

U.S. Embassies in the participating countries will recruit, screen, and select the participants; provide pre-departure briefings; facilitate visas; arrange international travel to the United States; and oversee follow-on alumni projects. Once a cooperative agreement is awarded, the recipient must consult regularly with the Public Affairs Section at the U.S. Embassy in the partner country to implement the project.

Guidelines

Pending the availability of funds, it is anticipated that the cooperative agreement will begin on or about September 1, 2011. The award period will be 12 to 18 months in duration, as appropriate for the applicant's program design. Planning and preparation will start in 2011, and the exchanges will take place sometime between November 2011 and December 2012. Applicants should propose the period of the exchange(s) in their proposals, but the exact timing may be altered through the mutual agreement of the Department of State and the award recipient.

The award recipient will be responsible for the following:

Orientations: Provide pre-departure materials and information about the U.S. program to help the U.S. Embassies, participants, and their families in preparation for the exchange. Also, provide orientations for those participating from the host communities, including host families.

Logistics: Manage all logistical arrangements, including French language interpretation as appropriate, domestic travel, ground transportation, accommodations, group meals, and disbursement of stipends.

Exchange Activities: Design and plan three weeks of exchange activities that provide a creative and substantive program that develops both the youth and the adult participants' knowledge and skill base in civic education, community service, and youth leadership development. The exchange will take place in no more than two or three locations so that the participants have time to familiarize themselves with a community. The exchange will focus primarily on interactive activities, practical experiences, and other hands-on opportunities that provide a substantive project on the specified program themes. Some activities should

be school and/or community-based, and the projects will involve as much sustained interaction with peers of the host country as possible (for both the youth and adult participants). Cultural, social, and recreational activities will balance the schedule. Applicants may choose to include a visit to Washington, DC.

Accommodations: Arrange home stays for the participants in the United States with properly screened and briefed American families for the majority of the exchange period. Criminal background checks must be conducted for members of host families (and others living in the home) who are 18 years or older. Please see the POGI for more details on host family screening and placement.

Monitoring: Develop and implement a plan to monitor the participants' safety and well-being while on the exchange and to create opportunities for participants to share potential issues and resolve them promptly. The award recipient will be required to provide proper staff supervision and facilitation to ensure that the teenagers have safe and pedagogically rich programs. Staff, along with the adult participants, will assist the youth with cultural adjustments, provide societal context to enhance learning, and counsel students as needed.

Follow-on Activities: Plan and implement activities in the participants' home countries, in coordination with the U.S. Embassies, particularly by facilitating continued engagement among the participants, advising and supporting them in the implementation of community service projects, and offering opportunities to reinforce the ideas, values and skills imparted during the exchange. Exchange participants should return home from the exchange prepared to conduct projects that serve a need in their schools or communities. To amplify program impact, proposals should present creative and effective ways to address the project themes, for both program participants and their peers.

Evaluation: Design and implement an evaluation plan that assesses the short- and medium-term impact of the project on the participants as well as on host and home communities.

Please note: In a cooperative agreement, the Department of State is substantially involved in program activities above and beyond routine grant monitoring. The Department's activities and responsibilities for the Youth Leadership Program with Sub-Saharan Africa are as follows:

(1) Provide advice and assistance in the execution of all program components.

(2) Manage the recruitment and selection of the participants, arrange and purchase international travel, provide pre-departure briefings, and oversee follow-on activities.

(3) Issue DS–2019 forms and J–1 visas. All foreign participants will travel on a U.S. Government designation for the J Exchange Visitor Program.

(4) Facilitate interaction within the Department of State, to include ECA, the regional bureaus, and overseas posts.

(5) Arrange meetings with Department of State officials in Washington, DC and the participating countries.

(6) Approve publicity materials and final calendar of exchange activities.

(7) Monitor and evaluate the program, through regular communication with the award recipient and possibly one or more site visits.

Additional Information

Award recipients will retain the name "Youth Leadership Program" to identify their project. All materials, publicity, and correspondence related to the program will acknowledge this as a program of the Bureau of Educational and Cultural Affairs of the U.S. Department of State. The Bureau will retain copyright use of and be allowed to distribute materials related to this program as it sees fit.

The organization must inform the ECA Program Officer and participating U.S. Embassies of their progress at each stage of the project's implementation in a timely fashion, and will be required to obtain approval of any significant program changes in advance of their implementation.

Proposals must demonstrate how the stated objectives will be met. The proposal narrative should provide detailed information on the major project activities, and applicants should explain and justify their programmatic choices. Projects must comply with J–1 visa regulations for the International Visitor and Government Visitor category. Please be sure to refer to the complete Solicitation Package—this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI)—for further information.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under Section I above.

Fiscal Year Funds: FY–2011.

Approximate Total Funding: $550,000.

Approximate Number of Awards: One or two.

Floor of Award Range: $200,000.

Ceiling of Award Range: $550,000.

Anticipated Award Date: Pending availability of funds, September 1, 2011.

Anticipated Project Completion Date: 12–18 months after start date, to be specified by applicant based on project plan.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making multiple awards in amounts exceeding $60,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Proposed sub-award recipients are also limited to grant funding of $60,000 or less if they do not have four years of experience in conducting international exchanges.

(c.) The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(d.) Organizations may submit only one proposal (total) under this competition. If multiple proposals are received from the same applicant, all submissions will be declared technically ineligible and will be given no further consideration in the review process. Please note: Applicant organizations are defined by their legal name, and EIN number as stated on their completed SF–424 and additional supporting documentation outlined in the Proposal Submission Instructions (PSI) document.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package

Please contact the Youth Programs Division, ECA/PE/C/PY, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, by telephone (202) 632–9352, fax (202) 632–9355, or e-mail *PhillipsJA@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/PE/C/PY–11–31 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer Jennifer Phillips and refer to the Funding Opportunity Number ECA/PE/C/PY–11–31 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov.* Please read all information before downloading.

IV.3. Content and Form of Submission:

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please note:** Effective January 7, 2009, all applicants for ECA Federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence To All Regulations Governing The J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et. seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival

information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

Office of Designation, Private Sector Programs Division,

U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package (POGI and PSI) for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: April 14, 2011.

Reference Number: ECA/PE/C/PY–11–31.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, *etc.*), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and six (6) copies of the application should be sent to:

Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/PY–11–31, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the Executive Summary, Proposal Narrative, and Budget sections of the proposal, as well as any attachments essential to understanding the program, in Microsoft Word and/or Excel format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Sections at the U.S. Embassies for their review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to:

Grants.gov Customer Support.

Contact Center Phone: 800–518–4726.

Business Hours: Monday—Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. *Quality of the program idea:* Objectives should be reasonable, feasible, and flexible. The proposal should clearly demonstrate how the institution will meet the program's objectives and plan. The proposed program should be creative, age-appropriate, respond to the design outlined in the solicitation, and demonstrate originality. It should be clearly and accurately written, substantive, and with sufficient detail. Proposals should also include a plan to support participants' community activities upon their return home.

2. *Program planning:* A detailed agenda and work plan should clearly demonstrate how project objectives would be achieved. The agenda and plan should adhere to the program overview and guidelines described above. The substance of workshops, seminars, presentations, school-based activities, and/or site visits should be described in detail.

3. *Support of diversity:* The proposal should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity in participant recruitment and selection and in program content. Applicants should demonstrate readiness to accommodate participants with physical disabilities.

4. *Institutional capacity and track record:* Proposed personnel and institutional resources in both the United States and in the partner countries should be adequate and appropriate to achieve the program goals. The proposal should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

5. *Program evaluation:* The proposal should include a plan to evaluate the program's success in meeting its goals, both as the activities unfold and after they have been completed. The proposal should include a draft survey questionnaire or other technique, plus a description of a methodology to link outcomes to original project objectives. The award recipient will be expected to submit intermediate reports after each project component is concluded.

6. *Cost-effectiveness and cost sharing:* The applicant should demonstrate efficient use of Bureau funds. The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. The proposal should maximize cost-sharing through other private sector support as well as institutional direct funding contributions, which demonstrates institutional and community commitment.

VI. Award Administration Information

VI.1 Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants, http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus one copy of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports, including the SF–PPR–E and SF–PPR–F.

(4) Quarterly or interim reports, as required in the Bureau cooperative agreement.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV.3.d.3 Application and Submission Instructions above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Jennifer Phillips, Youth Programs Division, ECA/PE/C/PY, SA–5, 3rd Floor, U.S. Department of State, 2200 C Street, NW., Washington, DC 20522–0503, by telephone 202–632–9352, fax 202–632–9355, or e-mail *PhillipsJA@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and reference number ECA/PE/C/PY–11–31.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: February 15, 2011.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–4202 Filed 2–23–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 12, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0024.

Date Filed: February 9, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 2, 2011.

Description: Application of Marceco, Ltd requesting a certificate of public convenience and necessity authorizing interstate charter air transportation.

Docket Number: DOT–OST–2011–0026.

Date Filed: February 9, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 2, 2011.

Description:

Application of 2106701 Ontario Inc. DBA NovaJet requesting an exemption and a foreign air carrier permit to engage in non-scheduled charter flights in foreign air transportation of persons, property and mail: (1) Between any points in Canada and any points in the United States; (2) between any point or points in the United States and any point or points in a third country or countries, provided that, except with respect to cargo charters, such services constitutes part of a continuous operations, with or without a change of aircraft, that includes service to Canada for the purpose of carrying local traffic between Canada and the United States; and (3) other charter operations.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–4116 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–08]

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 14 CFR. 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.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before March 7, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0134 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: Keira Jones, 202–267–4025, or Tyneka L. Thomas, 202–267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 17, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0134.
Petitioner: Al's Aerial Spraying.
Section of 14 CFR Affected: § 137.51.

Description of Relief Sought

Al's Aerial Spraying, LLC., is petitioning for reconsideration of denial. The exemption, if granted, would allow Al's Aerial Spraying to utilize a single-engine Pratt & Whitney PT–6 turboprop powered Air Tractor aircraft to make turnarounds over congested areas in a loaded configuration.

The petitioner submitted additional information to support their request for reconsideration. This additional information was submitted via phone conversation and in letter form. The petitioner had a conversation with the FAA on January 6, 2011, and also sent a letter to the FAA, which was received on January 18, 2011. Both the Record of Conversation from the phone call and the information submitted by letter are included in the public docket.

[FR Doc. 2011–4101 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–09]

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 14 CFR. 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 March 7, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0049 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: Keira Jones (202) 267–4025, Tyneka Thomas (202) 267–7626 or David Staples (202) 267–4058, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 17, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2011–0049.
Petitioner: Pinnacle Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 120.109(a)(1), (b), 120.115(c), 120.217(c), 120.223(a)(1), and 120.223(a)(1)(i).

Description of Relief Sought

Pinnacle seeks relief from conducting pre-employment testing, training, and the drug and alcohol records check for 1,000 safety-sensitive employees they plan to hire from Mesaba Aviation, Inc. d.b.a. Mesaba Airlines (Mesaba) following a transfer of assets. Pinnacle contends that both airlines have been operating safely under the listed regulations, and an exemption from these regulations would not affect safety and would be in the public interest.

[FR Doc. 2011–4102 Filed 2–23–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 558 (Sub-No. 14)]

Railroad Cost of Capital—2010

AGENCY: Surface Transportation Board.

ACTION: Notice of decision instituting a proceeding to determine the railroad industry's 2010 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2010. The decision solicits comments on the following issues: (1) The railroads' 2010 current cost of debt capital; (2) the railroads' 2010 current cost of preferred equity capital (if any); (3) the railroads' 2010 cost of common equity capital; and (4) the 2010 capital structure mix of the railroad industry on a market value basis. Comments should focus on the various cost of capital components listed above using the same methodology followed in *Railroad Cost of Capital—2009,* EP 558 (Sub–No. 13) (STB served Oct. 29, 2010).

DATES: Notices of intent to participate are due by March 8, 2011. Statements of the railroads are due by April 29, 2011. Statements of other interested persons are due by May 19, 2011. Rebuttal statements by the railroads are due by June 8, 2011.

ADDRESSES: Comments may be submitted either via the Board's e-filing system or in the traditional paper format. Any person using e-filing should comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 558 (Sub–No. 14), 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board's decision is posted on the Board's Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0236. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment of the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: February 18, 2011.

By the Board, Chairman Elliott, Vice Chairman Nottingham, and Commissioner Mulvey.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–4157 Filed 2–23–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35466]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Pursuant to a written trackage rights agreement dated January 25, 2011, Union Pacific Railroad Company (UP) has agreed to grant local trackage rights to BNSF Railway Company (BNSF) over UP lines extending between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of approximately 126.2 miles; and (2) UP milepost 219.4 at Elsey, Cal., and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles.[1]

[1] BNSF states that the trackage rights being granted here are only temporary rights, but, because

The transaction is scheduled to be consummated on or after March 10, 2011, the effective date of the exemption (30 days after the exemption is filed).

The trackage rights agreement will permit BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, Cal., which is adjacent to the UP rail line. The trackage rights are temporary in nature and are scheduled to expire at midnight on December 10, 2011.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease and Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by March 3, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35466, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F Street, NW., Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: February 17, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–4105 Filed 2–23–11; 8:45 am]

BILLING CODE 4915–01–P

they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See R.R. Consolidation Procedures,* 6 S.T.B. 910 (2003). Therefore, BNSF concurrently has filed a petition for partial revocation of this exemption in Docket No. FD 35466 (Sub-No. 1), *BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company,* wherein BNSF requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire at midnight on December 10, 2011, as provided in the parties' agreement. The petition will be addressed by the Board in a separate decision.

FEDERAL REGISTER

Vol. 76 Thursday,

No. 37 February 24, 2011

Part II

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 300, 441, 530, et al.
Mandatory Inspection of Catfish and Catfish Products; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 300, 441, 530–534, 537, 539–554, 544, 548, 550, 552, 555, 557, and 559–561

[Docket No. FSIS–2008–0031]

RIN 0583–AD36

Mandatory Inspection of Catfish and Catfish Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing regulations requiring continuous inspection of catfish and catfish products. FSIS is proposing these regulations to implement provisions of the Food, Conservation, and Energy Act (Farm Bill) of 2008. The proposed regulations are intended to ensure that catfish products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged.

DATES: Comments must be received on or before June 24, 2011.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that Web site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2–2127 George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2008–0031. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 350–E Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; (202) 205–0495.

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Background

I. Farm Bill Mandate for Catfish Inspection

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, § 10016(b)), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) to provide that "catfish, as defined by the Secretary," is an amenable species (21 U.S.C. 601 (w)(2)). Catfish and catfish products are therefore subject to continuous inspection under the FMIA, which FSIS administers. The definition of "catfish" determines the scope of the FSIS inspection program. FSIS considered two possible definitions: Fish belonging to the family Ictaluridae and, a broader definition, all fish of the order Siluriformes. If catfish are defined as all fish of the order Siluriformes, FSIS will inspect domestically produced and imported Siluriformes, including basa, swai, and others. If the term "catfish" is defined as fish of the family Ictaluridae, FSIS will inspect all domestically and foreign produced Ictaluridae, which would account for virtually all of domestically produced Siluriformes and approximately 20–25% of foreign produced Siluriformes. Such a rule would cover approximately 70% of Siluriformes consumed in the United States in recent years. This proposed rule is silent on the scope of the term "catfish". USDA is asking for public comments on the scope of the definition and will fully define and describe the term in the final rule. For purposes of convenience, this proposed rule uses the term "catfish" to refer to all fish classified within the order of Siluriformes. The use of this term is not with prejudice to what fish FSIS will ultimately determine to be "catfish" for purposes of the final rule.

II. 2002 Farm Bill

Before 2002, various species of fish in the order Siluriformes were commonly labeled and sold as "catfish" in the United States. However, the Farm Security and Rural Investment Act of 2002, known as the 2002 Farm Bill, amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding a section declaring, for the purposes of the FD&C Act and notwithstanding any other provision of law, that the term "catfish" is the common or usual name (or part thereof) only of fish classified in the family Ictaluridae and permitting the labeling or advertising only for fish classified in that family to include the term "catfish" (21 U.S.C. 321d(a), 343(t); Pub. L. 107–171, Title X, § 10806, 116 Stat. 526).[1] Accordingly, non-Ictaluridae Siluriformes, such as fish belonging to the family of Pangasiidae that are produced in Asia (*e.g.,* basa, tra, and swai), could no longer be marketed as "catfish" in the United States. FDA advised importers to use alternative common or usual names for these non-Ictaluidae species that did not include the term "catfish," and suggested ways of devising those names.[2]

[1] The FD&C Act, as amended, (21 U.S.C. 321 *et seq.*) prohibits the adulteration or misbranding of any food, drug, device, or cosmetic in interstate commerce (21 U.S.C 331(b)). A food is considered misbranded if, among other circumstances of misbranding, its labeling is false or misleading (21 U.S.C. 343(a)(1)); it is offered for sale under the name of another food (21 U.S.C. 343(b)); if its label does not bear the common or usual name of the food, if there is any, or, if the food is made of two or more ingredients, the common or usual name of the ingredients (21 U.S.C. 343(i)); or if it purports to be or is represented as catfish, unless it is fish classified within the family Ictaluridae (21 U.S.C. 343(t)). The provision in 21 U.S.C. 321d, "Market names for catfish and ginseng," on catfish labeling, states, "(a)(1) Notwithstanding any other provision of law, for the purposes of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*)—(A) the term "catfish" may only be considered to be a common or usual name (or part thereof) for fish classified within the family Ictaluridae; and (B) only labeling or advertising for fish classified within that family may include the term "catfish."

[2] U.S. Department of Health and Human Services. Food and Drug Administration. February 28, 2003.

In the 2008 Farm Bill (the Food, Conservation, and Energy Act (Farm Bill) of 2008 (Pub. L. 110–246, § 11016(b)), Congress gave the Secretary of Agriculture and, by delegation, FSIS, the authority to determine to which fish the term "catfish" would apply.

III. 2008 Farm Bill

In amending the FMIA to make "catfish" an amenable species (21 U.S.C. 601(w)(2)), Congress recognized that there are differences in how catfish and the other species that are subject to the FMIA are slaughtered and processed. The Farm Bill added 21 U.S.C. 625, which provides that the sections of the FMIA dealing with ante-mortem and post-mortem inspection and humane slaughter (21 U.S.C. 603, 604), inspection of carcasses and parts before their entry into establishments or further-processing departments (21 U.S.C. 605), and exemptions from inspection for custom and farm slaughter and processing and other exemptions (21 U.S.C. 623), do not apply to catfish.

The 2008 Farm Bill also revised 21 U.S.C. 606, which requires the appointment of inspectors to examine and inspect all meat food products prepared for commerce, by designating the existing section as 21 U.S.C. 606(a) and adding a paragraph, 21 U.S.C. 606(b). This new paragraph provides that the examination and inspection of meat food products derived from catfish are to take into account the conditions under which catfish are raised and transported to processing establishments.

The 2008 Farm Bill provides that the amendments are not to apply until the date on which the Agency issues final regulations to carry out the amendments. The Bill instructs the Agency to consult with the FDA in issuing these final regulations.

IV. Defining "Catfish"

The definition of "catfish" is a threshold issue in this rulemaking as it determines the scope of the FSIS catfish inspection program. Before discussing the options for how to define "catfish", it is first helpful to review the scientific classification, or taxonomy, of the catfishes.

Taxonomy of the Catfishes

Taxonomy is the science of classification. Seven major hierarchical groupings are used to classify all living organisms. These are kingdom, phylum, class, order, family, genus, and species. The kingdom is the broadest grouping. The kingdom Animalia, for example, includes all known animals. The kingdom is comprised of individual phyla, phyla of classes, classes of orders, orders of families, families of genera, and genera of species. In the taxonomy of the fishes, fish of the order Siluriformes are commonly and collectively known as "catfishes" (Table 1).

TABLE 1 [3]—TAXONOMY OF THE CATFISHES. THE ORDER SILURIFORMES, OR "CATFISHES," INCLUDES THIRTY-SIX FAMILIES, COMMON NAMES OF WHICH ARE IN PARENTHESES

Order	Siluriformes (catfishes [English], silures [French])
Family	Akysidae (stream catfishes)
Family	Amblycipitidae (torrent catfishes)
Family	Amphiliidae (loach catfishes)
Family	Ariidae (bagres marinos, fork-tailed catfishes, poissonschats marins, sea catfishes)
Family	Aspredinidae (banjo catfishes)
Family	Astroblepidae (climbing catfishes, naked sucker-mouth catfishes)
Family	Auchenipteridae (driftwood catfishes)
Family	Bagridae (bagrid catfishes, naked catfishes)
Family	Callichthyidae (armored catfishes, callichthyid armored catfishes, coridoras, mailed catfishes, plated catfishes, poissons-chats cuirasses)
Family	Cetopsidae (whale catfishes, whalelike catfishes)
Family	Chacidae (angler catfishes, frogmouth catfishes, squarehead catfishes)
Family	Clariidae (airbreathing catfishes, bagres laberintos, labyrinth catfishes, poissons-chats à labyrinths)
Family	Cranoglanididae (armorhead catfishes, armoured catfishes)
Family	Diplomystidae (diplomystid catfishes, velvet catfishes)
Family	Doradidae (bagres sierra, poissons-chats épineux, thorny catfishes)
Family	Erethistidae
Family	Heptapteridae (heptapterids)
Family	Heteropneustidae (airsac catfishes)
Family	Hypophthalmidae (loweye catfishes)
Family	Ictaluridae (bagres de agua dulce, barbottes, barbottes et barbues, barbues, bullhead catfishes, North American catfishes, North American freshwater catfishes)
Family	Lacantuniidae
Family	Loricariidae (armored catfishes, loricariidés, plecoóstomas, suckermouth armored catfishes, suckermouth catfishes)
Family	Malapteruridae (electric catfishes)
Family	Mochokidae (naked catfishes, squeakers, upside-down catfishes)
Family	Nematogenyidae (mountain catfishes)
Family	Olyridae
Family	Pangasiidae (giant catfishes)
Family	Parakysidae
Family	Pimelodidae (flat-hosed catfishes, juiles, long-whiskered catfishes, longwhiskered catfishes, poissonschats à longues moustaches)

Memorandum "To All Interested Parties" on "market names for fish that are outside the family Ictaluridae and that were previously marketed with the term 'catfish' in their names."

TABLE 1 [3]—TAXONOMY OF THE CATFISHES. THE ORDER SILURIFORMES, OR "CATFISHES," INCLUDES THIRTY-SIX FAMILIES, COMMON NAMES OF WHICH ARE IN PARENTHESES—Continued

Order	Siluriformes (catfishes [English], silures [French])
Family	Plotosidae (coral catfishes, eel catfishes, stinging catfishes)
Family	Pseudopimelodidae (bumblebee catfishes, dwarf marbled catfishes)
Family	Schilbeidae (glass catfishes, schilbid catfishes)
Family	Scoloplacidae (spiny dwarf catfishes)
Family	Siluridae (freshwater catfishes, sheatfishes)
Family	Sisoridae (sisorid catfishes, sucker catfishes)
Family	Trichomycteridae (parasitic catfishes, pencil catfishes)

The order Siluriformes includes the family Ictaluridae, the North American catfish, to which belong the fork-tailed channel catfish (*Ictalurus punctatus*) and blue catfish (*I. furcatus*), the principal U.S. farm-raised species, and the flathead catfish (*Pylodictis olivaris*). Other species in the United States that are in the Ictaluridae family are the white catfish (*I. catus*), and the black, brown, and yellow bullhead (*I. melas, I. nebulosus,* and *I. natalis*). Also among the Siluriformes are the air-breathing catfishes of the Clariidae family, to which belongs *Clarias fuscus,* a Chinese species raised on a small scale in Hawaii.

Another family of Siluriformes, the Pangasiidae, the so-called "giant catfishes," [4] includes the aquaculture species basa (*Pangasius bocourti),* and tra or swai (*Pangasius hypophthalmus;* synonym, *Pangasius sutchi*), raised principally in Southeast Asia for domestic consumption and export. Other catfish types commercially raised in Asia include the hybrid *Clarias macrocephalus* and North American channel catfish (*I. punctatus*).

Options for Defining "Catfish"

The Agency settled on two options for defining "catfish" after reviewing the legislative and regulatory history and scientific classification system. One option, was a definition adopted by Congress in the 2002 Farm Bill that defined "catfish" to be only fish of the Ictaluridae family for marketing and labeling purposes under the FD&C Act. This is the current definition used by FDA in its seafood program. The other option was an order definition including all fish of the order Siluriformes. This definition was used by FDA prior to the 2002 Farm Bill, and would follow established scientific practice that defines "catfish" as all fish of the order Siluriformes.

The 2008 Farm Bill grants the Secretary of Agriculture the authority to define "catfish" anew for purposes of the 2008 amendments of the FMIA. The FMIA, like the FD&C Act, prohibits the adulteration and misbranding of foods that are subject to it. Accordingly, FSIS examined the available data in deciding how it could carry out the FMIA to the best effect.

Specifically, the Agency looked at data describing the presence of chemical residues in, and the presence of microorganisms on or in, catfish or catfish products, and the amount and types of catfish and catfish products consumed in the United States. Sparse information on the distribution of microbial contamination and chemical residues on catfish limit our ability to make strong statements about the baseline risk. Furthermore, the lack of experience in implementing continuous inspection programs in the context of aquaculture makes estimating the impact of such a program on risk difficult. However, the Agency has been able to conduct an illustrative assessment of potential human health risks associated with catfish consumption, using *Salmonella* as the example.[5] The Agency considered information about the extent of misbranding, and it evaluated outputs from its benefit-cost analysis for catfish inspection.

USDA is requesting public comments on the scope of the definition of the term "catfish."

V. Catfish Farming and Processing

Domestic Catfish Farming and Processing

The catfish growing process in the United States begins after eggs from breeding ponds are transferred to hatcheries. Hatchlings are reared in the hatcheries for several days before being placed in nursery or fry ponds, where they are raised until, as 3-inch to 8-inch fingerlings, they are transferred to grow-out ponds. There, the fish are fed a ration of pelletized floating feed made with soybean meal, fishmeal, corn, wheat, or other grains until they reach marketable size.

In some instances, medicated feeds containing antimicrobials may be fed to catfish for therapeutic treatment of bacterial infections. Also, pond water may be treated with chemicals to control algal growth and prevent off-flavor in the fish.

Catfish-raising ponds are generally of two types: Levee or delta ponds and watershed ponds. Levee ponds are built on flat land and filled with groundwater or surface water. In hilly areas, dams built across valleys and between hillsides capture runoff from rainfall to fill "watershed" ponds. Though water to fill and maintain watershed ponds usually comes from watershed runoff, wells are often necessary to supplement the watershed supply. Watershed ponds tend to be deeper than levee ponds and can efficiently nourish more fish per acre than levee ponds.

Water quality—proper temperature, pH, ammonia, nitrite, alkalinity, hardness, carbon dioxide, chloride, and oxygen—must be maintained to ensure fish health and maximize feed efficiency. Aerators are used to prevent oxygen depletion in the ponds. The oxygen levels are monitored regularly to ensure fish health and to help in limiting algal blooms.

When catfish reach marketable length and weight—optimally 9 to 12 inches and 0.75 to 1.5 pounds—they are collected with seines and put in aerated tanks mounted on trucks that then transport fish to the processing plant. A truck may carry from 4 to 10 of these vats, each loaded with about 3,000 pounds of water and catfish.

The following generally describes catfish processing in the United States. Individual operations may vary. At the processing plant, fish are unloaded into a holding vat and carried by conveyor to an electrical stunner. The fish are then sorted and sized. Fish of incorrect species, such as shad (used in the ponds

[3] Adapted from Integrated Taxonomic Information System (ITIS) report on "Siluriformes." At *http://www.itis.gov* (accessed October 4, 2009).

[4] ITIS report on "Siluriformes." At *http://www.itis.gov* (accessed Jan. 26, 2009).

[5] U.S. Department of Agriculture. Food Safety and Inspection Service. Office of Public Health Science. December 2010. Draft Risk Assessment of the Potential Human Health Effect of Applying Continuous Inspection to Catfish. Washington, DC.

to reduce algae), or incorrect size are sorted out. Fish of the correct size are sent to the next operation where they are headed and gutted. Next, the fish are trimmed and mounted on conveyors and sent tail-first through filleting machinery. After further trimming, including removal of the belly flap, or "nugget," fillets are skinned and sent through a chiller. Fillets are then prepared for packaging or freezing. Nuggets may be used in lower-grade edible product.

Most catfish fillets are shipped frozen. Preservatives, including sodium tripolyphosphate, may be used as humectants or to minimize oxidation and freezer burn. Some fillets are sold fresh; some marinated; and some breaded. Little if any U.S. farm-raised catfish undergoes complex processing. There are few multi-ingredient commercial catfish products. Fish too big for further processing with automated equipment are sent through a separate processing line to be hand-processed and sold as whole gutted fish (head on), mainly to restaurants and institutions.

Waste materials and byproducts from heading, gutting, and trimming are taken from the food processing area of the establishment to be separately processed or packaged and shipped. Muscle tissue separated from bones, called mince, may be processed into surimi (a white-fish food product). Other byproducts may be rendered to produce fish oils, or they may be used in animal feed manufacture, or processed into fishmeal or fertilizer. Fish heads may be sold as bait for commercial fishermen.

Foreign Catfish Farming and Processing

Foreign catfish farming and processing is done in a similar manner to that of the United States, but it may differ in specific methods. In general, it is more labor-intensive than U.S. farming and processing. It may involve the use of hatcheries and inland ponds. In some countries, however, catfish may be grown in net enclosures in rivers, in floating cages, sometimes alongside or under houseboats, or in "raceway" inlets fed by river waters.

Fish may be fed homemade or pelleted feed. Homemade feed is composed of fishmeal, mixed with rice bran. (In the United States, only a very low percentage of catfish feed—zero to 3 percent—is fishmeal.) In some instances, pelleted feed can be a source of contamination with unapproved antimicrobials or chemical residues.

Some reports suggest that antimicrobials prohibited for extra-label use in food-producing animals in the United States (*e.g.,* fluoroquinolones) have been used in the raising of catfish in foreign countries.[6] Also, the quality of the river water is more difficult to control or less subject to control by fish farmers than is pond water.

VI. Current Inspection of Domestic and Imported Catfish

U.S. catfish processors, exporters, and importers are subject to the U.S. Food and Drug Administration's seafood Hazard Analysis Critical Control Point (HACCP) regulations (21 CFR 123) and to other requirements under the Food, Drug, and Cosmetic (FD&C) Act. FDA's regulations on current good manufacturing practices (cGMPs, at 21 CFR part 110) and on recordkeeping and registration requirements (21 CFR part 1, subpart H), issued under the Bioterrorism Act of 2002 (Pub. L. 107–188, Jun. 12, 2002) also apply to these establishments.

For imported products, FDA requires that the importer either (1) obtain fish or fish products from a country that has an active memorandum of understanding with FDA that covers the product and documents the equivalence or compliance of the foreign inspection system with that of the United States, or (2) have and implement written verification procedures for ensuring fish and fish products offered for import into the United States were processed in accordance with FDA regulations in 21 CFR part 123 (21 CFR 123.12).

The arrangement for imported fish products does not presuppose a regulatory finding by FDA that the foreign inspection system is equivalent to that of the United States, nor does FDA conduct continuous re-inspection of imported fish products as a condition of their entry into the United States.

In addition to FDA regulations, some U.S. catfish processing establishments have contracted for voluntary, fee-for-service inspection and certification programs administered by the Department of Commerce's National Marine Fisheries Service (NMFS)under the Agricultural Marketing Act (7 U.S.C. 1622, 1624) and implementing regulations (50 CFR 260). NMFS administers three levels of seafood inspection programs under authority of the Agricultural Marketing Act (7 U.S.C. 1622, 1624) and regulations implementing that act (50 CFR 260). These are: (1) A resident inspection program, which provides continuous inspection to qualifying establishments; (2) an integrated quality assurance program, under which an establishment operates an NMFS-approved quality assurance system and assists NMFS personnel in carrying out U.S. grading or specification regulations; and (3) a HACCP-Quality Management Program (QMP), under which the establishment's quality program is enhanced to meet the ISO 9001 quality management standards.

An establishment that participates in the continuous inspection program must agree to prepare products using only wholesome raw materials and to correctly label inspected items. The establishment must also agree to prior label approval by NMFS and to furnish the Agency with reports that the Agency may request on processing, packaging, grading, laboratory analysis, and production of inspected products. The establishment must provide facilities to NMFS inspectors and agree to conditions under which inspection may be suspended or terminated (50 CFR 260.97). The premises of the establishment must be free from conditions that may result in food contamination (50 CFR 260.98). Buildings and structures must be equipped with adequate lighting, ventilation, drains and gutters, and hot and cold water. Processing facilities must be of sound construction and capable of being efficiently and thoroughly cleaned. Animals and pests must be excluded. The use of chemical compounds, such as cleaning agents, insecticides, rodenticides, and bactericides must be limited to circumstances and conditions approved by NMFS (50 CFR 260.99).

An establishment participating in any of the NMFS inspection programs is expected to have organized food-safety management systems that are implemented through a combination of operational prerequisite programs that document how food safety hazards are to be controlled, and HACCP plans for each product processed by the establishment. The establishment must maintain documented Sanitation Standard Operating Procedures (Sanitation SOPs) and prerequisite programs. The programs must ensure the safety of processing water, ensure employee hygiene, prevent contamination of food-contact surfaces, and prevent cross-contamination generally in the establishment. The establishment is expected to document how it will control nonconforming products, handle recalls, and withdraw defective products from the market. All

[6] U.S. Department of Health and Human Services. Food and Drug Administration. July 2007. Congressional Testimony: Safety of Chinese Imports. Washington, DC; U.S. Department of Health and Human Services. Food and Drug Administration. November 2008. Enhanced Aquaculture and Seafood Inspection—Report to Congress. Washington, DC.

HACCP-related records must be available to NMFS inspectors.

VII. Public Health Protection: Chemical and Microbiological Contaminants

FDA and the Centers for Disease Control and Prevention (CDC) consider commercially raised catfish to be a low-risk food. Even so, because catfish of domestic or foreign origin may be exposed to chemical and microbiological contaminants, it is incumbent on FSIS to consider the food safety hazards that might be presented by catfish in planning the Agency's regulatory approach.

Chemical Residues in Catfish

Most of the chemical residues identified in some domestic and foreign catfish fall into three main classes—heavy metals, pesticides, and antimicrobials.

Heavy Metals

At sufficient levels, these heavy metals are associated with ischemic heart disease, developmental abnormalities, decreased intelligent quotient (IQ) values, and other harmful effects in humans.[7]

FSIS tested 737 samples collected under a sampling plan representing catfish consumption in the United States during the course of one year, April 2008 through March 2009. Samples of seafood labeled as "catfish" were taken from the retail market system in the United States and were tested for the presence of arsenic, cadmium, lead, and mercury. Seventeen samples from among domestic and imported products had detectable heavy metal residues. Six domestic samples contained lead and cadmium. Four samples contained lead at a mean concentration of 43.48 parts per billion (ppb), with a range of 29.49 ppb to 76.92 ppb, while 2 samples contained cadmium at a mean concentration of 11.6 ppb, with a range of 10.9 ppb to 13.11 ppb. Twelve imported samples contained lead and arsenic. Ten samples contained lead at a mean concentration of 46.08 ppb, with a range of 27.96 ppb to 103.24 ppb, while 2 samples contained arsenic at a mean concentration of 1.34, with a range of 1.03 ppm to 1.64 ppm. We are unaware of regulatory action levels for arsenic, cadmium, and lead; the action level for mercury is 1,00 ppb.[8]

In a 2001 study of 257 domestic catfish (*i.e.,* Ictaluridae) samples conducted by Santerre *et al.,* lead residues were detected in 11 percent, arsenic residues in 5 percent, and mercury residues in 83 percent.[9] Average metal residues detected in the study were lower than recommended safety limits, although it should be noted that the Environmental Protection Agency has not established a reference dose (maximum acceptable oral dose) for lead.

Pesticides

In 2008, the USDA Agricultural Marketing Service[10] tested 552 catfish samples collected under a sampling plan representing catfish consumption in the U.S. (including 435 samples of domestic and 108 samples of foreign catfish, as well as 9 samples of catfish of unknown origin) for pesticide residues.[11] Of note, chlorpyrifos[12] residues were detected in less than 1 percent of the domestic samples and in 32 percent of the import samples. DDE (p,p'-Dichlorodiphenyldichloroethylene), a metabolite of dichlorodiphenyltrichloroethane (DDT)[13] was detected in 97 percent of the domestic samples and 34 percent of imported samples at levels below regulatory concern; endosulfan[14] and its metabolites were detected in less than 1 percent of the domestic samples and in 27 percent of the import samples; and Toxaphene[15] was detected in 1 percent of the domestic samples and none of the import samples.

Unapproved Antimicrobials

If antimicrobials that are not approved by the FDA, such as malachite green and fluoroquinolones, are used in catfish production, they can result in the presence of chemical residues in edible tissue. Some research suggests that antimicrobial residues in food may hasten the development of antimicrobial-resistant infections in humans.[16] Exposure to high levels of malachite green and similar antimicrobials has been shown to be carcinogenic and mutagenic in rats. In 2006, the FDA found 15 imported catfish samples positive for malachite green and 2 for fluoroquinolones. In 2007, 868,000 lines of seafood fish and fishery products were submitted for import to the U.S.; FDA obtained samples from approximately 10,400 of those lines; and FDA tested 686 of those samples for antimicrobial residues. Meanwhile, about one percent of the 10.5 billion pounds of imported fish and fisheries products in 2007 were Siluriformes. In their 2008 report "Enhanced Aquaculture and Seafood Inspection—Report to Congress," available at: *http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/Seafood/SeafoodRegulatoryProgram/ucm150954.htm*. FDA reported that in 2007 it found 12 imported catfish samples positive for malachite green and 6 for fluoroquinolones. Since June 2008, FDA rejected 31 shipments of catfish imports for presence of unsafe animal drug residues.

In conjunction with the April 2008—March 2009 heavy metals survey, FSIS tested 733 catfish samples for the presence of chloramphenicol, gentian

[7] U.S. Centers for Disease Control and Prevention. Agency for Toxic Substances and Disease Registry. (1999). Toxicological Profile for Mercury.

U.S. Centers for Disease Control and Prevention. Agency for Toxic Substances and Disease Registry. (2007a). Toxicological Profile for Arsenic.

U.S. Centers for Disease Control and Prevention. Agency for Toxic Substances and Disease Registry. (2007b). Toxicological Profile for Lead.

[8] U.S. Department of Agriculture. Food Safety and Inspection Service. 2010. Analysis of Heavy Metals and Veterinary Drugs found in 737 Catfish Samples from Retail Markets in the United States. Washington, DC.

[9] Santerre, C.R., P.B. Bush, D.H. Xu, G.W. Lewis, J.T. Davis, R.M. Grodner, R. Ingram, C.I. Wei, J.M. Hinshaw. 2001. Metal Residues in Farm-Raised Channel Catfish, Rainbow Trout, and Red Swamp Crayfish from the Southern U.S. Journal of Food Science. 66:270–273.

[10] U.S. Department of Agriculture. Agriculture Marketing Service. December 2009. Pesticide Data Program Annual Report 2008. Washington, DC.

[11] U.S. Department of Agriculture. Agriculture Marketing Service. December 2009. Pesticide Data Program annual Report 2008. Washington, DC.

[12] An organophosphate insecticide linked to neurological and birth defects.

[13] A synthetic organochlorine pesticide often used for mosquito control, DDT is a suspected carcinogen. Use of DDT was banned in the U.S. in 1972. Today it is banned in most developed countries. Because of its long half-life (ca. 25 years), DDT is classified as a persistent organic pollutant. This perhaps explains its presence in domestic and imported catfish samples.

[14] An organochlorine insecticide with acute toxicity and high bioaccumulation potential, endosulfan is an endocrine disruptor.

[15] Toxaphene is a mixture of approximately 200 organic compounds. Used as an insecticide in cotton and soybean growing areas of the United States, it was banned for use in 1986. Toxaphene is a carcinogen.

[16] Heuer, O.E. Kruse, H., Grave K., Karunasagar, I., & Angulo, F.J. (2009). Human Health Consequences of Use of Antimicrobial Agents in Aquaculture. *Clinical Infectious Diseases.* 49:1248–1253.

Muller, L., Kasper, P. Kersten, B. & Zhang, J. (1998). Photochemical genotoxicity and photochemical carcinogenesis. Two Sides of a Coin? *Toxicology Letters.* 102–103: 383–387.

Culp, S.J., Mellick, P.W., Trotter, R.W., Greenlees, K.J., Kodell, R.L., Beland, F.A. (2006). Carcinogenicity of Malachite Green Chloride and Leucomalachite Green in B6C3F1 Mice and F344 Rats. Food and Chemical Toxicology. 44:1204–1212.

There are three approved classes of antimicrobials for use in catfish: florfenicol, Romet 30 and TC, and several terramycin formulations. *See http://www.fda.gov/downloads AnimalVeterinary/ResourcesforYou/Animal HealthLiteracy/UCM109808.pdf* (Accessed Feb. 15, 2011).

violet, malachite green, and nitrofurans. (The number of samples tested for some chemicals differs slightly due to insufficient amount of material in some samples to do all of the tests.) A total of 10 samples were confirmed positive for nitrofurans (AOZ and AMOZ), gentian violet, and malachite green. Five domestic samples had confirmed positive results, 4 for gentian violet and 1 for malachite green. Five imported samples had confirmed positive results, each for AOZ and AMOZ, 2 for gentian violet, and 1 for malachite green. Detects were at levels below regulatory concern.

The foregoing shows that, while catfish may not frequently harbor residues of illegal drugs or other chemicals, the potential exists for such contamination. Because some shipments of imported catfish have been found with residues of drugs that FDA has banned and that are unsafe, FSIS proposes to conduct regular verification to ensure the safety of catfish and catfish products.

Microbial Pathogens in Catfish

The hazard identification component of the FSIS catfish risk assessment [17] identified certain microorganisms as higher-priority. The prioritization was based on association with catfish-related outbreaks and on the severity of resultant illness. The microorganisms identified included *Salmonella, Listeria monocytogenes,* and Enterotoxigenic *E. coli.*

Salmonella

In a study by McCaskey and colleagues [18] reviewed by FSIS, *Salmonella* were found on 2 percent of 220 domestic catfish fillets. Among 136 imported catfish violations listed by FDA for 1998–2004, 42 percent were for *Salmonella.*[19] It is difficult to compare prevalence values described here because the domestic fillets were sampled randomly, whereas the imported fillets were likely not sampled randomly.[20]

Listeria

Though no catfish-borne listeriosis outbreaks have been identified, Chou *et al.* (2006) identified *L. monocytogenes* in 25–47% of raw catfish fillets at three U.S. processing plants.[21] Some isolates were persistently found in processed fillets, suggesting either that the sanitation was inadequate, or that these isolates originated from the natural habitats of the catfish. McCaskey *et al.* (1998) found a prevalence of 5.9% for *L. monocytogenes* on catfish fillets. Significant risk may exist if cross-contamination occurs between raw products and ready-to-eat (RTE) products (Fernandes *et al.* 1998). Chou *et al.* (2006) found that *L. monocytogenes* was most commonly isolated from catfish in the winter with a prevalence rate of 51 percent, compared to 41 percent in the spring, 36.7 percent in the fall, and 19 percent in the summer. This finding may be attributable to the ability of *L. monocytogenes* to out-compete other bacterial species at lower temperatures.

Escherichia coli

A 2003 outbreak linked catfish or coleslaw consumption to 41 cases of Enterotoxigenic *E. coli* (ETEC) O169:H41-related illness (Beatty, 2004).[22] However, FSIS is aware of no data to describe the occurrence of ETEC on catfish.

Illness Outbreaks From Catfish

Cases of human illness have been linked to catfish consumption. Since 1990, the Centers for Disease Control and Prevention (CDC) have identified seven illness outbreaks where such catfish were consumed. In only one of these outbreaks was catfish specifically identified as possible vehicles of infection. These outbreaks, which are described below, have included 66 illnesses and 8 hospitalizations (Table 2).

TABLE 2—CDC DATA ON OUTBREAKS OF FOODBORNE ILLNESS IN WHICH CATFISH WAS A CONFIRMED OR SUSPECTED VEHICLE, 1991–2007, UNITED STATES.[23]

Year	State	Setting	Etiology	Illnesses	Hospitalizations	Deaths
1991	NJ	Restaurant	*Salmonella*	10	6	0
1999	FL	Private Home	Unknown	2	0	0
1999	FL	Restaurant/Deli	Unknown	5	0	0
2000	OH	Restaurant/Deli	Chemical	2	0	0
2003	TN	Workplace	*E. coli* O169	41	2	0
2003	CO	Restaurant/Deli	Unknown	4	0	0
2007	FL	Private Home	Unknown	2	0	0

In 1991, an illness outbreak occurred in New Jersey that affected ten case-patients. Nine stool specimens tested positive for *Salmonella* Hadar. Catfish was identified as a possible vehicle for illnesses.

In 1991, an illness outbreak occurred in New Jersey that affected ten case-patients. Nine stool specimens tested positive for *Salmonella* Hadar. Catfish was identified as a possible vehicle for illnesses.

In 1999, two illness outbreaks occurred in Florida with undetermined etiology or causal agent. The first affected five case-patients, all reporting catfish consumption. Statistical evidence suggested catfish might be the vehicle, although the restaurant where case-patients dined had poor sanitation and inadequate refrigeration. The second affected two case-patients who experienced illnesses after preparing and consuming catfish and yellow rice

[17] U.S. Department of Agriculture. Food Safety and Inspection Service. Office of Public Health Science. December 2010. Draft Risk Assessment of the Potential Human Health Effect of Applying Continuous Inspection to Catfish. Washington, DC.

[18] McCaskey T, TC Hannah, T Lovell, *et al.* 1998. *Safe and Delicious* study shows catfish is low risk for foodborne illness. Highlights of Agricultural Research. Vol. 45, No. 4. Available at *http://www.ag.auburn.edu/aaes/communications/highlights/winter98/catfish.html.*

[19] U.S. Department of Agriculture. Economic Research Service. 2009. Economic Research Service Staff Analysis of FDA Import Refusals for Catfish, 1998–2004. Washington, DC.

[20] Because of this, the FSIS catfish draft risk assessment assumed that the prevalence of *Salmonella* on imported catfish was the same as that on domestic fish, *i.e.* 2%.

[21] Chou, C.H., Silva, J.L., & Wang, C. (2006). Prevalence and Typing of *Listeria monocytogenes* in Raw Catfish Fillets. Journal of Food Protection, 69, 815–819.

[22] Beatty, M.E., Bopp, C.A., Wells, J.G., Greene, K.D., Puhr, N.D., & Mintz, E.D. (2004). Enterotoxin-producing *Escherichia coli* O169:H41, United States. Emerging Infectious Diseases. Retrieved from *http://www.cdc.gov/ncidod/EID/vol10no3/03-0268.htm* Oct. 16, 2009.

[23] Data from the Centers for Disease Control and Prevention's (CDC) electronic Foodborne Disease Outbreak Reporting System (eFORS). Provided to FSIS by CDC, Sept. 15, 2008.

at home. Both foods were identified as implicated items.

In 2000, an Ohio illness outbreak was reported that affected two case-patients experiencing signs and symptoms suggestive of chemical contamination. Samples of raw and fried, farm-raised catfish were tested, and results indicated contamination with an unidentified chemical.

In 2003, two reported illness outbreaks identified catfish as an implicated food item. One outbreak occurred in Tennessee and included 41 illnesses and 12 confirmed cases of *E. coli* O169:H41. An epidemiologic study was conducted and identified multiple food items, including catfish. A food worker was suspected as the source of contamination. The second outbreak occurred in Colorado, and investigators reported that four out of five people became ill after eating catfish at a restaurant. The fifth, well person did not report eating catfish.

The most recent reported illness outbreak occurred in Florida in 2007. Two case-patients were identified after consuming in a private home catfish prepared at a grocery store. Improper cold storage and reheating practices at the food service facility (grocery store) were noted.

Table 2 shows that there has been one catfish-associated outbreak from *Salmonella* in the past twenty years. Because only a small proportion of all foodborne illnesses reported are identified as associated with outbreaks (*http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5931a1.htm*), it is possible that there may be a low level of sporadic cases of salmonellosis associated with catfish that are not detected with current levels of surveillance. FSIS notes, however, that this case occurred before FDA's implementation of regulations (21 CFR part 123) that require processors of fish and fishery products to develop and implement HACCP systems for their operations. Since implementation, no cases of salmonellosis linked to catfish have been reported.

The FSIS Catfish Draft Risk Assessment

FSIS conducted an illustrative assessment of the potential risk to human health of catfish consumption, using the example of *Salmonella* contamination. We are particularly interested in *Salmonella* because the general burden of illness from this pathogen in the United States remains a concern and there is evidence that at least one outbreak of human salmonellosis may have been related to catfish consumption.[24] *Salmonella* is a useful model because its presence provides an indication of the sanitary conditions under which food is produced, and because an approach that produces a reduction in *Salmonella* through improved process control is effective in controlling for the presence of other microbial pathogens.[25]

With regard to the risk assessment for catfish, FSIS continues to evaluate the hazards, particularly Salmonella, associated with this fish. FSIS invites all interested stakeholders to submit additional data and scientific evidence specific to catfish food safety. FSIS will consider this information and other data in the development of a final risk assessment in this proceeding.

Further, USDA is seeking public comments on the evidence regarding the public health benefits and cost-effectiveness to be achieved with the proposed program.

VIII. Proposed Regulations Implementing Continuous Inspection of Catfish and Catfish Products

As stated above, this proposal implements provisions of the FMIA added by the 2008 Farm Bill respecting the amenable species "catfish, as defined by the Secretary" (21 U.S.C. 601(w)(2)). It is intended to prevent and eliminate any burdens on commerce imposed by adulterated or misbranded catfish or catfish products and to protect the health and welfare of consumers from such adulterated or misbranded catfish or catfish products (21 U.S.C. 602).

A. Coverage of the FMIA: Provisions Applicable to Catfish and Catfish Products

The FMIA (21 U.S.C. 601–695) requires FSIS to carry out a continuous inspection program for the species that are subject to this statute, which now includes catfish. FSIS inspects food products derived from those species, verifies that the products are prepared for commerce under sanitary conditions, and inspects products that are exported from or imported into the United States. The inspection may include testing for pathogens or for drug or other chemical residues. The FMIA also gives FSIS the authority to take action with respect to meat products in commerce that may be adulterated or misbranded. FSIS intends to apply to catfish and catfish products provisions of the FMIA that now apply to meat and meat food products, except for the provisions that the 2008 Farm Bill excludes from applicability to catfish.

B. Catfish and Catfish Product Inspection Regulations Under the FMIA

FSIS is proposing to establish regulatory requirements for the continuous inspection of catfish and catfish products. FSIS is adapting for use in the regulation and inspection of catfish and catfish products those meat inspection regulations that are appropriate in preventing the transportation, sale, offer for sale or transportation, or receipt for transportation, in commerce, of adulterated or misbranded products (21 U.S.C. 602, 610, 621). Because there are differences between fish and mammalian livestock species, some of the regulations for catfish will be separate within the Code of Federal Regulations from those for the inspection of meat and meat food products. Other regulations apply as written to catfish and will simply be cross-referenced.

Organization of Catfish Inspection

In general, the catfish regulations parallel the sequence of operations from the harvesting and delivery of the fish to the processing plant, through the in-plant operations, to transportation in commerce, specifying export and import requirements where appropriate.

After outlining the district-level supervision of catfish inspection in proposed 9 CFR 530.2, FSIS makes clear in proposed § 530.3 that, as provided in 9 CFR 300.6, persons that are subject to the FMIA, and specifically the catfish inspection provisions, are to grant authorized Agency or Department personnel access to establishments that process catfish and to other establishments in industries related to the catfish processing industry (21 U.S.C. 606, 642(a)).

Definitions

FSIS is proposing largely to use the same definitions for the catfish inspection regulations (proposed 9 CFR 531.1) as for the meat inspection regulations (9 CFR 301.2), which are incorporated into proposed 9 CFR 531.1 by reference. However, recognizing the differences between the commercial production and processing of catfish products, as opposed to other products

[24] U.S. Department of Agriculture. Food Safety and Inspection Service. Office of Public Health Science. December 2010. Draft Risk Assessment of the Potential Human Health Effect of Applying Continuous Inspection to Catfish. Washington, DC.

[25] Food Safety and Inspection Service. 2006. Review of the Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems Final Rule pursuant to Section 610 of the Regulatory Flexibility Act, as Amended. Available at: *http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/2007-0022P/610_Report_PR_HACCP.pdf* (Accessed Oct. 14, 2009).

that are subject to the FMIA, the Agency is proposing to add definitions for "catfish," "catfish product," "catfish food product," "farm-raised," and some other terms. The Agency also is adapting certain terms used in the meat inspection regulations, such as "applicant" and "consumer package," to apply in the context of catfish production and processing.

FSIS is proposing that the term "catfish"—aside from what animal species the term is to denote—mean the skeletal muscle tissue of catfish, the edible portion of the fish that is prepared for the consumer.

FSIS is proposing to define "catfish food product" to parallel the definition of "meat food product," and "catfish product" to mean any catfish or catfish part, as well as any product made wholly or in part from any catfish or catfish part, except for products exempted from definition as a catfish product in the regulations. In the context of the proposed regulations, the term "catfish product" generally denotes an edible product.

The Agency is proposing to define "farm-raised," as "grown under controlled conditions, within an enclosed space, as on a farm." As indicated in earlier discussion, FSIS understands "farm-raised catfish" to be those that are typically raised in confinement from incubated eggs to harvest and fed commercial feed throughout the stages of production until harvested. Production schemes include culturing catfish in ponds and high-density culture systems that utilize tanks, raceways, and cages. The Agency recognizes that variations of these arrangements may be in use in the United States and in foreign countries. FSIS also recognizes that there are situations in which wild-caught catfish are processed for commercial distribution and requests comment on how the Agency should address these situations.

FSIS expects that, in general, catfish that will be subject to the proposed regulations will be grown as food for human consumption in a controlled environment by a commercial operator. Many of the remaining proposed definitions are adaptations from the definitions in the meat inspection regulations. For example, a "product" is any carcass, catfish, catfish product, or catfish food product that is capable of use as human food; an "official mark," is a symbol to identify the status of any article, catfish, or catfish product under the FMIA; and such terms as "U.S. Condemned," "U.S. Detained," and "U.S. Retained," are redefined to apply in situations involving catfish products.

Inasmuch as the ante-mortem inspection, post-mortem inspection, and humane slaughter provisions of the amended FMIA do not apply to catfish, there is little need for a definition or other requirements addressing slaughtering methods. However, the FMIA defines as adulterated a food product that is, in whole or in part, the product of an animal that has died otherwise than by slaughter (21 U.S.C. 601(m)(5)). In the view of FSIS, catfish that died under circumstances other than the controlled circumstances of commercial fish harvesting and processing would be adulterated under this provision of the FMIA and unacceptable for food. (For example, a fish that fell onto the pavement in the delivery area of a processing plant and lay there until it died would not be acceptable for human food.) Also, it may be necessary for the Agency to apply the detention, seizure, and condemnation provisions of the Act (21 U.S.C. 672, 673) in cases where the Agency finds dead, dying, or diseased catfish. It would then be necessary to distinguish catfish slaughtered for the purpose of being processed into human food from catfish that died from a disease, from accidental asphyxiation, from poisoning by environmental contaminants, or by any other cause that would render the catfish unacceptable for human food.

Moreover, the Agency has become aware of methods used in transporting catfish to, or in holding catfish at, processing establishments that involve holding the fish at so low a temperature that the catfish are intentionally killed before being delivered for processing for human food. To the extent that the methods are applied under controlled conditions in a manner that does not create a human food-safety hazard, FSIS would likely view these methods as constituting slaughter.

The question therefore arises whether the Agency should propose a definition of "slaughter" that would encompass various methods of killing catfish for food and that would ensure that catfish that died otherwise than by slaughter would not be used for food. FSIS's tentative view is that it should. Thus, it has proposed to define "slaughter," with respect to catfish, as intentional killing under controlled conditions. FSIS requests comment on this proposed definition, and on whether there is a need for it.

Establishments Requiring Inspection; Grant and Approval of Inspection

In proposed 9 CFR part 532, FSIS identifies the classes of establishments that handle catfish that require inspection. Under this proposal, establishments that process catfish or catfish products for transportation or sale in commerce for use as human food will need to be under FSIS inspection. Also, the records not only of official catfish establishments but those of related businesses, including retail establishments that are exempt from continuous inspection, will be subject to periodic inspection.

FSIS is proposing requirements for catfish processing establishments to qualify for a grant of inspection that are similar to those that apply to meat processing establishments. These requirements cover facilities, potable water and water sanitation performance standards, Sanitation SOPs, and validated HACCP plans. FSIS intends to assign inspection personnel to catfish processing establishments.

Proposed 9 CFR 532.2 sets out the application procedures, cross-referencing the application procedures for, and grant and approval of, meat inspection in 9 CFR part 304 because the procedures for catfish establishments will be similar to those for meat establishments.

Establishments will have to complete an Application for Federal Inspection (currently, FSIS Form 5200–2, available from the appropriate District Office). In addition to completing the application, establishments will need to attach a description of the limits of the premises of the establishment that are to be under Federal inspection (Item No. 106 on the current application form). This description could be written, or it could be a drawing.

Under this proposal, a catfish establishment intending to conduct operations under an FSIS Grant of Inspection will be subject, consistent with 9 CFR 304.3, to the sanitation performance standard requirements (distinct from Sanitation SOPs) in 9 CFR part 416. After the establishment files its application with the appropriate District Office, FSIS will reserve an official plant number, in accordance with 9 CFR 305.1, that will identify all inspected and passed products prepared in an establishment and that must be printed on the label of any packaged product. All packaged catfish products also will have to bear the U.S. Inspection legend. All labeling material will have to be Federally approved and on-hand before inspection could be granted per 9 CFR 317.4.

Under the proposed regulations (requirements for sanitary operation under 21 U.S.C. 608 and 621), the establishment will have to have documentation supporting the potability of the water it uses for catfish (per 9 CFR and 416.2(g)).

FSIS also cross-references 9 CFR 305, on the assignment of establishment numbers and the inauguration of inspection, and 9 CFR 306, on the assignment and authorities of FSIS personnel, because they are essentially the same for meat and catfish inspection (proposed 9 CFR 532.2(c) and (d)). Before the inauguration of inspection, FSIS inspection personnel will examine the establishment and premises. If this examination shows that the facilities are satisfactory, FSIS will assign inspection personnel. No establishment operations may be conducted except under the supervision of an inspection program employee. FSIS provides inspection service to official establishments without charge, up to eight (8) consecutive hours per shift on consecutive days during the basic workweek. The regulations further provide that each official establishment is to submit a work schedule to the District Manager for approval (proposed 9 CFR 533.5; 9 CFR 307.4(d)(1)).

Any work conducted over the 8-hour shift, or any time past the initial 5-consecutive-day period, will be charged to the plant at the prevailing hourly overtime rate. If the operator of the establishment requests inspection during odd hours, a minimum of 2 hours will be charged to the plant at the above rate. This rate also is charged if the plant works on any Federal holiday.

Although there is no exemption from inspection in the amended FMIA for custom catfish slaughter and processing facilities, FSIS is providing an exemption for retail stores and restaurants in proposed 9 CFR 532.3 (under 21 U.S.C. 661(c)) and paralleling 9 CFR 303.1(d) and (e)). FSIS is tentatively using the poultry exemption regulations set out in 9 CFR 381.10 as a model in proposing a limit of 75 pounds for individual household (single-sale) purchases of catfish to be deemed retail purchases; the quantity for non-household consumers would be 150 pounds. FSIS solicits comments on what the limits on retail sales to household or non-household consumers ought to be.

In proposed 9 CFR 532.4, the Agency asserts Federal pre-emption of State or local authority with respect to premises, facilities, and operations at an official establishment, and with respect to labeling, packaging, and ingredient requirements (pursuant to 21 U.S.C. 678).

Finally, in proposed 9 CFR 532.5, FSIS exempts from inspection articles that do not contain a minimum amount of catfish (3 percent raw or 2 percent cooked catfish) or historically are not regarded by consumers as products of the catfish food products industry per 9 CFR 301.2. The catfish ingredients of the exempt products will have to be FSIS-inspected or inspected under an equivalent foreign system (under 21 U.S.C. 601(j)). Also, the labels of these exempt products cannot represent the products as catfish products. Products exempt from the definition of "catfish product" will be subject to regulation under the FD&C Act.

Facility Requirements for Catfish Inspection

In proposed part 533, FSIS sets out facility requirements for catfish processing establishments (under 21 U.S.C. 608, 621). To ensure that sanitary operating conditions are maintained, official catfish processing establishments will have to be separate and distinct from any unofficial establishment and separate from any other official establishment, except an establishment preparing products under the FMIA, the Poultry Products Inspection Act (PPIA), or the Egg Products Inspection Act (EPIA) (proposed 9 CFR 533.1). Common areas for inspected and uninspected products may be used if the inspected product is acceptably maintained and protected to prevent product adulteration.

FSIS is proposing to require that official catfish establishments provide office space and furnishings for the exclusive use of the inspector and other Program employees assigned to the establishment (proposed 9 CFR 533.3). This is essentially the same requirement as that applying to establishments that prepare other products under the FMIA. The space set aside for this purpose will have to meet with the approval of Agency supervisors. As the Agency does in the meat inspection program, FSIS will exercise its discretion to determine whether small establishments requiring the services of less than one full-time inspector will not have to furnish Government office space if adequate facilities exist in a nearby location. Each establishment, however, will have to provide laundry service for inspectors' outer work clothing.

Other facilities to be provided by an official establishment include sufficient lighting for the proper conduct of inspection, facilities for performing inspection, receptacles for diseased carcasses and parts, and materials for cleansing and disinfecting hands, for sterilizing instruments used in handling diseased carcasses, and for cleaning and sanitizing floors and other articles or places contaminated by diseased carcasses (proposed 9 CFR 533.4). Establishments will have to provide adequate facilities, including denaturing materials for the proper disposal of condemned articles, and docks and receiving rooms for receipt and inspection of catfish and catfish products (proposed 9 CFR 533.4).

FSIS approves operating schedules for official meat establishments and is proposing to require such approval for catfish processing establishments (proposed 9 CFR 533.5, referencing 9 CFR 307.4). This is necessary to ensure that the Agency can maintain an inspector presence during establishment operations. The proposed regulations thus define a shift and the basic workweek for Program employees and require each official establishment to submit a work schedule to the District Manager [26] for approval. Under the proposed regulations, each official establishment will be required to maintain a consistent work schedule and, except for minor deviations, will not be allowed to change it without submitting the proposed change to the District Manager at least two weeks in advance. The Agency also is proposing to require that official establishments request inspection service outside the regular workday as far as possible in advance of receiving the service.

FSIS offers overtime and holiday inspection service for a fee. The FSIS regulations list the Federal holidays (9 CFR 307.5, referred to by proposed 9 CFR 533.6) and the terms of overtime and holiday inspection (9 CFR 307.6, referred to by proposed 9 CFR 533.7, and 9 CFR 391.3).

Pre-Harvest and Transport to Processing Establishment

In proposed 9 CFR part 534 (under 21 U.S.C. 606(b)), FSIS outlines the pre-harvest standards to be applied to catfish to ensure that the environmental conditions and source waters in which the fish are grown will not render the fish unfit for food. The Agency is proposing to require that catfish harvested for human food must not have lived under conditions that would render them unsound, unwholesome, unhealthful, or otherwise unfit for human food (proposed 9 CFR 534.1)—that is, whether the fish would be "adulterated" as the term is defined in 21 U.S.C. 601(m)(3) in the FMIA. The Agency advises catfish producers to monitor the water in which the fish are raised for suspended solids, organic matter, nutrients, heavy metals, antimicrobials, pesticides, fertilizers, and industrial chemicals that may contaminate the fish. FSIS may take

[26] The District Manager, in the current Agency organization, has absorbed functions of the former Area Supervisor, mentioned in 9 CFR 307.4.

samples of fish and water (proposed 9 CFR 534.2) to assess whether the fish are being raised under conditions that will produce safe and wholesome product.

The Agency reminds producers in proposed 9 CFR 534.3 that only certain new animal drugs are legally available for use in raising catfish for human food. Approved drugs and tolerances are listed in the FDA regulations (21 CFR parts 516, subpart E; 520; 524; 526; 529; 556; and 558).

FSIS is proposing general standards for the transportation of catfish to the processing plant (proposed 9 CFR 534.4, under 21 U.S.C. 606(b)). A vehicle used to transport catfish to a processing establishment will need to contain sufficient water and oxygen to ensure that the catfish that arrive at the establishment are not adulterated per 9 CFR 301.2(5) in that they have perished by means other than slaughter. Any catfish that are dead or dying (otherwise than by slaughter), diseased, or contaminated with substances that would adulterate catfish food products are subject to condemnation at the establishment. (*See also* proposed 9 CFR 555.11 and .12.)

Sanitation and HACCP Requirements for Processing Facilities

FSIS is proposing (under 21 U.S.C. 608, 621) that catfish processing establishments will have to meet certain basic requirements that parallel those that meat establishments must meet and those that seafood processing establishments are already required to meet under FDA regulations. FSIS is proposing (proposed 9 CFR 537.1) to require that any official establishment that prepares or processes catfish or catfish products for human food comply with the sanitation requirements in 9 CFR 416. These requirements include the sanitation performance standards and the requirement that every official meat (or poultry) establishment have written Sanitation SOPs.

The sanitation performance standards (9 CFR 416.1–416.6) resemble in some ways FDA's current good manufacturing practice regulations for buildings and facilities (21 CFR part 110, subpart B) but provide for continuous FSIS inspection. The sanitation performance standards set forth requirements in terms of an objective to be achieved but do not prescribe the means to achieve the objective. To meet the performance standards, establishments must develop and employ sanitation or processing procedures customized to the nature and volume of their production.

Compliance with FSIS's Sanitation SOP requirement is a condition for receiving a grant of inspection. FSIS verifies the adequacy and effectiveness of the Sanitation SOPs as part of its inspection (9 CFR 416.17).

Under the proposed rule, catfish establishments will be required to detail, in writing, the procedures that they will carry out to prevent direct contamination or adulteration of product before and during operations (9 CFR 416.12(a)). Each catfish establishment will be responsible for evaluating the effectiveness of its Sanitation SOPs and for revising them as necessary to keep them effective and current with respect to changes in facilities, equipment, utensils, operations, or personnel (9 CFR 416.14).

Under the proposed regulations, catfish establishments will have to conduct the pre-operation procedures in the Sanitation SOPs before the start of operations, conduct all other procedures in the Sanitation SOPs at the frequencies specified, and monitor the daily implementation of the procedures in the Sanitation SOPs (9 CFR 416.13). Establishments will be responsible for taking and required to take appropriate corrective action when the Sanitation SOPs have failed to prevent direct contamination or adulteration of product as detailed in 9 CFR 416.15(a). Corrective actions include procedures to ensure the appropriate disposition of product that may be contaminated, to restore sanitary conditions, and to prevent the recurrence of direct contamination or adulteration of product. Corrective actions may also need to include reevaluating and modifying the Sanitation SOPs or improving their execution (9 CFR 416.15(b)).

If this proposed rule is adopted, each catfish establishment will be required to maintain a daily record of the actions it takes that are prescribed in the Sanitation SOPs and to make such records available to Program employees for inspection and verification (9 CFR 416.16(a) and (c)). The establishment will be required, at a minimum, to record deviations from the Sanitation SOPs, along with corrective actions taken—including procedures to prevent the direct contamination or adulteration of products—in conjunction with the monitoring of daily sanitation activities.

The establishments will also be responsible for complying and will have to comply with the HACCP requirements (proposed 9 CFR 537.1(a)(1) cross-referencing to 9 CFR part 417; issued under 21 U.S.C. 601(m)(1), 601(m)(3), 601(m)(4), 602, 608, and 621). These requirements are similar to the FDA requirements for processors of fish or fishery products (21 CFR 123.6–123.10). The FSIS regulations include requirements that implement the principles of HACCP—hazard analysis, supporting documentation, decision-making documents, critical control points, critical limits, monitoring, corrective actions, verification, and recordkeeping (9 CFR 417.1 to 417.5)—and require a HACCP-trained individual to perform certain key functions (9 CFR 417.7). The FSIS regulations also define an inadequate HACCP system (9 CFR 417.6); they require a review, preferably by a HACCP-trained individual, of records associated with the production of a product before the product is shipped ("pre-shipment review") (9 CFR 417.5(c)); and, of course, they provide for Agency verification of HACCP plan adequacy (9 CFR 417.8).

The Agency's verification includes a review of the HACCP plan to determine that it meets regulatory requirements; a review of Critical Control Point CCP records; a review and determination of the adequacy of corrective actions taken when there is a deviation from a critical limit; a review of the critical limits; review of other records pertaining to the HACCP plan or system; direct observation or measurement at a CCP; sample collection and analysis to determine whether the product meets all regulatory requirements respecting biological, chemical, or physical hazards; and on-site observations and records review (9 CFR 417.8). The frequency of FSIS verification activities will vary, depending on a number of factors, such as the establishment's past performance, risk inherent in the processes or products, quantity of product, and likely uses.

FSIS is proposing, under 21 U.S.C. 606(b), to require that a catfish establishment's hazard analysis take into account the hazards that can occur before, during, and after the harvest of catfish (proposed 9 CFR 537.2). Moreover, FSIS provides that catfish products not produced under a hazard analysis and HACCP plan that fully complies with the regulations will be adulterated under the FMIA because they will have been prepared and packed under insanitary conditions that may render them injurious to health (9 CFR 537.2(b)).

Mandatory Dispositions; Performance Standards Respecting Physical, Chemical, or Biological Contaminants

In proposed 9 CFR part 539, FSIS lists the diseases or other conditions that would lead to condemnation of catfish carcasses or parts affected upon inspection (under 21 U.S.C. 606). Both zoonotic and non-zoonotic diseases are

included because FSIS is required to ensure that the food products it regulates are not adulterated either for food safety reasons, or because they are unwholesome or otherwise unfit for human food. Catfish and catfish products affected by these diseases or conditions would be adulterated under 21 U.S.C. 601(m)(3) in that they are unsound, unwholesome, or otherwise unfit for human food.

The Agency intends to condemn, as unwholesome or unfit for human food, carcasses or parts of catfish whose tissues are affected by abscesses or lesions, and catfish tissues affected by non-zoonotic parasites such as cestodes, or by such parasites as digenean trematodes, metacercaria (*Bolbophorus* spp.), yellow grubs (*Clinostomum* spp.), or white grubs (*Hysterbmorpha* spp.). FSIS also intends to condemn catfish affected by Heterophyid intestinal flukes or *Dictophymatidae* nematodes, columnaris (infection by *Flexibacter columnaris*), or enteric septicemia of catfish (ESC) (proposed 9 CFR 539.1). The Agency will condemn catfish carcasses, parts, or catfish products found to be in a state of spoilage or decomposition or that are otherwise unwholesome. FSIS requests comments on what extent of columnaris or other infection should result in condemnation and on whether there are other conditions found in catfish that require such disposition.

Under proposed 9 CFR 539.2, catfish and catfish products that are contaminated with physical matter will be subject to retention by Program employees. Also, any antibiotic or other drug residues or pesticide residues in catfish tissues will have to be within applicable tolerances in the FDA or Environmental Protection Agency regulations (21 CFR part 556; 40 CFR part 180).[27] The FSIS National Residue Program determines whether there are violative concentrations of drug or other chemical residues in the products the Agency regulates.[28] Catfish or catfish products containing violative residues will not be eligible to bear the mark of inspection because FSIS could not find them to be not adulterated under 21 U.S.C. 601(m)(2)(A). The products will be subject to condemnation. The residue standards will apply to imported as well as domestic catfish and catfish products.

With respect to microbiological contamination, FSIS plans to implement a pathogen reduction program for catfish that would be similar to that for other classes of raw product subject to the FMIA. After completing a study to determine the national baseline prevalence and levels of *Salmonella* on raw catfish, FSIS will conduct regular testing in processing establishments for the purpose of measuring industry performance against the baseline.

Handling and Disposal of Condemned and Inedible Materials

FSIS is proposing to require that a processor prevent catfish that have died otherwise than by slaughter from entering the official establishment (under 21 U.S.C. 601(m)(3), 601(m)(4), 608, 621, 644) (proposed 9 CFR 540.1(a)). The establishment will have to maintain physical separation between slaughtered catfish and those that have died otherwise than by slaughter (proposed 9 CFR 540.1(b)) to prevent commingling of edible and inedible product. All condemned or otherwise inedible catfish parts will have to be conveyed from the official premises for further disposition at a rendering plant or other facility that handles inedible products (proposed 9 CFR 540.3).

Marks, Marking, and Labeling of Products and Containers

Official Marks and Devices

FSIS is proposing (under 21 U.S.C. 601(n)(12), 601(s)–(v), 606, 611) to use certain official marks, devices, and certificates for the purpose of identifying inspected and passed catfish and catfish products and their status. FSIS is proposing to provide that an official inspection legend containing the number of the official establishment be shown on all labels of inspected and passed product (9 CFR 541.2(a)). The form of the official legend will be that for meat products (9 CFR 312.2(b)(1), reproduced in proposed 9 CFR 541.2), or another form that the Agency would prescribe. Comments and suggestions on what an alternative form might be are welcome.

FSIS is proposing to require that whole, gutted catfish carcasses that have been inspected and passed at an official establishment, and that are intended for sale as whole, gutted catfish, be marked or labeled with an official inspection legend containing the number of the establishment at the time of inspection (proposed 9 CFR 541.2(d)). The form of the inspection legend will be that in 9 CFR 312.2(a) and as illustrated in proposed 9 CFR 541.2(d) or as otherwise determined by the FSIS Administrator. The marking must ensure that the catfish will be identified as having been inspected and will not become misbranded while in commerce. Comments are welcome on whether marking is necessary, the form of the mark that would be satisfactory, and how the mark should be applied.

In proposed 9 CFR 541.3, FSIS is providing that the official mark used in sealing railroad cars, cargo containers, or other transport conveyances, as prescribed in proposed 9 CFR part 555, be in the form of the inscription and serial number shown in 9 CFR 312.5 or in another form approved by FSIS. The Agency-approved seal will be an official device under the FMIA. The seal will have to be attached to the means of conveyance by an Agency employee.

FSIS is also proposing (proposed 9 CFR 541.4) that the official export inspection mark for catfish (*see* proposed 9 CFR part 552) be that specified in 9 CFR 312.8(a), and that the export certificate for catfish and catfish products be the same as that prescribed in 9 CFR 312.8(b) for meat and meat food products.

FSIS also is proposing (proposed 9 CFR 541.5) that the official mark for shipments of articles and catfish that are officially detained be the designation "U.S. Detained." The device for applying the mark would be the same "U.S. Detained" tag that FSIS uses for detained meat articles.

Labeling Requirements; Prior Approval of Labeling

FSIS is proposing (proposed 9 CFR 541.7) to apply to catfish and catfish products many of the same labeling and label approval requirements as those for meat and meat food products in 9 CFR 317, Subpart A, except where those regulations apply specifically, or could only apply, to meat or meat food products (under 21 U.S.C. 607). The requirements that FSIS is proposing to apply to catfish address labels and labeling, the abbreviations of official marks, label approval, generically approved labeling, the use of approved labels, the labeling of products for foreign commerce, prohibited practices, the reuse of official inspection marks, filling of containers, relabeling of products, the storage and distribution of labels, and the requirements for packaging materials.

Under this proposal, the basic requirements for a label (most, in 9 CFR 317.2) will be similar in a number of respects to those that FDA requires for the label of food products under its jurisdiction. Unlike FDA, however, FSIS

[27] FSIS notes, in addition, that the FDA Compliance Policy Guide, Section 575.100, Pesticide Chemicals in Food—Enforcement Criteria, lists action levels for banned but persistent chlorinated pesticides. Most pesticides detected in catfish are listed in this guidance.

[28] The program is explained at: *http://www.fsis.usda.gov/Science/Chemistry/index.asp* (Accessed 10/29/2008.)

requires that the label bear the official inspection legend. Also, unlike FDA, FSIS forbids any final labeling from being used on any product unless the sketch of the final labeling has been approved by the Agency.

Another requirement that differs from the FDA requirements is the requirement for safe-handling labeling (9 CFR 317.2(l)) on products that are not ready-to-eat, that is, products that are raw or that undergo minimal treatment, such as heating, before being consumed. FSIS is proposing to require that safe-handling instructions appear on the label of every not-ready-to-eat catfish product that is destined for household consumers, hotels, restaurants, or similar institutions.

Generically Approved Labeling

Under this proposed rule, processors of catfish and catfish products will be able to use generically approved labeling if the labeling meets the conditions for such labeling in 9 CFR 317.5. Generically approved labeling usually involves minor modifications of labeling that has been approved by FSIS.

Prevention of False or Misleading Labeling Practices

Under the FSIS regulations, no product or any of its wrappers, packaging, or other containers may bear any false or misleading marking, label, or other labeling, and no statement, word, picture, design, or device that conveys any false impression or gives any false indication of origin or quality or that is otherwise false or misleading may appear in any marking or other labeling. No product may be enclosed wholly or partly in any wrapper, packaging, or other container that is made, formed, or filled in a manner that would make it misleading. (9 CFR 317.8.)

To prevent the misuse of labeling, FSIS enforces regulations controlling the conditions under which product may be relabeled at a location other than an official establishment (9 CFR 317.12). The Agency also regulates the conditions under which labels, wrappers, or containers bearing official marks may be transported from one official establishment to another official establishment (9 CFR 317.13). All these requirements, which apply to meat and meat food products, will apply to catfish and catfish products under this proposed rule.

A major challenge to the identification of processed fish products is the inability to visually identify the species of fish after processing. Because of the interest of the catfish products industry and consumers in ensuring that product labeling correctly represents the actual species of fish in the product, FSIS is considering the use of various technological means to verify catfish species. There is available chemical taxonomic information consisting of species-characteristic biochemical patterns that may be compared quantitatively to patterns obtained by an appropriate laboratory analysis of the fish in question. These patterns include data from isoelectric focusing (IEF), a type of electrophoresis, and restriction fragment length polymorphism (RFLP) studies. RFLP is a technique in which organisms may be differentiated by analysis of patterns derived from cleavage of their DNA. If two organisms differ in the distance between sites of cleavage of a particular restriction endonuclease, the length of the fragments produced will differ when the DNA is digested with a restriction enzyme. The similarity of the patterns generated can be used to differentiate species (and even strains) from one another.

In recent years, interest in another technique, known as "DNA bar coding," has been growing. It involves the DNA sequencing of mitochondrial gene cytochrome c oxidase I (COI) in seafood tissue samples to obtain unique, species-specific identifications, or "barcodes." The method is considered robust and sensitive to small phylogenetic differences. FDA has been considering it as a replacement for IEF as that agency's standard for species identification and FSIS is considering this approach as well. FSIS welcomes comment and suggestions on species verification methods that the Agency might use.

Net Weight and Retained Water

FSIS labeling regulations on net weight of meat products incorporate by reference Handbook 133 of the National Institute of Standards and Technology (NIST). These regulations include provisions for determining compliance with net weight requirements and prescribe the reasonable variations from the declared net weight on the labels of immediate containers of products (9 CFR 317.18–317.22). To ensure that there is compliance, the regulations prescribe requirements for scales to determine accurate weights and for the testing of scales (9 CFR 317.20–317.21).

FSIS has learned from FDA and industry sources that catfish presents a specific challenge regarding net weight because of the frequent and varying use of glazing. (A glaze is a thin coating of ice on a catfish or catfish product that is intended to preserve the freshness of the product.) To regulate net weight for raw catfish products, FSIS is proposing to apply to raw catfish the requirements for control of retained water from processing in raw meat and poultry products through 9 CFR part 441 (referenced in proposed 9 CFR 541.7(b)), slightly amended to include raw catfish and catfish products. Retained water—water remaining in raw product after it undergoes immersion chilling or a similar process—will not be permitted unless the official establishment is able to show, with data collected under a written protocol, that the retained water is an unavoidable consequence of the process used to meet applicable food-safety requirements (9 CFR 441.10(a)). The establishment will have to label its products to state, besides net weight, the maximum percentage of water retained in the product from such processing as chilling (*e.g.,* up to X% retained water, less than X% water retained from chilling). The protocol, to be maintained in the establishment's files, will have to explain how data will be collected and used to demonstrate that the amount of retained water in the product covered by the protocol is an unavoidable consequence of the process used to meet specified food-safety requirements. The establishment will have to notify FSIS as soon as it has a new or revised protocol (9 CFR 441.10(c)). Expected elements of the protocol are given in the regulations (9 CFR 441.10(d)).

FSIS also is proposing to apply to catfish and catfish products the requirements in part 442, subchapter E, governing quantity of contents labeling, the testing of scales, and the handling of product that is found to be out of compliance with net weight requirements (referenced in proposed 9 CFR 541.7(b)).

FSIS is proposing, in particular, that packages of fresh or fresh-frozen catfish carcasses or parts be labeled to reflect 100-percent net weight (gross weight less the weight of glaze) after thawing. The de-glazed net weight must average 100 percent of the stated net weight of the frozen product when sampled and weighed according to the method prescribed in NIST Handbook 133 Chapter 2, Section 2.6.[29] Interested persons may want to consult NIST Handbook 133 for maximum allowable variations.

Nutrition Labeling Requirements

Under the FMIA (21 U.S.C. 601(n)(1), 621), FSIS is proposing to apply the nutrition labeling requirements to

[29] U.S. Department of Commerce. NIST Handbook 133: Checking the Net Contents of Packaged Goods, Fourth Edition, January 2005. Washington, DC.

catfish and catfish products that are not raw, single-ingredient products (proposed 9 CFR 541.7(d)). The FSIS requirements for meat and meat food products (9 CFR 317.300–317.500) are similar to FDA's (21 CFR 101.9 *et seq.*) in that a nutrition facts panel has to appear on the label. The FSIS nutrition facts panel includes information on serving size, servings per container, amount of calories per serving, and calories from fat. Also the panel includes amount and percent daily value of total fat and saturated fat, cholesterol, sodium, total carbohydrates, dietary fiber, sugar, and protein, as well as information on percent daily intake of vitamins and minerals. Processors may provide additional nutritional labeling that is not false or misleading.

Food Ingredients Permitted

FSIS is proposing to apply to catfish products requirements in 9 CFR part 424 prohibiting a product from bearing or containing any food ingredient that would render it adulterated or misbranded under 21 U.S.C. 601(m)(2)(C) (proposed 9 CFR part 544). This prohibition is consistent with the current regulation of catfish products under the FD&C Act.

Few further-processed catfish products are produced domestically; however, FSIS is aware of the use in some fresh-frozen catfish of sodium tripolyphosphate and other sodium phosphates as humectants. Also, marinade solutions and breading ingredients are used in the preparation of some catfish products. FDA has approved these various ingredients for uses that include catfish products or has determined them to be Generally Recognized As Safe (GRAS) for these uses.

Under the FMIA, establishments will only be able to prepare a further-processed catfish product when the establishment is under inspection by an FSIS inspection program employee. Under 21 U.S.C. 601, 606, and 608, preparation of edible product will have to be carried out in compliance with the sanitary and other requirements in the regulations (proposed 9 CFR 548.1(a)).

Under this proposed rule, FSIS will make determinations on the safety and suitability of uses of food ingredients in catfish products in consultation and coordination with FDA, as it does for all food ingredients. FSIS will compile safe and suitable uses, including limits and conditions of use, of food ingredients in these products and make the information available in an instruction to its inspection force, FSIS Directive 7120.1. This directive is regularly updated and published on the Agency's Web site at: *http://www.fsis.usda.gov/Regulations_&_Policies/7000_Series-Processed_Products/index.asp* (accessed Feb. 15, 2011).

Ready-to-Eat and Canned Catfish Products: Control of Listeria Monocytogenes

Only a few ready-to-eat (RTE) catfish products, such as smoked catfish, are distributed in commerce. Under this proposed rule, these products will have to comply with appropriate performance standards, as must all RTE meat and poultry products if they are not to be considered adulterated under either the FMIA (21 U.S.C. 601(m)) or the PPIA (21 U.S.C. 453(g). Any pathogen on an RTE product adulterates the product because RTE products are likely not to be cooked before consumption. Currently, there are requirements for the control of *Listeria monocytogenes* in RTE products that are exposed to the processing environment after undergoing a process that is lethal to *L. monocytogenes.* FSIS is proposing to make post-lethality-exposed catfish products subject to these requirements (proposed 9 CFR 548.6, referencing 9 CFR part 430).

An RTE product is adulterated if it contains *L. monocytogenes,* or if it comes into direct contact with a food-contact surface that is contaminated with *L. monocytogenes* because it is likely to be consumed without further processing such as cooking. An RTE catfish product, as well as an RTE meat or poultry product, would be adulterated in either of these situations.

Canned Products

FSIS is not aware of any canned catfish products that are processed in the United States for human consumption, but canned catfish soups are imported into this country. Under this proposed rule, any domestic canned catfish products that an official establishment manufactures will be subject to requirements similar to those for canning and canned meat products (proposed 9 CFR 548.6, cross-referencing to 9 CFR part 318, subpart G (§§ 318.300–318.311)). Domestic canned fish products currently are subject to FDA requirements for low-acid canned foods (21 CFR 113) and imported canned products are subject to equivalency requirements for process filing (21 CFR 108.35). Under the proposed rule, imported canned catfish products will have to be produced under requirements that are equivalent to those that would apply to domestic products.

Accredited Laboratories

Under this proposed rule, FSIS will allow catfish processing establishments to use third-party accredited laboratories instead of an FSIS laboratory to analyze official regulatory samples for residues (proposed 9 CFR 548.9). This practice has been allowed so as to provide an option for establishments of receiving, at their own expense, sample results more quickly than would be the case with the limited laboratory capacity of FSIS. An establishment that holds sampled product until the receipt of test results might be especially interested in the availability of accredited laboratory services. Use of an accredited laboratory would always be at the establishment's discretion, and the establishment would have to pay for the service. The requirements for laboratory accreditation are in 9 CFR part 439, subchapter E.

FSIS is proposing to bring catfish within the coverage of the accredited laboratory program for species identification—which would be a new program service—as well as for residue detection. The Agency would amend the accredited laboratory regulations as necessary to include species identification methods in the program.

Standards of Identity and Composition

FSIS may promulgate standards of composition for catfish products composed of more than one ingredient. A standard of composition prescribes the minimum amount of catfish for a product to be called by a name that asserts that it was made with catfish. The Agency also may prescribe standards of identity for catfish products. A standard of identity prescribes the specific ingredients or components, and relative amounts, in a product that are necessary to meet consumer expectations for the product. However, there is at present only a relatively small number of commercially distributed catfish products, and FSIS is not aware of any product identity issues requiring a regulatory intervention.

Comments are welcome on whether the Agency should promulgate any standards of identity or composition in this rulemaking. This issue is separate from the basic product identity issue of what species of fish or catfish is actually in a product.

Exports

FSIS is proposing (proposed 9 CFR 552, cross-referencing provisions of 9 CFR 322) to adopt requirements for exported catfish and catfish products that are similar to those that apply to

meat articles under 9 CFR 322 (issued under 21 U.S.C. 615–616). Some of the meat regulations, *e.g.,* those addressing the transport of lard or tallow, are not applicable to catfish. The Agency is proposing to require that the outside container of any inspected and passed catfish product for export, with certain exceptions, bear an official export stamp, as depicted in the regulations (9 CFR 312.8), that includes the number of the export certificate. Under this proposal, the FSIS inspector in charge at the official catfish establishment will be authorized to issue official export certificates for shipments of inspected and passed product to any foreign country. FSIS will expect that the certificates will be issued at the time the products leave the official establishment. The certificates could be issued at a later time only after identification and reinspection of the products. Under the proposal, the certification will have to show the names of the exporter and consignee, the destination, the number and types of packages, the shipping marks, the kinds of products, and the weight of the products.

Transportation in Commerce

The FMIA gives FSIS the authority to regulate amenable products in commerce (21 U.S.C. 602). Since, under the FMIA and this proposal, catfish and catfish products are amenable to inspection, no person may sell, transport, offer for sale or transportation, or receive for transportation, in commerce, any catfish or catfish product that is capable of use as human food if it is adulterated, misbranded, or does not bear an official inspection legend at the time of such sale, transportation, offer, or receipt (21 U.S.C. 610(c)).

Under the authority in 21 U.S.C. 610 and 621, FSIS is proposing (proposed 9 CFR 555.1) to require that any catfish product capable of use as human food that is to be transported in commerce be properly handled and maintained to ensure that it is not adulterated and is properly marked and labeled. A transport conveyance intended to carry catfish products will be subject to FSIS inspection to determine its sanitary condition. A transport conveyance that is insanitary may cause contamination of catfish products and thus may not be used until the insanitary conditions are corrected. Under these proposed regulations, products on an insanitary vehicle must be removed and either handled in accordance with the regulations on mandatory dispositions or on the handling of condemned and inedible materials (proposed 9 CFR 539 or 540).

FSIS has tentatively determined that other regulations on the transportation of meat and meat food products (in 9 CFR part 325) are appropriate for the transportation of catfish products (proposed 9 CFR 555.3–555.8). These proposed regulations address: The transportation of unmarked, inspected product under FSIS affixed-seal; product that may have become adulterated in transit or storage; inedible products; the filing of original certificates for unmarked inspected products; and the unloading of any catfish product from an officially sealed conveyance or loading after the conveyance has left the official establishment. These regulations would serve to prevent the diversion of adulterated catfish and catfish products into food channels (proposed 9 CFR 555.9).

Imported Products

The FMIA prohibits the importation of carcasses, parts, meat, or meat food products of amenable species if these articles are adulterated or misbranded, and unless they comply with all the inspection, building, construction standards, and other provisions of the FMIA and regulations applicable to the products (21 U.S.C. 620). FSIS enforces this provision through random inspection for species verification and for residues, and through the random sampling and testing of the tissues of amenable species by the exporting country.

Each foreign country from which products of amenable species are offered for importation into the United States must obtain a certification from FSIS stating that the country maintains a program using reliable analytical methods to ensure compliance with U.S. standards for residues in those products. FSIS periodically reviews the certifications and revokes any certification if the Agency determines that the country involved is not maintaining a program that uses reliable analytical methods to ensure compliance with U.S. standards for residues in the products it exports. In considering any application for certification, FSIS takes into account inspection at individual establishments in order to ensure that the foreign country's inspection program is meeting the United States standards (21 U.S.C. 620(f)).

As mentioned previously, under the FMIA, as amended by the 2008 Farm Bill, the provisions governing imports apply to catfish and catfish products. FSIS is proposing to apply the requirements for the inspection of imported meat products (21 U.S.C. 620) to the inspection of imported catfish products (9 CFR part 557, referencing 9 CFR part 327). FSIS must find that a foreign inspection system ensures compliance of processing establishments and catfish products with requirements that are equivalent to the inspection and other requirements of the FMIA and the regulations that implement it that apply to official catfish establishments in the United States. When the Agency determines that a foreign country's inspection system for catfish and catfish products is equivalent to that operated by FSIS, the Agency will give notice of that fact (in the **Federal Register**) and will list the name of the country in the regulations (in proposed 9 CFR 557.2(b)).

Demonstrating Equivalence of Foreign Systems

FSIS is proposing that countries demonstrate the equivalence of their inspection system to the U.S. system, in the following respects:

(1) *Program administration.* Under proposed 9 CFR 557.2 (under 21 U.S.C. 620(a)), as must foreign programs for other species under the FMIA, the foreign program for catfish will have to be staffed in a way that will ensure uniform enforcement of the laws and regulations. Ultimate control and supervision must rest with the national government or employees of the system (9 CFR 327.2(a)(2)(i)(B)). Qualified, competent inspectors must be assigned (9 CFR 327.2(a)(2)(i)(C)). National inspection officials must have the authority to enforce requisite laws and regulations and certify or refuse to certify products intended for export (9 CFR 327.2(a)(2)(i)(D)). There must be adequate administrative and technical support and inspection, sanitation, quality, and species verification, residue standards, and other regulatory requirements that are equivalent to those of the United States (9 CFR 327.2(a)(2)(i)(E)–(G)).

(2) *Legal authority and requirements governing catfish and catfish products inspection.* To be considered eligible to export catfish products to the United States, foreign countries will have to enforce laws and regulations that address the conditions under which catfish are raised and transported to the processing establishment (9 CFR 327.2(a)(2)(ii)(I); 21 U.S.C. 606(b), 620(a); proposed 9 CFR 557.3). FSIS recognizes that in some countries, in addition to having fish ponds like those in the United States, catfish producers use floating cages on rivers and

"raceway ponds" that are filled and emptied by the continuous flow of water from nearby rivers. Under this proposed rule, the water quality, residue, and other standards applying in these catfish-raising situations will have to be equivalent to those applying to catfish raised in the United States.

Also, eligible foreign countries will have to establish standards for, and maintain continuous official supervision of, preparation and processing of product to ensure that adulterated or misbranded product is not prepared for export to the United States (9 CFR 327.2(a)(ii)(D)). A single standard of inspection and sanitation will need to be maintained throughout all certified establishments (9 CFR 327.2(a)(ii)(E)). The country's requirements will need to address sanitary handling of product and provide for official controls over condemned material; a HACCP system equivalent to that set forth in 9 CFR part 417; and other applicable controls under the FMIA or implementing regulations (9 CFR 327.2(a)(2)(ii)(F)–(I)).

(3) *Document evaluation and system review.* Foreign countries seeking eligibility to export catfish and catfish products into the United States (proposed 9 CFR 557.2(a)), under 21 U.S.C. 620) will also have to present to FSIS copies of laws, regulations, and other information pertaining to their systems of catfish products inspection, just as countries now do when they seek eligibility to export products of other species amenable to the FMIA. FSIS will make a determination of eligibility on the basis of a study of these documents and an on-site visit to the country of the system in operation by FSIS. FSIS will also conduct periodic reviews of foreign catfish products inspection systems to determine their continued eligibility (9 CFR 327.2(a)(3)).

(4) *Maintenance of standards.* In addition, countries seeking eligibility to export catfish and catfish products into the United States will have to provide for periodic supervisory visits to certified establishments to ensure that U.S. requirements are being met and for written reports on the supervisory visits (proposed 9 CFR 557.2, under 21 U.S.C. 620). The reports will have to be available to FSIS. The foreign program will have to conduct random sampling of catfish tissues and the testing of the tissues for residues identified by FSIS or by the foreign inspection authority as potential contaminants, in accordance with FSIS-approved sampling and analytical methods (9 CFR 327.2(a)(2)(iv)(C)). The residue testing will have to be conducted on samples from catfish intended for export to the United States.

Under this proposal, only certified foreign catfish establishments will be eligible to export their catfish products to the United States. However, if a foreign establishment is not in compliance with U.S. requirements for imported products, FSIS will terminate the eligibility of the establishment. FSIS will provide reasonable notice to the foreign government of the proposed termination of eligibility, unless delay in notification could result in the importation of adulterated or misbranded product. (9 CFR 327.2(a)(3).)

Marking and Labeling of Imported Products

The proposed regulations (proposed 9 CFR 557.14 and 557.15, under 21 U.S.C. 620) will apply to catfish and catfish products the requirements in 9 CFR 327.14 and 327.15 for the marking of catfish and catfish products and the labeling of immediate and outside containers of product that is imported. An imported catfish product will have to be marked "product of [country of origin]" under multiple authorities (7 CFR part 60, under 7 U.S.C. 1638a(a)(3)), proposed 9 CFR 541.7, and 9 CFR 317.9(b)(9)(xxv), 317.8(b)(40), under 21 U.S.C. 607, 620, 621).

2. Proposed Regulations Under Other FMIA Subchapters

Rules of Practice; Reference To Rules of Practice

FSIS is proposing to apply its rules of practice (9 CFR part 500, under 21 U.S.C. 601, 606, 608, 610, 621, and 671)) in enforcing the proposed catfish inspection regulations (proposed 9 CFR 561.1). Also, FSIS is proposing to provide establishments with an opportunity for presentation of views (proposed 9 CFR 561.2, referencing 9 CFR part 335) before reporting violations to the Department of Justice for criminal prosecution. The procedure to be followed in a case relating to catfish and catfish products inspection would be the same as that followed in a case relating to meat and meat food products inspection. FSIS uses its rules of practice for enforcement processes that may lead to such actions as withholding (refusing to allow the mark of inspection to be applied to product) or suspension (withdrawing inspection program employees from a facility) of inspection. The USDA uniform rules of practice (7 CFR 1.130–1.151) apply in actions commenced pursuant to section 401 of the FMIA (21 U.S.C. 671). Establishment management has a right to appeal enforcement decisions made by inspection program personnel (9 CFR 306.5).

Detention, Seizure, Condemnation

Detention

Under this proposal, FSIS will exercise its detention authority under the FMIA upon finding that catfish or catfish products in commerce are adulterated, misbranded, or otherwise in violation of the Act or regulatory requirements (21 U.S.C. 672, proposed 9 CFR 559.1, 9 CFR 329.1–329.6). The FMIA authorizes detentions if the Secretary has reason to believe that the article is adulterated or misbranded and is capable of use as human food, or that it has not been inspected in violation of the FMIA or of any other Federal or State law.

Detained product may not be further distributed or sold to consumers. Detained product is either appropriately disposed of by the product owner, agent, or custodian (*e.g.,* through voluntary destruction, by personal use, donation, or other FSIS-acceptable option), or FSIS initiates an action to seize the product.

Seizure and Condemnation

When detained product is not destroyed or properly disposed of, it is subject to seizure and condemnation by a U.S. District Court under Section 403 of the FMIA (21 U.S.C. 673). FSIS is proposing to apply the provisions for seizure and condemnation in the meat regulations (9 CFR 329.7–329.9) to catfish (proposed 9 CFR 559.2). The regulations also address criminal offenses addressed in Sections 22 and 405 of the FMIA (21 U.S.C. 622, 675), such as bribery of Program employees, receipt of gifts by Program employees, and assaults on, or other interference with, Program employees while engaged in, or on account of, the performance of their official duties under the Act.

Records Required To Be Kept

FSIS is proposing (under 21 U.S.C. 642(b)) to require persons involved in processing, buying and selling, or rendering catfish or catfish products to keep records on their activities respecting catfish sold, transported, offered for sale or transport, in commerce. Under this proposal, the classes of records they will be required to keep include sales records or invoices, shippers' certificates and required permits, records of seal numbers used in the sealed transport of inedible products, guaranties provided by suppliers of packaging materials, canning records as required by 9 CFR

part 318, subpart G, nutrition labeling records, and records of all labeling, along with the formulation and processing procedures (proposed 9 CFR 550.1).

Under this proposal, persons subject to these requirements will have to keep the records and maintain them at the place where the business generating the records is conducted. In the case where one person or firm conducts catfish operations at several establishments or locations, the records could be kept at a headquarters office (proposed 9 CFR 550.2). The Agency is proposing to require the records be retained for a period of 2 years after December 31 of the year in which the transaction to which the record relates occurred (proposed 9 CFR 550.3).

Canning records will have to be maintained in accordance with current requirements for records of the canning of meat food products. Processing and production records would have to be retained for at least 1 year at the canning establishment and for an additional 2 years at the establishment or other location from which the records could be made available to authorized FSIS employees (proposed 9 CFR 550.3, 9 CFR 318.307(e)). Records of scheduled processes will have to be maintained on file at the processing establishment and available to Program employees (proposed 9 CFR 550.3, 9 CFR 318.302).

Authorized representatives of the Secretary will have to be afforded access to the businesses that would be subject to the recordkeeping requirements (under 21 U.S.C. 642(a)). They will have to be afforded any necessary facilities, except reproduction equipment, for the examination and copying of records and for the examination and sampling of inventory (proposed 9 CFR 550.4).

Persons and firms covered by the recordkeeping requirements will have to register with the FSIS Administrator using a form obtained from the Agency (proposed 9 CFR 550.5). FSIS is asking for comment on a proposed time frame for completion of this registration under "Proposed Phasing of Implementation". This registration requirement will apply to farms and transporters that supply catfish to official processing establishments and will enable FSIS to conduct sampling and other activities as necessary to account for the conditions under which catfish are raised and transported to the processing establishment (under 21 U.S.C. 606(b)). The registration would have to be updated whenever a change is made in the name, address, or trade name under which the registrant operates. These registration requirements would not apply, however, to any person conducting business only at an official establishment (proposed 9 CFR 550.5(c)). This registration requirement is similar to that with which food establishments must already comply under FDA regulations.

FSIS will require each official establishment to provide accurate information to FSIS employees so that they can report on the amount of products prepared or handled in the establishment, and on sanitation, microbiological testing, and other aspects of the establishment's operations. FSIS is proposing that the operator of each establishment report quarterly on the number of pounds of catfish processed. The report would have to be filed within 15 days after the end of each quarter. The establishment operator also will have to file other reports as FSIS might require from time to time under the FMIA (proposed 9 CFR 550.6.) FSIS notes that production data from individual establishments is protected from disclosure under the Freedom of Information Act. The Agency releases only aggregate data for reporting purposes.

Finally, FSIS is proposing to require that a consignee who refuses delivery of a product bearing the mark of inspection because the product is adulterated or misbranded notify the Inspector-in-Charge of the kind, quantity, source, and present location of the product. The consignee also will have to report on the respects in which the product is adulterated or misbranded. Movement of the product, except back to the official establishment from where it came, is prohibited (proposed 9 CFR 550.7), and if the product moves back to the originating establishment, the use of seals, documentation, or other conditions applies.

Summary of Proposed Regulations

In general, FSIS has attempted to apply to catfish and catfish inspection, with some modifications, the regulations governing the inspection of other species under the FMIA. In many cases the proposed regulations merely cross-reference the existing regulations for meat and meat food products. The accompanying table shows how the catfish regulations in proposed Subchapter F correspond to the meat inspection regulations in Subchapter A (9 CFR parts 300–335) or Subchapter E (9 CFR parts 416, 417, 424, 439, 441, 442).

TABLE 5—RELATIONSHIP BETWEEN CATFISH AND CATFISH PRODUCT INSPECTION REGULATIONS IN SUBCHAPTER F AND MEAT INSPECTION REGULATIONS IN SUBCHAPTER A OR SUBCHAPTER E

Subject	Subchapter F designation	Corresponding Subchapter A or E part or section reference
GENERAL REQUIREMENTS; DEFINITIONS	PART 530	Part 300.
General	§ 530.1	§ 300.1, § 300.2.
FSIS organization for inspection of catfish and catfish products	§ 530.2	§ 300.3.
Access to establishments	§ 530.3	§ 300.6.
DEFINITIONS	PART 531	Part 301.
Definitions	§ 531.1	§ 303.1.
REQUIREMENTS FOR INSPECTION	PART 532	Part 302, Part 304, Part 305.
Establishments requiring inspection; other inspection	§ 532.1	§ 302.1.
Application for inspection, *etc.*	§ 532.2	§ 304.1, § 304.2, § 304.3.
Exemption of retail operations	§ 532.3	§ 303.1.
Inspection at official establishments; relation to other authorities	§ 532.4	§ 302.2.
Exemption from definition of catfish product of certain human food products containing catfish.	§ 532.5.	
SEPARATION OF ESTABLISHMENT; FACILITIES FOR INSPECTION	PART 533	Part 305, Part 306, Part 307.
Separation of establishments	§ 533.1	§ 305.2.
Facilities for Program employees	§ 533.3	§ 307.1.
Other facilities and conditions to be provided	§ 533.4	§ 307.2.
Schedule of operations	§ 533.5	§ 307.4.
Overtime and holiday inspection service	§ 533.6	§ 307.5.
Basis of billing for overtime and holiday services	§ 533.7	§ 307.6.

TABLE 5—RELATIONSHIP BETWEEN CATFISH AND CATFISH PRODUCT INSPECTION REGULATIONS IN SUBCHAPTER F AND MEAT INSPECTION REGULATIONS IN SUBCHAPTER A OR SUBCHAPTER E—Continued

Subject	Subchapter F designation	Corresponding Subchapter A or E part or section reference
PRE-HARVEST STANDARDS AND TRANSPORTATION TO PROCESSING ESTABLISHMENT.	PART 534.	
General	§ 534.1.	
Water quality for food fish	§ 534.2.	
Standards for use of drugs and other chemicals in feed and in catfish growing ponds.	§ 534.3.	
Transportation to processing plant	§ 534.4.	
SANITATION REQUIREMENTS AND HAZARD ANALYSIS AND CRITICAL CONTROL POINTS SYSTEMS.	PART 537	Part 416, Part 417.
Basic requirements	§ 537.1	Part 416, Part 417.
Hazard Analysis and HACCP plan	§ 537.2	Part 417, § 417.2.
MANDATORY DISPOSITIONS; PERFORMANCE STANDARDS	PART 539	Part 311.
HANDLING AND DISPOSAL OF CONDEMNED AND OTHER INEDIBLE MATERIALS.	PART 540	Part 314.
Dead catfish	§ 540.1	§ 314.8.
Specimens for educational, research, and other nonfood purposes; permits	§ 540.2	§ 314.9.
Handling and disposal of condemned or other inedible materials	§ 540.3	Part 314.
MARKS, MARKING AND LABELING OF PRODUCTS AND CONTAINERS	PART 541	Part 312, Part 316.
General	§ 541.1.	
Official marks and devices to identify inspected and passed catfish and catfish products.	§ 542.2	§ 312.2.
Official seals for transportation of products	§ 541.3	§ 312.5.
Official export inspection marks, devices, and certificates	§ 541.4	§ 312.8.
Official detention marks and devices	§ 541.5	§ 329.2.
Labels required; supervision of a Program employee	§ 541.7	Part 317, Part 441, Part 442.
FOOD INGREDIENTS PERMITTED	PART 544	Part 424.
Use of food ingredients	§ 544.1	Part 424.
PREPARATION OF PRODUCTS	PART 548	Part 318.
Preparation of catfish products	§ 548.1.	
Requirements concerning ingredients and other articles used in the preparation of catfish products.	§ 548.2	§ 318.6.
Samples of products, water, dyes, chemicals to be taken for examination	§ 548.3	§ 318.9.
Mixtures containing product but not amenable to the Act	§ 548.4	§ 318.13.
Ready-to-eat catfish products	§ 548.5	Part 430.
Canning and canned products	§ 548.6	Part 318, Subpart G (§§ 318.300–318.311).
Use of animal drugs	§ 548.7.	
Polluted water contamination at establishment	§ 548.8	§ 318.4.
Accreditation of non-Federal chemistry laboratories	§ 548.9	Part 439.
STANDARDS OF IDENTITY AND COMPOSITION	PART 549 (RESERVED).	Part 319.
RECORDS REQUIRED TO BE KEPT	PART 550	Part 320.
Records required to be kept	§ 550.1	§ 320.1.
Place of maintenance of records	§ 550.2	§ 320.2.
Record retention period	§ 550.3	§ 320.3.
Access to and inspection of records, facilities, and inventory; copying and sampling.	§ 550.4	§ 320.4.
Registration	§ 550.5	§ 320.5.
Information and reports required from official establishment operators	§ 550.6	§ 320.6.
Reports by consignees of allegedly adulterated or misbranded products; sale or transportation as violations.	§ 550.7	§ 320.7.
EXPORTS	PART 552	Part 320.
Affixing stamps and marking products for export; issuance of export certificates; clearance of vessels and transportation.	§ 552.1	§ 322.1, § 322.2, § 322.4.
TRANSPORTATION OF CATFISH PRODUCTS IN COMMERCE	PART 555	Part 325.
Transportation of catfish products	§ 555.1	§ 325.1.
Catfish product transported within the United States as part of export movement	§ 555.2	§ 325.3.
Unmarked, inspected catfish product transported under official seal between official establishments for further processing.	§ 555.3	§ 325.5.
Handling of catfish products that may have become adulterated	§ 555.4	§ 325.10.
Transportation of inedible catfish product in commerce	§ 555.5	§ 325.11.
Certificates	§ 555.6	§ 325.14.
Official seals; forms, use, and breaking	§ 555.7	§ 325.16.
Loading or unloading of catfish products in sealed transport conveyances	§ 555.8	§ 325.18.
Diverting of shipments	§ 555.9	§ 325.18.
Provisions inapplicable to specimens for laboratory examination or to naturally inedible articles.	§ 555.10	§ 325.19.
Transportation and other transactions concerning dead, dying, or diseased catfish, and catfish or parts of catfish that died otherwise than by slaughter.	§ 555.11	§ 325.20.

TABLE 5—RELATIONSHIP BETWEEN CATFISH AND CATFISH PRODUCT INSPECTION REGULATIONS IN SUBCHAPTER F AND MEAT INSPECTION REGULATIONS IN SUBCHAPTER A OR SUBCHAPTER E—Continued

Subject	Subchapter F designation	Corresponding Subchapter A or E part or section reference
Means of conveyance in which dead, dying, or diseased catfish or parts of catfish must be transported.	§ 555.12	§ 325.21.
IMPORTATION	PART 557	Part 327.
Definitions; application of provisions	§ 557.1	§ 327.1.
Eligibility of foreign countries for importation of catfish products into the United States.	§ 557.2	§ 327.2.
No catfish product to be imported without compliance with applicable regulations	§ 557.3	§ 327.3.
Imported catfish products; foreign certificates required	§ 557.4	§ 327.4.
Importer to make application for inspection of catfish products for entry	§ 557.5	§ 327.5.
Catfish products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment.	§ 557.6	§ 327.6.
Import catfish products; equipment and means of conveyance used in handling to be maintained in sanitary condition.	§ 557.8	§ 327.8.
[Reserved]	§ 557.9	§ 327.9.
Samples; inspection of consignments; refusal of entry; marking	§ 557.10	§ 327.10.
Receipts to importers for import catfish product samples	§ 557.11	§ 327.11.
Foreign canned or packaged catfish products bearing trade labels; sampling and inspection.	§ 557.12	§ 327.12.
Foreign catfish products offered for importation; reporting of findings to Customs	§ 557.13	§ 327.13.
Marking of catfish products and labeling of immediate containers thereof for importation.	§ 557.14	§ 327.14.
Outside containers of foreign catfish products; marking and labeling; application of official inspection legend.	§ 557.15	§ 327.15.
Small importations for importer's own consumption; requirements	§ 557.16	§ 327.16.
Returned U.S. inspected and marked catfish products	§ 557.17	§ 327.17.
Catfish products offered for entry and entered	§ 557.18	§ 327.18.
Specimens for laboratory examination and similar purposes	§ 557.19	§ 327.19.
[Reserved]	§ 557.20 [Reserved].	
[Reserved]	§ 557.21 [Reserved].	
[Reserved]	§ 557.22 [Reserved].	
[Reserved]	§ 557.23 [Reserved].	
Appeals; how made	§ 557.24	§ 327.24.
Disposition procedures for catfish product condemned or ordered destroyed under import inspection.	§ 557.25	§ 327.25.
Official import inspection marks and devices	§ 557.26	§ 327.26.
DETENTION, SEIZURE, CONDEMNATION	PART 559	Part 329.
Catfish and other articles subject to administrative detention	§ 559.1	§§ 329.1, 329.2, 329.3, 329.4, 329.5.
Articles or catfish subject to judicial seizure and condemnation	§ 559.2	§§ 329.6, 329.7, 329.8.
Criminal offenses	§ 559.3	§ 329.9.
STATE–FEDERAL, FEDERAL–STATE COOPERATIVE AGREEMENTS; STATE DESIGNATIONS.	PART 560	Part 321, Part 331.
Cooperation with States and Territories	§ 560.1	§ 321.1.
Cooperation of States in Federal programs	§ 560.2	§ 321.2.
Designation of States under the FMIA	§ 560.3	Part 331, § 331.3, § 331.5, § 331.6.
RULES OF PRACTICE	PART 561	Part 335.
Rules of practice governing inspection actions	§ 561.1	Part 500.
Rules of practice governing proceedings under the FMIA for criminal violations	§ 561.2	Part 335.

IX. FSIS Implementation

Farm-raised catfish establishments have been operating under the FDA Seafood HACCP Regulations (21 CFR part 123). The Seafood HACCP Regulations describe procedures for the safe and sanitary processing of fish and fish products. The FDA regulations require all processors of fish and fishery products to develop HACCP programs when necessary and to meet the requirements of 21 CFR part 110 as they relate to the eight key sanitation areas defined in the regulations (21 CFR 123.11). FDA has recommended that each processor develop and implement written Sanitation SOPs for each facility where fish and fishery products are produced. The provisions on sanitation control procedures are in 21 CFR 123.11.

FSIS anticipates that moving the catfish industry from FDA's regulatory regime to the FSIS inspection system will have some impact on the industry. If this proposed rule is adopted, all catfish processing establishments will be required to follow the regulations in 9 CFR part 416 for sanitation. The establishments will have to meet the FSIS sanitation performance standards. To meet the standards, establishments may develop and employ sanitation or processing procedures customized to the nature and volume of their production.

A catfish processing establishment will have the flexibility to innovate in facility design, construction, and operations. The establishment, however, will have to continue to operate under sanitary conditions in a manner that

ensures that the product is not adulterated and that does not interfere with FSIS inspection and its enforcement of such standards.

In its catfish products inspection, FSIS intends to focus on verification of Sanitation SOPs and HACCP plans. Under the proposed Sanitation SOPs, FSIS inspection program personnel will verify that plant management is conducting its operations in a sanitary environment and manner.

Catfish processing establishments will be able to include elements of their Sanitation SOPs in their HACCP plans. Sanitation activities that directly affect the control of a processing hazard will be evaluated in the hazard analysis. Where appropriate, the activities could be identified as CCPs in the HACCP plan. Sanitation activities not identified as a CCP in the HACCP plan could remain in the Sanitation SOPs or in another prerequisite program for which the hazard analysis accounts. Any sanitation activity incorporated into a HACCP plan as a CCP could be removed from the facility's Sanitation SOPs or other prerequisite program. FSIS will verify the activity's effectiveness, whether as an element of the Sanitation SOPs or as a CCP in a HACCP plan.

FSIS will also verify (under 9 CFR 417.8) that HACCP plans comply with the requirements of part 417 and have been validated by the establishment in accordance with 9 CFR 417.4. Potential verification activities by FSIS include, but would not be limited to, sampling activities (targeted and non-targeted, marketplace, rapid screening tests for chemical residues); hands-on verification (organoleptic inspection, use of temperature or other monitoring devices); and review of establishment monitoring records.

In addition to verifying Sanitation SOPs and HACCP systems, FSIS intends to verify establishment compliance with the other regulatory requirements that become part of the final rule. As previously noted, the frequency of FSIS verification activities will vary, depending on such factors as the establishment's past performance, the risk inherent in processes or products, quantity of product, and likely uses of the product. FSIS also will verify the conditions under which catfish are raised and transported to the establishment, both as a check on the effectiveness of the establishment's HACCP plan and to provide additional assurance that only safe, wholesome raw materials are processed for human food.

Proposed Phasing of Implementation

To provide for an orderly transition from FDA's regulatory program to FSIS's continuous inspection program, FSIS is proposing a four-phase approach to implementation of the final rule that establishes the new catfish inspection program. The Agency requests comment on the implementation time frame. During the transition period to full implementation, FSIS plans to provide establishments and foreign countries that will be subject to the final rule with the opportunity to train their personnel and to bring their operations into compliance with the new regulations. FSIS is aware that Ictaluridae, Pangasius and species of other families are imported into the United States. Although a determination as to the definition of "catfish" has not yet been made, any foreign producers or processors handling catfish, as defined by a final rule, will be subject to FSIS processes and procedures.

FSIS is proposing a phased implementation of the final catfish inspection rule to provide a reasonable timeframe for countries to develop and implement equivalent catfish inspection programs. FSIS intends to work with exporting countries to ensure that the catfish products exported to the United States during the phase-in period achieve an equivalent level of sanitary protection as catfish products produced in domestic establishments.

The following is FSIS's proposed timeline for implementing the final rule requiring continuous inspection of catfish and catfish products. The Agency is proposing to allow exporting establishments to operate under FSIS's transitional requirements until the final rule is fully implemented. It is also proposing to permit exporting establishments in foreign countries to continue to export their products during the phased implementation if they comply with the transitional requirements.

The proposed phase-in will not, however, preclude establishments that are prepared to bring their operations into full compliance with the final rule before the final implementation date from operating under the new inspection program. Such establishments will need to work with their District Office to obtain the necessary inspection services.

The proposed phasing of implementation will begin on the effective date of the final rule, 90 days after publication in the **Federal Register**. FSIS is requesting comment on what the duration of each of the following phases should be, and on the compliance dates that affected establishments will be required to meet for each of the following phases until the final rule is fully implemented:

Phase One

- FSIS will deploy inspection personnel to domestic catfish processing establishments.
- Domestic establishments will be required to continue to comply with the requirements of 21 CFR part 123 until FSIS sanitation procedures (under proposed 9 CFR part 537) are in place. The regulations in 21 CFR part 123 require processors to monitor conditions and practices to ensure conformity with FDA's current Good Manufacturing Practices in 21 CFR part 110.
- Foreign countries that are exporting catfish to the United States at the time the final rule is published and that intend to continue to do so will need to submit documentation to demonstrate that they have a law or other appropriate legal measure in place that provides authority to regulate the growing and processing of catfish for human food. At this phase of implementation, FSIS will accept written documentation that countries have provided to importers pursuant to FDA's regulations in 21 CFR 123.12(a)(2)(ii)(B) as evidence of a country's authority to regulate the production of catfish products and to assure compliance with the requirements of 21 CFR part 123. FSIS will post a list on its Web site of countries that have met this initial, minimum requirement. FSIS will recognize current arrangements under 21 CFR part 123, including certification of foreign facilities by competent third parties, until complete implementation of the final rule or FSIS determines whether foreign inspection systems are equivalent to that of the United States.
- FSIS will begin a series of on-site audits of foreign countries that export catfish products to the United States to verify that establishments that produce catfish products for export to the United States are complying with the required transitional measures.
- Domestic producers will be required to begin to submit the labels of catfish products to FSIS for prior approval. Labels will have to meet the requirements in proposed 9 CFR 541.7.
- Labels of catfish products produced in foreign establishments will be required, at a minimum, to bear the basic labeling features prescribed in proposed 9 CFR 541.7. These features include the product name, handling statement, net weight statement, ingredients statement, address line, and nutrition facts panel. The labels will

also need to include safe handling instructions as well as the inspection legend and establishment number by the final implementation date.

Phase Two

• Persons and firms covered by the recordkeeping requirements in proposed 9 CFR 550.5 will have to register with FSIS.

Phase Three

• Domestic and foreign establishments will be required to comply with the sanitation requirements in 9 CFR part 416 (proposed 9 CFR part 537).

Phase Four

• The transitional measures will expire. FSIS will require that all establishments that produce catfish and catfish products comply with all provisions of the final catfish inspection regulations.

• Foreign countries that export catfish products to the United States will be required to have implemented a catfish inspection program that is equivalent to the U.S. inspection program. To be eligible for the importation of their products into the United States, the countries will have to be listed in proposed 9 CFR part 557.

X. Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866, "Regulatory Planning and Review." FSIS would amend Title 9, Code of Federal Regulations, Chapter III by adding regulations on the mandatory inspection of catfish and catfish products. The regulations, if adopted, will continue to ensure that catfish and catfish products produced and sold in commerce for use as human food are safe, wholesome, and not adulterated. The regulations will also ensure that they are properly marked, labeled, and packaged. FSIS will verify that catfish are raised and transported to processing establishments under conditions that ensure that catfish products used for human food are not adulterated.

The proposed regulations require establishments that process and prepare catfish to apply for FSIS inspection and meet the conditions for receiving inspection. Establishments will be required to meet sanitation performance standards, have written Sanitation SOPs, and operate validated HACCP systems. FSIS will verify the Sanitation SOPs and HACCP systems and will conduct other verification activities to ensure that the establishments are in compliance with the FMIA and regulatory requirements under the Act that apply to catfish and catfish products. The establishments will be subject to sampling as part of microbiological, chemical, and other testing by FSIS of catfish and catfish products. The labeling of inspected products will bear a distinctive mark or legend to reflect that the product has been inspected and passed by FSIS.

The proposed regulations also require the listing in the regulations of foreign countries after their food safety systems for catfish have been found by FSIS to be equivalent to that of the United States. The equivalency determination and the listing in the regulations are necessary in order for the catfish products of these countries to be imported into the United States. The proposed regulations also require the inspection (actually, re-inspection) of catfish products offered for entry into this country.

FSIS is proposing these regulations to carry out the requirements of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, Sec. 11016), known as the 2008 Farm Bill, that amended the FMIA to make catfish, as defined by the Secretary of Agriculture, an amenable species under the FMIA and subject to many of the requirements of the FMIA.

Regulatory Approaches Considered

Regardless of the definition of catfish that is adopted an alternative to current FDA practices would be proposed.

FSIS has considered two basic regulatory approaches to catfish inspection—a more command-and-control, traditional approach or an approach that focuses on the verification of an establishment's food safety system. Strictly in terms of implementing the FMIA with respect to catfish and catfish products, FSIS could take a prescriptive, command-and-control approach to inspection, as it has in the past with meat and poultry and currently does with egg products. Command-and-control requirements specify, often in great detail, how an establishment is to achieve a particular food-safety objective. They may involve the use of specific techniques or processing parameters; the review and approval of equipment, establishment drawings and specifications; and the review and approval of particular process control programs. FSIS, however, rejected this command-and-control approach in 1996 with the adoption of the Pathogen Reduction/Hazard Analysis and Critical Control Points Systems final rule (61 FR 38806; July 25, 1996).

Thus, the Agency is proposing to adopt, as it has for meat and poultry, an approach to inspection that focuses on the verification of an establishment's food safety system, which consists of an establishment's HACCP plan, Sanitation SOPs, and prerequisite programs. As mentioned elsewhere in this document, the FSIS HACCP requirements for meat and poultry establishments are in some ways similar to the FDA HACCP requirements for seafood processors (in 21 CFR 123), yet supported by much more intensive inspection by FSIS.

USDA is requesting public comments on the approach.

Costs and Benefits

Costs

Siluriformes

If catfish are defined as members of the order Siluriformes, the mean total first-year and one-time cost to the catfish and catfish food products domestic supply chain industries of the proposed measures is projected to be about $306,000. The first year cost is projected to be about $543,000. For the catfish and catfish food product domestic industry, the mean annual cost is projected at $187,000. The projected mean estimated annualized cost is $240,000 (*See* Table 18 of the RIA Appendix). The projected lower bound (10th percentile) is $237,000, and the projected upper bound (90th percentile) is $243,000.[30] The present value of the mean cost, using a 7-percent discount rate over 10 years is projected at $1.7 million. The projected additional mean total annualized cost to the catfish and catfish food products supply chain industries of the provisions of the proposal analyzed is about $0.0008 per pound ($240,000/285 million pounds, in 2007) of aggregate processed catfish and catfish food products.

For the domestic industry and the Government, the additional mean total first-year one-time cost to the catfish and catfish products supply chain industries and additional cost to the government of the proposed measures is projected at $1.3 million. The additional mean total first-year cost is projected at $15.4 million. Additional mean annual cost is projected at $14.0 million. The projected mean annualized cost is $14.2 million (*See* Table 18 of the RIA Appendix). The projected lower bound (10th percentile) is $14.1 million. The projected upper bound (90th percentile) is $14.3 million. The present value of

[30] A stochastic simulation model was used to determine the distribution of values. Uncertainty analyses are conducted to estimate cost distributions for each of the alternatives for the proposed rule. The stochastic model uses @RISK (Version 4.5, Palisades Corp.) to examine the effects of uncertainty.

the mean total cost, using a 7-percent discount rate over 10 years is projected at $100.0 million.

Ictaluridae

For catfish defined as Ictaluridae, the mean total first-year and one-time cost to the catfish and catfish food products domestic supply chain industries of the proposed measures is projected to be about $286,000. The first year cost is projected at about $516,000. For the catfish and catfish food product domestic industry, the mean annual cost is projected at $181,000. The projected mean estimated annualized cost is $230,000. The projected lower bound (10th percentile) is $227,000, and the projected upper bound (90th percentile) is $233,000.[31] The present value of the mean cost, using a 7 percent discount rate over 10 years is projected at $1.6 million.

The projected mean total annualized cost to the catfish and catfish food products supply chain industries of the provisions of the proposal analyzed is about $0.0011 per pound ($230,000/204 million pounds, in 2007) of aggregate processed catfish and catfish food products.

The cost of the provisions to the catfish and catfish food products industry compares to a 2006–2008 average price of $0.83 per pound for frozen whole catfish,[32] $1.14 per pound for frozen catfish fillets,[33] and $0.402 per pound for frozen catfish nuggets.[34] These costs compare to an estimated cost of about 1 cent per pound of meat and poultry associated with the Pathogen Reduction/Hazard Analysis and Critical Control Points (PR/HACCP) rule of 1996.[35] For the domestic industry and the Government, the mean total first-year one-time cost to the catfish and catfish products supply chain industries and cost to the Government of the proposed measures is projected at $1.2 million. The mean total first-year cost is projected at $11.8 million. The mean annual cost is projected at $10.5 million. The projected mean annualized cost is $10.6 million. The projected lower bound (10th percentile) is $10.3 million. The projected upper bound (90th percentile) is $10.9 million. The present value of the mean total cost, using a 7-percent discount rate over 10 years is projected at $74.8 million.

Break-Even Analysis

FSIS anticipates that all catfish and catfish products establishments will be in compliance with the requirements for Sanitation SOPs and HACCP according to the yet-to-be-determined implementation schedule. From discussions with industry experts, FSIS believes that a significant share of the catfish and catfish products industry is compliant with many of the individual proposed measures; although, because of differences between FDA and FSIS regulations, FSIS believes the industry will need time to make adjustments. Even though compliance rates for some HACCP related activities may be relatively high, the performance of HACCP systems depends on how well all the elements—hazard analysis, monitoring of CCPs and critical limits, recordkeeping, verification—are being performed. FSIS conducted an illustrative assessment of the potential risk to human health of catfish consumption, using the example of *Salmonella* contamination. Thus, we use *Salmonella* to illustrate potential benefits in this break-even analysis.

Epidemiological evidence suggests that salmonellosis leads to both acute and chronic illnesses. The acute illness that accompanies salmonellosis generally causes gastrointestinal symptoms that can lead to lost productivity and medical expenses. In rare instances, salmonellosis may result in acute or chronic arthritis. Arthritis is characterized by limited mobility, pain and suffering, productivity losses, and medical expenditures. Finally, salmonellosis can result in death. The risk of death appears to be higher in the elderly, children, and people with compromised immune systems. FSIS has estimated the costs for each of these severity levels.

Applying the same methodology as FDA in projecting a monetary value for each QALD, using the value of a statistical life (VSL); and the value of a statistical life year (VSLY), FSIS projects a mean annualized cost of about $18,000 per new average case of salmonellosis (FDA, 2009). Thus, under the proposed rule for catfish defined as Siluriformes, using the projected annualized cost of $14.2 million and the estimated mean annualized cost of an average case of *Salmonella* spp. of approximately $18,000 (at a 7 percent discount rate), if roughly 790 illnesses were averted, the benefits of the proposed rule would equal the additional costs.

Under the proposed rule applied to the catfish family Ictaluridae, using the projected annualized cost of $10.6 million and the estimated mean annualized cost of an average case of *Salmonella* spp. of $18,000, roughly 590 illnesses would have to be averted for the benefits of the proposed rule to equal the additional costs.

Effects on Small Entities

The Administrator has determined that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–602), this proposed rule will not have a significant economic impact on a substantial number of small entities in the United States. Catfish farms (about 1,300) and slaughtering and primary processing establishments (about 23), and as many as 116 further processing establishments, live-fish haulers, importers, and feed mills would be affected by the rule. Most of these plants meet the Small Business Administration (SBA) size criteria for small businesses in the food manufacturing classification or other categories, in that they have 500 or fewer employees. The action would affect a substantial number of these small entities because the requirements would apply to all processing establishments in the catfish processing industry that ship their products in interstate commerce and would to some extent pertain to fish-farming practices. However, this action may have a significant effect on a substantial number of businesses that import catfish because imported catfish will be required to be inspected under a foreign system that is equivalent to that of the United States and from establishments that the foreign inspection authority has certified as complying with United States requirements.

The proposed rule would directly and indirectly affect multiple sectors of the U.S. economy, including numerous small firms, jobs (*i.e.,* employment) and on the government (*e.g.,* local, State, and Federal). Sectors likely to be affected (directly and indirectly), in addition to the types of entities already mentioned, include transportation firms, importing and exporting firms, food service and restaurant firms, domestic and international trade, consumers, and government agencies. The economic analysis of the effects of this proposed rule accompanying this document is available at: *http://www.fsis.usda.gov/Regulations_&_Policies/Proposed_Rules/index.asp*.

[31] A stochastic simulation model was used to determine the distribution of values. Uncertainty analyses are conducted to estimate cost distributions for each of the alternatives for the proposed rule. The stochastic model uses @RISK (Version 4.5, Palisades Corp.) to examine the effects of uncertainty.

[32] Wholesale price. Source: Catfish Market Statistics, NASS, USDA.

[33] Wholesale price. Source: Catfish Monthly Summary, NASS, USDA.

[34] Wholesale price. Source: Catfish Market Statistics Annual, NASS, USDA.

[35] M. Ollinger, V. Mueller. 2003. Managing for Safer Food: The Economics of Sanitation and Process Controls in Meat and Poultry Establishments. Agricultural Economics Report 817. Economics Research Service, U.S. Department of Agriculture. Washington, DC.

XI. Paperwork Reduction Act

Title: Mandatory Inspection of Catfish and Catfish Products.

Type of Collection: Sanitation SOPs; HACCP Plans; Applications for Grants of Inspection; Applications for labeling approval; various records required to be kept.

Abstract: FSIS has reviewed the paperwork and recordkeeping requirements in this proposed rule in accordance with the Paperwork Reduction Act. Under this proposed rule, FSIS is requiring an information collection associated with the inspection of catfish.

FSIS would require an official catfish processing establishment to maintain HACCP plans and records, Sanitation SOPs, and other prerequisite program records, and conduct and keep records for microbiological testing. Currently, catfish establishments must have a HACCP plan and records and this information collection burden is reported by FDA. Once this information collection is approved by OMB, the FDA seafood information collection burden will be reduced appropriately. Catfish establishments will have to develop, submit, and maintain records of labels for their catfish products. In addition, they will have to develop nutrition labels for their catfish products. There is also a requirement for a consignee of any inspected catfish product who refuses to accept delivery of the product because it is adulterated or misbranded to notify the FSIS Inspector in Charge of the establishment that prepared the product.

In addition, transporters of live catfish would have to register with the Agency.

This estimate does not include collections of information that are a usual and customary part of business' normal activities.

Estimate of Burden: An average of 0.25 hours per response.

Respondents: Official establishments that process catfish, catfish importers, and transporters of live catfish.

Estimated Number of Respondents: For catfish defined as Siluriformes, 230: There are 23 catfish slaughter and primary processing establishments, 10 further processing establishments, and 11 transporters of catfish to processing plants, plus approximately 80 import-export brokers.

For catfish defined as Ictaluridae, 51, including 23 catfish slaughter and processing establishments, at least 10 further processing establishments, and 11 transporters of catfish to processing plants, plus approximately 7 import-export brokers.

Estimated Number of Responses per Respondent: 1,512.

Estimated Total Annual Burden on Respondents: For catfish defined as Siluriformes: 47,350 hours.

For catfish defined as Ictaluridae: 32,002.5 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, Room 3532 South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and (c) ways to enhance the quality, utility, and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

XII. E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601 *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

XIII. Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the FMIA from imposing any marking, labeling, packaging, or ingredient requirements on Federally inspected catfish products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over catfish products that are outside official establishments for the purpose of preventing the distribution of catfish products that are misbranded or adulterated under the FMIA or, in the case of imported articles that are not at such an establishment, after their entry into the United States. This proposed rule is not intended to have retroactive effect.

Administrative proceedings would not be required before parties may file suit in court challenging this proposed rule. However, the administrative procedures specified in 9 CFR 306.5 would have to be exhausted before any judicial challenge of the application of the provisions of this final rule, if the challenge involved any decision of an FSIS employee relating to inspection services provided under the FMIA.

XIV. Expected Environmental Impact

FSIS has tentatively determined that this proposed rule would not have a significant individual or cumulative effect on the human environment. Therefore, this proposed action would be appropriately subject to the categorical exclusion from the preparation of an environmental assessment or environmental impact statement provided under 7 CFR 1b.4(6) of the U.S. Department of Agriculture regulations.

XV. Executive Order 13175, USDA Nondiscrimination Statement, and Additional Public Notification

Executive Order 13175

The policies contained in this proposed rule do not have Tribal Implications that preempt Tribal Law.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, or audiotape) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is

important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this proposed rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Proposed_Rules/index.asp.*

The Regulations.gov Web site is the central on-line rulemaking portal of the United States Government. It is offered as a public service to increase participation in the Federal Government's regulatory activities. FSIS participates in Regulations.gov and will accept comments about documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that provide for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and other types of information that could affect, or would be of interest to, our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page at *http://www.fsis.usda.gov/News_&_Events/Constituent_Update/index.asp.* Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://origin-www.fsis.usda.gov/News_&_Events/EmailEmail_Subscription/index.asp* and allows FSIS customers to sign up for subscription options in eight categories. The subscription options categories include recalls, export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

XVI. Proposed Regulations

List of Subjects

9 CFR Part 300

Meat inspection.

9 CFR Part 441

Consumer protection standards, Meat and meat products, Poultry products, Catfish and catfish products.

9 CFR Part 530

Catfish and catfish products, Catfish inspection.

9 CFR Part 531

Catfish and catfish products, Catfish inspection.

9 CFR Part 532

Catfish and catfish products, Catfish inspection, Reporting and recordkeeping requirements.

9 CFR Part 533

Catfish and catfish products, Catfish inspection, Government employees.

9 CFR Part 534

Aquaculture, Catfish and catfish products, Catfish inspection.

9 CFR Part 537

Catfish and catfish products, Catfish inspection, Hazard Analysis and Critical Control Point (HACCP) Systems, Sanitation.

9 CFR Part 539

Animal diseases, Catfish and catfish products, Catfish inspection.

9 CFR Part 540

Catfish and catfish products, Catfish inspection.

9 CFR Part 541

Catfish and catfish products, Catfish inspection, Food labeling, Food packaging, Nutrition, Reporting and recordkeeping requirements, Signs and symbols.

9 CFR Part 544

Catfish and catfish products, Catfish inspection, Food additives, Food packaging, Laboratories, Reporting and recordkeeping requirements.

9 CFR Part 548

Catfish and catfish products, Catfish inspection, Food additives, Food packaging, Laboratories, Reporting and recordkeeping requirements, Signs and symbols.

9 CFR Part 550

Catfish and catfish products, Catfish inspection, Reporting and recordkeeping requirements.

9 CFR Part 552

Catfish and catfish products, Catfish inspection, Exports.

9 CFR Part 555

Catfish and catfish products, Catfish inspection, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 557

Catfish and catfish products, Catfish inspection, Food labeling, Food packaging, Imports.

9 CFR Part 559

Catfish and catfish products, Catfish inspection, Crime, Seizures and forfeitures.

9 CFR Part 560

Catfish and catfish products, Catfish inspection, Intergovernmental relations.

9 CFR Part 561

Administrative practice and procedure, Catfish and catfish products, Catfish inspection, Crime, Government employees.

For the reasons set forth in the preamble, 9 CFR chapter III is proposed to be amended as follows:

Subchapter A—Agency Organization and Terminology; Mandatory Meat and Poultry Products Inspection and Voluntary Inspection and Certification

PART 300—AGENCY MISSION AND ORGANIZATION

1. The authority citation for 9 CFR part 300 continues to read as follows:

Authority: 21 U.S.C. 450–471, 601–695, 1031–1056; 7 U.S.C. 138–138i, 450, 1621–1627, 1901–1906; 7 CFR 2.7, 2.18, 2.53.

2. Section 300.3 is amended by revising paragraphs (a), (b) introductory text, and (b)(1) to read as follows:

§ 300.3 FSIS organization.

(a) *General.* The organization of FSIS reflects the Agency's primary regulatory responsibilities: implementation of the FMIA, including catfish, the PPIA, and the EPIA. FSIS implements the inspection provisions of the FMIA, the PPIA, and the EPIA through its field structure.

(b) *Headquarters.* FSIS has ten principal components or offices, each of which is under the direction of an Assistant Administrator. The Assistant Administrators, along with their staffs, and the Administrator, along with the Office of the Administrator and ten staff offices that report to the Administrator, are located at U.S. Department of Agriculture headquarters in Washington, DC.

(1) *Program Offices.* FSIS's headquarters offices are the Office of Public Health Science; the Office of Management; the Office of Policy and Program Development; the Office of Field Operations; the Office of Data Integration and Food Protection; the Office of Program Evaluation, Enforcement, and Review; the Office of Public Affairs and Consumer Education; the Office of Outreach, Employee Education, and Training; the Office of International Affairs; and the Office of Catfish Inspection Programs.

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Subchapter E—Regulatory Requirements under the Federal Meat Inspection Act and the Poultry Products Inspection Act

PART 441—CONSUMER PROTECTION STANDARDS: RAW PRODUCTS

3. The authority citation for 9 CFR part 441 continues to read as follows:

Authority: 21 U.S.C. 451–470, 601–695; 7 U.S.C. 450, 1901–1906; 7 CFR 2.18, 2.53

§ 441.10 [Amended]

4. In § 441.10, remove the term "Raw livestock and poultry" and add in its place the term "Raw livestock, poultry, and catfish" at the beginning of the first sentence of paragraph (a) and at the beginning of the first sentence of paragraph (b).

5. A new Subchapter F, consisting of Parts 530 to 561, is added to Chapter III to read as follows:

Subchapter F—Mandatory Inspection of Catfish and Catfish Products

PART 530—GENERAL REQUIREMENTS; DEFINITIONS

Sec.
530.1 General.
530.2 FSIS organization for inspection of catfish and catfish products.
530.3 Access to establishments.

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 530.1 General.

(a) The regulations in this subchapter provide for the inspection of catfish and catfish products. The inspection and regulations are intended to prevent the sale, transportation, offer for sale or transportation, or receipt for transportation, in commerce of any catfish or catfish product that is capable of use as human food and is adulterated or misbranded at the time of the sale, transportation, offer for sale or transportation, or receipt for transportation.

(b) Catfish as defined in this subchapter are amenable to the Act, including, as the Administrator may determine, to provisions of the Act in which other amenable species are named, except where the Act specifically excludes the provisions from applicability to catfish.

§ 530.2 FSIS organization for inspection of catfish and catfish products.

The Food Safety and Inspection Service, U.S. Department of Agriculture, administers a continuous inspection program for catfish and catfish products. The organization of FSIS and the principal offices of FSIS and their functions are described, and organizational terms defined, in 9 CFR part 300. Section 300.3 lists the FSIS district offices and the geographic areas of the districts.

§ 530.3 Access to establishments.

The provisions of 9 CFR 300.6 apply to catfish processing establishments and related industries as they do to other establishments subject to the FMIA.

PART 531—DEFINITIONS

Sec.
531.1 Definitions.

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 531.1 Definitions.

As used in this subchapter, unless otherwise required by the context, the following terms shall be construed, respectively, to mean:

Act. The Federal Meat Inspection Act, as amended, (34 Stat. 1260, as amended, 81 Stat. 584, 84 Stat. 438, 92 Stat. 1069, 106 Stat. 4499, 119 Stat. 2166, 122 Stat. 1369, 122 Stat. 2130, 21 U.S.C., sec. 601 *et seq.*).

Adulterated. This term applies to any carcass, part thereof, catfish or catfish food product under one or more of the following circumstances:

(1) If it bears or contains any such poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(2)(i) If it bears or contains (by reason of administration of any substance to the live animal or otherwise) any added poisonous or added deleterious substance, other than one which is:

(A) A pesticide chemical in or on a raw agricultural commodity;

(B) A food additive; or

(C) A color additive which may, in the judgment of the

Administrator, make such article unfit for human food;

(ii) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug, and Cosmetic Act;

(iii) If it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(iv) If it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug, and Cosmetic Act: Provided, That an article which is not deemed adulterated under paragraphs (2) (ii), (iii), or (iv) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical food additive, or color additive in or on such article is prohibited by the regulations in this subchapter in official establishments;

(3) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(5) If it is, in whole or in part, the product of an animal which has died otherwise than by slaughter;

(6) If its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health;

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

(8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

Amenable species. A species that is, and whose products are, subject to the Act and regulations promulgated under the Act, except as the Act may provide.

Animal food. Any article intended for use as food for dogs, cats, or other animals, derived wholly, or in part, from the carcass or parts or products of the carcass of any amenable species, except that the term animal food as used herein does not include:

(1) Processed dry animal food or

(2) Feeds for amenable species manufactured from processed by products of amenable species.

Applicant. Any person who requests inspection service, exemption, or other authorization under the regulations.

Biological residue. Any substance, including metabolites, remaining in catfish at time of slaughter or in any of their tissues after slaughter as the result of treatment or exposure of the catfish to a pesticide, organic or inorganic compound, hormone, hormone like substance, antihelmintic, or other therapeutic or prophylactic agent.

Capable of use as human food. This term applies to any carcass or part or product of a carcass of any catfish unless it is denatured or otherwise identified as required by section 540.3 of this subchapter to deter its use as a human food, or it is naturally inedible by humans; *e.g.,* barbels or fins in their natural state.

Carcass. All parts, including viscera, of any slaughtered livestock.

Catfish. The skeletal muscle tissue of catfish. As applied to products of catfish species, this term has a meaning comparable to that of "meat" in the meat inspection regulations (9 CFR 301.2).

Catfish byproduct. Any catfish part capable of use as human food, other than the skeletal muscle tissue, that has been derived from one or more catfish.

Catfish food product. Any article capable of use as human food that is made wholly or in part from any catfish or part thereof; or any product that is made wholly or in part from any catfish or part thereof, excepting those exempted from definition as a catfish product by the Administrator in specific cases or by a regulation in this subchapter; upon a determination that they contain catfish ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the catfish food industry, and provided that they comply with any requirements that are imposed in such cases or regulations as conditions of such exemptions to ensure that the catfish meat or other portions of such carcasses contained in such articles are not adulterated, and that such articles are not represented as catfish food products.

Catfish product. Any catfish or catfish part; or any product that is made wholly or in part from any catfish or catfish part, except for those exempted from definition as a catfish product by the Administrator in a regulation in this subchapter. Except where the context requires otherwise (*e.g.,* in part 540 of this subchapter), this term is limited to articles capable of use as human food.

Commerce. Commerce between any State, any Territory, or the District of Columbia, and any place outside thereof; or within any Territory not organized with a legislative body, or the District of Columbia.

Consumer package. Any container in which a catfish product is enclosed for the purpose of display and sale to household consumers.

Container. Any box, can, tin, cloth, plastic, or any other receptacle, wrapper, or cover.

Dead catfish. The body of catfish that has died otherwise than by slaughter.

Dying or diseased catfish. Catfish affected by any of the conditions for which the catfish are required to be condemned under part 539 or other regulations in this subchapter.

Edible. Intended for use as human food.

Farm-raised. Grown under controlled conditions, within an enclosed space, as on a farm.

Federal Food, Drug, and Cosmetic Act. The Act so entitled, approved June 25, 1938 (52 Stat. 1040), and Acts amendatory thereof or supplementary thereto.

Firm. Any partnership, association, or other unincorporated business organization.

Further processing. Smoking, cooking, canning, curing, refining, or rendering in an official establishment of product previously prepared in official establishments.

Immediate container. The receptacle or other covering in which any product is directly contained or wholly or partially enclosed.

Inedible. Adulterated, uninspected, or not intended for use as human food.

"*Inspected and passed*" or "*U.S. Inspected and Passed*" or "*U.S. Inspected and Passed by Department of Agriculture*" *(or any authorized abbreviation thereof).* This term means that the product so identified has been inspected and passed under the regulations in this subchapter, and at the time it was inspected, passed, and identified, it was found to be not adulterated.

Label. A display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article.

Labeling. All labels and other written, printed, or graphic matter:

(1) Upon any article or any of its containers or wrappers, or

(2) Accompanying such article.

Misbranded. This term applies to any carcass, part thereof, meat or meat food product under one or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another food;

(3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the food imitated;

(4) If its container is so made, formed, or filled as to be misleading;

(5) If in a package or other container unless it bears a label showing:

(i) The name and place of business of the manufacturer, packer, or distributor; and

(ii) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; except as otherwise provided in part 317 of this subchapter with respect to the quantity of contents;

(6) If any word, statement, or other information required by or under authority of the Act to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations in part 319 of this subchapter unless:

(i) It conforms to such definition and standard, and

(ii) Its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) If it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by the regulations in part 319 of this subchapter, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) If it is not subject to the provisions of paragraph (7)(ii) of this section unless its label bears:

(i) The common or usual name of the food, if any there be, and

(ii) In case it is fabricated from two or more ingredients, the common or usual name of each such ingredient, except as otherwise provided in part 317 of this subchapter;

(10) If it purports to be or is represented for special dietary uses,

unless its label bears such information concerning its vitamin, mineral, and other dietary properties as is required by the regulations in part 317 of this subchapter.

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears a label stating that fact; except as otherwise provided by the regulations in part 317 of this subchapter; or

(12) If it fails to bear, directly thereon or on its containers, when required by the regulations in part 316 or 317 of this subchapter, the inspection legend and, unrestricted by any of the foregoing, such other information as the Administrator may require in such regulations to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the article in a wholesome condition.

Nonfood compound. Any substance proposed for use in official establishments, the intended use of which will not result, directly or indirectly, in the substance becoming a component or otherwise affecting the characteristics of meat food and meat products excluding labeling and packaging materials as covered in part 541 of this subchapter.

Official certificate. Any certificate prescribed by the regulations in this subchapter for issuance by an inspector or other person performing official functions under the Act.

Official device. Any device prescribed by the regulations in part 312 of this subchapter for use in applying any official mark.

Official establishment. Any slaughtering, cutting, boning, catfish product canning, curing, smoking, salting, packing, rendering, or similar establishment at which inspection is maintained under the regulations in this subchapter.

Official import inspection establishment. This term means any establishment, other than an official establishment as defined in this section, where inspections are authorized to be conducted as prescribed in part 557 of this subchapter.

Official inspection legend. Any symbol prescribed by the regulations in this subchapter showing that an article was inspected and passed in accordance with the Act.

Official mark. The official inspection legend or any other symbol prescribed by the regulations in this subchapter to identify the status of any article, catfish, or catfish product under the Act.

Packaging material. Any cloth, paper, plastic, metal, or other material used to form a container, wrapper, label, or cover for meat products.

Person. Any individual, firm, or corporation.

Pesticide chemical, food additive, color additive, raw agricultural commodity. These terms shall have the same meanings for purposes of the Act and the regulations in this subchapter as under the Federal, Drug, and Cosmetic Act.

Prepared. Slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

Process authority. A person or organization with expert knowledge in catfish production process control and relevant regulations. This definition does not apply to § 548.6 of this subchapter or to subpart G of part 318 of this chapter.

Process schedule. A written description of processing procedures, consisting of any number of specific, sequential operations directly under the control of the establishment employed in the manufacture of a specific product, including the control, monitoring, verification, validation, and corrective action activities associated with production. This definition does not apply to § 548.6 of this subchapter or to subpart G of part 318 of this chapter.

Producer. Any person engaged in the business of growing farm-raised catfish.

Product. Any carcass, catfish, catfish product, or catfish food product, capable of use as human food.

Program. The organizational unit within the Department having the responsibility for carrying out the provisions of the Act.

Program employee. Any inspector or other individual employed by the Department or any cooperating agency who is authorized by the Secretary to do any work or perform any duty in connection with the Program.

Slaughter. With respect to catfish, intentional killing under controlled conditions.

State. Any State of the United States or the Commonwealth of Puerto Rico.

Territory. Guam, the Virgin Islands of the United States, American Samoa, and any other territory or possession of the United States.

U.S. Condemned. This term means that the catfish, part, or product of catfish so identified was inspected and found to be adulterated and is condemned.

U.S. Detained. This term applies to catfish, catfish products, and other articles which are held in official custody in accordance with section 402 of the Act (21 U.S.C. 672), pending disposal as provided in the same section 402.

U.S. Retained. This term means that the catfish, part, or product of catfish so identified is held for further examination by an inspector at an official establishment to determine its disposal.

United States. The States, the District of Columbia, and the Territories of the United States.

PART 532—REQUIREMENTS FOR INSPECTION

Sec.

532.1 Establishments requiring inspection; other inspection.
532.2 Application for inspection.
532.3 Exemption of retail operations.
532.4 Inspection at official establishments; relation to other authorities.
532.5 Exemption from definition of catfish product of certain human food products containing catfish.

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 532.1 Establishments requiring inspection; other inspection.

(a) No establishment may process or prepare catfish, catfish parts, or catfish products capable of use as human food, or sell, transport, or offer for sale or transportation in commerce any of these articles without continuous inspection under these regulations, except as expressly exempted in § 532.3.

(b) Inspection under the regulations is required at: (1) Every establishment, except as provided in the regulation on exemption of retail operations (§ 532.3), in which any catfish or catfish products are wholly or in part, processed for transportation or sale in commerce, as articles intended for use as human food.

(2) Every establishment, except as provided in the regulation on exemption of retail operations (§ 532.3), within any State or organized territory which is designated pursuant to section 301 of the Act (21 U.S.C. 661), at which any catfish or catfish products are processed for use as human food solely for distribution within that State or territory.

(3) Except as provided in the regulation on exemption of retail operations (§ 532.3), every establishment designated by the administrator under section 301 of the Act (21 U.S.C. 661) as one producing adulterated catfish products which would clearly endanger the public health.

(4) *Coverage of catfish and catfish products processed in official establishments.* All catfish and catfish products prepared in an official establishment must be inspected, handled, processed, marked, and labeled as required by the regulations.

(5) *Other inspection.* Periodic inspections may be made of:

(i) The records of all persons engaged in the business of hatching, feeding, growing, or transporting catfish between premises where catfish are bred, hatcheries, and premises where catfish are grown, and from these premises to processing establishments.

(ii) Exempted retail establishments to determine that those establishments are operating in accordance with these regulations.

§ 532.2 Application for inspection.

(a) Application for inspection is as required by 9 CFR 304.1.

(b) Information to be furnished is as required by 9 CFR 304.2(a), (b), and (c)(1). Conditions for receiving inspection, including having written Sanitation SOPs and HACCP plans, are as required by 9 CFR 304.3.

(c) *Official numbers; inauguration of inspection; withdrawal of inspection; reports of violation.* The requirements for assignment of official numbers, inauguration of inspection, withdrawal of inspection, and reports of violations at catfish processing establishments are as required by 9 CFR part 305 for meat establishments.

(d) *Assignment and authorities of program employees.* The requirements concerning the assignment and authorities of Program employees at catfish processing establishments are as required by 9 CFR parts 306 and 307 with respect to Program employees at meat establishments.

§ 532.3 Exemption of retail operations.

The exemption in 9 CFR 303.1(d) for operations of types traditionally and usually conducted at retail stores and restaurants applies with respect to catfish products as it does with respect to products of other amenable species under the FMIA. However, a retail quantity of catfish or catfish products sold to a household consumer is a normal retail quantity if it does not exceed 75 pounds and the quantity of catfish or catfish product sold by a retail supplier to a non-household consumer is a normal retail quantity if it does not exceed 150 pounds in the aggregate.

§ 532.4 Inspection at official establishments; relation to other authorities.

(a) Requirements within the scope of the Act with respect to premises, facilities, and operations of any official establishment that are in addition to or different than those made under this subchapter may not be imposed by any State or local jurisdiction except that the State or local jurisdiction may impose recordkeeping and other requirements within the scope of § 550.1 of this chapter, if consistent with those requirements, with respect to the establishment.

(b) Labeling, packaging, or ingredient requirements in addition to or different than those made under this subchapter, the Federal Food, Drug, and Cosmetic Act and Fair Packaging and Labeling Act may not be imposed by any State or local jurisdiction with respect to any catfish or catfish products processed at any official establishment in accordance with the requirements under this subchapter and those Acts.

§ 532.5 Exemption from definition of catfish product of certain human food products containing catfish.

The following articles contain catfish ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the catfish food products industry. Therefore, the articles are exempted from the definition of "catfish product" and the requirements of the Act and the regulations that apply to catfish products, if they comply with the conditions specified in this section.

(a) Any human food product if:

(1) It contains less than 3 percent raw or 2 percent cooked catfish;

(2) The catfish ingredients used in the product were prepared under Federal inspection or were inspected under a foreign inspection system approved under § 557.2 of this chapter and imported in compliance with the Act and the regulations;

(3) The immediate container of the product bears a label which shows the name of the product in accordance with this section; and

(4) The product is not represented as a catfish product. The percentage of cooked catfish ingredients must be computed on the basis of the moist, deboned, cooked catfish in the ready-to-serve product when prepared according to the serving directions on the consumer package.

(b) A product exempted under this section will be deemed to be represented as a catfish product if the term "catfish" or a term representing a fish species that is covered by the definition of "catfish" in part 531 of this subchapter is used in the product name of the product without appropriate qualification.

(c) A product exempted under this section is subject to the requirements of the Federal Food, Drug, and Cosmetic Act.

PART 533—SEPARATION OF ESTABLISHMENT; FACILITIES FOR INSPECTION; FACILITIES FOR PROGRAM EMPLOYEES; OTHER REQUIRED FACILITIES

Sec.
533.1 Separation of establishments.
533.2 [Reserved]
533.3 Facilities for Program employees.
533.4 Other facilities and conditions to be provided.
533.5 Schedule of operations.
533.6 Overtime and holiday inspection service.
533.7 Basis of billing for overtime and holiday services.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 533.1 Separation of establishments.

Each official establishment shall be separate and distinct from any unofficial establishment and from any other official establishment, except an establishment preparing products under the FMIA, the PPIA, or the EPIA, or under State catfish inspection requirements and authorities that are deemed to be at least equal to those provided under the FMIA. Further, doorways, or other openings, may be permitted between establishments at the discretion of the Administrator and under such conditions as he may prescribe. An official establishment that is not separate and distinct from another official or unofficial establishment must ensure that no sanitary hazards are created by the lack of separation.

§ 533.2 [Reserved]

§ 533.3 Facilities for Program employees.

Office space, including necessary furnishings, light, heat, and janitor service, must be provided by official establishments, rent free, for the exclusive use for official purposes of the inspector and other Program employees assigned thereto. The space set aside for this purpose shall meet with approval of the District Manager or the frontline supervisor and must be conveniently located, properly ventilated, and provided with lockers suitable for the protection and storage of Program supplies and with facilities suitable for Program employees to change clothing if such facilities are deemed necessary by the frontline supervisor. At the discretion of the Administrator, small establishments requiring the services of less than one full-time inspector need not furnish facilities for Program employees as prescribed in this section, where adequate facilities exist in a nearby convenient location. Laundry service for inspectors' outer work clothing must be provided by each establishment.

§ 533.4 Other facilities and conditions to be provided.

When required by the District Manager or the frontline supervisor, each official establishment must provide the following facilities and conditions, and such others as may be found to be essential to efficient conduct of inspection and maintenance of sanitary conditions:

(a) Sufficient light to be adequate for the proper conduct of inspection;

(b) Tables, benches, and other equipment on which inspection is to be performed, of such design, material, and construction as to enable Program employees to conduct their inspection in a ready, efficient and clean manner;

(c) Receptacles for holding and handling diseased carcasses and parts, so constructed as to be readily cleaned and to be marked in a conspicuous manner with the phrase "U.S. Condemned" in letters not less than 2 inches high, and, when required by the frontline supervisor, to be equipped in a way that allows the receptacles to be locked or sealed;

(d) Adequate arrangements, including liquid soap and cleansers, for cleansing and disinfecting hands, for sterilizing all implements used in handling diseased carcasses, for cleaning and sanitizing floors, and such other articles and places as may be contaminated by diseased carcasses or otherwise;

(e) Adequate facilities, including denaturing materials, for the proper disposal of condemned articles in accordance with the regulations in this subchapter;

(f) Docks and receiving rooms, to be designated by the operator of the official establishment, with the frontline supervisor, for the receipt and inspection of catfish, catfish products, or other products.

(g) Suitable lockers in which brands bearing the official inspection legend and other official devices (excluding labels) can be stored. Official certificates shall be kept when not in use in suitable file cabinets. All such lockers and file cabinets shall be equipped for sealing or locking with locks or seals to be supplied by the Department. The keys of such locks shall not leave the custody of Program employees.

§ 533.5 Schedule of operations.

The requirements governing the schedule of operations for catfish processing establishments are as required by 9 CFR 307.4 for meat establishments.

§ 533.6 Overtime and holiday inspection service.

The requirements governing overtime and holiday inspection service in 9 CFR 307.5 apply to catfish processing establishments.

§ 533.7 Basis of billing for overtime and holiday services.

The requirements for billing and overtime and holiday inspection services are as required by 9 CFR 307.6.

PART 534—PRE–HARVEST STANDARDS AND TRANSPORTATION TO PROCESSING ESTABLISHMENT.

Sec.

534.1 General.

534.2 Water quality for food fish.

534.3 Standards for use of drugs in the raising of catfish.

534.4 Transportation to processing plant.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 534.1 General.

Catfish that are harvested for use as human food must have grown and lived under conditions that will not render the catfish or their products unsound, unwholesome, unhealthful, or otherwise unfit for human food.

§ 534.2 Water quality for food fish.

Producers of catfish should monitor the water in which the fish are raised for the presence of suspended solids, organic matter, nutrients, heavy metals, pesticides, fertilizers, and industrial chemicals that may contaminate fish. FSIS will collect samples of feed, fish, and pond water from producers, at intervals to be determined by the Administrator, for the purpose of verifying that catfish are being raised under conditions that will yield safe, wholesome products.

§ 534.3 Standards for use of drugs in the raising of catfish.

New animal drugs that are the subject of an approved new animal drug application (NADA) or abbreviated new animal drug application (ANADA) under section 512 of the Federal Food, Drug, and Cosmetic Act (the Act) [21 USC 360b], or a conditional approval under section 571 of the Act [21 USC 360ccc], or an investigational exemption under section 512(j) of the Act [21 U.S.C. 360b(j)] may be used in the raising of catfish. New animal drugs approved under section 512 of the Act may be used in an extra-label manner if such use complies with section 512(a)(4) of the Act and FDA regulations found at 21 CFR part 530.

§ 534.4 Transportation to processing plant.

A vehicle used to transport catfish from a producer's premises to a processing establishment must be equipped with vats or other containers for holding the catfish. The vats or other containers must be maintained in a sanitary condition. Sufficient water and sufficient oxygen must be provided to the vats that hold the catfish to ensure that catfish delivered to the processing establishment will not be adulterated. Any catfish that are dead, dying, diseased, or contaminated with substances that may adulterate catfish products are subject to condemnation at the official catfish processing establishments.

PART 537—SANITATION REQUIREMENTS AND HAZARD ANALYSIS AND CRITICAL CONTROL POINTS SYSTEMS

Sec.

537.1 Basic requirements.

537.2 Hazard analysis and HACCP plan.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 537.1 Basic requirements.

(a) Any official establishment that prepares or processes catfish or catfish products for human food must comply with the requirements contained in 9 CFR parts 416 and 417, except as otherwise provided in this subchapter.

(b) For the purposes of 9 CFR parts 416, 417, and 500, an "official establishment" or "establishment" includes a plant that prepares or processes catfish or catfish products.

§ 537.2 Hazard analysis and HACCP plan.

(a) A catfish establishment's hazard analysis shall take into account the food safety hazards that can occur before, during, and after harvest.

(b) The failure of an establishment to develop and implement a hazard analysis and a HACCP plan that comply with this part or to operate in accordance with the requirements of 9 CFR chapter III, subchapter E, will render the products produced under these conditions adulterated.

PART 539—MANDATORY DISPOSITIONS; PERFORMANCE STANDARDS RESPECTING PHYSICAL, CHEMICAL, OR BIOLOGICAL CONTAMINANTS

Sec.

539.1 Disposal of diseased or otherwise adulterated catfish carcasses and parts or catfish products.

539.2 Physical, chemical, or biological contaminants.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 539.1 Disposal of diseased or otherwise adulterated catfish carcasses and parts or catfish products.

(a)(1) Carcasses or parts of catfish affected by abscesses or lesions, non-zoonotic parasites such as cestodes, or such parasites as digenean trematodes, metacercaria (*Bolbophorus* spp.), yellow grubs (*Clinostomum* spp.), or white grubs (*Hysterbmorpha* spp.) are subject to condemnation unless properly disposed of by the establishment to prevent their use as human food.

(2) Catfish affected by Heterophyid intestinal flukes or *Dictophymatidae* nematodes are subject to condemnation unless properly disposed of by the establishment.

(b) Catfish affected by diseases, including columnaris (infection by *Flexibacter columnaris*) and enteric septicemia of catfish (ESC), are subject to condemnation unless properly disposed of by the establishment to prevent their use as human food.

(c) Catfish carcasses or parts or catfish products that are found to be in a state of spoilage or decomposition are subject to condemnation unless properly disposed of by the establishment to prevent their use as human food.

(d) Grossly deformed fish may not be used for human food.

§ 539.2 Physical, chemical, or biological contaminants.

(a) Catfish and catfish products that are contaminated with physical matter are subject to official retention and condemnation.

(b) Antibiotic or other drug residues in catfish tissues must be within applicable tolerances in 21 CFR part 556.

(c) Pesticide residues in catfish tissues must be within applicable tolerances in 40 CFR part 180.

(d) Catfish or catfish products containing violative concentrations of drugs or other chemicals are subject to condemnation.

PART 540—HANDLING AND DISPOSAL OF CONDEMNED AND OTHER INEDIBLE MATERIALS

Sec.

540.1 Dead catfish.
540.2 Specimens for educational, research, and other nonfood purposes; permits.
540.3 Handling and disposal of condemned or other inedible materials.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 540.1 Dead catfish.

(a) With the exception of dead catfish that have died en route to an official establishment that have been received with live catfish at the official establishment, and that are subject to sorting and disposal at the official establishment, no catfish or part of the carcass of catfish that died otherwise than by slaughter may be brought onto the premises of an official establishment without advance permission from the FSIS frontline supervisor.

(b) The official establishment shall maintain physical separation between slaughtered catfish and the edible parts or products of slaughtered catfish and any catfish or parts of catfish that have died otherwise than by slaughter. Catfish or any parts of catfish that have died otherwise than by slaughter shall be excluded from any room or compartment in which edible product is prepared, handled, or stored.

§ 540.2 Specimens for educational, research, and other nonfood purposes; permits.

The requirements of 9 CFR 314.9 apply to the handling and release of specimens of condemned or other inedible catfish materials.

§ 540.3 Handling and disposal of condemned or other inedible materials.

Condemned or other inedible catfish and catfish parts shall be separated from edible catfish. If not disposed of on the premises of the establishment, the condemned and inedible catfish parts shall be conveyed from the official establishment for disposition at a rendering plant, an animal feed manufacturing establishment, or at another establishment for other non-food use. If not decharacterized by use of approved denaturants or colorings, the inedible materials shall be enclosed in containers that are conspicuously marked to indicate that the contents are condemned or otherwise inedible. The materials may be shipped under company or official seal to a rendering facility or for other inedible processing.

PART 541—MARKS, MARKING AND LABELING OF PRODUCTS AND CONTAINERS

Sec.

541.1 General.
541.2 Official marks and devices to identify inspected and passed catfish and catfish products.
541.3 Official seals for transportation of products.
541.4 Official export inspection marks, devices, and certificates.
541.5 Official detention marks and devices.
541.7 Labels required; supervision of a Program employee.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 541.1 General.

The marks, devices, and certificates prescribed or referenced in this part are official marks, devices, and certificates for the purposes of the Act respecting catfish and catfish products. The marks, devices, and certificates shall be used only in accordance with the regulations in this part.

§ 541.2 Official marks and devices to identify inspected and passed catfish and catfish products.

(a)(1) The official inspection legend required by this part must be shown on all labels for inspected and passed catfish and catfish products and must be in the following form prescribed in 9 CFR 312.2(b)(1) for inspected and passed products of cattle, sheep, swine, and goats, or in another form to be prescribed by the Administrator, except that it need not be of the size illustrated, if it is of a sufficient size and color to be conspicuously displayed, and readily legible, and in the same proportions of letter size and boldness are maintained as illustrated:

(2) The official inspection legend shall contain the words "U.S. Inspected and Passed" or an abbreviation of those words approved by the Administrator.

(b) This official mark must be applied by mechanical means and must not be applied by a hand stamp.

(c)(1) The official inspection legend, or the approved abbreviation of the legend, must be printed on consumer packages and other immediate containers of inspected and passed catfish products or on labels to be securely affixed to the containers of the products and may be printed or stenciled on the containers but must not be applied by rubber stamping.

(2) The official inspection legend may also be used for the purposes of marking shipping containers, band labels, and other articles with the approval of the Administrator.

(d) Whole gutted catfish carcasses that have been inspected and passed in an official establishment and are intended for sale as whole gutted catfish must be marked or labeled in a manner that will ensure that the catfish carcasses are identified as "Inspected and Passed" and will not become misbranded while in

commerce. The official inspection legend used for this purpose must be in the form illustrated below or in another form determined by the Administrator:

§ 541.3 Official seals for transportation of products.

The official mark for use in sealing railroad cars, cargo containers, or other means of conveyance as prescribed in part 555 of this subchapter must be the inscription and serial number shown in 9 CFR 312.5 or another official mark approved by the Administrator. Any seal approved by the Administrator for applying the official mark is an official device for the purposes of the Act. The seal must be attached to the means of conveyance only by a Program employee, who shall also affix a "Warning Tag" (Form MP–408–3 or similar official form).

§ 541.4 Official export inspection marks, devices, and certificates.

(a) The official export inspection mark for catfish required by part 552 of this subchapter must be in the same form as that specified in 9 CFR 312.8(a) or otherwise as prescribed by the Administrator.

(b) The official export certificate for catfish and catfish products required by part 552 of this subchapter must be in the same form as that prescribed for meat and meat food products in 9 CFR 312.8(b) or otherwise as prescribed by the Administrator.

§ 541.5 Official detention marks and devices.

The official mark for shipments of articles and catfish detained under this subchapter is the designation "U.S. Detained," and the official device for applying the mark is the official "U.S. Detained" tag (FSIS Form 8400–2) as prescribed in 9 CFR 329.2 or otherwise by the Administrator.

§ 541.7 Labels required; supervision of a Program employee.

(a) *General labeling requirements.* The requirements in part 317, subpart A, of this chapter, governing labels and labeling, safe-handling labeling, abbreviations of official marks, labeling approval, generically approved labeling, the use of approved labels, the labeling of products for foreign commerce, prohibited practices, the reuse of official inspection marks, filling of containers, relabeling of products, the storage and distribution of labels, and the requirements for packaging materials, apply to catfish and catfish products.

(b) The requirements in part 441, subchapter E, governing water retained from processing in raw meat and poultry, apply to retained water in catfish. The requirements in part 442, subchapter E, governing quantity of contents labeling, the testing of scales, and the handling of product that is found to be out of compliance with net weight requirements, apply to catfish and catfish products.

(1) Packages of frozen or fresh-frozen catfish carcasses or parts must be labeled to reflect 100-percent net weight after thawing. The de-glazed net weight must average 100 percent of the stated net weight of the frozen product when sampled and weighed according to the method prescribed in National Institute of Standards and Technology (NIST) Handbook 133 Chapter 2, Section 2.6.[36]

(2) [Reserved]

(c) *Nutrition labeling.* The requirements for nutrition labeling of meat and meat food products in part 317, subpart B, of this chapter, also apply to the labeling of catfish and catfish food products.

PART 544—FOOD INGREDIENTS PERMITTED

Sec.
544.1 Use of food ingredients.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 544.1 Use of food ingredients.

(a) No catfish product may bear or contain any food ingredient that would render it adulterated or misbranded or that is not approved in part 424 of subchapter E, or in this part or elsewhere in this subchapter, or by the Administrator in specific cases.

(b) (Reserved)

PART 548—PREPARATION OF PRODUCTS

Sec.
548.1 Preparation of catfish products.
548.2 Requirements concerning ingredients and other articles used in the preparation of catfish products.
548.3 Samples of products, water, dyes, chemicals, *etc.* to be taken for examination.
548.4 Mixtures containing product but not amenable to the Act.
548.5 Ready-to-eat catfish products.
548.6 Canning and canned products.
548.7 Use of animal drugs.
548.8 Polluted water contamination at establishment.
548.9 Accreditation of non-Federal chemistry laboratories.

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 548.1 Preparation of catfish products.

(a) All processes used in preparing any catfish product in official establishments shall be subject to inspection by Program employees unless such preparation is conducted as or consists of operations that are exempted from inspection under 9 CFR 303.1. No fixtures or appliances, such as tables, trucks, trays, tanks, vats, machines, implements, cans, or containers of any kind, shall be used unless they are of such materials and construction as will not contaminate or otherwise adulterate the product and are clean and sanitary. All steps in the preparation of edible products shall be conducted carefully and with strict cleanliness in rooms or compartments separate from those used for inedible products.

(b) It shall be the responsibility of the operator of every official establishment to comply with the Act and the regulations in this subchapter. To carry out this responsibility effectively, the operator of the establishment shall institute appropriate measures to ensure the maintenance of the establishment and the preparation, marking, labeling, packaging and other handling of its products strictly in accordance with the sanitary and other requirements of this subchapter.

§ 548.2 Requirements concerning ingredients and other articles used in the preparation of catfish products.

All ingredients and other articles used in the preparation of any catfish product must be clean, sound, healthful, wholesome, and otherwise such as will not result in the product's being adulterated.

§ 548.3 Samples of products, water, dyes, chemicals, etc. to be taken for examination.

Samples of products, water, dyes, chemicals, preservatives, spices, or other articles in any official establishment shall be taken, without cost to the Program, for examination, as often as may be deemed necessary for the efficient conduct of the inspection.

§ 548.4 [Reserved]

§ 548.5 Ready-to-eat catfish products.

Ready-to-eat catfish products are subject to the requirements in part 430, subchapter E, of this chapter.

[36] U.S. Department of Commerce. NIST Handbook 133: Checking the Net Contents of Packaged Goods, Fourth Edition, January 2005. Washington, DC.

§ 548.6 Canning and canned products.

The requirements for canning and canned products in 9 CFR part 318, subpart G (§§ 318.300–318.311) apply to catfish products that are canned.

§ 548.7 Use of animal drugs.

Edible tissues of catfish with residues exceeding tolerance levels specified in 21 CFR part 556 are adulterated within the meaning of section 402(a)(2)(C)(ii) of the Federal Food, Drug, and Cosmetic Act because they bear or contain a new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act.

§ 548.8 Polluted water contamination at establishment.

In the event that there is polluted water (including but not limited to flood water) in an official establishment, all products and ingredients for use in the preparation of the products that have been rendered adulterated by the water must be condemned. After the polluted water has receded from the establishment, the establishment must follow the cleaning and sanitizing procedures in § 318.4 of subchapter A of this chapter.

§ 548.9 Accreditation of non-Federal chemistry laboratories.

A non-Federal analytical laboratory that has met the requirements for accreditation specified in 9 CFR 439 and hence, at an establishment's discretion, may be used in lieu of an FSIS laboratory for analyzing official regulatory samples. Payment for the analysis of regulatory samples is to be made by the establishment using the accredited laboratory.

PART 549—[RESERVED]

PART 550—RECORDS REQUIRED TO BE KEPT

Sec.

550.1 Records required to be kept.
550.2 Place of maintenance of records.
550.3 Record retention period.
550.4 Access to and inspection of records, facilities and inventory; copying and sampling.
550.5 Registration.
550.6 Information and reports required from official establishment operators.
550.7 Reports by consignees of allegedly adulterated or misbranded products; sale or transportation as violations.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 550.1 Records required to be kept.

The requirements in 9 CFR 320.1 for records to be kept apply to persons that engage in businesses relating to catfish and catfish products as they do to persons that engage in businesses relating to the carcasses, parts, or products of other species amenable to the FMIA.

§ 550.2 Place of maintenance of records.

The requirements in 9 CFR 320.2 for the place where records are to be maintained apply in the keeping of records under this part.

§ 550.3 Record retention period.

The record retention requirements in 9 CFR 320.3 apply to records required to be kept under this part.

§ 550.4 Access to and inspection of records, facilities and inventory; copying and sampling.

The provisions of 9 CFR 320.4 apply to businesses dealing in catfish and catfish products.

§ 550.5 Registration.

The registration requirements in 9 CFR 320.5 apply to persons engaging in businesses, in or for commerce, relating to catfish and catfish products as they do to persons engaging in businesses relating to the carcasses, parts, and products, or any livestock, of other animal species that are amenable to the FMIA.

§ 550.6 Information and reports required from official establishment operators.

The information and reporting requirements in 9 CFR 320.6 for operators of official establishments apply with respect to catfish and catfish products as they do with respect to other species amenable to the FMIA.

§ 550.7 Reports by consignees of allegedly adulterated or misbranded products; sale or transportation as violations.

The requirements in 9 CFR 320.7 for reports by consignees of allegedly adulterated or misbranded products apply with respect to catfish and catfish products as they do with respect to products of other species amenable to the Act.

PART 552—EXPORTS

Sec.

552.1 Affixing stamps and marking products for export; issuance of export certificates; clearance of vessels and transportation.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 552.1 Affixing stamps and marking products for export; issuance of export certificates; clearance of vessels and transportation.

(a) The manner of affixing stamps and marking products for export is that prescribed in § 322.1(a) of this chapter.

(b) The requirements for the issuance of export certificates are as prescribed in § 322.2 of this chapter.

(c) The requirements for clearing vessels and other transportation vehicles are set out in § 322.4 of this chapter.

PART 555—TRANSPORTATION OF CATFISH PRODUCTS IN COMMERCE

Sec.

555.1 Transportation of catfish products.
555.2 Catfish product transported within the United States as part of export movement.
555.3 Unmarked, inspected catfish product transported under official seal between official establishments for further processing; certificate.
555.4 Handling of catfish products that may have become adulterated.
555.5 Transportation of inedible catfish product in commerce.
555.6 Certificates.
555.7 Official seals; forms, use, and breaking.
555.8 Loading or unloading of catfish products in sealed transport conveyances.
555.9 Diverting of shipments.
555.10 Provisions inapplicable to specimens for laboratory examination, *etc.,* or to naturally inedible articles.
555.11 Transportation and other transactions concerning dead, dying, or diseased catfish, and catfish or parts of catfish that died otherwise than by slaughter.
555.12 Means of conveyance in which dead, dying, or diseased catfish or parts of catfish must be transported.

Authority: 7 U.S.C. 450; 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 555.1 Transportation of catfish products.

(a) No person may sell, transport, offer for sale or transportation, or receive for transportation, in commerce, any catfish or catfish product that is capable of being used as human food and is adulterated or fails to bear an official inspection legend or is otherwise misbranded at the time of such sale, transportation, offer or receipt, except otherwise provided in this paragraph or in part 557 of this chapter.

(b) No person, engaged in the business of buying, selling, freezing, storing, or transporting, in or for commerce, catfish products capable of use as human food, or importing such articles, shall transport, offer for transportation, or receive for transportation, in commerce or in any State designated under § 560.3 of this subchapter, any catfish product which is capable of use as human food and is not wrapped, packaged, or otherwise enclosed to prevent adulteration by airborne contaminants, unless the railroad car, truck, or other

means of conveyance in which the product is contained or transported is completely enclosed with tight fitting doors or other covers for all openings. In all cases, the means of conveyance shall be reasonably free of foreign matter (such as dust, dirt, rust, or other articles or residues), and free of chemical residues, so that product placed therein will not become adulterated.

(c) Any cleaning compound, lye, soda solution, or other chemical used in cleaning the means of conveyance must be thoroughly removed from the means of conveyance prior to its use. Such means of conveyance onto which product is loaded, being loaded, or intended to be loaded, shall be subject to inspection by an inspector at any official establishment.

(d) The decision whether or not to inspect a means of conveyance in a specific case, and the type and extent of such inspection shall be at the Agency's discretion and shall be adequate to determine if catfish product in such conveyance is, or when moved could become, adulterated.

(e) Circumstances of transport that can be reasonably anticipated shall be considered in making said determination. These include, but are not limited to, weather conditions, duration and distance of trip, nature of product covering, and effect of restowage at stops en route. Any means of conveyance found upon such inspection to be in such condition that catfish product placed therein could become adulterated shall not be used until such condition which could cause adulteration is corrected.

(f) Catfish product placed in any means of conveyance that is found by the inspector to be in such condition that the catfish product may have become adulterated shall be removed from the means of conveyance and handled in accordance with part 539 or § 540.3 of this subchapter.

§ 555.2 Catfish product transported within the United States as part of export movement.

When any shipment of any catfish product is offered to any carrier for transportation within the United States as a part of an export movement, the same certificate shall be required as if the shipment were destined to a point within the United States.

§ 555.3 Unmarked, inspected catfish product transported under official seal between official establishments for further processing; certificate.

The requirements governing transportation of catfish product that has been inspected and passed, but not so marked, from one official establishment to another official establishment are the same as those in § 325.5 of this chapter that apply to unmarked inspected meat products.

§ 555.4 Handling of catfish products that may have become adulterated.

The provisions of § 325.10 regarding the handling of products that may have become adulterated or misbranded apply to catfish and catfish products.

§ 555.5 Transportation of inedible catfish product in commerce.

The provisions in § 325.11(e) of this chapter regarding the transportation of inedible livestock products apply to the transportation of inedible catfish parts or products.

§ 555.6 Certificates.

The provisions in § 325.14 of this chapter regarding the filing of original certificates of unmarked inspected meat products delivered to carriers applies with respect to catfish and catfish products.

§ 555.7 Official seals; forms, use, and breaking.

The official seals required by this part are those prescribed in § 541.3 and § 312.5 of this chapter.

§ 555.8 Loading or unloading of catfish products in sealed transport conveyances.

The requirements in 9 CFR 325.18 governing the unloading of any meat or meat food product from an officially sealed railroad car, truck, or other means of conveyance containing any unmarked product or loading any means of conveyance after the product leaves an official establishment are applicable to catfish and catfish products.

§ 555.9 Diverting of shipments.

(a) Shipments of inspected and passed catfish products that bear the inspection legend may be diverted from the original destination without a reinspection of the articles if the waybills, transfer bills, running slips, conductor's card, or other papers accompanying the shipments are marked, stamped, or have attached thereto signed statements in accordance with § 325.15.

(b) In case of a wreck or similar extraordinary emergency, the Department seals on a railroad car or other means of conveyance containing any inspected and passed product may be broken by the carrier, and if necessary, the articles may be reloaded into another means of conveyance, or the shipment may be diverted from the original destination, without another shipper's certificate; but in all such cases the carrier must immediately report the facts by telephone or telegraph to the District Manager in the area in which the emergency occurs. The report must include the following information:

(1) Nature of the emergency.

(2) Place where seals were broken.

(3) Original points of shipment and destination.

(4) Number and initial of the original car or truck.

(5) Number and initials of the car or truck into which the articles are reloaded.

(6) New destination of the shipment.

(7) Kind and amount of articles.

§ 555.10 Provisions inapplicable to specimens for laboratory examination, etc., or to naturally inedible articles.

The provisions of this part do not apply:

(a) To specimens of product sent to or by the Department of Agriculture or divisions thereof in Washington, DC, or elsewhere, for laboratory examination, exhibition purposes, or other official use;

(b) To material released for educational, research, and other nonfood purposes, as prescribed in § 540.2 of this subchapter;

(c) To tissues for use in preparing pharmaceutical, organotherapeutic, or technical products and not used for human food, as described in § 540.2 of this subchapter;

(d) To material or specimens of product for laboratory examination, research, or other nonhuman food purposes, when authorized by the Administrator, and under conditions prescribed by him in specific cases; and

(e) To articles that are naturally inedible by humans.

§ 555.11 Transportation and other transactions concerning dead, dying, or diseased catfish, and catfish or parts of catfish that died otherwise than by slaughter.

No person engaged in the business of buying, selling, or transporting in commerce, or importing any dead, dying, or diseased catfish or parts of catfish that died otherwise than by slaughter shall:

(a) Sell, transport, offer for sale or transportation, or receive for transportation, in commerce, any dead, dying, or diseased catfish or parts of catfish that died otherwise than by slaughter, unless the catfish and parts are consigned and delivered, without avoidable delay, to establishments of animal food manufacturers, renderers, or collection stations that are registered as required by part 550 of this subchapter, or to official establishments that operate under Federal inspection,

or to establishments that operate under a State or Territorial inspection system approved by FSIS as one that imposes requirements at least equal to the Federal requirements for purposes of paragraph 301(c) of the Act;

(b) Buy in commerce or import any dead, dying, or diseased catfish or parts of catfish that died otherwise than by slaughter, unless he is an animal food manufacturer or renderer and is registered as required by part 550 of this subchapter, or is the operator of an establishment inspected as required by paragraph (a) of this section and such catfish or parts of catfish are to be delivered to establishments eligible to receive them under paragraph (a) of this section;

(c) Unload en route to any establishment eligible to receive them under paragraph (a) of this section, any dead, dying, or diseased catfish or parts of catfish that died otherwise than by slaughter, which are transported in commerce or imported by any such person: *Provided,* That any such dead, dying, or diseased catfish, or parts of catfish may be unloaded from a means of conveyance en route where necessary in case of a wreck or otherwise extraordinary emergency, and may be reloaded into another means of conveyance; but in all such cases, the carrier must immediately report the facts by telephone or other electrical or electronic means to the Office of Program Evaluation, Enforcement, and Review, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(d) Load into any means of conveyance containing any dead, dying, or diseased catfish, or parts of catfish that died otherwise than by slaughter, while in the course of importation or other transportation in commerce any catfish or parts of catfish not within the foregoing description or any other products or other commodities.

§ 555.12 Means of conveyance in which dead, dying, or diseased catfish or parts of catfish must be transported.

All vehicles and other means of conveyance used by persons subject to § 555.11 for transporting in commerce or importing, any dead, dying, or diseased catfish or parts of catfish that died otherwise by slaughter must be leak proof and so constructed and equipped as to permit thorough cleaning and sanitizing. The means of conveyance used in conveying the catfish or parts of catfish must be cleaned and disinfected before being used in the transportation of any product intended for use as human food. The cleaning procedure must include the complete removal from the means of conveyance of any fluid, parts, or product of dead, dying, or diseased catfish and the thorough application of a disinfectant approved by the Administrator to the interior surfaces of the cargo space.

PART 557—IMPORTATION

Sec.

557.1 Definitions; application of provisions.
557.2 Eligibility of foreign countries for importation of catfish products into the United States.
557.3 No catfish product to be imported without compliance with applicable regulations.
557.4 Imported catfish products; foreign certificates required.
557.5 Importer to make application for inspection of catfish products for entry.
557.6 Catfish products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.
557.7 Products for importation; movement prior to inspection; handling; bond; assistance.
557.8 Import catfish products; equipment and means of conveyance used in handling to be maintained in sanitary condition.
557.9 [Reserved]
557.10 Samples; inspection of consignments; refusal of entry; marking.
557.11 Receipts to importers for import catfish products samples.
557.12 Foreign canned or packaged catfish products bearing trade labels; sampling and inspection.
557.13 Foreign catfish products offered for importation; reporting of findings to Customs.
557.14 Marking of catfish products and labeling of immediate containers thereof for importation.
557.15 Outside containers of foreign products; marking and labeling; application of official inspection legend.
557.16 Small importations for importer's own consumption; requirements.
557.17 Returned U.S. inspected and marked catfish products.
557.18 Catfish products offered for entry and entered to be handled and transported as domestic; exception.
557.19 Specimens for laboratory examination and similar purposes.
557.20–557.23 [Reserved]
557.24 Appeals; how made.
557.25 Disposition procedures for catfish product condemned or ordered destroyed under import inspection.
557.26 Official import inspection marks and devices.

Authority: 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 557.1 Definitions; application of provisions.

(a) When used in this part, the following terms shall be construed to mean:

(1) *Import.* To bring within the territorial limits of the United States whether that arrival is accomplished by land, air, or water.

(2) *Offer for entry.* Presentation of the imported product by the importer to the Program for reinspection.

(3) *Entry.* The point at which imported product offered for entry receives reinspection and is marked with the official mark of inspection in accordance with § 557.26 of this subchapter.

(b) The provisions of this part shall apply to catfish and catfish products that are capable of use as human food. Compliance with the conditions for importation of products under this part does not excuse the need for compliance with applicable requirements under other laws, including the provisions in part 94 of chapter I of this title.

§ 557.2 Eligibility of foreign countries for importation of catfish products into the United States.

(a) The requirements in 9 CFR 327.2(a)(1), 327.2(a)(2)(i), 327.2(a)(2)(ii)(C)–(I), 327.2(a)(2)(iii)–(iv), and 327.2(a)(3), for determining the acceptability of foreign meat inspection systems for the importation of meat and meat food products into the United States, apply in determining the acceptability of foreign catfish inspection systems for the importation of catfish and catfish products into the United States. In determining the acceptability of these systems, the Agency will evaluate the manner in which they take into account the conditions under which catfish are raised and transported to a processing establishment.

(b)(1) It has been determined that catfish and catfish products from the following countries covered by foreign inspection certificates of the country of origin as required by 9 CFR 557.4, are eligible under the regulations in this subchapter for entry into the United States after inspection and marking as required by the applicable provisions of this part: (None listed as of [PUBLICATION DATE OF FINAL RULE]).

(2) Persons interested in having the most recent list of eligible countries and establishments may contact the Office of International Affairs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

§ 557.3 No catfish product to be imported without compliance with applicable regulations.

No catfish or catfish product offered for importation from any foreign country shall be admitted into the

United States if it is adulterated or misbranded or does not comply with all the requirements of this subchapter that would apply to it if it were a domestic product.

§ 557.4 Imported catfish products; foreign certificates required.

Except as provided in § 557.16, each consignment containing any catfish or catfish products consigned to the United States from a foreign country must be accompanied by a foreign inspection certificate for catfish and catfish products. The certificate, in paper or electronic format, must contain those data elements that the Administrator may prescribe to carry out the intent of this section.

§ 557.5 Importer to make application for inspection of catfish products for entry.

(a) Each importer must apply for inspection of any catfish product offered for entry (*See* Sec. 301.2(yyy)).

(b) The application should be made as long as possible in advance of the anticipated arrival of each consignment into the United States, except in case of consignments of products expressly exempted from inspection by §§ 557.16 and 557.17.

(c) Each application must state the approximate date on which the consignment is due to arrive at such port in the United States, the name of the ship or other carrier transporting it, the name of the country from which the product was, or is to be, shipped, the place where inspection is desired in accordance with § 557.6, the quantity and kind of product, and whether it is fresh, cured, canned or otherwise prepared. In case of consignments arriving in the United States by water, the application must state the port of first arrival in the United States.

§ 557.6 Catfish products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

(a)(1) Except as provided in §§ 557.16 and 557.17, all catfish products offered for entry from any foreign country shall be reinspected by a Program inspector before they shall be allowed entry into the United States.

(2) Every lot of product shall routinely be given visual inspection by a Program import inspector for appearance and condition, and checked for certification and label compliance.

(3) FSIS operates an electronic system to provide reinspection instructions. The electronic system assigns re-inspection levels and procedures that are based on established sampling plans or established sampling plans and established product, country, and plant history.

(4) When the inspector deems it necessary, the inspector may sample and inspect lots not designated by the electronic system.

(b) Catfish and catfish products required by this part to be inspected must be inspected only at an official establishment or at an official import inspection establishment approved by the Administrator as provided in this section.

(c) Owners or operators of establishments, other than official establishments, who want to have import inspections made at their establishments, shall apply to the Administrator for approval of their establishments for such purpose. Application must be made on a form furnished by the Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC, 20250, and must include all information called for by that form.

(d) Approval for Federal import inspection must be in accordance with §§ 304.1 and 304.2 of this chapter. Also, before approval is granted, the establishment must have developed written Sanitation Standard Operating Procedures in accordance with part 416 of this chapter.

(e) Owners or operators of establishments at which import inspections of product are to be made shall furnish adequate sanitary facilities and equipment for examination of such product. The requirements of §§ 307.1, 307.2 (b), (d), (f), (h), (k), and (l) and 416.1 through 416.6 of this chapter shall apply as conditions for approval of establishments as official import inspection establishments to the same extent and in the same manner as they apply with respect to official establishments.

(f) The Administrator is authorized to approve any establishment as an official import inspection establishment provided that an application has been filed in accordance with the requirements of paragraphs (c) and (d) of this section and he determines that such establishment meets the requirements under paragraph (e) of this section. Any application for inspection under this section may be denied or refused in accordance with the rules of practice in part 500 of this chapter.

(g) Approval of an official import inspection establishment may be withdrawn in accordance with applicable rules of practice if it is determined that the sanitary conditions are such that the product is rendered adulterated, that such action is authorized by section 21(b) of the Federal Water Pollution Control Act, as amended (84 Stat. 91), or that the requirements of paragraph (e) of this section were not complied with. Approval may be withdrawn in accordance with section 401 of the Act and applicable rules of practice.

(h) A special official number shall be assigned to each official import inspection establishment. Such number shall be used to identify all products inspected and passed for entry at the establishment.

(i) A product examination must be made, as provided in paragraph (a) of this section, of a foreign catfish or catfish product, including defrosting if necessary to determine its condition. Inspection standards for foreign chilled fresh or frozen fresh catfish shall be the same as those used for domestic catfish or catfish products. Samples may be collected at no cost to FSIS and submitted to an FSIS laboratory for analysis (*See* § 557.18).

(j) Imported canned products are required to be sound, healthful, properly labeled, wholesome, and otherwise not adulterated at the time the products are offered for importation into the United States. Provided other requirements of this part are met, the determination of the acceptability of the product and the condition of the containers shall be based on the results of an examination of a statistical sample drawn from the consignment as provided in paragraph (a) of this section. If the inspector determines, on the basis of the sample examination, that the product does not meet the requirements of the Act and regulations thereunder, the consignment shall be refused entry. However, a consignment rejected for container defects but otherwise acceptable may be reoffered for inspection under the following conditions:

(1) If the defective containers are not indicative of an unsafe and unstable product as determined by the Administrator;

(2) If the number and kinds of container defects found in the original sample do not exceed the limits specified for this purpose in FSIS guidelines; and

(3) If the defective containers in the consignment have been sorted out and exported or destroyed under the supervision of an inspector.

(k) Program inspectors or Customs officers at border or seaboard ports shall report the sealing of cars, trucks, or other means of conveyance, and the sealing or identification of containers of foreign product to Program personnel at

points where such product is to be inspected.

(l) Representative samples of canned product designated by the Administrator in instructions to inspectors shall be incubated under supervision of such inspectors in accordance with § 318.309(d)(1)(ii), (d)(1)(iii), (d)(1)(iv)(c), (d)(1)(v), (d)(1)(vii) and (d)(1)(viii) of this subchapter. The importer or his/her agent shall provide the necessary incubation facilities in accordance with § 318.309(d)(1)(i) of this subchapter.

(m) Sampling plans and acceptance levels as prescribed in paragraphs (j) and (l) of this section may be obtained, upon request, from the Office of International Affairs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

§ 557.7 Products for importation; movement prior to inspection; handling; bond; assistance.

The requirements in 9 CFR 327.7 respecting the movement or conveyance from any port, or delivery to the consignee, of any product required to be inspected under part 327, apply to catfish and catfish products.

§ 557.8 Import catfish products; equipment and means of conveyance used in handling to be maintained in sanitary condition.

Compartments of ocean vessels, railroad cars, and other means of conveyance transporting any catfish or catfish product to the United States, and all trucks, chutes, platforms, racks, tables, tools, utensils, and all other devices used in moving and handling any catfish or catfish product offered for importation into the United States, shall be maintained in a sanitary condition.

§ 557.9 [Reserved]

§ 557.10 Samples; inspection of consignments; refusal of entry; marking.

The provisions in 9 CFR 327.10 governing the taking of samples, the inspection of consignments, the refusal of entry, and the controlled pre-stamping of shipments of meat and meat food products apply with respect to catfish and catfish products.

§ 557.11 Receipts to importers for import catfish product samples.

FSIS will issue to importers official receipts for samples of foreign products collected for laboratory analysis, as provided in § 327.11 of this chapter.

§ 557.12 Foreign canned or packaged catfish products bearing trade labels; sampling and inspection.

Foreign canned or packaged catfish products bearing on their immediate containers trade labels that have or have not been approved in accordance with the regulations in § 541.7 of this subchapter are to be sampled and inspected in the same manner as provided by § 327.12 of this chapter for foreign canned meat food products.

§ 557.13 Foreign catfish products offered for importation; reporting of findings to Customs.

Program inspectors are to report their findings as to any catfish product that has been inspected in accordance with this part in the same manner as that provided by § 327.13 of this chapter for meat products. Catfish products that are refused entry are to be handled in the same manner as provided by § 327.13 for meat products that are refused entry. Import personnel will identify to the Port Director of U.S. Customs and Border Protection and the Importer of record any products refused entry into the United States.

§ 557.14 Marking of catfish products and labeling of immediate containers thereof for importation.

The regulations in 9 CFR 327.14 governing the marking of meat and meat food products and the labeling of immediate containers of those products for importation apply with respect to catfish and catfish products.

§ 557.15 Outside containers of foreign products; marking and labeling; application of official inspection legend.

The requirements in 9 CFR 327.15 governing the marking and labeling of outside containers of meat and meat food products apply also with respect to catfish and catfish products.

§ 557.16 Small importations for importer's own consumption; requirements.

The exemption in 9 CFR 327.16 for small importations of meat or meat food products for the importer's own consumption applies with respect to catfish or catfish products.

§ 557.17 Returned U.S. inspected and marked catfish products.

U.S. inspected and passed and so marked catfish products exported to and returned from foreign countries will be admitted into the United States without compliance with this part upon notification of and approval by the Assistant Administrator, Office of International Affairs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, in specific cases.

§ 557.18 Catfish products offered for entry and entered to be handled and transported as domestic; exception.

The regulations in 9 CFR 327.18 governing the offer for entry into the United States of meat and meat food products apply with respect to catfish and catfish products. Products that fail to meet these regulatory requirements are subject to penalties as administered by the U.S. Port Director of Customs and Border Protection. Likewise, the products may be subject to detention and to being proceeded against as determined by the Administrator.

§ 557.19 Specimens for laboratory examination and similar purposes.

Importation of catfish or catfish product samples for trade show exhibition, laboratory examination, research, evaluative testing, trade show exhibition, or other scientific purposes are subject to the same conditions as imported meat or meat product specimens under § 327.19.

§ 557.20–557.23 [Reserved]

§ 557.24 Appeals; how made.

An appeal from a decision of any Program employee is to be made as provided by 9 CFR 327.24.

§ 557.25 Disposition procedures for catfish product condemned or ordered destroyed under import inspection.

Disposition procedures for condemned catfish or catfish products ordered destroyed under import inspection are as those for carcasses, parts, meat, and meat food products under 9 CFR 327.25.

§ 557.26 Official import inspection marks and devices.

The official inspection legend and other marks to be applied to imported catfish and catfish products are as required by 9 CFR 327.26 for meat food products prepared from cattle, sheep, swine, and goats.

PART 559—DETENTION, SEIZURE, CONDEMNATION

Sec.

559.1 Catfish and other articles subject to administrative detention.
559.2 Articles or catfish subject to judicial seizure and condemnation.
559.3 Criminal offenses.

Authority: 7 U.S.C. 450; 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 559.1 Catfish and other articles subject to administrative detention.

The provisions of 9 CFR 329.1 through 329.5 governing the administrative detention of carcasses, parts, meat, and meat food products of

livestock apply also with respect to the carcasses, parts, and products of catfish.

§ 559.2 Articles or catfish subject to judicial seizure and condemnation.

The provisions of 9 CFR 329.6 through 329.8 governing the judicial seizure and condemnation of carcasses, parts, meat, and meat food products of livestock apply also with respect to the carcasses, parts, and products of catfish.

§ 559.3 Criminal offenses.

The criminal provisions of the Act apply with respect to the inspection of catfish and catfish products as they do with respect to the inspection of other food products subject to the Act.

PART 560—STATE–FEDERAL, FEDERAL–STATE COOPERATIVE AGREEMENTS; STATE DESIGNATIONS

Sec.

560.1 Cooperation with States and Territories.
560.2 Cooperation of States in Federal programs.
560.3 Designation of States under the Federal Meat Inspection Act.

Authority: 7 U.S.C. 450; 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 560.1 Cooperation with States and Territories.

The provisions in § 321.1 of this chapter authorizing the Administrator to cooperate with any State (including Puerto Rico) or any organized Territory in developing and administering a meat inspection program for the State or Territory apply with respect to catfish products inspection.

§ 560.2 Cooperation of States in Federal programs.

Under the "Talmadge-Aiken Act" of September 28, 1962 (7 U.S.C. 450), the Administrator is authorized to utilize employees and facilities of any State in carrying out Federal functions under the FMIA, including functions relating to the inspection of catfish and catfish products. A cooperative program for this purpose is called a Federal-State program.

§ 560.3 Designation of States under the Federal Meat Inspection Act

The requirements in part 331 of this chapter apply with respect to catfish and catfish products inspection, including:

(a) The requirements in 9 CFR 331.3 governing the designation of States for Federal inspection under section 301(c) of the Act (21 U.S.C. 661(c));

(b) The requirements in 9 CFR 331.5 governing the designation under section 301(c) of the Act of establishments whose operations would clearly endanger the public health; and

(c) The requirements in 9 CFR 331.6 governing the designation of States under paragraph 205 of the Act.

PART 561—RULES OF PRACTICE

Sec.

561.1 Rules of practice governing inspection actions.
561.2 Rules of practice governing proceedings under the Federal Meat Inspection Act.

Authority: 7 U.S.C. 450; 21 U.S.C. 601–602, 606–622, 624–695; 7 CFR 2.7, 7 CFR 2.18, 2.53.

§ 561.1 Rules of practice governing inspection actions.

The rules of practice in part 500 of this chapter, governing inspection actions taken by FSIS with respect to establishments and products, apply to actions taken with respect to catfish processing establishments, catfish, and catfish products regulated under this subchapter.

§ 561.2 Rules of practice governing proceedings under the Federal Meat Inspection Act.

The procedures that the Agency must follow before reporting a violation of the Federal Meat Inspection Act for prosecution by the Department of Justice are given in part 335, subchapter A of this chapter.

Done, at Washington, DC.

Alfred V. Almanza,

Administrator.

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S. 188/P.L. 112–2
To designate the United States courthouse under construction at 98 West First Street, Yuma, Arizona, as the "John M. Roll United States Courthouse". (Feb. 17, 2011; 125 Stat. 4)

Last List February 3, 2011

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