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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2010–0398; Amendment No. 33–31]

RIN 2120–AJ62

Airworthiness Standards; Rotor Overspeed Requirements; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an unintentional error in the preamble of the final rule, Airworthiness Standards; Rotor Overspeed Requirements, published on July 18, 2011 (76 FR 42020). The final rule established uniform rotor overspeed design and test requirements for aircraft engines and turbochargers certificated by the FAA and the European Aviation Safety Agency (EASA). This document corrects an error in the preamble.

DATES: Effective September 8, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact Tim Mouzakis, Engine and Propeller Directorate Standards Staff, ANE–111, Engine and Propeller Directorate, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7114; fax (781) 238–7199; e-mail *timoleon.mouzakis@faa.gov.* For legal questions concerning this final rule contact Vincent Bennett, ANE–7, Office of Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; fax (781) 238–7055; e-mail *vincent.bennett@faa.gov.*

SUPPLEMENTARY INFORMATION

Background

On Monday, July 18, 2011, the FAA published a final rule entitled ''Airworthiness Standards; Rotor Overspeed Requirements'' (76 FR 42022). The final rule revised the aircraft turbine engine rotor overspeed type certification standards.

During the review process, we determined a portion of the section entitled ''Total Estimated Benefits and Costs of this Proposed Rule'' should be removed. We found that this section included a discussion of a comment that had already been fully discussed in the paragraph headed ''Material Properties of Test Rotors''. We are therefore eliminating discussion of this comment in the benefits and costs section of the preamble.

Correction to Preamble

1. On page 42022, third column, revise the first full paragraph of ''Total Estimated Benefits and Costs of This Proposed Rule'' to read as follows:

> ''Industry must currently certificate to the two standards that are substantively similar, but have a few slightly different testing and documentation procedures and requirements. The rule harmonizes these procedures and requirements to the higher standard and, thereby, may increase safety. In addition, by reducing the amount of duplicative testing that would need to be either witnessed or analyzed by the FAA, the FAA is better able to prioritize its resources to other, more safety critical areas. Consequently, we determined that unquantifiable future minimal benefits from the rule may also accrue. The FAA concludes that the combination of cost savings and potential increased safety benefits will make this rule cost beneficial. Further, we therefore determined that this rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT'S Regulatory Policies and Procedures.''

This correction ensures correct understanding of and FAA response to comments received. There are no changes to the existing regulatory text.

Issued in Washington, DC, on August 31, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

[FR Doc. 2011–23025 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0087; Airspace Docket No. 11–ASO–12]

Amendment of Class D Airspace; Eglin AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D Airspace in the Eglin Air Force Base (AFB), FL airspace area. The Destin Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approaches have been developed for Destin-Fort Walton Beach Airport that enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport.

This action also corrects the geographic coordinates of Eglin AFB, Duke Field, and Hulbert Field.

DATES: Effective 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On July 1, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class D airspace in the Eglin AFB, FL area (76 FR 38580) Docket No. FAA–2011–0087. Subsequent to publication, the FAA found that the latitude coordinates for Eglin AFB were not rounded up. This rule makes that correction. Also, this action adjusts the geographic coordinates for Duke Field and Hurlburt Field. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received supporting this action. Class D airspace designations are published in

paragraph 5000 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class D airspace in the Eglin AFB, FL area to accommodate new standard instrument approach procedures developed for Destin-Fort Walton Beach Airport. The Destin NDB has been decommissioned, and the NDB approach cancelled. The existing Class D airspace extending upward from the surface is being modified for the safety and management of IFR operations. This action also rounds up the latitude coordinates of Eglin AFB from 'lat. 30°28.59′59″ N. to 30°29′00″ N., and adjusts the geographic coordinates of Duke Field and Hurlburt Field to be in concert with the FAAs aeronautical database.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace in the Eglin AFB, FL area.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

ASO FL D Eglin Air Force Base, FL [Amended]

Eglin Air Force Base, FL
(Lat. 30°29′00″ N., long. 86°31′34″ W.)
Destin-Fort Walton Beach Airport
(Lat. 30°24′00″ N., long. 86°28′17″ W.)
Duke Field
(Lat. 30°39′01″ N., long. 86°31′22″ W.)
Hurlburt Field
(Lat. 30°25′44″ N., long. 86°41′22″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB, and within a 4.4-mile radius of Destin-Fort Walton Beach Airport, excluding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius centered on Duke Field; excluding the portion southwest of a line connecting the 2 points of intersection within a 5.3-mile radius of Hurlburt Field; excluding a portion east of a line beginning at lat. 30°30′43″ N., long. 86°26′21″ W. extending east to the 5.5-mile radius of Eglin AFB.

Issued in College Park, Georgia, on August 29, 2011.

Barry A. Knight,

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

[FR Doc. 2011–22876 Filed 9–7–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1330; Airspace Docket No. 10–ASO–41]

Amendment of Class E Airspace; Rutherfordton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Rutherfordton, NC. The Rutherford Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed for Rutherford County-Marchman Field. This action also updates the geographic coordinates of the airport and changes the airport name. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On June 1, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace 700 feet above the surface, at Rutherfordton, NC (76 FR 31510) Docket No. FAA–2010–1330. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending

upward from 700 feet above the surface to support new standard instrument approach procedures developed at Rutherford County-Marchman Field, Rutherfordton, NC. Airspace reconfiguration is necessary due to the decommissioning of the Rutherford NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport. This action also updates the geographic coordinates of the airport to coincide with the FAAs aeronautical database, and changes the airport name from to Rutherford County Airport to Rutherford County-Marchman Field, Rutherfordton, NC.

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

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

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Rutherfordton, NC [Amended]

Rutherford County-Marchman Field, NC
(Lat. 35°25′42″ N., long. 81°56′06″ W.)

That airspace extending upward from 700 feet above the surface within an 11.6-mile radius of Rutherford County-Marchman Field.

Issued in College Park, Georgia, on August 19, 2011.

Mark D. Ward,

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

[FR Doc. 2011–22312 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0280; Airspace Docket No. 11–ASO–16]

Amendment of Class E Airspace; Shelby, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Shelby, NC, to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures serving Shelby-Cleveland County Regional Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. This action also changes the airport name.

DATES: Effective 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On June 20, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Shelby, NC (76 FR 35799) Docket No. FAA–2011–0280. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Shelby, NC, to provide the controlled airspace required to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures developed for Shelby-Cleveland County Regional Airport. This action is necessary for the safety and management of IFR operations at the airport. This action also recognizes the airport name change from Shelby Municipal Airport to Shelby-Cleveland County Regional Airport, Shelby, NC.

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

traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASO NC E5 Shelby, NC [Amended]

Shelby-Cleveland County Regional Airport, NC

(Lat. 35°15′21″ N., long. 81°36′02″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of the Shelby-Cleveland County Regional Airport.

Issued in College Park, Georgia, on August 19, 2011.

Mark D. Ward,

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

[FR Doc. 2011–22313 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0741]

RIN 1625–AA08

Special Local Regulation for Marine Events; Chesapeake Bay Workboat Race; Back River, Messick Point, Poquoson, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish special local regulation during the Chesapeake Bay Workboat Race, a series of boat races to be held on the waters of Back River, Poquoson, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic during the power boat races on the Back River in the vicinity of Messick Point, in Poquoson, Virginia.

DATES: This rule is effective September 18, 2011 from 1 p.m. to 4 p.m.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0741 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0741 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LCDR Christopher A. O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail *Christopher.A.ONeal@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive the application for this event in sufficient time to allow for publication of an NPRM, and any delay encountered in this regulation's effective date by publishing a NPRM would require either the cancellation of the event, or require that the event be held without a special local regulation. Either course of action would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters. Additionally, this special local regulation will be enforced for approximately three hours on September 18, 2011 while the boat races are in progress. This regulated area should have a minimal impact on transiting vessels because mariners are not precluded from using any portion of the waterway except the area within the safety zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest since the Coast Guard did not receive an application for this event in sufficient time to allow for publication more than 30 days prior to the date scheduled for the event, and any additional delay in the effective date would prevent the safety zone from being effective at the time of the event. Therefore, immediate action is needed to ensure the safety of vessels transiting the area.

Background and Purpose

On September 18, 2011 the Chesapeake Bay Watermen's will sponsor a workboat race on the navigable waters of the Back River in Poquoson, Virginia.

A fleet of spectator vessels is expected to gather near the event site to view the competition. Due to the need for vessel control during the event, the Coast

Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators, and other transiting vessels. The regulated area shall be enforced from 1 p.m. to 4 p.m. September 18, 2011.

During this enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Rule

This special local regulation will restrict general navigation in the regulated area during the marine event, from 1 p.m. to 4 p.m. on September 18, 2011. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event to enhance the safety or participants in and spectators to the Chesapeake Bay Workboat Race.

The enforcement period for this safety zone shall be from 1 p.m. to 4 p.m. on September 18, 2011. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this rule prevents traffic from transiting a portion of certain waterways during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this section of the Back River during the event from 1 p.m. to 4 p.m. on September 18, 2011.

Although this regulation prevents traffic from transiting a portion of the Back River during the event, this rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T05–0741 to read as follows:

§ 100.501–35T05–0741 Special Local Regulations; Chesapeake Bay Workboat Race, Poquoson, Virginia.

(a) *Regulated Area.* The regulated area includes all waters of the Back River, Poquoson, Virginia, bounded to the north by a line drawn along latitude 37°06′30″ N, bounded to the south by a line drawn along latitude 37°16′15″ N, bounded to the east by a line drawn along longitude 076°18′52″ W and bounded on the west by a line drawn along longitude 076°19′30″ W. All coordinates reference Datum NAD 1983.

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

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

(c) Special Local Regulations: (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by an Official Patrol.

(ii) Proceed as directed by any official patrol.

(d) Enforcement Period: This regulation will be enforced from 1 p.m. to 4 p.m. on September 18, 2011.

Dated: August 19, 2011.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2011–22918 Filed 9–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0545]

RIN 1625–AA08

Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, John H. Kerr Reservoir, Clarksville, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will temporarily change the enforcement period of special local regulations for one recurring marine event in the Fifth Coast Guard District, specifically, the ''Clarksville Hydroplane Challenge,'' hydroplane races on the waters of the John H. Kerr Reservoir. Because this event will consist of approximately 80 hydroplane powerboats conducting high-speed competitive races in heats counter-clockwise around an oval racecourse on the water of the John H. Kerr Reservoir, this regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the John H. Kerr Reservoir in Clarksville, Virginia during the event.

DATES: This rule is effective from 9 a.m. September 24, 2011 until 6 p.m. on September 25, 2011. This rule will be enforced from 9 a.m. to 6 p.m. on September 24 and 25, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0545 and are available online by going to *http://www.*

regulations.gov, inserting USCG–2011–0545 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LCDR Christopher A. O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Christopher.A.Oneal@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 27, 2011, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, John H. Kerr Reservoir, Clarksville VA. in the **Federal Register** (76 FR 123). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The Coast Guard was informed about the changed date too late for the full delayed-effective date period to run. In addition, the public interest favors allowing the event to take place at its scheduled time. The burden on the boating public will be low, consisting of a short restriction on vessel traffic in a limited area, with passage allowed when safe to do so. The benefit of allowing the event to continue as scheduled will be enjoyed by a large number of participants and spectators.

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of Fifth Coast Guard District. The water activities that typically comprise marine events include sailing regattas, power boat races, swim races and holiday parades. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation will temporarily change the enforcement period of special local regulations for one recurring marine event within Fifth Coast Guard District. This regulation applies to one marine event in 33 CFR 100.501, Table to § 100.501.

On September 24 and 25, 2011, the Cambridge Power Boat Racing Association will sponsor the ''Clarksville Hydroplane Challenge'' hydroplane races on the waters of the John H. Kerr Reservoir. The regulation at 33 CFR 100.501 is effective annually for this hydroplane boat race marine event. The event will consist of approximately 80 hydroplane powerboats conducting high-speed competitive races in heats counter-clockwise around an oval racecourse on the water of the John H. Kerr Reservoir adjacent to Occoneechee State Park, Clarksville, Virginia and State Route 15 Highway Bridge. A fleet of spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the hydroplane races. The regulation at 33 CFR 100.501 will be enforced for the duration of the event. Under the provisions of 33 CFR 100.501, from 9 a.m. to 6 p.m. on September 24 and 25, 2011, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing a special local regulation on the specified waters of John H. Kerr Reservoir, Clarksville, Virginia.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule prevents traffic from transiting a portion of certain waterways during specified times, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the area where the marine event is being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where the event is occurring when it is safe to do so. In some cases vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. In § 100.501, suspend line No. 47 in the Table to § 100.501.

■ 3. In § 100.501, add line No. 62 in Table to § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

Table To § 100.501.—All coordinates listed in the Table to § 100.501 reference Datum NAD 1983.

COAST GUARD SECTOR HAMPTON ROADS—COTP ZONE

Number	Date	Event	Sponsor	Location
*	*	*	*	* * *
62	September 24 and 25, 2011.	Clarksville Hydroplane Challenge.	Cambridge Power Boat Racing Assoc.	The waters of the John H. Kerr Reservoir, adjacent to the State Route 15 Highway Bridge and Occoneechee State Park, Clarksville, Virginia, from shoreline to shoreline, bounded on the south by a line running northeasterly from a point along the shoreline at latitude 36°37′14″ N, longitude 078°32′46.5″ W, thence to latitude 36°37′39.2″ N, longitude 078°32′08.8″ W, and bounded on the north by the State Route 15 Highway Bridge.

* * * * *

Dated: August 19, 2011.

Mark S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2011–22917 Filed 9–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0629]

RIN 1625–AA08

Special Local Regulations for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Wrightsville Channel; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will temporarily change the enforcement period of one special local regulation for a recurring marine event in the Fifth Coast Guard District, specifically the ''Wilmington YMCA Triathlon'' conducted on the waters of Wrightsville Channel near Wrightsville Beach, North Carolina. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event, which has been rescheduled from the last Saturday in September to the second-to-last Saturday in September. This action is intended to restrict vessel traffic on Wrightsville Channel during the swimming portion of this event.

DATES: This rule is effective on September 17, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0629 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0629 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, e-mail *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

Regulatory Information

On July 27, 2011, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Wrightsville Channel; Wrightsville Beach, NC in the **Federal Register** (76 FR 44877). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard was informed about the changed date too late for the full delayed-effective date period to run. In addition, the public interest favors allowing the event to run at its scheduled time. The burden on the boating public will be low, consisting of a short restriction on vessel traffic in a limited area, with passage allowed when safe to do so. The benefit of allowing the event to continue as scheduled will be enjoyed by a large number of participants and spectators.

Background and Purpose

The YMCA sponsors the annual, ''Wilmington YMCA Triathlon'', at Wrightsville Beach, North Carolina. The Triathlon consists of three events: A running portion, a bike-riding portion, and a swimming portion. The swimming portion of the Triathlon takes place in the waters adjacent to Wrightsville Beach. A special local regulation is effective annually to create a safety zone for the swimming portion of the Triathlon.

The listing of annual recurring marine events within the Fifth Coast Guard District, that specifies regulated area and enforcement date(s) are published in 33 CFR § 100.501. The Table to § 100.501 identifies marine events by Captain of the Port zone. This rule changes the date for the marine event listed on line No. 57 in the Table.

The regulation as specified on line No. 57 in the Table; indicates the Triathlon event should take place on September 24, 2011, although this year the event date will take place one week earlier, on September 17, 2011.

The swim portion of the Triathlon, scheduled to take place on Saturday September 17, 2011, will consist of two groups of 750 swimmers entering Banks Channel at the Blockade Runner Hotel and swimming northwest along Motts Channel to Seapath Marine. A fleet of spectator vessels are expected to gather near the event site to view the competition.

To provide for the safety of the participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the swimming portion of the triathlon. The regulation at 33 CFR 100.501 will be enforced from 7 a.m. to 9 a.m. on September 17, 2011; vessels will not be able enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Comments and Changes

There were no comments and no changes made.

Discussion of Rule

The Coast Guard is temporarily suspending the regulation listed at line No. 57 in Table to § 100.501 and will insert a new temporary regulation in the Table to § 100.501 on line No. 63, in order to reflect the change in the event date for this year. This change is needed to accommodate the change in date of the annual Triathlon. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation.

This safety zone will restrict vessel movement on the specified waters of Wrightsville Channel, Wrightsville Beach, NC. The regulated area will be established in the interest of participant safety during the swim portion of the ''Wilmington YMCA Triathlon'' and will be enforced from 7 a.m. to 9 a.m. on September 17, 2011. The Coast Guard, at its discretion, when practical will allow the passage of vessels. During the Marine Event no vessel will be allowed to transit the regulated area unless the vessel receives permission from the Patrol Commander.

Any vessel transiting the regulated area must do so at a no-wake speed during the enforcement period. Nothing in this rule negates the requirement to operate at a safe speed as provided in the Navigational Rules and Regulations.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation prevents traffic from transiting waters of Wrightsville Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast and local area newspapers and radio stations so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. Vessel traffic will be able to transit the regulated area before and after the triathlon races, when the Coast Guard Patrol Commander deems it is safe to do so. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Small entities may include owners or operators of vessels intending to transit Wrightsville Channel from 7 a.m. to 9 a.m. on September 17, 2011.

This rule will not have a significant economic impact on substantial number of small entities for the following reasons. The regulation will be enforced for only two hours. Although the regulated area will apply to Motts, Banks and Wrightsville Channels, traffic may be allowed to pass within the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C 1233.

■ 2. In § 100.501, suspend line No. 57 in the Table to § 100.501.

■ 3. In § 100.501, add line No. 63 in Table to § 100.501; to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District

* * * * *

COAST GUARD SECTOR NORTH CAROLINA—COTP ZONE

Number	Date	Event	Sponsor	Location
*	*	*	*	*
59	September 17, 2011	Wilmington YMCA Triathlon.	Wilmington YMCA ..	The waters of, and adjacent to, Wrightsville Channel from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53′ W.

* * * * *

Dated: August 29, 2011.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2011–22919 Filed 9–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0808]

Drawbridge Operation Regulation; Steamboat Slough, Grand Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the California Highway 160 Drawbridge across Steamboat Slough, mile 11.2, at the head of Grand Island, Sacramento County, CA. The deviation is necessary to allow California Department of

Transportation to paint and perform routine maintenance on the drawbridge. This deviation allows single leaf operation of the double leaf bascule style drawbridge during the project.

DATES: This deviation is effective from 7 a.m. September 7, 2011 to 6 p.m. November 22, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of the docket USCG–2011–0808 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0808 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, e-mail *David.H.Sulouff@uscg.mil* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The California Department of Transportation has requested a temporary change to the operation of the Steamboat Slough Drawbridge, mile 11.2 Steamboat Slough, at the head of Grand Island, CA. The drawbridge provides 21 feet vertical clearance above Mean High Water in the closed-to-navigation position. The draw opens on signal from May 1 through October 31 from 6 a.m. to 10 p.m. At all other times the draw shall open on signal if at least four hours notice is given, as required by 33 CFR 117.199. Navigation on the waterway is commercial and recreational.

Either leaf of the double bascule drawspan may be secured in the closed-to-navigation position from 7 a.m. September 6, 2011 to 6 p.m. November 22, 2011, to allow Caltrans to conduct painting and maintenance on the bridge. The opposite leaf will continue to operate normally, providing unlimited vertical clearance and 92 feet horizontal clearance between leafs. A work platform will be installed below the secured leaf, reducing vertical clearance by 6 feet. This temporary deviation has been coordinated with waterway users. No objections to the proposed temporary deviation were raised.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 29, 2011.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2011–22915 Filed 9–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0775]

RIN 1625–AA00

Safety Zone; Revolution 3 Triathlon, Sandusky Bay, Lake Erie, Cedar Point, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Cedar Point, Sandusky, OH. This zone is intended to restrict vessels from a portion of Lake Erie during the Revolution 3 Triathlon. This temporary safety zone is necessary to protect participants, spectators and vessels from the hazards associated with a triathlon event.

DATES: This rule is effective from 6 to 11 a.m. on September 11, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0775 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0775 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail the Marine Events Coordinator, LTJG Cory Hoffman, Marine Safety Unit, Toledo, 402 Madison Avenue Suite 700, Toledo, OH 43604; (419) 418–6050, e-mail *Cory.J.Hoffman@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The permit application for this year's event was not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with a swimming event in a navigable water.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable and contrary to the public interest for the the same reasons discussed in the preceding paragraph.

Background and Purpose

The Revolution 3 Triathlon will occur between 6 a.m. and 11 a.m. on September 11, 2011. Scores of swimmers are expected to participate in this triathlon. The Captain of the Port Detroit has determined that swimming events present a significant risk to public safety. The likely combination of participants and motor vessels in the open waters of Sandusky Bay, Lake Erie presents a high risk of serious injuries or fatalities.

Discussion of Rule

With the above safety hazards in mind, the Captain of the Port Detroit has determined that a temporary safety zone is necessary to ensure the safety of participants during the Revolution 3 Triathlon. The safety zone will include the waters of Lake Erie within a line drawn from 41–29–00.04 N, 082–40–48.16 W to 41–29–19.28 N, 082–40–38.97 W to 41–29–02.51 N, 082–40–20.82 W to 41–28–45.52 N, 082–40–35.75 W then following the shoreline to the point of origin. In the event of inclement weather, an alternate swim course will be used on the waters of

Sandusky Bay within a line drawn from 41–28–22 N, 082–40–44 W to 41–28–38.59 N, 082–41–10.51 W and extending to 41–28–17.25 N, 082–40–54.09 W. For either course, the safety zone will occur from 6 to 11 a.m. on September 11, 2011. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that during the short time this zone will be in effect, it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel or legal policy issue. The safety zone will be enforced for a relatively short amount of time, and vessels may still pass through the zone with permission of the Captain of the Port Detroit.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the above portion of Lake Erie near Cedar Point, OH; or in case of inclement weather, the owners or operators of vessels intending to transit or anchor in the above portion of Sandusky Bay between 6 and 11 a.m. on September 11, 2011. The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for 5 hours during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect. Additionally, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the time expected.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

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

Technical Standards

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

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

Environment

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

An environmental analysis check list and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0775 to read as follows:

§ 165.T09–0775 Safety Zone; Revolution 3, Sandusky Bay, Lake Erie, Cedar Point, OH.

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Erie within 41–29–00.04 N, 082–40–48.16 W to 41–29–19.28 N, 082–40–38.97 W to 41–29–02.51 N, 082.40.20.82 W to 41–28–45.52 N, 082–40–35.75 W. In the event of inclement weather, the following alternate area is a temporary safety zone: All waters of Sandusky Bay within 41–28–22 N, 082–40–44 W to 41–28–38.59 N, 082–41–10.51 W to 41–28–17.25 N, 082–40–54.09 W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced from 6:00 a.m. through 11:00 a.m. on September 11, 2011.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contact via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: August 29, 2011.

J.E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2011–22995 Filed 9–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0786]

RIN 1625–AA00

Safety Zones; Fireworks Displays and Surfing Events in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones for marine events within the Captain of the Port (COTP) Long Island Sound Zone for a surfing event and fireworks displays. This action is necessary to provide for the safety of life on navigable waters during the events. Entry into, transit through, mooring or anchoring within this zone is prohibited unless authorized by the COTP Sector Long Island Sound.

DATES: This rule is effective in the CFR on September 8, 2011 through 5 p.m. on September 15, 2011. This rule is effective with actual notice for purposes of enforcement beginning at 8:30 p.m. on September 1, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0786 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0786 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary

rule, call or e-mail Petty Officer Joseph Graun, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because any delay encountered in this regulation's effective date by publishing an NPRM would be contrary to public interest since immediate action is needed to protect both spectators and participants from the potential safety hazards associated with these events. We spoke to the event sponsors, and they are unable and unwilling to move their event dates for the following reasons.

The sponsors for Quiksilver Pro New York, Surf competition stated delaying the event is not an option because weather conditions later in the year will not support competition size waves. This is the first time this event will be held on the East Coast. The sponsors were not aware of the requirements for submitting a marine event application 135 days in advance resulting in a late notification to the Coast Guard. The sponsors are now aware of the reporting requirements.

The sponsors for Stamford Fireworks and Village of Island Park Labor Day Celebration Fireworks submitted a marine event application with sufficient notice to the Coast Guard. These fireworks displays are recurring marine events with a corresponding entry in a proposed permanent rule for which the NPRM just closed its public comment period (docket number USCG–2008–0384); no public comments were received. The Coast Guard is establishing these temporary safety zones to provide for safety of life during this year's events.

For the same reasons under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date by first publishing a NPRM would be contrary to the rule's objectives of ensuring safety of life on the navigable waters during these scheduled events as immediate action is needed to protect both spectators and participants from the potential safety hazards associated with these events including collisions with surfers, unexpected pyrotechnics detonation and burning debris.

Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1226, 1231; 46 U.S.C. chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary rule establishes safety zones for fireworks displays and a surfing event. Marine events are frequently held on the navigable waters within the COTP Long Island Sound Zone. Based on accidents that have occurred in the past and the explosive hazards of fireworks, the COTP Long Island Sound has determined that surfing events and fireworks displays proximate to watercrafts pose significant risk to public safety and property.

In order to protect the safety of all waterway users including event participants and spectators, this temporary rule establishes safety zones for the time and location of each event.

Discussion of Rule

This temporary rule establishes safety zones for two fireworks displays and one surfing event in the COTP Long Island Sound Zone. These events are listed below in the text of the regulation in table format.

Because large numbers of spectator vessels are expected to congregate around the location of these events, these regulated areas are needed to protect both spectators and participants from the safety hazards created by them including unexpected pyrotechnics detonation, burning debris, and hazards inherent with surfing competitions.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the COTP, or designated representative.

The Coast Guard determined that these regulated areas will not have a significant impact on vessel traffic due to their temporary nature, limited size, and the fact that vessels are allowed to transit the navigable waters outside of the regulated areas. The COTP will cause public notifications to be made by all appropriate means including but not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The regulated areas will be of limited duration and cover only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated areas. Vessels requiring entry into the regulated areas may be authorized to do so by the COTP or the designated representative.

Advance public notifications will also be made to the local maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the designated regulated areas during the enforcement periods stated for each

event listed below in the List of Subjects.

The temporary safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated areas will be of limited size and of short duration, and vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas. Additionally, before the effective period, notifications will be made to the local maritime community by all appropriate means including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0786 to read as follows:

§ 165.T01–0786 Safety Zones; Fireworks Displays and Surfing Events in Captain of the Port Long Island Sound Zone

(a) Regulations.

The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the events listed in TABLE 1 of § 165.T01–0786 and TABLE 2 of § 165.T01–0786.

These regulations will be enforced for the duration of each event.

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Long Island Sound (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Vessel operators desiring to enter or operate within the regulated areas should contact the COTP or the designated representative via VHF channel 16 or by telephone at (203) 468–4404 to obtain permission to do so.

(d) Spectators shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or designated representative.

(e) The COTP or designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(f) The regulated area for all fireworks displays listed in TABLE 1 of § 165.T01–0786 is that area of navigable waters within a 1000 foot radius of the launch platform or launch site for each fireworks display. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY.'' This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background. Shore sites used in these locations will display a sign labeled ''FIREWORKS—STAY AWAY'' with the same dimensions.

(g) The regulated areas for all surfing events listed in Table 2 of § 165.T01–0786 are all navigable waters within a 100 yard radius of surfing participants and support vessels within the location area.

TABLE 1 OF § 165.T01–0786

Fireworks Events	
1 Stamford Fireworks	• Date: September 1, 2011. • Time: 8:30 p.m. to 10:30 p.m. • Location: All waters of Stamford Harbor, Stamford, CT in approximate position 41°1′48.464″ N, 073°32′15.316″ W (NAD 83).
2 Village of Island Park Labor Day Celebration Fireworks.	• Date: September 3, 2011. • Time: 8:30 p.m. to 10:30 p.m. • Location: Waters off Village of Island Park Fishing Pier, Village Beach, NY in approximate position 40°36′30.95″ N, 073°39′22.23″ W (NAD 83).

TABLE 2 OF § 165.T01–0786

Surfing Events	
2 Quiksilver Pro New York, Surf competition.	• Effective dates: September 4–15, 2011. • Enforcement dates: 4 days to be determined by weather. • Notification: Broad. • Time: 8 a.m. to 5 p.m. • Locations: All waters of the Atlantic Ocean within 150 yards of each beach listed below, Long Beach, NY. • National Beach: Approximate positions, beach begins 40°34′58.961″ N, 073°40′10.236″ W beach ends 40°34′58.961″ N, 073°39′59.962″ W. • Lincoln Beach: Approximate positions, beach begins 40°34′56.647″ N, 073°39′18.982″ W beach ends 40°34′56.647″ N, 073°39′8.668″ W. • Laurelton Beach: Approximate positions, beach begins 40°34′59.344″ N, 073°40′31.962″ W beach ends 40°34′59.344″ N, 073°40′31.789″ W. • Pacific Beach: Approximate positions, beach begins 40°34′56.733″ N, 073°38′37.385″ W beach ends 40°34′56.733″ N, 073°38′26.491″ W.

Dated: August 19, 2011.

J.M. Vojvodich,

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

[FR Doc. 2011–22996 Filed 9–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17 and 51

RIN 2900–AN63

Per Diem Payments for the Care Provided to Eligible Veterans Evacuated From a State Home as a Result of an Emergency

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its regulations concerning per diem payments to States to permit continuation of such payments in some situations for veterans who have been evacuated from a State home as a result of an emergency. Per diem is the daily rate paid by VA to a State for providing a specified level of care to eligible veterans in a facility that is officially recognized and certified by VA. This final rule authorizes VA to continue to pay per diem when veterans for whom VA is paying per diem are evacuated as a result of an emergency from a State home to a facility that is not recognized by VA as a State home. The rule requires, in order for per diem payments to continue while the veteran is relocated due to an emergency, that an appropriate VA official determine whether an emergency exists and whether the facility to which veterans may be evacuated (evacuation facility) complies with certain minimum standards. The rule establishes the minimum standards that facilities to which veterans are evacuated must meet in order for States to continue receiving per diem for relocated veterans. These standards also apply to evacuation facilities when veterans are evacuated from contract nursing homes.

DATES: *Effective Date:* This final rule is effective October 11, 2011. This final rule applies to all applications for reimbursement pending with VA or received by VA on or after the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Theresa A. Hayes, MPH, RN, Office of Patient Care Services (114), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–6771 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to 38 U.S.C. 1741–1745, VA provides per diem payments to reimburse States for each eligible veteran receiving nursing home care, domiciliary care, and adult day health care in State home facilities that are recognized and certified by VA. Section 1742 specifically provides that ''[n]o payment or grant may be made to any home * * * unless such home is determined by the Secretary to meet such standards as the Secretary shall prescribe, which standards with respect to nursing home care shall be no less stringent than those prescribed pursuant to section 1720(b) of this title.'' The statutes do not address circumstances in which veterans may need to be evacuated temporarily to another facility due to an emergency.

VA implemented its authority to provide per diem payments to States in, inter alia, 38 CFR parts 17 and 51. In a document published in the **Federal Register** on March 23, 2011 (76 FR 16354), VA proposed to amend those regulations to address VA's authority to continue per diem payments to a State for a veteran during an emergency evacuation of the veteran to a temporary or substitute State home facility where the State continues to provide care.

VA provided a 60-day comment period that ended May 23, 2011. VA received no comments. Based on the rationale set forth in the proposed rule and in this document, we are adopting the proposed rule as a final rule without change.

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 an 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 given year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule does not contain any 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. This final rule affects veterans receiving care in State facilities and will not have a significant economic impact on any small entities. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of section 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles are 64.009 Veterans Medical Care Benefits, 64.010 Veterans Nursing Home Care, and 64.011 Veterans Dental 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, Department of Veterans Affairs, approved this document on September 1, 2011, 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, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

38 CFR Part 51

Administrative practice and procedure, Claims, Day care, Dental Health, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professionals, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: September 1, 2011.

William F. Russo,

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

For the reasons stated in the preamble, VA amends 38 CFR parts 17 and 51 as follows:

PART 17—MEDICAL

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

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

■ 2. Add § 17.58 to read as follows:

§ 17.58 Evacuation of community nursing homes.

When veterans are evacuated from a community nursing home as the result of an emergency, they may be relocated to another facility that meets certain minimum standards, as set forth in 38 CFR 51.59(c)(1).

(Authority: 38 U.S.C. 501, 1720)

PART 51—PER DIEM FOR NURSING HOME CARE OF VETERANS IN STATE HOMES

■ 3. The authority citation for part 51 is revised to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743; and as stated in specific sections.

■ 4. Add § 51.59 to subpart C to read as follows:

§ 51.59 Authority to continue payment of per diem when veterans are relocated due to emergency.

(a) *Definition of emergency.* For the purposes of this section, emergency means an occasion or instance where all of the following are true:

(1) It would be unsafe for veterans receiving care at a State home facility to remain in that facility.

(2) The State is not, or believes that it will not be, able to provide care in the State home on a temporary or long-term basis for any or all of its veteran residents due to a situation involving the State home, and not due to a situation where a particular veteran's medical condition requires that the veteran be transferred to another facility, such as for a period of hospitalization.

(3) The State determines that the veterans must be evacuated to another facility or facilities.

(b) *General authority to pay per diem during relocation period.* Notwithstanding any other provision of this part, VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who resided in a State home, and for whom VA was paying per diem, if such veteran is evacuated during an emergency into a facility other than a VA facility if the State is responsible for providing or paying for the care. VA will not pay per diem payments under this section for more than 30 days of care provided in the evacuation facility, unless the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to return the veteran to a State home within the 30-day period, in which case such official will approve additional period(s) of no more than 30 days in accordance with this section. VA will not provide per diem if VA determines that a veteran is or has been placed in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(c) *Selection of evacuation facilities.* The following standards and procedures apply to the selection of an evacuation facility in order for VA to continue to pay per diem during an emergency; these standards and procedures also apply to evacuation facilities when veterans are evacuated from a nursing home care facility in which care is being provided pursuant to a contract under 38 U.S.C. 1720.

(1) Each veteran who is evacuated must be placed in a facility that, at a minimum, will meet the needs for food, shelter, toileting, and essential medical care of that veteran.

(2) For veterans evacuated from nursing homes, the following types of facilities may meet the standards under paragraph (c)(1) of this section:

(i) VA Community Living Centers;

(ii) VA contract nursing homes;

(iii) Centers for Medicare and Medicaid certified facilities; and

(iv) Licensed nursing homes.

Note to paragraph (c)(2): If none of the above options are available, veterans may be evacuated temporarily to other facilities that meet the standards under paragraph (c)(1) of this section.

(3) For veterans evacuated from domiciliaries, the following types of facilities may meet the standards in paragraph (c)(1) of this section:

(i) Emergency evacuation facilities identified by the city or state;

(ii) Assisted living facilities; and

(iii) Hotels.

(d) *Applicability to adult day health care facilities.* Notwithstanding any other provision of this part, VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who was receiving adult day health care, and for whom VA was paying per diem, if the adult day health care facility becomes temporarily unavailable due to an emergency. Approval of a temporary facility for such veteran is subject to paragraph (e) of this section. If after 30 days the veteran cannot return to the original adult day health care facility, VA will discontinue per diem payments unless the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to provide care at the original facility or to relocate an eligible veteran to a new facility, in which case such official will approve additional period(s) of no more than 30 days in accordance with this section. VA will not provide per diem if VA determines that a veteran was provided adult day health care in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(e) *Approval of response.* Per diem payments will not be made under this section unless and until the director of the VAMC determines, or the director of the VISN in which the State home is located (if the VAMC director is not capable of doing so) determines, that an emergency exists and that the evacuation facility meets VA standards set forth in paragraph (c)(1) of this section.

(Authority 38 U.S.C. 501, 1720, 1742)

[FR Doc. 2011–22920 Filed 9–7–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0816–201106; FRL–9458–1]

Approval and Promulgation of Implementation Plans; Georgia: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule and Fine Particulate Matter Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve portions of a revision to the State Implementation Plan (SIP), submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (EPD), to EPA on September 30, 2010, for parallel processing. Georgia submitted the final version of this SIP revision on January 13, 2011. The portions of the SIP revision approved by this action incorporate two updates to Georgia's air quality regulations under Georgia's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Georgia's PSD permitting requirements for its greenhouse gas (GHG) emissions. Second, the SIP revision incorporates provisions for implementing the PSD program for the fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). EPA is approving Georgia's January 13, 2011, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the Clean Air Act (CAA or Act) and EPA regulations, including those relating to PSD permitting for GHGs and the $PM_{2.5}$ NAAQS. Additionally, EPA is responding to adverse comments received on EPA's November 29, 2010, proposed approval of Georgia's September 30, 2010, draft SIP revision.

DATES: *Effective Date:* This rule will be effective October 11, 2011.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0816. All documents in the docket are listed on the *http://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Georgia SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; *e-mail address: bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule and the NSR $PM_{2.5}$ Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; *e-mail address: abrams.heather@epa.gov.* For information regarding the $PM_{2.5}$ NAAQS, contact Mr. Joel Huey, Regulatory Development Section, at the same address above. Mr. Huey's telephone number is (404) 562–9104; *e-mail address: huey.joel@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is the background for this action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the Georgia SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[1] the ''Johnson Memo Reconsideration,'' [2] the ''Light-Duty Vehicle Rule,'' [3] and the ''Tailoring Rule.'' [4] Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

With regard to the $PM_{2.5}$ NAAQS, EPA finalized a rule on May 16, 2008, including changes to the NSR program (hereafter referred to as the ''2008 NSR $PM_{2.5}$ Rule''). *See* 73 FR 28321. The 2008 NSR $PM_{2.5}$ Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. States were required to provide SIP submissions to address the requirements for the 2008 NSR $PM_{2.5}$ Rule by May 16, 2011.

On September 30, 2010,[5] in response to the Tailoring Rule, earlier GHG-related EPA rules and the 2008 NSR $PM_{2.5}$ Rule, EPD submitted a draft revision to EPA for approval into the Georgia SIP to: (1) Establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Georgia's PSD permitting requirements for GHG emissions; and (2) incorporate provisions for implementing the PSD program for the $PM_{2.5}$ NAAQS. Subsequently, on November 29, 2010, EPA published a proposed rulemaking to approve portions of Georgia's September 30, 2010, SIP revision under parallel processing. *See* 75 FR 73017. Specifically, EPA proposed to approve

[1] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[2] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[3] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[4] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

[5] With respect to the $PM_{2.5}$ NAAQS, Georgia's January 13, 2011, SIP revision only addresses PSD requirements. Regarding the nonattainment NSR provisions for the $PM_{2.5}$ NAAQS, EPA is awaiting final SIP submittal from Georgia for the nonattainment NSR $PM_{2.5}$ provisions.

the portions of Georgia's September 30, 2010, draft SIP revision that incorporate by reference the thresholds for GHG permitting applicability at 40 CFR 52.21 (as amended June 3, 2010, and effective August 2, 2010), into Georgia's SIP (391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality*),[6] and that incorporate the federal requirements related to the 2008 NSR $PM_{2.5}$ Rule. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's November 29, 2010, **Federal Register** notice.

EPA's November 29, 2010, proposed approval was contingent upon Georgia providing a final SIP revision that was substantively the same as the revision proposed for approval by EPA in the November 29, 2010, proposed rulemaking. *See* 75 FR 73017. Georgia provided its final SIP revision on January 13, 2011. There were no differences between Georgia's September 30, 2010, draft SIP revision, and the January 13, 2011, final SIP revision.

On December 30, 2010, EPA published a final rule narrowing its previous approval of PSD programs as applicable to GHG-emitting sources in SIPs for 24 states, including Georgia.[7] *See* 75 FR 82536 (PSD Narrowing Rule). Specifically, in the PSD Narrowing Rule, EPA withdrew its previous approval of Georgia's SIP to the extent it applied PSD to GHG-emitting sources below the thresholds in the Tailoring Rule. The effect of the PSD Narrowing Rule on the approved Georgia SIP was to establish that new and modified sources are subject to PSD permitting requirements for their GHG emissions only if they emit GHGs at or above the Tailoring Rule's emission thresholds. As result of today's action approving Georgia's incorporation of the appropriate GHG permitting thresholds into its SIP, paragraph (b) in 40 CFR 52.572, as included in EPA's Narrowing Rule, is no longer necessary. Thus, today's action also amends 40 CFR 52.572 to remove this unnecessary regulatory language.

In addition to changes to address PSD permitting requirements for GHGs and $PM_{2.5}$ discussed above, Georgia's January 13, 2011, SIP revision incorporated by reference provisions in 40 CFR 52.21 that: (1) Exclude facilities that produce ethanol through a natural fermentation process from the definition of ''chemical process plants'' in the major NSR source permitting program as provided by the Ethanol Rule (72 FR 24060, May 1, 2007), and (2) implement EPA's Fugitive Emissions Rule (73 FR 77882, December 19, 2008).[8] The SIP revision also includes a provision (at 391–3–1–.02(7)(a)(iv)) that would automatically rescind portions of Georgia's SIP in the wake of certain court decisions or other events (the automatic rescission clause). At this time, EPA is not taking final action to approve these three additional provisions into the Georgia SIP.

II. What is EPA's response to comments received on this action?

EPA received two sets of adverse comments on the November 29, 2010, proposed rulemaking to approve revisions to Georgia's SIP. One set of comments, provided by the Air Permitting Forum, raised concerns regarding the SIP revisions relating to PSD permitting for GHGs. The other set of comments, provided by Oglethorpe Power Corporation, expressed concern over EPA not proposing action on the automatic rescission clause contained in Georgia's September 30, 2010, draft SIP revision. A full set of the comments provided by both Oglethorpe Power Corporation and Air Permitting Forum (hereinafter referred to as the ''Commenter'') is provided in the docket for today's final action. The comments can be accessed at *http://www.regulations.gov* using Docket ID No.: EPA–R04–OAR–2010–0816. A summary of the adverse comments and EPA's responses are provided below.

Generally, the adverse comments fall into four categories. First, one Commenter states that PSD requirements cannot be triggered by GHGs. Second, a Commenter expresses concerns regarding a footnote in the November 29, 2010, proposal describing EPA's previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter states that the planned SIP approval narrowing action ''is illegal.'' Third, a Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, both Commenters express concern over EPA not proposing action in the November 29, 2010, rulemaking on the automatic rescission clause (labeled the ''severability provision'' by one Commenter, and the ''sunsetting clause'' by the other Commenter) included in Georgia's September 30, 2010, draft SIP revision. EPA's response to these four categories of comments is provided below.

Comment 1: The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter reiterates EPA's statement that without the Tailoring Rule thresholds, PSD will apply as of January 2, 2011, to all stationary sources that emit or have the potential to emit, depending on the source category, either 100 or 250 tons of GHGs per year. The Commenter also reiterates EPA's statement that beginning January 2, 2011, a source owner proposing to construct any new major source that emits at or higher than the GHG applicability levels, or to modify any existing major source in a way that would increase GHG emissions, would need to obtain a PSD permit that addresses these emissions before construction could begin. In raising concerns with the two aforementioned statements, the Commenter states: ''No area in the State of Georgia has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting.'' The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to today's action. Finally, the Commenter states that ''EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Georgia to

[6] Georgia's submittal also includes revised title V operating permit provisions, which are not included in the SIP. As such, EPA is not taking final action to approve Georgia's update to its title V regulations in this rulemaking.

[7] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans.'' 75 FR 82536 (December 30, 2010).

[8] On March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. The March 31, 2010, stay was established as a result of EPA granting Natural Resource Defense Council's petition for reconsideration on the original Fugitive Emissions Rule. *See* 73 FR 77882. On March 30, 2011 (76 FR 17548), EPA proposed an interim rule that superseded the March 31, 2010, stay to clarify and extend the stay of the Fugitive Emission Rule until EPA completes its reconsideration. The interim rule simply reverts the CFR text back to the language that existed prior to the Fugitive Emissions Rule changes in the December 19, 2008 rulemaking. EPA plans to issue a final rule approving the interim rule. Until the interim rule is final, the Fugitive Emission Rule is still currently stayed through October 3, 2011.

rescind that portion of its rules that would allow GHGs to trigger PSD.''

Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants such as GHGs, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in today's rulemaking. In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a ''major stationary source'' was one which emitted ''any air pollutant subject to regulation under the Act'' at or above the specified numerical thresholds; and defined a ''major modification,'' in general, as a physical or operational change that increased emissions of ''any pollutant subject to regulation under the Act'' by more than an amount that EPA variously termed as de minimis or significant. In addition, EPA's 2002 NSR Reform rules added to the PSD regulations the new definition of ''regulated NSR pollutant'' (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)) and noted that EPA added this term based on a request from a commenter to ''clarify which pollutants are covered under the PSD program.'' Further, EPA explained that in addition to criteria pollutants for which a NAAQS has been established, ''[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant.'' *See* 67 FR 80186, 80240 and 80264 (December 31, 2002). Among other things, the definition of ''regulated NSR pollutant'' includes ''[a]ny pollutant that otherwise is subject to regulation under the Act.'' *See* 40 CFR 52.21(b)(50)(d)(iv); 40 CFR 51.166(a)(49)(iv).

EPA disagrees with the Commenter's underlying premise that PSD requirements were not triggered for GHGs when GHGs became subject to regulation on January 2, 2011. This has been well established and discussed in connection with prior EPA actions, including, most recently, the Johnson Reconsideration and the Tailoring Rule. In addition, EPA's November 29, 2010, proposed rulemaking provides the general basis for the Agency's rationale that GHGs, while not a NAAQS pollutant, can trigger PSD permitting requirements. The November 29, 2010, action also refers the reader to the preamble of the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and concluded such an interpretation of the Act would contravene Congress' unambiguous intent. *See* 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response-to-Comments document (''Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments''), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules (''EPA's Response to Motions for Stay,'' *Coalition for Responsible Regulation* v. *EPA,* D.C. Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action and can be accessed at *http://www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–0816.

Comment 2: The Commenter expresses concerns regarding a footnote in which EPA describes its previously announced intention to narrow its prior approval of some SIPs. In the footnote, EPA explained that such narrowing would ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds are not obligated under federal law to obtain PSD permits during any gap between the effective date of GHG-permitting requirements (January 2, 2011) and the date that a SIP is revised to incorporate the Tailoring Rule thresholds. The Commenter asserts that EPA's narrowing of its prior SIP approvals ''is illegal.'' Further, the Commenter states that ''EPA has not proposed to narrow Georgia's SIP approval here and any such proposal must be explicit and address the action specifically made with respect to Georgia. EPA cannot sidestep these important procedural requirements.''

Response 2: While EPA does not agree with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, the narrowing approach was not the subject of EPA's November 29, 2010, proposed rulemaking to approve Georgia's September 30, 2010, SIP revision. Rather, the narrowing approach was the subject of a separate rulemaking, which was considered and finalized in the PSD Narrowing Rule in an action separate from today's rulemaking. *See* 75 FR 82536 (December 30, 2010). In today's final action, EPA is acting to approve a SIP revision submitted by Georgia, and is not otherwise narrowing its approval of previously approved provisions in the Georgia SIP. Accordingly, the legality of the narrowing approach is not at issue in today's rulemaking.

Comment 3: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Georgia, much less nationwide.

Response 3: EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Georgia's September 30, 2010, draft SIP revision, today's action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in and of itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional review under the Paperwork Reduction Act. In addition, because today's action simply approves existing state law, it will not have a significant economic impact on a substantial number of small entities beyond the impact of existing state law requirements. Thus, a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

In sum, today's rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD

programs, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled *''VII. Comments on Statutory and Executive Order Reviews,''* 75 FR 31601–31603, and *''VI. What are the economic impacts of the final rule?''* 75 FR 31595–31601. EPA also notes that today's action does not in-and-of itself trigger the regulation of GHGs. To the contrary, by helping to clarify that higher PSD applicability thresholds for GHGs apply than would otherwise be in effect under the Act, this rulemaking, as well as EPA's Tailoring Rule, is part of the effort to provide relief to smaller GHG-emitting sources that would otherwise be subject to PSD permitting requirements for their GHG emissions.

Comment 4: The Commenters object to EPA not proposing to take action (in the November 29, 2010, proposed rulemaking) on the automatic rescission clause included in Georgia's September 30, 2010, draft SIP revision. One Commenter states: ''EPA refuses to take action on this provision, proposing neither approval nor disapproval of the severability provision in the Georgia SIP.'' This Commenter further states that, at a minimum, EPA is required, pursuant to section 110(k)(2) of the CAA, to take action within 12 months after the State's submission of a complete SIP revision. The other Commenter asserts that EPA cannot take action on any portion of the Georgia SIP revision without taking action on the automatic rescission clause because, in the Commenter's opinion, the rescission clause is not ''separable.'' The Commenter goes on to state that EPA is changing the intended scope of the State's regulations. Further, the Commenter states: ''EPA's failure to 'act' on this provision would have the effect of codifying a provision more stringent than what Georgia submitted to EPA because it would effectively make the tailoring thresholds permanent until EPA revises the SIP in the future. EPA must follow Section 110(k)(3) and its own guidance, and approve the submitted provisions as a whole.''

Response 4: Contrary to the comments described above, EPA is not refusing to take action on the automatic rescission clause. Rather, EPA is in the process of evaluating the approvability of the automatic rescission clause included in Georgia's January 13, 2011, final SIP revision, and will continue to work with the State to resolve outstanding concerns and reach a final decision. As noted by one Commenter, section 110(k)(3) of the Act provides EPA with 12 months to act on a SIP revision once the State's submission is complete, and that time period has not yet expired with respect to Georgia's automatic rescission clause.

One Commenter cites the Seventh Circuit finding in *Bethlehem Steel* v. *Gorsuch,* 742 F.2d 1028 (7th Cir. 1984) that EPA may not act separately on a portion of a SIP revision submittal that is not separable from the rest, and the commenter defines ''separable'' as meaning that approving only a portion of the SIP revision ''should not result in the approved portions of the SIP submission being more stringent than the State would have anticipated.'' However, in an e-mail dated May 10, 2011, Georgia agreed to allow EPA to take action on the majority of this SIP revision now, and reserve action on the automatic rescission clause for a later date. The May 10, 2011, e-mail to EPA Region 4 Air Planning Branch, Regulatory Development Section Chief Lynorae Benjamin from Georgia EPD Air Protection Branch Chief James Capp states: ''Georgia would like you to move forward with final approval for the GHG Rule and not wait on the resolution for the rescission clause. However, we would like to continue working with you on obtaining approval of the rescission clause.'' *See* Docket ID No. EPA–R04–OAR–2010–0816. Given Georgia's agreement to EPA's proposed course of action, EPA is not acting in a way that makes its approval more stringent than the state would anticipate and the 7th Circuit's analysis in *Bethlehem Steel* is not implicated. Moreover, regardless of whether EPA eventually approves the automatic rescission clause into Georgia's SIP, if the federal GHG regulations are eliminated for some reason, Georgia will be able to revise its SIP accordingly using the SIP revision procedures set forth in section 110 of the CAA. EPA notes that it has not yet decided on the approvability of the rescission clause that the State submitted with its January 13, 2011 SIP revision, but will continue to work with the State in consideration of a final course of action.

III. What is the effect of this final action?

Final approval of Georgia's January 13, 2011, SIP revision will incorporate the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010) and adopted as state law, confirming that smaller GHG sources emitting less than these thresholds will not be subject to PSD permitting requirements under the approved Georgia SIP. Pursuant to section 110 of the CAA, EPA is approving the changes made in Georgia's January 13, 2011, SIP revision into Georgia's SIP, with the exception of certain provisions noted above.

Georgia's January 13, 2011, revision updates its existing incorporation by reference of the federal NSR program to include the relevant federal Tailoring Rule provisions set forth at 40 CFR 52.21 into the Georgia SIP at 391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality.*[9] EPA has determined that the portions of Georgia's January 13, 2011, SIP revision, approved by today's action are consistent with EPA's regulations, including the Tailoring Rule. Furthermore, EPA has determined that these portions of the January 13, 2011, revision to Georgia's SIP are consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, at 75 FR 31561.

Additionally, Georgia's January 13, 2011, SIP revision incorporates by reference the provisions at 40 CFR 52.21 as amended by the promulgation of the NSR $PM_{2.5}$ Rule for PSD.[10] EPA has determined that these portions of Georgia's January 13, 2011, SIP revision approved by today's action are consistent with EPA's regulations, including the NSR $PM_{2.5}$ Rule for PSD, and with section 110 of the CAA.

IV. Final Action

EPA is taking final action to approve, with certain exceptions, Georgia's January 13, 2011, SIP revision, which updates Georgia's air quality regulations, 391–3–1–.02(7)—*Prevention of Significant Deterioration of Air Quality,* to reflect changes in federal requirements. Specifically, Georgia's January 13, 2011, SIP revision incorporates appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule, and incorporates those thresholds in the form in which they are stated in state law. In addition, the SIP revision incorporates provisions for implementing the PSD program for the $PM_{2.5}$ NAAQS. EPA determined that the portions of the January 13, 2011, SIP revision addressed by today's action are approvable because they are in

[9] Georgia's submittal also relates to title V provisions, which are not included in the SIP. As such, EPA is not taking action to approve Georgia's update to its title V regulations in this rulemaking.

[10] Georgia's January 13, 2011, SIP revision excludes adoption of the relevant grandfathering provision at 40 CFR 52.21(i)(1)(ix). On May 18, 2011, (76 FR 28646) EPA took final action to repeal the $PM_{2.5}$ grandfathering provision at 40 CFR 52.21(i)(1)(xi) which ends the use of the 1997 PM_{10} Surrogate Policy for PSD permits under the federal PSD program at 40 CFR 52.

accordance with the CAA and EPA regulations.

As result of EPA's approval of Georgia's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into Georgia's SIP, paragraph (b) in 40 CFR 52.572, as included in EPA's PSD Narrowing Rule, is no longer necessary. In this final action, EPA is amending 40 CFR 52.572 to remove this unnecessary regulatory language.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 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* CAA section 307(b)(2). For purposes of judicial review, each of the SIP revisions approved by today's action are severable from one another.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 16, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570 (c) is amended by revising the entry for ''391–3–1–.02(7)'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation

EPA APPROVED GEORGIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	* * *
391–3–1–.02(7) ..	Prevention of Significant Deterioration of Air Quality (PSD).	12/29/2010	9/8/2011, [Insert citation of publication].	Georgia's PSD Rule 391–3–1–.02(7) incorporates by reference the regulations found at 40 CFR 52.21 as of June 3, 2010, with changes. This EPA action is approving the incorporation by reference with the exception of the following provisions: (1) the provisions amended in the Ethanol Rule (72 FR 24060) which exclude facilities that produce ethanol through a natural fermentation process from the definition of "chemical process plants" in the major NSR source permitting program found at 40 CFR 52.21(b)(1)(i)(*a*) and (b)(1(iii)(*t*); and 2) the administrative regulations amended in the Fugitive Emissions Rule (73 FR 77882). Additionally, this EPA action is not approving the "automatic rescission clause" provision at 391–3–1–.02(7)(a)2.(iv). This rule contains NO_X as a precursor to ozone for PSD and NSR.
*	*	*	*	* * *

* * * * *

■ 3. Section 52.572 is revised to read as follows:

§ 52.572 Approval Status.

With the exceptions set forth in this subpart, the Administrator approves Georgia's plans for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. Furthermore, the Administrator finds the plans satisfy all requirements of Part D, Title I, of the Clean Air Act as amended in 1977.

[FR Doc. 2011–22666 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2011–0747; FRL–9460–4]

Findings of Failure To Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2006 Fine Particulate Matter ($PM_{2.5}$) NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding that certain states, the District of Columbia, and the Commonwealth of Puerto Rico have not submitted a complete State Implementation Plan (SIP) that addresses basic program elements of the Clean Air Act (CAA or Act) necessary to implement, maintain, and enforce the 2006 24-hour Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). The EPA refers to these SIP submissions as "infrastructure" SIPs, because they address basic structural requirements specified in section 110(a)(1) and (2) that states must establish that they meet following the promulgation of a new or revised NAAQS. Specifically, the EPA is evaluating whether these states, the District of Columbia, and the Commonwealth of Puerto Rico made complete infrastructure SIP submissions to address the applicable requirements of section 110(a)(2)(A) through (M) necessary to implement the 2006 $PM_{2.5}$ NAAQS, with the exception of section 110(a)(2)(I), portions of section 110(a)(2)(C) pertaining to nonattainment area requirements and section 110(a)(2)(D)(i)(I). By this action, the EPA is identifying those states, the District of Columbia, and the Commonwealth of Puerto Rico that have failed to make a complete submission for some or all of these specific requirements. The finding of failure to submit for some or all of these specific elements establishes a 24-month deadline for the EPA to promulgate a Federal Implementation Plan (FIP) to address each state's outstanding infrastructure SIP elements unless, prior to that time, the state submits, and the EPA approves, a submission that meets the required elements, or unless the state is already subject to an existing FIP that addresses the SIP deficiency.

DATES: The effective date of this rule is October 11, 2011.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27709; telephone (919) 541–3356; fax number (919) 541–0824; email address: *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 553 of the Administrative Procedures Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement by the statutory date. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

For questions related to a specific state, the District of Columbia, and the Commonwealth of Puerto Rico, please contact the appropriate regional office below.

Regional offices	States
Region II—Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866.	Puerto Rico.

Regional offices	States
Region III—Cristina Fernandez, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187.	District of Columbia.
Region VII—Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, KS 66101–2907.	Iowa.
Region VIII—Monica Morales, Air Quality Planning Unit Manager, EPA Region VIII Air Program, 1595 Wynkoop St. (8P–AR), Denver, CO 80202–1129.	Montana.
Region IX—Lisa Hanf, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105	Arizona and Hawaii.
Region X—Robert Elleman, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska and Washington.

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I. Background

On September 21, 2006, the EPA promulgated a final rule revising the existing 1997 24-hour NAAQS for $PM_{2.5}$ from 65 micrograms per cubic meter ($\mu g/m^3$) to 35 $\mu g/m^3$. In that action, the EPA set the revised 2006 24-hour $PM_{2.5}$ primary standard at 35 $\mu g/m^3$.

CAA section 110(a) requires states to submit SIPs that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of such NAAQS, or within such shorter period as the EPA may prescribe. These SIPs were due on September 21, 2009. The EPA refers to these specific submissions as ''infrastructure'' SIPs because they are intended to address basic structural requirements for SIPs for a new or revised NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS necessarily affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

Section 110(a)(2) lists specific elements that states must meet, as applicable, in the general infrastructure SIP submissions. The requirements include basic SIP infrastructure elements such as SIP provisions to provide for monitoring, enforcement, and general legal authority, which are designed to assure attainment and maintenance of the NAAQS. In the case of section 110(a)(2)(D)(i), the provisions are intended to assure that the SIP of the state in question contains provisions necessary to prevent certain prohibited impacts on air quality in other states. In a September 25, 2009, memorandum titled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' the EPA identified the requirements that are the subject of this action, as applicable, and provided additional recommendations concerning the requirements. Most states submitted SIPs addressing section 110(a)(2). For various reasons, some of the submissions did not address all infrastructure SIP elements.

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Therefore, this action does not cover these specific section 110(a)(2) elements. However, this action does pertain to the requirements in section 110(a)(2)(D)(i)(II) for prevention of significant deterioration (PSD). On June 9, 2010, in a separate final rulemaking (75 FR 32763), the EPA found that 29 states and territories had not made a SIP submittal that addressed the section 110(a)(2)(D)(i)(I) requirements related to interstate transport.[1]

On January 12, 2011, WildEarth Guardians and Sierra Club filed a complaint against the EPA alleging that the agency had failed to take final action on infrastructure SIPs submitted by some states for the 2006 $PM_{2.5}$ NAAQS and that the agency had failed to make findings of failure to submit for other states that had failed to make such infrastructure SIP submissions.

II. This Action

This action reflects the EPA's determinations with respect to the section 110(a)(2) requirements for the 2006 24-hour $PM_{2.5}$ NAAQS only. These are based upon the failure of states to submit infrastructure SIPs to address the requisite requirements, or failure to certify that they have already met the requisite requirements, or both. For those states that have not yet made a submittal and for those states that made a submittal that was not complete with respect to each element of section 110(a)(2), as applicable, the EPA is making a finding of failure to submit a complete SIP.

For those states that did not make any submittal, except as noted above with respect to the June 9, 2010, finding, the EPA is making a finding of failure to submit a complete SIP with respect to all of the section 110(a)(2) SIP elements. In the same manner, for those states that did not make a submittal that addressed all of the section 110(a)(2) elements, as applicable, the EPA is making a finding of failure to submit only with respect to those specific elements for which the

[1] That notice included, among others, the states of Alaska, Iowa, Montana, and the District of Columbia and the Commonwealth of Puerto Rico, some of which are also subject of this action. We are not superseding or otherwise affecting that limited finding with respect to those states which the finding remains in effect.

state did not make a complete submission. These findings establish a 24-month deadline for the promulgation by the EPA of a FIP, in accordance with section 110(c)(1), unless prior to that time the state submits, and EPA approves, a submission from the state to address the elements for which the finding of failure to submit applies. These findings of failure to submit do not impose sanctions, and do not set deadlines for imposing sanctions as described in section 179, because these findings do not pertain to the elements of a Title I part D plan for nonattainment areas as required under section 110(a)(2)(I), and because this action is not a SIP call pursuant to section 110(k)(5). The EPA will work with these states and provide assistance as necessary to help them develop approvable submittals in a timely manner.

This action will be effective on October 11, 2011.

Findings of Failure To Submit for States That Failed To Make an Infrastructure SIP Submittal in Whole or in Part for the 2006 24 Hour $PM_{2.5}$ NAAQS

Region II

Puerto Rico failed to submit a SIP to satisfy the requirements of section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M).

Region III

District of Columbia failed to submit a SIP to satisfy the requirements of section 110(a)(2)(D)(i)(II) (PSD prong only). Regarding this finding, section 110(a)(2)(D)(i)(II) (PSD prong only) is already addressed for the District of Columbia through an existing FIP that remains in place. Therefore, this action will not trigger any additional FIP obligation with respect to these requirements.

Region VII

Iowa failed to submit a SIP to satisfy the requirements of section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M).

Region VIII

Montana failed to submit for section 110(a)(2)(D)(i)(II) (PSD prong only).

Region IX

Arizona failed to submit for section 110(a)(2)(G).

Hawaii failed to submit for section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M).

Region X

Alaska failed to submit for section 110(a)(2)(A)–(C), (E)–(H) and (J)–(M).

Washington failed to submit for section 110(a)(2)(A)–(C), (D)(i)(II) (PSD prong only), (E)–(H) and (J)–(M).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden. This rule relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2006 $PM_{2.5}$ NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as the EPA may provide. The final rule does not establish any new information collection requirement apart from that already required by law. The OMB control numbers for the EPA's regulations in the CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any action subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the action will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purpose of assessing the impacts of this final action on small entities, small entity is defined as: (1) A small business that is a small industry entity as defined in the U.S. Small Business Administration size standards (*See* 13 CFR 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which independently owned and operated is not dominate in its field.

After considering the economic impacts of this final action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2006 $PM_{2.5}$ NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as the EPA may provide.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538 for state, local, and tribal governments and the private sector. The action does not impose any new enforceable duty on any state, local or private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2006 $PM_{2.5}$ NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain, and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or shorter period as the EPA may provide.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS. This action will not

modify the relationship of the states and the EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249). It does not have a substantial direct effect on one or more Indian Tribes, because no Tribe has implemented an air quality management program related to the 2006 $PM_{2.5}$ NAAQS. Furthermore, this action does not affect the relationship or distribution of power and responsibilities between the federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is making findings concerning whether or not each state has submitted a complete SIP that provides the basic program elements specified in CAA section 110(a)(2) necessary to implement the 2006 $PM_{2.5}$ NAAQS. The findings of failure to submit for all or a portion of states' SIP establish a 24-month deadline for the EPA to promulgate FIPs to address the outstanding SIP elements unless, prior to that time, the affected states submit, and the EPA approves, the required SIPs.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. At the time of proposal of the implementation rule for the 1997 $PM_{2.5}$ standard, information on the methodology and data regarding the assessment of potential energy impacts regarding implementation of the 2006 $PM_{2.5}$ standard was not addressed because the $PM_{2.5}$ NAAQS is not a significant energy action. This is based on the fact that no impacts are specifically ascribed to the standard only. Potential energy impacts are ascribed during the implementation phase by the states. An energy impact analysis, as part of a regulatory impact analysis or other assessment for the $PM_{2.5}$ NAAQS rule, was prepared by the Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003. [October 17, 2006 (71 FR 60853)]

I. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

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

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

The EPA has determined that this final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice is making a finding concerning whether each state has submitted or failed to submit a complete SIP that provides the basic program elements of section 110(a)(2) necessary to implement the 2006 $PM_{2.5}$ NAAQS.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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 action in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective October 11, 2011.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date the final action is published in the **Federal Register**. Filing a petition for review by the Administrator of this final action 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 must be final, and shall not postpone the effectiveness of such action.

Thus, any petitions for review of this action related to findings of failure to submit related to the requirements of section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 2006 $PM_{2.5}$ NAAQS must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: August 31, 2011.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2011–22838 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0594; FRL–9456–6]

Revision to the California State Implementation Plan; Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Yolo-Solano Air Quality Management District portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from expandable polystyrene product manufacturing operations. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA).

DATES: This rule is effective on November 7, 2011 without further notice, unless EPA receives adverse comments by October 11, 2011. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0594, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. E-mail: *steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What rule did the State submit?

We are approving Yolo-Solano Air Quality Management District (YSAQMD) Rule 2.41, adopted on September 10, 2008, and submitted by the California Air Resources Board (CARB) on December 23, 2008. On April 20, 2009, EPA determined that the submittal for Rule 2.41 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There is no previous version of this rule in the SIP, and no previous versions have been submitted.

C. What is the purpose of the submitted rule?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 2.41 was designed to control VOC emissions from the manufacturing of expandable polystyrene products. The rule requires all products to be manufactured with either low-pentane or mid-pentane beads. Manufacturing emissions must be controlled by an emissions control system with a capture efficiency of at least 90% and a destruction efficiency of at least 95%. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), must not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA (see section 110(l) of the CAA), and must not modify, in a nonattainment area, any SIP-approved control requirement in effect before November 15, 1990 (see section 193 of the CAA). The YSAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 2.41 must fulfill RACT as well as CAA section 110(l) requirements.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''Control of VOC Emissions from Polystyrene Foam Manufacturing'' (EPA–450/3–90–020, September 1990).

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and CAA section 110(l). The SIP revision would not interfere with the on-going process for ensuring that requirements for reasonable further progress and attainment of the National Ambient Air Quality Standards are met. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by October 11, 2011, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 7, 2011. This will incorporate the rule into the federally enforceable SIP.

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.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: August 8, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(364)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(364) * * *

(i) * * *

(C) Yolo-Solano Air Quality Management District.

(*1*) Rule 2.41, ''Expandable Polystyrene Manufacturing Operations,'' adopted on September 10, 2008.

* * * * *

[FR Doc. 2011–22975 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 116 and 302

[EPA–HQ–SFUND–2011–0565; FRL–9460–9]

Designation of Hazardous Substances; Designation, Reportable Quantities, and Notification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA is issuing a technical amendment to correct, by removal of three Chemical Abstracts Service Registry Numbers that were erroneously included in the list of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act.

DATES: This final rule is effective on September 8, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2011–0565. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Superfund Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276.

FOR FURTHER INFORMATION CONTACT: Lynn Beasley, Regulation and Policy Development Division, Office of Emergency Management (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1965; fax number: (202) 564–2625; e-mail address: *beasley.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Type of entity	Examples of affected entities
Federal Agencies	National Response Center and any Federal agency that may release or respond to releases of hazardous substances.
State and Local Governments	State Emergency Response Commissions, and Local Emergency Planning Committees.
Responsible Parties	Those entities responsible for the release of a hazardous substance from a vessel or facility. Those entities with an interest in the substances incorrectly identified by their Chemical Abstracts Service Registry Number(s) as a hazardous substance.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of this document and other related information?

The current information is as follows:

- Docket ID No. EPA–HQ–SFUND–2011–0565.
- Federal eRulemaking Portal: *http://www.regulations.gov.*

II. What does this correction do?

This technical amendment is a correction to remove three Chemical Abstracts Service (CAS) Registry Numbers that were erroneously identified with *Sodium Phosphate, tribasic,* from the following Title 40 of the Code of Federal Regulations: Table 116.4 A—List of Hazardous Substances; Table 116.4 B—List of Hazardous Substances by CAS Number; Table 302.4—List of Hazardous Substances and Reportable Quantities; and Appendix A to section 302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances. The three correct Chemical Abstracts Service Registry Numbers remain on these tables.

On March 13, 1978, EPA issued a final rule in the **Federal Register** that designated hazardous substances under the authority of section 311(b)(2)(A) of the Federal Water Pollution Control Act (*aka,* Clean Water Act or CWA). On April 4, 1985, EPA issued a final rule in the **Federal Register** that designated hazardous substances and adjusted the reportable quantities under the authority of section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In both of these rules, *Sodium Phosphate, tribasic* was designated as a hazardous substance. For the convenience of the user, hazardous substances are presented in Tables and an Appendix that include the CAS Registry Number for each hazardous substance. In some cases, a chemical name may have more than one CAS Registry Number associated with it due to the chemical's various forms; however, CAS Registry Numbers are unique to a chemical or substance.[1] That is, two substances or forms of a substance do not have the same CAS Registry Number. *Sodium Phosphate, tribasic* has three CAS Registry Numbers associated with its chemical name. Those CAS Registry Numbers are 7601–54–9, 10101–89–0, and 13061–89–4. The first, 7601–54–9 is associated with the sodium salt of *Sodium Phosphate, tribasic.* The second, 10101–89–0 is associated with the dodecahydrate (*i.e.,* 12 H_2O) form of *Sodium Phosphate, tribasic.* And the third, 10361–89–4 is associated with the decahydrate (*i.e.,* 10 H_2O) form of *Sodium Phosphate, tribasic.* Those CAS Registry Numbers will continue to appear on the above cited tables and lists in Title 40 of the Code of Federal Regulations.

A petition from the International Food Additives Counsel,[2] dated March 14,

[1] Each CAS Registry Number (often referred to as a CAS Number): Is a unique numeric identifier, designates only one substance, and has no chemical significance. From the CAS Web site: *http://www.cas.org/expertise/cascontent/registry/regsys.html.*

[2] Petition for Rulemaking Correction, CAS Numbers in Title 40, Code of Federal Regulations, Section 302.4, Table 302.4—List of Hazardous Substances and Reportable Quantities, Appendix A to Section 302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances, and Section 116.4 Designation of Hazardous Substances.

2007, brought to the attention of the Agency that several CAS Registry Numbers were erroneously identified with the designated hazardous substance, *Sodium Phosphate, tribasic.* The erroneous CAS Registry Numbers in fact belong to three non-hazardous chemicals; *Sodium Trimetaphosphate (STMP), Sodium Tripolyphosphate (STPP),* and *Sodium Hexametaphosphate (SHMP).* The erroneous CAS Registry Numbers associated with *Sodium Phosphate, tribasic* have caused, and will continue to cause regulatory confusion until they are removed from the effected Tables and Appendix. As such, EPA is removing the three CAS Registry Numbers that are erroneously associated with *Sodium Phosphate, tribasic* and leaving the correct CAS Registry Numbers in each of the effected Tables and Appendix.

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment, because EPA is merely correcting information that is confusing to the public because it provides erroneous information about a hazardous substance. Three of the six CAS Registry Numbers identified with the hazardous substance, *Sodium Phosphate, tribasic* in fact belong to three non-hazardous substances. CAS Registry Numbers are provided for the convenience of the public to aid in the identification of the designated hazardous substances. The association of the three CAS Registry Numbers that belong to three non-hazardous substances with *Sodium Phosphate, tribasic* was an error. It is important that the public has accurate and correct regulatory information. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do any of the statutory and Executive Order reviews apply to this action?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

A. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of September 8, 2011. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 116

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

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

Dated: August 30, 2011.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out above, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

■ 1. The authority citation for part 116 continues to read as follows:

Authority: Secs. 311(b)(2)(A) and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*)

■ 2. In § 116.4:

■ a. Table 116.4A—List of Hazardous Substances is amended by revising the entry for Sodium phosphate, tribasic; and

■ b. Table 116.4B—List of Hazardous Substances by CAS Number is amended by removing the following entries: 7758294, 7785844, and 10124568.

The revision reads as follows:

§ 116.4 Designation of hazardous substances.

* * * * *

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES

Common name	CAS No.	Synonyms	Isomers	CAS No.
* *	*	*	*	*
Sodium phosphate, tribasic	7601549 10101890 10361894			
* *	*	*	*	*

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

■ 4. In § 302.4:

■ a. Table 302.4—List of Hazardous Substances and Reportable Quantities is amended by revising the entry for Sodium phosphate, tribasic; and

■ b. Appendix A to § 302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances is amended by removing the following entries: 7758294, 7785844, and 10124568.

The revision reads as follows:

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Statutory code†	RCRA waste No.	Final RQ pounds (Kg)
* * *	*	*	*	*
Sodium phosphate, tribasic	7601–54–9 10101–89–0 10361–89–4	1		5000 (2270)
* * *	*	*	*	*

* * * * *

[FR Doc. 2011–22887 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 79

[MB Docket No. 11–43; FCC 11–126]

Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order reinstates the video description rules adopted by the Commission in 2000. ''Video description,'' which is the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses in the program's dialogue, makes video programming more accessible to individuals who are blind or visually impaired. The Order reinstates the requirement that large-market broadcast affiliates of the top four national networks, and multichannel video programming distributor systems (''MVPDs'') with more than 50,000 subscribers, provide video description. It also reinstates the requirement that that all network-affiliated broadcasters (commercial or non-commercial) and all MVPDs pass through any video description provided with network programming they carry, to the extent that they are technically capable of doing so and when that technical capability is not being used for another purpose related to the programming.

DATES: *Effective date:* October 11, 2011, except for 47 CFR 79.3(d) and (e), which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 11, 2011.

Compliance date: October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Lyle Elder, *Lyle.Elder@fcc.gov* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order in MB Docket No. 11–43, FCC 11–126, adopted August 24, 2011, and released August 25, 2011. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Final Rule

I. Introduction

1. Pursuant to the Commission's responsibilities under the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''),[1] this Order reinstates the video description rules adopted by the Commission in 2000.[2] ''Video description,'' which is the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses in the program's dialogue,[3] makes video programming more accessible to individuals who are blind or visually impaired. The United States Court of Appeals for the District of Columbia Circuit vacated the Commission's original video description rules due to insufficient authority soon after their initial adoption.[4] The CVAA has directed us to reinstate those rules with certain modifications.[5] We anticipate that these revised and reinstated rules will afford better access to television programs for individuals who are blind or visually impaired, enabling millions more Americans to enjoy the benefits of television service and participate more fully in the cultural and civic life of the nation.

2. This Order reinstates the requirement that large-market broadcast affiliates of the top four national networks, and multichannel video programming distributor systems (''MVPDs'') with more than 50,000 subscribers, provide video description.[6] Covered broadcasters are each required to provide 50 hours of video-described prime time or children's programming, per calendar quarter, and covered MVPDs are required to provide the same number of hours on each of the five most popular nonbroadcast networks.[7] This ''most popular'' list excludes two nonbroadcast networks that primarily air programming recorded less than 24 hours before it is first aired.[8] The rules also require that all network-affiliated broadcasters (commercial or non-commercial) and all MVPDs pass through any video description provided with programming they carry. They must do so, however, only to the extent that they are technically capable of doing so and when that technical capability is not being used for another purpose related to the programming.[9] As required under the CVAA, these rules will be reinstated on October 8, 2011. Broadcast stations and MVPDs subject to the rules must begin full compliance on July 1, 2012.

II. Background

3. In 1996, at Congress's direction, the Commission issued a report on the use of video description in video programming.[10] In 2000, the Commission adopted rules requiring certain broadcasters and MVPDs to carry programming with video description.[11] Five months after the rules went into effect, they were vacated by the United States Court of Appeals for the District of Columbia Circuit on the ground that the Commission lacked sufficient authority to promulgate video description rules.[12] On October 8, 2010, President Obama signed the CVAA, which gives the Commission express authority to adopt video description rules. The statute directs the Commission, as an initial step, to reinstate the previously adopted video description rules, with certain modifications.[13] To fulfill our statutory mandate, we adopt the rules discussed below.[14]

III. Discussion

A. Reinstated Rules

4. Section 713(f)(1) of the Communications Act, as added by the CVAA, states that the Commission shall, after a rulemaking, reinstate its video description regulations contained in the Implementation of Video Description of Video Programming Report and Order (15 F.C.C.R. 15,230 (2000)), recon. granted in part and denied in part, (16 F.C.C.R. 1251 (2001)), modified as provided in paragraph (2).[15]

Consistent with Congress' directive, we will reinstate the Commission's video description rules on October 8, 2011, with the modifications required by the CVAA and discussed below.[16] The most significant elements of these reinstated rules are:

- Full-power affiliates of the top four national networks located in the top 25 television markets must provide 50 hours per calendar quarter of video-described prime time and/or children's programming. MVPDs that operate systems with 50,000 or more subscribers must provide 50 hours per calendar quarter of video-described prime time and/or children's programming on each of the top five non-broadcast networks that they carry on those systems.
- To count toward the requirement, the programming must not have been previously aired with video description, on that particular MVPD channel or broadcast station, more than once.
- Any broadcast station, regardless of its market size, affiliated or otherwise associated with any television network, must ''pass through'' video description when the network provides it, if the station has the technical capability necessary to do so, and that technical capability is not being used for another purpose related to the programming. Similarly, any MVPD system, regardless of its number of subscribers, must ''pass

[1] Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751 (2010).

[2] The CVAA requires that ''the Commission shall, after a rulemaking, reinstate its video description regulations'' with certain modifications. CVAA 202(a), Public Law 111–260, 124 Stat. 2751 (2010) (to be codified at 47 U.S.C. 613). The regulations were initially promulgated in *Implementation of Video Description of Video Programming,* MM Docket No. 99–339, Report and Order, 15 FCC Rcd 15230 (2000) (''*2000 Report and Order*''), recon. granted in part and denied in part, 16 FCC Rcd 1251 (2001) (''*Recon*''), and were codified at 47 CFR 79.3. The Commission initiated this proceeding to implement the CVAA in March 2011. *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* MB Docket No. 11–43, Notice of Proposed Rulemaking, 26 FCC Rcd 2975 (2011) (''*NPRM*'').

[3] CVAA at Title II, sec. 202(a), 713(h)(1). Video description is sometimes referred to as ''audio description''; *see infra* para. 56 (discussing the Commission's use of the statutory term ''video description'').

[4] *Motion Picture Ass'n of America, Inc.* v. *Federal Communications Comm.,* 309 F.3d 796 (DC Cir. 2002).

[5] CVAA at Title II, sec. 202(a), 713(f)(1–2).

[6] Appendix A, *Final Rules* (Revised 47 CFR 79.3(b)).

[7] *Id.* at § 79.3(b)(1), (3).

[8] *See infra* para. 14 (ESPN and Fox News exempted); *see also* CVAA at Title II, sec. 202(a), 713(f)(2)(E).

[9] Appendix A, *Final Rules* (Revised 47 CFR 79.3(b)(3), (5)).

[10] 47 U.S.C. 613 (this section, Video Programming Accessibility, was added to the Communications Act by Section 305 of the Telecommunications Act of 1996); *see also Implementation of Section 305 of the Telecommunications Act of 1996—Video Programming Accessibility,* MM Docket No. 95–176, Report, 11 FCC Rcd 19214 (1996) (''*Report*''). The Commission had initiated the inquiry in 1995, before enactment of the 1996 Act. *Closed Captioning and Video Description of Video Programming,* MM Docket No. 95–176, Notice of Inquiry, 11 FCC Rcd 4912 (1995).

[11] *2000 Report and Order, supra* note 2.

[12] *Motion Picture Ass'n of America, Inc.* v. *Federal Communications Comm.,* 309 F.3d 796 (DC Cir. 2002).

[13] CVAA at Title II, sec. 202(a), 713(f)(1) (requiring reinstatement of the rules one year after the date of enactment of the CVAA).

[14] The CVAA imposes other requirements with respect to video description. For example, we are required to submit a report to Congress by April 1, 2014 discussing the status, benefits, and costs of video description on television and Internet-provided video programming. *Id.* at § 713(f)(3). We must submit a second report by October 8, 2019 that provides a detailed review of the video description market and the potential need for expansion of the description mandates. *Id.* at § 713(f)(4)(C)(iii). The CVAA also gives us authority to expand the video description obligations if we determine that the benefits of video description outweigh its costs. *Id.* at § 713(f)(4)(A), (B), (C)(iv). We will address these questions in later proceedings.

[15] *Id.* at § 713(f)(1). *See also id.* at § 713(f)(2) (''Such regulations shall be modified only as follows * * *'').

[16] *See generally 2000 Report and Order* and *Recon, supra* note 2.

through'' video description when a broadcast station or nonbroadcast network provides it, if it has the technical capability necessary to do so on the channel on which it distributes the broadcast station or nonbroadcast network programming and that technical capability is not being used for another purpose related to the programming. Any programming aired with description must always include description if re-aired on the same station or MVPD channel.

• Complaints alleging a failure to comply with these rules may be filed with the Commission by any viewer, and the Commission will act to resolve such complaints after reviewing all relevant information provided by the complainant and the video programming distributor.

B. Requirement To Provide Video Description

5. Under the reinstated rules, certain broadcast stations and MVPDs have an obligation to provide video description of some of the video programming [17] that they offer. Full-power affiliates of the top national networks that are located in the 25 television markets with the largest number of television households [18] must provide 50 hours per calendar quarter of video-described programming during prime time,[19] or at any time if they are providing children's programming.[20] To count toward this 50-hour requirement, video-described programming must be airing either the first or second time on the station; that is, a video described program may be counted toward the 50 hours when it is originally aired and once more when it is re-run for the first time. Although we anticipate that much of the programming aired with video description will be newly produced, stations may count any program that they are airing for the first or second time with video description after the reinstated rules become effective, even if the program has previously been aired on that station. Similarly, a station may count programming toward its 50-hour obligation even if that programming has aired elsewhere with description, so long as it is airing with description for the first or second time on that station. The rules are identical for MVPDs with 50,000 or more subscribers, except that they apply to the programming of each of the top five national non-broadcast networks [21] carried by the MVPDs.

6. MVPD commenters raise some concerns about the requirement to provide video description, as opposed to passing it through when it is received. AT&T argues that

> [b]ecause of the practical, technical, and legal challenges involved, MVPDs are currently incapable of producing video descriptions on their own, and thus should only be required to transmit video descriptions to the extent that they are available.[22]

AT&T notes that ''MVPDs do not generally have the expertise, resources, or established processes for'' the production of video description.[23] Along similar lines, Verizon explains that ''[t]he overwhelming majority of programming viewed by FiOS TV subscribers is received by Verizon and immediately passed on to subscribers in real-time,'' creating technical hurdles to monitoring and adjusting an audio stream containing video description.[24] Finally, NCTA states that since video description is ''a creative work that is derivative of an original work, the descriptive audio may be subject to review and approval by several entities.'' [25] AT&T argues that it would not be in a position to create such a derivative work without a license from the copyright holders, which ''may be hesitant to grant such licenses.'' [26] For all these reasons, AT&T argues that ''the only entity that would be both capable of and authorized to create video descriptions would be the video programming provider,'' and ''the Commission should not skew [the carriage agreement] bargaining process by placing a regulatory obligation on MVPDs that they are unable independently to fulfill.'' [27]

7. The American Association of People with Disabilities (''AAPD'') greets with skepticism Verizon's claim of being totally ''hands-off'' with their content. They note that ''distributors contract with content providers and programmers before any programming is passed through their system, and do not 'blindly' pass along content to viewers.'' [28] The American Council of the Blind (''ACB'') ''recognizes the challenges in obtaining copyright permissions and producing audio description for programs,'' but suggests that relying on these marginal concerns when drafting overarching policy would be allowing the tail to wag the dog.[29] They argue that, rather than delaying full implementation due to these concerns, the Commission should simply take them into consideration, where appropriate, in the context of any future complaint.[30]

8. As industry commenters observe and as the Commission acknowledged in the *NPRM,* most video description has historically been created by programmers with whom broadcast stations and MVPDs contract for distribution of their content.[31] But the obligation on certain broadcast stations and MVPD systems to provide video description to their viewers is fundamental to the video description rules Congress has directed us to reinstate.[32] Limiting our rules to a pass-through obligation would eviscerate them, leaving no requirement in place on any party to ensure the production and distribution of video described content. In addition, doing so would put us in clear violation of Congress' directive that we reinstate the 2000 video description rules.

9. As discussed more fully below, we do not find any of the technical, practical, or legal concerns described by the commenters insurmountable, particularly given the very small amount of programming that must be described. We note that these stations

[17] The CVAA defines ''video programming'' in the video description context as ''programming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media (as defined in section 3).'' CVAA at Title II, section 202(a), 713(h)(2). Section 3 of the Communications Act, as amended in the CVAA, defines consumer-generated media as ''content created and made available by consumers to online websites and services on the Internet, including video, audio, and multimedia content.'' CVAA at Title I, sec. 101(1), 3 (54). The rules adopted herein adopt the CVAA definition of video programming. *See* Appendix A, *Final Rules* (Revised 47 CFR 79.3(a)(4)).

[18] These markets are the top 25 as determined by The Nielsen Company as of January 1, 2011 (*i.e.,* the 2010–2011 Designated Market Area rankings).

[19] For this purpose, prime time means 8–11 p.m. Monday through Saturday, and 7–11 p.m. on Sunday, except that these times are an hour earlier in the central time zone, and stations in the mountain time zone may choose which ''prime time'' period to adopt for the purpose of these rules. Appendix A, *Final Rules* (Revised 47 CFR 79.3(a)(6)). The National Association of Broadcasters (''NAB'') supports this definition, which was not opposed by any party. Comments of NAB at note 22.

[20] For this purpose, this is programming directed at children 16 years of age and younger. *See infra* para. 51 and Appendix A, *Final Rules* (Revised 47 CFR 79.3(a)(8)).

[21] The ranking of the Top 5 is based on The Nielsen Company's data on national prime time audience share, the number of subscribers reached, and the amount of non-exempt programming. *See infra* para. 12.

[22] Comments of AT&T Services, Inc. (''AT&T'') at 7.

[23] *Id.* at 8.

[24] Comments of Verizon Communications, Inc. (''Verizon'') at 2.

[25] Comments of NCTA at note 40.

[26] Comments of AT&T at 8.

[27] *Id. See also* Reply of CenturyLink at 4.

[28] Reply of AAPD at 4.

[29] Comments of ACB at 6.

[30] *Id.*

[31] *NPRM, supra* note 2, at note 47.

[32] *See generally,* CVAA, *supra* note 1. *See also* Reply of NAB at 6 (recognizing that the reinstated rules will require some broadcasters to ''provide'' video description, even though some elements of that provision are out of their control).

and systems provide 22 hours of prime-time programming per week, and most of the nine broadcast and nonbroadcast networks covered by the rules also provide some amount of children's programming. Out of all these hours of programming each week, a single broadcast or nonbroadcast network will be required to newly describe fewer than four hours each week, and, as long as the described programming is prime-time or children's programming, what is described is at the discretion of the regulated entity and their contractual partners.[33] Each covered station and system knows that it is individually responsible for ensuring that it carries one to two hundred hours of newly described programming each year (depending on the frequency of re-runs). We expect stations and systems to be forward-looking and fully prepared to provide this amount of newly described programming, whether by contract with network programmers or otherwise. Indeed, a third of the covered networks are already providing at least some video description.[34] Commenters identify no relevant distinctions between these networks and the others covered by the rules, giving us every confidence that video description can be successfully expanded within the generous time frame for compliance that we adopt in this Order.[35] Furthermore, as discussed below, the small amount of programming at issue in this proceeding also mitigates many other concerns raised by industry commenters, including those regarding the definition of ''near-live'' programming,[36] the pass-through obligation,[37] and the alleged need for new blanket exemptions.[38] We are simply not persuaded that these minimal requirements are overly burdensome, given the benefits they provide and our mandate from Congress. We also note that the CVAA requires us to review and reconsider these rules numerous times over the next decade, giving us ample opportunity to resolve any issues that arise upon implementation. Because the CVAA directs us to reinstate the video description rules as they were adopted in 2000, and gives us limited authority to revise them,[39] we believe that it is appropriate to hew closely to the original text of the rules where possible. We need not attempt to address every possible situation suggested by commenters that could hypothetically arise; we can address special or unique situations on a case-by-case basis through our administrative procedures. Per the CVAA, we provide for exemptions from the rules where they may be economically burdensome, and establish the process for seeking such exemptions.

1. Broadcast Stations

10. *Reference date for determining the top 25 markets.* In the *NPRM,* the Commission proposed to reinstate the 2000 rules, which designated ABC, CBS, Fox, and NBC affiliates, licensed to the top 25 markets as determined by The Nielsen Company, as the broadcast stations required to provide 50 hours of video description per quarter, and we adopt that proposal.[40] The CVAA directed us to ''update the list of the top 25 designated market areas,''[41] and in response, the *NPRM* proposed to apply the rules to the top 25 markets as determined by Nielsen as of January 1, 2011 (*i.e.,* the 2010–2011 designated market areas (DMA) rankings).[42] NAB, the WGBH National Center for Accessible Media (''WGBH''), and ACB agree with this approach to determining the covered broadcast stations, and we adopt the proposal.[43]

11. *New Affiliates.* The Commission also proposed to require stations in those markets that are affiliated with ABC, CBS, Fox, or NBC to provide video description regardless of when the affiliation begins.[44] That is, a station in a top 25 market that is not currently affiliated with one of those networks but becomes affiliated with one of them would be immediately responsible for complying with the video description requirement. NAB asks the Commission instead to give new affiliates a ''phase-in period of at least three months (but preferably six months)'' before requiring them to provide video description.[45] NAB argues that

> [a] station that becomes a top-four affiliate but is not technically ready to pass through video description will need a reasonable period to deploy the requisite technical capability. The CVAA does not require an immediate imposition of the video description rules on a station that newly becomes a top-four, top-25 affiliate, and NAB anticipates that without such a grace period, a station in this situation would seek a waiver of the rules.[46]

No other comments addressed this argument. We agree with NAB that some stations may require some time to buy or upgrade equipment and software after the affiliation agreement is finalized, and note that we have provided a three month ''grace period'' to MVPD systems that reach 50,000 subscribers.[47] We anticipate that a similar period will provide ample time for a station to establish the necessary technical capability. Accordingly, we require new ABC, CBS, Fox, and NBC affiliates in the top 25 markets to provide video description, in the same manner as current ABC, CBS, Fox, and NBC affiliates in the top 25 markets, beginning no more than three months after their affiliation agreement is finalized.

2. Top Five National Nonbroadcast Networks

12. In order to implement the requirement that MVPD systems with more than 50,000 subscribers provide 50 hours per calendar quarter of video-described prime time and/or children's programming on each of the top five non-broadcast networks that they carry,[48] we must identify the ''top 5

[33] *See infra* para. 51 (noting that the Commission declines to seek information about the program selection process).

[34] After the Commission's original video description rules were vacated, some broadcast and nonbroadcast networks voluntarily continued to provide this important service. *See NPRM, supra* note 2, at para. 4. CBS, Fox, and TNT, for instance, all provide description today and will be providing description under these rules. We commend these networks, and all others that have and continue to voluntarily offer described programming, for recognizing the importance of video description to the members of their audiences who are blind or visually impaired.

[35] *See infra* paras. 34–38 (discussing the compliance timeline).

[36] *See infra* paras. 40–42.

[37] *See infra* paras. 20–21.

[38] *See infra* paras. 45–47.

[39] CVAA at Title II, sec. 202(a), 713(f)(1–2).

[40] *NPRM, supra* note 2, at para. 9.

[41] CVAA, Title II, sec. 202(a), 713(f)(2)(B).

[42] *NPRM, supra* note 2, at para. 9. Markets are ranked by Nielsen based on their total number of television households. TVB Market Profiles *at http://www.tvb.org/market_profiles/131627.* DMA is a registered trademark of The Nielsen Company.

[43] *See* Comments of NAB at 11; Comments of WGBH at 11; Comments of ACB at 4. ACB suggests that although Nielsen ratings ''may suffice'' for determining the top 25 markets at this time, they may ultimately prove insufficient to accurately gauge market size, due to the expanding use of Internet-delivered video. They raise similar concerns about the measurement of audience size when determining the top five nonbroadcast networks. Given that the rules Congress instructed us to reinstate are limited to the provision of video description on television, the reach of broadcast stations and nonbroadcast networks over the Internet is not addressed in this proceeding.

[44] *NPRM, supra* note 2, at para. 9.

[45] August 19, 2011 Ex Parte of NAB at 1.

[46] Comments of NAB at 11.

[47] *See infra* para. 38.

[48] A number of commenters observe that, as proposed, the rules were ambiguous as to whether it is MVPD size or system size that determines whether a given MVPD system is required to provide description or only to pass it through. Comments of the National Cable & Telecommunications Association (''NCTA'') at 3; Reply of the American Cable Association (''ACA'') at 2–3; Reply of CenturyLink at 3. The *2000 Report & Order,* however, made it clear that the requirement to provide description was intended to be triggered by system size. *2000 Report and Order, supra* note 2, at para. 27. We have clarified the

national nonbroadcast networks that have at least 50 hours per quarter of prime time programming that is not exempt.'' [49] The prior rules determined the top nonbroadcast networks using ''an average of the national audience share during prime time of nonbroadcast networks, as determined by Nielsen Media Research, Inc., for the time period October 1999–September 2000, that reach 50 percent or more of MVPD households.'' [50] In the *NPRM,* the Commission proposed to measure audience share over an updated time frame, October 2009–September 2010,[51] and to explicitly exclude from the top five any non-broadcast network that does not provide, on average, at least 50 hours per quarter of prime time non-exempt programming.[52] No commenter opposed this proposal, which we adopt. Therefore, the top five nonbroadcast networks for the purposes of our rules are USA, the Disney Channel, TNT, Nickelodeon, and TBS.[53]

13. The Nielsen Company treats some nonbroadcast ''channels'' as more than one ''network'' for ratings purposes—notably, Nickelodeon and Nick at Nite. The Commission asked how we should take this into account when determining which networks are subject to the requirement to provide video description.[54] NCTA responds that, for these purposes, ''it makes sense for the Commission to treat those entities as a single network.'' [55] No other commenters address this question, and we concur with NCTA's suggestion. We therefore consider Nickelodeon and Nick at Nite to be a single network for ranking purposes and will consider them a single network for the purposes of compliance with the 50-hour requirement.

14. We asked for detailed information from any network that believes it should be excluded from the top five covered networks because it does not ''have at least 50 hours per quarter of prime time programming that is not exempt'' from these rules.[56] The comments of The Walt Disney Company (''Disney''), as parent company of ESPN, indicate that ''ESPN does not provide, on average, at least 50 hours per quarter of prime-time non-exempt programming,'' and are supported by an affidavit to that effect and ''a few illustrative programming schedules.'' [57] Similarly, the reply of News Corporation (''Fox'') indicates that ''Fox News qualifies for exclusion from the rules because it does not provide at least 50 hours per quarter of non-exempt (i.e., non-live or non-near live) prime-time programming,'' and is supported by a declaration to that effect and a programming schedule for a representative week.[58] Both networks base these assertions on the *NPRM's* proposed definition of ''near-live'' programming as ''programming performed and recorded less than 24 hours prior to the time it is first aired,'' [59] which we adopt here.[60] No commenter disputes the accuracy of these filings. Thus, pursuant to the terms of the statute, ESPN and Fox News are excluded from the list of top five nonbroadcast networks because they do not ''have at least 50 hours per quarter of prime time programming that is not exempt under'' the statute.[61]

15. ACB argues that, notwithstanding that the bulk of ESPN's prime-time programming is live or near-live, ''there certainly is prime [*sic*] programming that ESPN produces that does not fall under the given rules and should not be exempted.'' [62] The CVAA, however, limits the list of top five nonbroadcast networks to those networks that provide at least ''50 hours per quarter of prime time programming that is not exempt,'' and does not give the Commission authority to extend video description requirements to any other nonbroadcast networks.[63] Therefore, we decline to adopt ACB's proposal to extend video description requirements to ESPN's non-exempt prime-time programming.

3. Updates to the Lists of Markets and Nonbroadcast Networks

16. *Extension to Top 60 Markets.* The CVAA mandates that the Commission extend the video description requirements to broadcast stations in the top 60 markets after filing a report to Congress on the state of the video description market, and no later than six years after the enactment date of the CVAA.[64] The Report is due to be submitted to Congress between July 1, 2013 and July 1, 2014,[65] and as a result we must extend the video description requirements to the top 60 markets some time between July 1, 2013 and October 8, 2016. In the *NPRM,* the Commission asked whether this Order should identify now the reference date to be used to determine the top 60 markets and a compliance deadline for stations in markets 26–60, or whether the Commission should set those dates following the required report to Congress.[66] WGBH states that we ''should set a date at this time for the next phase of video description so as to assure that all parties are aware of the pending requirements.'' [67] ACB agrees that the reference date should be chosen at this time, and that the compliance deadline should be January 1, 2015, to give ''sufficient warning'' to covered entities and prevent ''unnecessary delays.'' [68] NAB disagrees, arguing that ''[t]he broadcast television industry is dynamic, and more experience is needed before any realistic timeframe can be established.'' It proposes that the Commission act to set these dates no sooner than January 1, 2014.[69] Given the narrow range of possible compliance deadlines, we see no benefit in delaying the selection of either the compliance date or the reference date. Furthermore, as WGBH notes, setting a date at this time gives significant advance notice to the parties likely to be covered.[70] This approach gives major-network affiliates in the top 60 markets additional time to upgrade equipment or architecture in order to provide video description once it is mandated (although, given the pass-through obligations of these stations, we expect that they will have little or no need for upgrades). Given the benefits of selecting compliance and reference dates now, and the absence of any countervailing harms, we elect to do so. The rules extend the requirement to provide 50 hours per quarter of video description to major network affiliates in the 60 largest markets beginning on July 1, 2015. These will be the television markets with the largest number of

language of the rule to reflect this intent. Appendix A, *Final Rules* (Revised 47 CFR 79.3(b)(4)).

[49] CVAA, Title II, sec. 202(a), 713(f)(2)(B). ''Exempt'' programming includes ''live or near-live programming.'' *See infra* para. 37.

[50] 47 CFR 79.3(b)(3).

[51] *NPRM, supra* note 2, at para. 12. These dates cover the 2009–2010 television season, which is the most recent full television season for which ratings are available.

[52] Appendix A, *Final Rules* (Revised 47 CFR 79.3(b)(4)); *see also infra* paras. 40–42 (addressing the definition of ''live or near-live'').

[53] *But see, infra,* para. 18 (list will be revised at three year intervals, if ratings change).

[54] *NPRM, supra* note 2, at para. 12.

[55] Comments of NCTA at note 32.

[56] *NPRM, supra* note 2, at para. 12.

[57] Comments of Disney at 1–2, Appendix A, Appendix B.

[58] Reply of Fox at 1, Exhibit No. 1, Exhibit No. 2.

[59] Comments of Disney at note 5; Reply of Fox at note 5.

[60] Appendix A, *Final Rules* (Revised 47 CFR 79.3(a)(7)); *see also infra* paras. 38–40.

[61] CVAA, Title II, sec. 202(a), 713(f)(2)(B).

[62] Reply of ACB at 8.

[63] CVAA, Title II, sec. 202(a), 713(f)(2)(B).

[64] *Id.* at § 713(f)(4)(C)(i–ii).

[65] *Id.* (explaining that the Commission must begin an inquiry into the state of the video description market no later than one year after July 1, 2012, when the rules go fully into effect, and must file the report to Congress no later than a year after beginning the inquiry).

[66] *NPRM, supra* note 2 at para. 11.

[67] Comments of WGBH at 3.

[68] Comments of ACB at 5.

[69] Comments of NAB at 12.

[70] Comments of WGBH at 3.

television households as determined by The Nielsen Company as of January 1, 2015 (*i.e.,* the 2014–2015 DMA rankings).

17. *Updating List of Top 25 Markets.* As discussed above, affiliates of the top four broadcast networks must provide 50 hours of video description per quarter if they are licensed to communities in the top 25 markets as of January 1, 2011. Because the relative size of television markets can change over time, the *NPRM* sought comment on whether we should reconsider the ranking of the top 25 markets at certain intervals to better reflect market conditions.[71] WGBH supports a periodic reconsideration of the rankings and suggests a five-year time frame, while agreeing with the Commission that ''the availability of described programming should vary little market-to-market based on the pass-through requirements.''[72] ACB agrees that a shifting television market supports periodic reevaluation, although at no less than 24-month intervals.[73] The Commission noted in the *NPRM* that, because of the ''pass-through'' obligations of network stations outside the top 25 markets, there may be little to no difference in the amount of video described programming available from affiliates of the top four networks in larger and smaller markets.[74] We share NAB's concern about increasing the ''complexities of compliance'' by modifying the list multiple times if it would have minimal impact on the availability of programming.[75] Thus, we decline to act at this time, but will gather information about this issue when preparing the first report to Congress, looking particularly at the availability of passed-through video description on major network affiliates outside the top 25 and top 60.

18. *Updating List of Top Five Nonbroadcast Networks.* Ratings of nonbroadcast networks change more frequently over time,[76] and a change in the list of covered nonbroadcast networks could mean a significant change in the described programming available to viewers. The Commission therefore sought comment on whether we should reconsider the ranking of the top five nonbroadcast networks at certain intervals to better reflect current market conditions and, if so, what those intervals should be.[77] Every commenter that addresses this issue supports a periodic reevaluation, although not an annual one.[78] MVPD commenters express some concern about the ''ramping-up efforts'' that will be necessary when networks are newly added to the top five list.[79] We find more compelling, however, the concerns both MVPD and consumer commenters raise about balancing the need for description of the most popular content against the need to avoid disruption for audiences who come to rely upon video described programming on a given channel.[80] We agree with ACB that a period of less than 24 months would be excessively disruptive to viewers, but that NCTA's proposed five-year interval could allow the described programming to get too out of sync with viewer preference. Therefore, in line with ACB's proposal that the revisions occur on a cycle ''no less than'' two years long, and AT&T's proposal that it be ''multi-year,'' our rules will automatically update the top five list every three years. We agree with NCTA that it is important to give newly included networks time to come into full compliance,[81] so each new list will be based not on The Nielsen Company ratings for the ratings year just ended, but for the previous year. Thus, the first update, on July 1, 2015, will be based on the ratings over the 2013–2014 ratings year. This approach will not only ensure that new top five networks have time to come into compliance, but that there is no interim period during which the list drops below five. To the extent a program network that otherwise would appear in the list of top five nonbroadcast networks does not air at least 50 hours of prime time programming that is not exempt,[82] it must seek an exemption from the video description requirement no later than 30 days after publication of the 2013–2014 ratings information by The Nielsen Company. This requirement will ensure that the nonbroadcast network replacing it in the top five has ample time to come into compliance. We direct the Media Bureau to act on any such requests promptly, applying the definition of ''near-live'' programming adopted in this Order, and to provide public notice of any resulting revisions to the list.

19. WGBH, ACB, and the American Foundation for the Blind (''AFB'') propose a ''no-backsliding'' rule in both the broadcast and nonbroadcast context. Under such a rule, the large network affiliate stations in a top 25 (or, later, top 60) market would retain the obligation to provide video description even if their market slipped out of the top 25, and MVPDs would retain the obligation to provide video description on any nonbroadcast network that was ever considered a top five network under these rules.[83] NCTA notes that the economic justification for applying the rules to the most popular cable networks—that they could ''best bear'' the recurring costs of video description—diminishes once a network ceases to be one of the most popular.[84] The same logic would apply to stations licensed to markets that suffer losses of numbers of television households.[85] NCTA also questions whether the Commission has the statutory authority to apply the rules to a network that is not on its top five list (or, by extension, to a station not in a top 25 market).[86] AFB argues that the ''Commission's ancillary jurisdiction provides the Commission the flexibility needed'' to take this option.[87] We agree with NCTA that the statute does not authorize us to expand the number of nonbroadcast networks subject to our rules beyond the five identified according to the criteria set out in the statute and interpreted here.[88] We therefore decline to adopt a ''no-backsliding'' rule in either the broadcast or non-broadcast contexts.[89] We encourage those entities initially subject to our rules to continue to provide video description and thereby serve individuals who are blind or

[71] *NPRM, supra* note 2, at para. 10.

[72] Comments of WGBH at 3.

[73] Comments of ACB at 4.

[74] *NPRM, supra* note 2, at para. 10.

[75] Comments of NAB at 12.

[76] Comments of WGBH at 3.

[77] *NPRM, supra* note 2, at para. 13.

[78] Comments of NCTA at note 32 (''no less than five year intervals''); Comments of AT&T at 10 (''a multi-year reassessment interval''); Comments of ACB at 5 (''no less than 24 months''), Comments of WGBH at 3 (''perhaps on a two-year timeline'').

[79] Comments of NCTA at note 32; Comments of AT&T at 9–10.

[80] Comments of NCTA at note 32.

[81] Comments of AT&T at 10; Comments of ACB at 5.

[82] Like ESPN and Fox News, which are excluded from the current top five list.

[83] Comments of WGBH at 2,3; Comments of ACB at 4–5; Reply of AFB at 3–4; Reply of ACB 6–7.

[84] Reply of NCTA at 5.

[85] In addition, a station's dropping off the list of top 25 (or 60) markets will not likely have a significant practical effect, as they will still be required to pass through any video description they receive.

[86] Reply of NCTA at 5.

[87] Reply of AFB at 3–4.

[88] The CVAA states that our reinstated ''regulations shall be modified only as follows,'' including ''[t]he Commission shall update * * * the list of the top 5 national nonbroadcast networks.'' Since Congress specifically directed us to reinstate the ''top 5'' requirement, we are not authorized to expand this number. We do have the authority to expand these rules, but only after the passage of time and a review of their impact. CVAA, Title II, sec. 202(a), 713(f)(4).

[89] We nonetheless encourage parties to voluntarily continue providing video description service once it has begun, because of the benefits it provides to the community and the lower costs of continuing, as opposed to beginning, the provision of video description.

visually impaired even after their obligation to do so ceases. We also note that broadcast stations that drop out of the top 25 markets will continue to have an obligation to pass through video description, as discussed below.

C. Pass-Through and Subsequent Airing of Video Described Programming

1. Pass-Through

20. In the *NPRM,* the Commission proposed to reinstate the previously adopted pass-through requirement.[90] Two commenters support this proposal, and no commenter objects.[91] Accordingly, we adopt this requirement without change. Broadcasters affiliated with any network, and all MVPDs, will be required to pass through any video description that they receive from a broadcast or cable network or, in the case of MVPDs, from a broadcast station they carry, subject to the exemptions discussed below.[92] As the Commission noted in the *NPRM,*[93] this obligation is distinct from the requirement to provide video description.[94] First, it applies to all MVPDs and network-affiliated broadcast stations (including non-commercial stations), rather than a subset of large-market entities.[95] Second, broadcast stations and MVPDs with the obligation to provide 50 hours of description must continue to pass through any video description that they receive even after they have provided the 50 required hours of description.[96]

21. Although, as noted, no commenter opposes adoption of the reinstated pass-through rules, NCTA does express some concern about whether MVPDs will be able to identify video-described programming provided by broadcasters in order to pass it through, because broadcasters are not required to include the IS0–639 language descriptor.[97] NAB responds that broadcasters will be able to include this descriptor without difficulty, and argues that this matter can be resolved by industry coordination and we should not impose a regulatory solution at this time.[98] In line with our preference to hew closely to the video description rules as originally adopted, and given the likelihood of technological shifts in this area,[99] we decline to dictate the method of identifying video described programming at this time.

2. Subsequent Airings

22. The Commission also proposed to reinstate the rule that, once a broadcast station or MVPD system has aired a program with description, either as part of its 50-hour obligation or because it passed the description through, that program must always include description if re-aired on the same station or MVPD channel.[100] In practice, we anticipate that most described programming will be provided to viewers as it is received from a network or other program supplier. The Association of Public Television Stations, *et al.* (''APTS'') expresses concern about the requirement to re-air description it does not control.[101] If stations or systems contract with program suppliers for described programming, rather than providing the description themselves, they can also ensure via contract that future airings of a described program also contain description.[102] As a result, the program will be provided to the station or system with a video description track, and this rule will function identically to the ''pass-through'' rule. As the Commission explained in the *2000 Report & Order,* this requirement ''should not impose any burden on any broadcast station or MVPD subject to our rules, or on their programming suppliers.''[103] Once a program has aired with description, viewers reasonably anticipate that it will be at least as accessible in later airings. Furthermore, Congress has directed us to reinstate this rule. Therefore, we adopt this proposal, and reinstate the rule without change.[104] As discussed below,[105] however, and consistent with the rules adopted in 2000, the station or MVPD system need not include video description with a subsequent airing of a program if it is using the technology used to provide video description for a conflicting program-related purpose.

3. Technical Capability Exception

23. In the original rules, the pass-through requirement did not apply when a station or MVPD channel did not have the ''technical capability necessary to pass through the video description.''[106] The Commission explained that it would ''consider broadcast stations and MVPDs to have the technical capability necessary to support video description if they have virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost.''[107] In the *NPRM,* the Commission noted the evolution toward digital programming since the original rules were adopted, and sought comment on how this Order should take digital programming into account when determining whether a distributor has ''the technical capability necessary.''[108] We find that the exception remains necessary despite the passage of time. As APTS notes, almost half of public television stations are not providing a second audio stream capable of including video description at this time, and many are incapable of

[90] *NPRM, supra* note 2, at paras. 14–16.

[91] Comments of WGBH at 3; Reply of AAPD at 4; *see also, e.g.,* Comments of Verizon at 2 (''Verizon passes along video descriptions when supplied by any of our other content suppliers, and we will continue to do so.'').

[92] Appendix A, Final Rules (Revised 47 CFR 79.3(b)(3), (5)); *but see, infra* paras. 23–31 (discussing exemptions from the pass-through requirement). We also note that the must carry provision of the Communications Act requires cable operators to carry ''the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers.'' 47 U.S.C. 534(b)(3), 47 CFR 76.62(e), (f) (cable); 47 U.S.C. 338(j), 47 CFR 76.66(j) (DBS). *See also Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules and Implementation of the Satellite Home Viewer Improvement Act of 1999,* First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, paras. 60–61 (2001).

[93] *NPRM, supra* note 2, at para. 14.

[94] *See supra* paras. 5–9.

[95] *2000 Report and Order, supra* note 2, at para. 30.

[96] *Recon, supra* note 2, at para. 14 (NAB recognized that entities that had met their 50 hour obligation were still required to pass description through to viewers). Broadcast stations and MVPDs that pass through video-described programming from a network can count that programming toward their 50 hour obligation, so long as it is either aired during prime time or is children's programming, and has not been previously aired on that channel more than once since the adoption of our rules.

[97] Comments of NCTA at 8–9. The ISO–639 language descriptor is essentially a metadata ''tag'' that is used by digital cable systems for ''signaling the presence of and providing information about individual AC–3 audio streams.'' Many broadcasters use a different ''tag,'' due to updates to the digital broadcast television standard. Comments of NCTA at 8.

[98] Reply of NAB at 6–7.

[99] *See infra* para. 29–31 (discussing the difficulties with carrying video description on an additional audio stream at this time).

[100] *NPRM, supra* note 2, at para. 6.

[101] Comments of APTS at 6.

[102] Of course, if the station or system provides the description, or if it exists in a file in their control, the station or system should likewise have no difficulty complying with this requirement.

[103] *2000 Report and Order, supra* note 2, at para. 33.

[104] Appendix A, *Final Rules* (Revised 47 CFR 79.3(c)(3), (4)); *see also Recon, supra* note 2, at note 74 (''Broadcast stations and MVPDs can count a repeat of a previously aired program in the same quarter or in a later quarter, but only once altogether'').

[105] *See infra* para. 28.

[106] This exception does not apply in the context of the ''subsequent airing'' rule, because any channel on which description has previously aired has the demonstrated technical capability to air description again.

[107] *2000 Report and Order, supra* note 2, at para. 30.

[108] *NPRM, supra* note 2, at para. 16.

doing so.[109] We also find that there is insufficient justification for revising the ''minimal cost'' standard.[110] We therefore reinstate the technical capability exception as previously adopted.

24. In the *2000 Report and Order,* the Commission noted that it did ''not believe [the pass-through] rule [would] impose any burden on the affected stations and MVPDs,'' because the rule only applied to ''broadcast stations and MVPDs that already [had] the technical capability necessary to support video description.'' [111] ACB appears to oppose the exception as proposed, suggesting that, unless a station or system faces an ''undue burden, there should be no other reason'' not to pass video description through.[112] NAB reads their proposal to require the Commission to review the technical capability claims of any station or system before it could rely on this exception, and argues that this would result in an ''extraordinary drain on Commission resources.'' [113] ACB's Reply, however, indicates that it is opposed not to the proposed implementation of the exception, but to the exception in its entirety. ACB objects to the possibility that we would ''only apply audio description pass through rules to stations that are technically capable,'' arguing that this would not create incentives for stations and systems to develop pass through capacity.[114]

25. To the extent not all stations and systems will have the technical capability to pass through video description by the implementation date, by its terms the exception will limit the scope of the pass-through rule.[115] We note, however, that, as equipment prices drop over time and older architectures are upgraded, this exception will apply to fewer and fewer stations and systems. Furthermore, the CVAA directs us to reinstate the rules as they were adopted in 2000, and gives us limited authority to revise them.[116] We agree with NAB that the record does not support revising this rule, and as NAB proposed we will ''only require pass through of audio description when a station [or system] becomes technically capable.'' [117]

26. We note that, although the workings of the exception were not discussed in the *2000 Report and Order* or *Recon,* as a practical matter it is self-implementing. A station or system may refrain from passing description through if it would be able to demonstrate, in the event of a complaint, that at the time of the failure to pass some description through, it was not technically capable of doing so (and could not become capable at minimal cost).[118]

27. Commenter Cristina Hartmann asks that the Commission explicitly define the term ''minimal cost'' as a percentage of annual gross revenues.[119] Ms. Hartmann expresses concern that leaving the term undefined will result in the indefinite maintenance of the status quo.[120] ACB raises a similar concern in its Reply.[121] We find this concern to be speculative, however, and to provide an insufficient basis on which to deviate from the original rules Congress has directed us to reinstate. Thus, we adopt the approach of the *2000 Report & Order,* finding that a station or system is technically capable to pass video description through if it has ''virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost.'' [122] We also emphasize that this exception does not apply to the requirement to provide description in the first instance. Those stations and MVPD systems obligated to provide 50 hours of described programming must do so, regardless of technical capability.[123]

4. ''Other Program-Related Service'' Exception

28. On reconsideration of the 2000 rules, the Commission adopted an exception to the pass-through and subsequent airing requirements, holding that when the secondary audio program (''SAP'') equipment and channel were being used to provide another program-related service, such as foreign-language audio, a station or MVPD system did not have to stop providing that service in order to provide the video description. This action was based on the fact that in the analog world, the SAP channel could not be used to provide two services simultaneously, and there was significant value in existing uses of the secondary audio (usually to provide Spanish-language audio).[124] In the *NPRM* in this proceeding, the Commission pointed out that digital transmission enables broadcasters and MVPDs to provide numerous audio channels for any given video stream, thus allowing simultaneous transmission of a variety of audio tracks, and asked whether it is necessary or appropriate to apply this exception to digital transmissions.[125] We are persuaded that, given the current state of technology, and the continuing and growing importance of service to Spanish language viewers, it is appropriate to continue the exception for now.

29. A number of commenters support elimination of this exception, largely on the assumption that the ability to carry numerous audio streams would alleviate any concerns about conflicts on any given audio channel.[126] Many industry commenters, however, argue that, given the current state of technology, we cannot assume that MVPDs and broadcasters are able to carry numerous audio streams. NCTA notes that cable systems have been designed, and cable equipment manufactured, for a two-stream architecture.[127] AT&T, CenturyLink, DirecTV, and DISH point to similar legacy equipment issues, as well as potential bandwidth constraints.[128]

30. Industry commenters argue that it is not only their architecture that will need updating to enable widespread access to multiple audio streams, but

[109] Comments of APTS at 4. As discussed below, if these stations are capable of providing a secondary audio stream that includes video description at ''minimal cost,'' they will be required to do so starting July 1, 2012.

[110] *See infra* para. 27 (discussing a proposal to revise the minimal cost standard).

[111] *2000 Report and Order, supra* note 2, at para. 30.

[112] Comments of ACB at 5. We note that ''undue burden'' has been replaced with the phrase ''economically burdensome'' in the individual exemption rules adopted in this item, but the process for seeking such an exemption remains the same. *See infra* paras. 43–44.

[113] Reply of NAB at 12–13.

[114] Reply of ACB at 5.

[115] *2000 Report and Order, supra* note 2, at para. 30. (''since our requirement will only affect other broadcast stations and MVPDs that already have the technical capability necessary to support video description, we do not believe our rule will impose any burden on the affected stations and MVPDs'').

[116] CVAA at Title II, sec. 202(a), 713(f)(1–2).

[117] *Id.*

[118] Thus, APTS' proposed special exemption for public television stations is unnecessary. *See* Comments of APTS at 5. If the cost of passing description through is minimal, it will not implicate the funding issues APTS raises. If it is more than minimal, it is not required, and no special exemption is necessary.

[119] Reply of Cristina Hartmann at 9–11.

[120] *Id.*

[121] Reply of ACB at 5.

[122] *2000 Report & Order, supra* note 2, at para. 30.

[123] These stations or systems may seek a waiver from the Commission on the grounds that the rules are economically burdensome. Appendix A, *Final Rules* (Revised 47 CFR 79.3(d)).

[124] *Recon, supra* note 2, at para. 15.

[125] *NPRM, supra* note 2, at para. 15 (''digital video signals can have an enormous number of alternative audio tracks; although as a practical matter that number may be limited by the amount of bandwidth allocated to the programming stream, digital programming can technically include more than three audio tracks''), citing MPEG Compression Standard ISO/IEC 13818–1; Advanced Television Systems Committee (''ATSC'') A/53, A/52 Standards.

[126] Comments of WGBH at 3; Comments of ACB at 6; Reply of the American Association of People with Disabilities (''AAPD'') at 3.

[127] Comments of NCTA at 5; see also Reply of ACA at 3–4.

[128] Comments of AT&T at 3; Joint Comments of DirecTV, Inc. and Dish Network, L.L.C. (''DBS Providers'') at 2–3; Reply of CenturyLink at 3–4.

consumer equipment as well. NAB explains that ''use of a third audio stream [rather than the second] to deliver video descriptions * * * may actually disenfranchise many blind and visually impaired consumers because they will not be able to access'' the descriptions, for the reasons described below.[129] Viewers relying on analog television sets, whether attached to over-the-air converter boxes or MVPD-connected set-top boxes, may still rely on secondary audio program (''SAP'') technology and thus be limited to a maximum of one ''additional'' channel.[130] Even viewers with digital sets may be unable to find and activate an audio stream that has been properly labeled ''VI'' (''Visually Impaired'') pursuant to the ATSC standard, because few digital sets that take advantage of that capability are available.[131]

31. Thus, if we were to eliminate the exception for other program-related content, one of two things would likely happen. Stations and systems would replace some other program-related content with video description to comply with the pass-through requirement, potentially depriving audiences, including in many instances non-English speaking communities who use the second audio stream to receive Spanish-language programming, of a valuable service. Alternatively, stations and systems would provide the passed-through video description on an audio stream tagged ''VI,'' making it difficult, if not impossible, for the target audience to access it. The record contains no information about the prevalence of use of secondary audio streams to provide other program-related content, so we do not know the full impact of this exception. Nonetheless, we conclude that, since the potential for conflicting uses that originally drove adoption of the exception in the virtually all-analog world in 2000 remains today, we will reinstate the exception as originally adopted and defer to stations and systems to determine how best to serve their audiences.[132] We will, however, revisit the need for this exception when we review the state of the market.[133] We expect that at some point in the near future, due to voluntary upgrades and equipment obsolescence, broadcasters, MVPDs, and the installed base of consumer equipment will be sufficiently advanced to handle a video description audio track that does not conflict with any other program-related service, obviating this exception.[134]

32. Even today, however, we strongly encourage stations and systems to provide video description simultaneously with other program-related content when they can do so. When both video description and another program-related secondary audio stream (usually Spanish language) is available for a given program, our rules allow the station or system to choose which to pass through.[135] In some cases, that system or (more commonly) station will have the capability to pass both ''additional'' audio streams through simultaneously. In such a case, we encourage them to do so. When more than two audio tracks are passed through, the ''second'' track (likely Spanish language) will often be the only ''additional'' audio track many viewers can access, due to the limits of legacy equipment. Nonetheless, an increasing number of viewers will be able to access another ''additional'' audio track if it is provided, due to the growing adoption of newer technology. Indeed, individuals who are blind or visually impaired may be early adopters of such technology. Therefore, stations and systems should take full advantage of their capabilities to ensure the widest possible access to video described programming.

33. We emphasize that the other program-related content exception does not apply to the requirement to provide description, but only to the pass-through and ''previously described'' obligations. Video description of programming must be provided in a manner accessible by all consumers if a large-market broadcaster or large MVPD system intends to count that programming toward its requirement to provide 50 hours of description.

D. Phase-In

34. As required by statute, these rules will be ''reinstated'' on October 8, 2011 (''the day that is 1 year after the date of enactment'').[136] As discussed below, broadcasters and MVPDs will have to be in full compliance beginning on July 1, 2012.[137] The *NPRM* had proposed that compliance begin on January 1, 2012, but the record provides little support for that proposal.

35. Most consumer advocates acknowledge that there could be difficulties with the introduction of description on January 1, 2012, only 85 days after reinstatement of the rules.[138] They are dismissive, however, of industry claims about the need for a full year to prepare for compliance, given the long history of these rules and industry participation in the drafting of the CVAA.[139] ACB proposes and AAPD supports a 60 day ''testing'' period, beginning January 1, 2012, in which viewers, distributors, and programmers could work together to test and verify the systems for provision and pass-through of video description, with full compliance required beginning March 1, 2012.[140] AFB also acknowledges that some stations or systems might have implementation difficulties that could

[129] Comments of NAB at 8. *See also,* Comments of DBS Providers at 2–3; Comments of AT&T at 3; Comments of NCTA at 5–6; Reply of ACA at 3–4; Reply of Cristina Hartmann at 11–12; Reply of CenturyLink at 3–4; Reply of NCTA at 3–6; Reply of AT&T at 5–6.

[130] *NPRM, supra* note 2, at para. 15; *but see* Comments of the Consumer Electronics Association (''CEA'') at 4 (at least some MVPD equipment allows the audio channel to be chosen at the set-top box, which would allow any subscriber to access any audio stream provided by the MVPD regardless of the type of television the stream is sent to). As discussed in this section, however, many MVPD systems may still be architecturally limited to two audio streams, rendering this point moot.

[131] Comments of NAB at 7 (''NAB is not aware of any DTV receiver currently available in the market that can recognize and allow a consumer to choose an audio stream 'tagged' as VI.''); Comments of CEA at 3 (''many legacy TVs may only present audio streams marked as 'complete main' ''). ACB argues that MVPDs could target equipment upgrades to the homes of individuals who will most benefit from video description, in order to reduce the cost of transitioning. Reply of ACB at 4. Even if targeted upgrades to consumer premises equipment were feasible, however, and even if that equipment could be used to select the ''VI'' audio so that it could be output to legacy televisions in a usable fashion, some MVPDs would not have the system architecture in place to actually deliver more than two audio streams to that equipment.

[132] *See, e.g.,* Comments of the Walt Disney Company (''Disney'') at 4 (''Disney Channel would like to ensure that its programming is accessible by *both* the visually-impaired and the Spanish-speaking communities.''); Reply of NCTA at 4; *see also* Reply of AT&T at 6 (stations and systems should have the flexibility to choose when it would be better to provide ''other secondary audio that serves the public interest.'').

[133] This review will begin no later than July 1, 2013. CVAA at Title II, sec. 202(a), 713(f)(3). *See also* CVAA at Title II, sec. 203(d) (requiring that we undertake a rulemaking addressing technical standards, which must be completed within 18 months after the second VPAAC Report to the Commission (due April 8, 2012)).

[134] June 23, 2011 Ex Parte Presentation of CEA at 2.

[135] Appendix A, *Final Rules* (Revised 47 CFR 79.3(b)(3), (5)).

[136] CVAA, Title II, sec. 202(a), 713(f)(1).

[137] The Paperwork Reduction Act requires that any new regulation imposing a paperwork burden be reviewed and approved by OMB before it becomes effective. The Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

[138] Comments of ACB at 5 (indicating that stations with ''little experience with description'' will need time to coordinate reception and pass-through of video descriptions); Reply of AAPD at 7 (''multiple entities and technologies [are] involved'' and testing is necessary to ensure audience is receiving the signal); Reply of AFB at 2 (''sometimes unforeseen practical circumstances can arise that thwart even the best of good intentions'').

[139] *See e.g.,* Reply of AAPD at 4–5; Reply of AFB at 2.

[140] Comments of ACB at 5; Reply of AAPD at 7.

justify up to three months of additional time.[141]

36. Industry commenters are largely unified not only in their opposition to a January 1 compliance date, but also in their support for compliance beginning in the fourth quarter of 2012.[142] They note that certain central questions will remain in flux until the release of this Order,[143] and that there are legal and contractual issues that cannot be resolved until its release (including program selection, standards setting, and coordination among individual MVPDs, broadcast stations, and programmers).[144] NAB argues that we should roughly align the compliance date of the rules with the start of the fall television season, so that ''program production systems'' for new programs could be revised to include video description.[145] NAB proposes October 1 as the compliance date, even though the fall season generally begins several weeks earlier, because it is the first day of a calendar quarter and compliance with the rules is calculated on a quarterly basis.[146] NCTA also argues for an October 1 compliance date, which it states will allow programmers to choose programs that will provide the most benefit to consumers of video description, rather than have the choices ''dictated simply by the exigencies of compliance.'' [147] Commenters also point to technical concerns with a shorter timeframe for compliance. Both programmers and distributors must verify, and possibly update, their transmission capabilities to handle video description.[148] Finally, NCTA notes that the original rules gave stations and systems 18 months to comply, considerably more than the timeline proposed in the NPRM or by the consumer groups this time around.[149]

37. While we agree with consumer advocacy groups that industry does not need as much time to come into compliance with the CVAA-mandated rules as it did when the Commission originally adopted video description requirements a decade ago, a phase-in period of approximately nine months, is reasonable given the challenges cited by commenters. We continue to believe, as the Commission said in the *NPRM,* that ''although the CVAA deferred certain implementation issues to the Commission, to a great extent the entities that will be subject to our reinstated rules have been aware of the pending requirements since at least the enactment of the CVAA on October 8, 2010.'' [150] We are persuaded, however, that enough issues were in flux until the release of this Order that the covered entities are justified in their request for more than the proposed 85 days to come into compliance. As discussed above, we do not believe it will be difficult for broadcasters and MVPDs to negotiate the rights to provide video description given the small amount of video-described programming required and their discretion in choosing it. Nonetheless, we recognize that complex programming agreements may need to be renegotiated. We also agree with NAB that it is appropriate to start the compliance date with the beginning of a calendar quarter to simplify compliance and enforcement.[151] Given this long lead time, we believe that the vast majority of broadcast stations and MVPD systems can have their systems fully tested and be prepared to provide video description beginning July 1, 2012. We expect that this extended phase-in period will mean that few, if any, stations or systems will need an extension of time to come into full compliance.

38. We also proposed that, should any MVPD system not serving at least 50,000 subscribers on the effective date of the rules begin to do so at a later date, it must provide video description on the top five non-broadcast networks, in the same manner as MVPD systems currently serving 50,000 or more subscribers, beginning no more than three months after reaching 50,000 subscribers.[152] We received no comments on this proposal. As the *NPRM* noted, an MVPD should be aware in advance that it is approaching the 50,000 subscriber threshold, and we believe three months is sufficient time to come into compliance with the requirement to provide 50 hours of video description per quarter.[153] Therefore, we adopt this proposal.

E. Exemptions

39. As discussed in the *NPRM,* the CVAA directs us to exempt programming that is ''live or near-live'' from the operation of these rules, and directs us to take that exemption into consideration when determining whether a non-broadcast network is covered by the video description rules.[154] As discussed above, we have adopted the *NPRM's* proposed definition of ''near-live'' and taken it into account when determining the top five list.[155] The CVAA also gives the Commission authority to provide certain other individual or categorical exemptions. We adopt the proposal to make individual exemption determinations on the basis of economic burden, adopt a narrow ''breaking news exemption,'' and decline to adopt further exemptions at this time.

1. Live or Near-Live Programming

40. As the Commission explained in the *NPRM,* ''live'' programming is ''programming aired substantially simultaneously with its performance.'' [156] No commenter objects to this definition, which we adopt. The Commission further explained that some television programs are ''filmed and produced just hours before they are first aired,'' and that others are aired live on the East Coast but three hours later on the West Coast.[157] With this understanding, the Commission proposed that programming performed and recorded less than 24 hours prior to the time it was first aired be considered ''near-live,'' and asked whether this time period would ''ensure that programming is not covered by the reinstated rules unless there is ample time to create and insert video descriptions in the programming before it is aired.'' [158]

[141] Reply of AFB at 2.

[142] Comments of NAB at 15 (proposing October 1, 2012); Comments of NCTA at 13 (same); Comments of APTS (October 8, 2012); Reply of AT&T at 2–4 (fourth quarter 2012); Reply of ACA at 5 (same).

[143] Comments of NCTA at 10. These issues include the identity of the top 25 markets and the top five networks, and the standard for considering waiver requests, all finalized herein.

[144] Comments of NCTA at 12; Comments of NAB at 8; Reply of AT&T at 4. NCTA also argues in passing that the House Committee Report on the CVAA assumed that the rules will be in full effect ''approximately'' one year after they are reinstated. Comments of NCTA at fn. 29. We find that the language of the House Committee Report, particularly given its use of the term ''approximately,'' does not compel any particular compliance date.

[145] Comments of NAB at 15.

[146] Comments of NAB at 15–16.

[147] Comments of NCTA at 12, 13.

[148] Comments of NCTA at 12–13.

[149] Comments of NCTA at 11.

[150] *NPRM, supra* note 2, at para. 19.

[151] Comments of NAB at 15–16.

[152] *NPRM, supra* note 2 at para. 18.

[153] Given that all MVPDs are required to pass through video description they receive unless they lack the technical capability to do so or are using that capability for another program-related service, in most cases being elevated into the category of MVPDs that must also ''provide'' video description should have little effect on viewer access to described programming.

[154] *NPRM, supra* note 2 at 20 (citing CVAA, Title II, sec. 202(a), 713(f)(2)(B), (E)).

[155] *See supra* para. 14.

[156] *NPRM, supra* note 2, at 21.

[157] *Id.*

[158] *Id.* We note our disagreement with those commenters who argue that because it is possible to provide video description in real-time, we should not exempt live programming, or at least all live programming, at all. Reply of Harry Brown; Reply of AAPD at 7; Comments of ACB at 4. Given the statute's explicit direction that the ''regulations shall not apply to live or near-live programming,''

41. The legislative history of the CVAA sheds no light on the intended definition of ''near-live,'' [159] but common sense suggests that a ''nearly live'' program is one that is aired a very short time after its performance or recording. NCTA argues that ''many episodes of programs are not ready [to be described] until very close to the time they are scheduled to air,'' [160] and agrees with NAB that no program can begin the description process until it is delivered ''in final, edited and approved form.'' [161] These commenters propose, therefore, that the question of whether a program is ''near-live'' should have no connection to when it was performed or recorded. They also argue that it takes over a week to add video description to a program even after it has been ''approved,'' and that the Commission should therefore define seven- or ten-day-old programming as ''near-live.'' [162] We conclude that reading ''near-live'' as referring to programming that is ''complete, with no further edits,'' [163] seven or ten days before airing would strain the common-sense meaning of the term ''near-live,'' which connotes both a short time frame (of much less than seven or ten days) and one that is tied to when a performance occurred ''live.'' [164]

42. In any case, we do not believe the definition of ''live or near-live'' is as broadly significant as either industry or advocate commenters suggest. Because the obligation to provide video description is only for a limited number of hours, the definitions' primary purpose at this stage is to determine which nonbroadcast networks are excluded from the top five, and no commenter addressed how or whether any proposed change to the definition would change the top five list. As discussed in more detail in paragraph 9 above, covered entities may choose which approximately four hours of programming a week they will describe. We presume that they and their programmer partners will choose to describe programs that can be described in a timely fashion. Indeed, a number of programs are being video described today without any regulatory mandate at all,[165] and we have every reason to believe that, except in the rare instances discussed in paragraph 44, below, networks will have enough programming from which to choose to meet the CVAA's minimal requirements without encountering problems due to the definition of ''near-live.'' [166] Some consumer advocates propose that ''historically significant events,'' such as the Olympics and Presidential inaugurations, be covered by the rules even if they are live or near-live.[167] Leaving aside whether that would be permissible under the CVAA, the flexibility on the part of the programmers to describe their choice of programming means that, regardless of how we structure the exemptions, there is no guarantee that any specific programming will be described.[168] Because no commenter demonstrates that the 24-hour definition will increase the burden of compliance, and no commenter offers a reasonable alternative definition of ''near-live,'' nor demonstrates the impact of that definition on the top five, we adopt the proposal. We may revisit this issue at a later date, and will gather information about it when preparing the first report to Congress.[169]

2. Other Exemptions

43. Section 713(f)(2)(C) of the Communications Act, as added by the CVAA, states that

> [t]he regulations may permit a provider of video programming or a program owner to petition the Commission for an exemption from the requirements of [the video description provisions] upon a showing that the requirements contained in this section be [*sic*] economically burdensome.[170]

The Commission proposed to reinstate the previously adopted process for requesting an individual exemption from our rules, replacing the term ''undue burden'' with ''economically burdensome,'' while using the same range of factors previously applied under the undue burden standard.[171] As discussed in the *NPRM,* this revision ensures that the video description rules are aligned with the standard used in the closed captioning context.[172] NAB and AAPD support this proposal, and we adopt it.[173]

44. NCTA expresses concern about the fact that the proposed rule defined ''economically burdensome'' as ''imposing significant difficulty or expense.'' [174] As the *NPRM* explained, we intend to ''use the same factors as applied to the undue burden standard'' (and listed in the proposed rule itself) to determine whether the rules are economically burdensome (*i.e.,* whether they impose significant difficulty or expense).[175] Although the factors listed are not identical to those NCTA proposes,[176] the list is not exclusive.[177]

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we have no discretion in this matter. CVAA, Title II, sec. 202(a), 713(f)(2)(E).

[159] S. Rep. 111–386 at 12 (2010); H. Rep. 111–563 at 28–29 (2010).

[160] Comments of NCTA at 14.

[161] Comments of NAB at 17. *See also* Comments of WGBH at 4.

[162] Comments of NAB at 9; Comments of NCTA at 14.

[163] Comments of WGBH at 4.

[164] *See* Comments of Joe Clark at 2 (''The practicality of [video-]describing a late-arriving show that is indisputably prerecorded is an issue different from'' whether it is ''near-live.''). We note that in the context of closed captioning of Internet Protocol (''IP'')-delivered video programming these terms may be defined differently. The Commission's Video Programming Accessibility Advisory Committee (''VPAAC'') has recommended that, in that context, we look to the time between a program's airing on television and its delivery via IP, rather than the time between its recording and airing. In that case as well, however, VPAAC suggests that ''near-live'' is best interpreted to mean a period of hours, not days. First Report of the Video Programming Accessibility Advisory Committee on the Twenty-First Century Communications and Video Accessibility Act of 2010 (rel. July 13, 2011).

[165] *See supra* note 34.

[166] NAB also proposes that we exempt ''delayed or repeated'' airings of live or near-live programs, arguing that ''it would be nonsensical to require a network or station to assume the costs of video description for programming primarily intended to be aired live, simply because such programming was re-aired at a later time.'' Comments of NAB at 16, 18. We decline to extend the exemption to this programming. If ''live or near-live'' programming is re-aired long enough after it is performed and recorded that it is no longer ''near-live,'' there is no reason to distinguish between it and programming that was never aired live. In either case, there is sufficient time to describe the programming, if the distributor chooses to describe it. Furthermore, if a station or system would prefer not to describe ''delayed or repeated'' airings of live or near-live programming, it can choose (or contract for its program supplier to choose) alternative programming.

[167] Comments of ACB at 6 (the Olympics); Reply of AAPD at 7 (Super Bowls); Reply of ACB at 7 (Presidential inaugurations).

[168] We note that parties are of course not prohibited from describing programming that falls within the live or near-live exemption, and that any such described programming that a station or system provides may be counted toward the 50-hour requirement.

[169] *See supra* para. 16.

[170] *Id.* at § 713(f)(2)(C). We note that Section 713(f)(2)(C) is expressed in permissive terms (e.g., ''the regulations may permit''), rather than the mandatory language that appears in other subsections of the legislation. *Compare* 713(f)(2)(A) (''the regulations shall apply''). Accordingly, under subsection (C), the Commission may permit exemptions based on the ''economically burdensome'' standard, but is not required to do so.

[171] Comments of NAB at 23. In the CVAA, Congress revised Section 713(d)(3) of the Communications Act, which relates to closed captioning exemptions, by removing the reference to the ''undue burden'' standard and replacing it with a reference to the ''economically burdensome'' standard. CVAA, Title II, sec. 202(c).

[172] *NPRM, supra* note 2, at para. 22.

[173] Comments of NAB at 23; Reply of AAPD at 8–9; *see also* Reply of Cristina Hartmann at 13–14.

[174] Appendix A, *Final Rules* (Revised 47 CFR 79.3(d)(2)).

[175] *NPRM, supra* note 2, at para. 22.

[176] Comments of NCTA at 15–16 (citing the *NPRM* at note 66).

[177] 47 U.S.C. 613(e) (''In determining whether the closed captions necessary to comply with the requirements of this paragraph would result in an undue economic burden, the factors to be considered *include* * * *'' (*emph. added*);

Continued

We will consider all relevant evidence that the rules are ''economically burdensome'' to a petitioning party.

45. The *NPRM* sought comment on whether the Commission should adopt any categorical exemptions, beyond the exemption for ''live or near-live'' programming.[178] NAB proposes that we exempt all locally produced programming, as well as all news programming, from the coverage of the rules.[179] It argues that if we ''added such a burden'' to locally produced programming, it could become so expensive and untimely that the amount produced would drop. It points to a similar exemption in the closed captioning rules.[180] Those rules, of course, require all programming to be captioned unless excepted, and are therefore fundamentally different from these rules, which require only a small amount of programming, chosen by the programmer, to be described. NAB also argues that there are special legal concerns with the description of news programming in particular, contending that declining to exempt non-live news programming from these rules would mean that ''broadcasters would be forced to add subjective video descriptions from non-journalists into the middle of news reporting.'' [181] As discussed in paragraph 9, above, the very small amount of programming that must be described means that it is unnecessary to carve out exemptions for particular types of programs beyond the live and near-live exemption mandated by the CVAA. Stations and systems may choose what to describe and how and by whom a program is described, and may simply choose not to describe any programming that would be difficult to describe. Thus, NAB has not persuaded us that covering locally produced and news programming by the video description rules will be unduly burdensome for providers. Furthermore, no party recommending blanket exemptions for certain types of programs provided evidence of how or if these new exemptions would shift the list of top five nonbroadcast networks (which is based, in part, on the provision of sufficient non-exempt programming).[182] Therefore, we decline to adopt these proposed categorical exemptions.

46. We note and acknowledge NCTA's point that due to special circumstances, a covered network could theoretically have fewer than 50 hours of scheduled prime-time or children's programming that can count toward the requirement in a given quarter.[183] NCTA proposes that we adopt a categorical exemption from the 50-hour minimum requirement for networks in this situation, crediting them with satisfying the requirement if they describe all of the non-exempt programming in a quarter that could count toward the requirement even if that would be fewer than 50 hours of described programming.[184] We decline to adopt such an exemption at this time, when we and the parties have little experience with the actual impact of the rules or ability to craft an exemption tailored to the types of special circumstances that may arise. We anticipate that these instances will be exceedingly rare; as noted in paragraph 9 above, these networks air many, many hours of prime-time and children's programming each quarter, and only 50 of those need be newly described or first-time re-runs. If such a situation does arise, however, a station or system (or the programmer itself) may petition the Commission for a waiver. Finally, NCTA can raise this issue again in the context of a future review, once the actual impact of these rules can be assessed.

47. One proposal that would not affect the top five list and is not obviated by the limited description requirements is the ''breaking news exemption'' that NAB proposes.[185] In the children's television context, broadcasters must provide three hours per week of ''core'' educational and informational children's programming in order to receive expedited renewal of their licenses.[186] Generally, if that program is preempted, it must be rescheduled, but we do not require that it be rescheduled if the preemption is for breaking news.[187] In similar fashion, NAB suggests that we ''allow video described programming to be preempted for breaking news and emergency information without negative consequences.'' [188] In practice this would mean that if an unscheduled news bulletin interrupted an hour-long video described program, the station or system would still be allowed to count that program in its entirety toward the 50-hour quarterly requirement. We agree that this is a sensible exemption, and adopt it.[189]

F. Digital Format

48. Section 713(f)(2)(A) of the Communications Act, as added by the CVAA, states that ''[t]he regulations shall apply to video programming, as defined in subsection (h), insofar as such programming is transmitted for display on television in digital format.'' [190] In the *NPRM,* the Commission proposed to clarify that the video description rules apply to all programming, including digital programming, which was not widespread at the time of the adoption of the original rules.[191] All commenters who respond to this proposal support it.[192] In a footnote, NCTA does raise a concern that the proposal could be read to imply a definition of ''video programming'' broader than the one in the CVAA itself.[193] We adopt the *NPRM's* proposal to extend the reinstated rules to cover all video programming, and reiterate that we use the term ''video programming'' as it is defined in the CVAA.[194]

49. The *NPRM* also proposed rules to govern our treatment of the secondary streams of digital broadcasters.[195] We

Appendix A, *Final Rules* (Revised 47 CFR 79.3(d)(3)) (''In addition to these factors, the petitioner must describe *any other factors it deems relevant* to the Commission's final determination * * *'') (*emph. added*).

[178] *NPRM, supra* note 2, at para. 26.

[179] Comments of NAB at 18–19. NAB also proposes to exempt Mobile DTV (discussed *infra* para. 55), and NCTA proposes a blanket exemption for nonbroadcast networks with fewer than 50 hours of prime-time or children's programming that can count toward the requirement in a given quarter (discussed *infra* para. 44). We decline to grant either exemption for the reasons noted above. *See* Comments of Joe Clark (opposing the grant of any new blanket exemptions).

[180] Comments of NAB at 18.

[181] Comments of NAB at 19. *But see* Reply of Cristina Hartmann at 7–8 (dismissing NAB's concerns as groundless).

[182] *See supra* para. 12.

[183] Comments of NCTA at 17 (raising concerns about a situation in which ''a program network airs a considerable amount of live or near-live programming during prime time in any particular calendar quarter (for example, to offer seasonal sporting event programming), or if a network schedule is filled with previously-described programming'' and as a result ''the network does not have the requisite hours of non-repeat programming in its prime time or children's programming line-up to describe'').

[184] Comments of NCTA at 17.

[185] Comments of NAB at 20.

[186] 47 CFR 73.671(d).

[187] *Children's Television Obligations of Digital Television Broadcasters,* MM Docket No. 00–167, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943, para. 39 (2004).

[188] Comments of NAB at 20.

[189] *See also* CVAA, Title II, section 202(a), 713(g) (requiring unscheduled news bulletins that report emergency information to convey such information in a manner that is accessible to individuals who are blind or visually impaired).

[190] 47 U.S.C. 613(f)(2)(A).

[191] *NPRM, supra* note 2, at para. 27.

[192] Comments of the Consumer Electronics Association (''CEA'') at 2; Comments of WGBH at 5; Comments of ACB at 7.

[193] Comments of NCTA at note 12.

[194] ''[P]rogramming by, or generally considered comparable to programming provided by a television broadcast station, but not including consumer-generated media.'' CVAA, Title II, section 202(a), 713(h)(1). *See also NPRM, supra* note 2, at note 25 (''The proposed rules adopt the CVAA definition of video programming.'').

[195] *NPRM, supra* note 2, at para. 28.

received few comments on this issue.[196] We adopt the proposal to consider only programming on the primary programming stream when measuring a broadcast station's compliance with the ''50 described hours'' requirement, unless the station carries another top-four national broadcast network on another stream.[197] In situations in which a broadcast station carries a different top-four network's programming on a secondary stream, we will apply the rules in the same manner as if the network programming on that stream were carried by a separate station. We also adopt the *NPRM's* proposal to impose the pass-through requirement, discussed above, on all network-provided programming carried on all of an affiliated station's programming streams, a proposal which no commenter directly addressed. This approach ensures the availability of described programming to the widest possible audience. NAB seeks assurance that major network affiliates on secondary streams will be eligible for technical capability exemptions from the pass-through requirements. We clarify that a major network carried on a secondary stream will be treated no differently than any other station or system required to pass description through; thus, it may seek a technical capability exemption.[198]

G. Other Issues

50. *Quality Standards.* The *NPRM* sought comment on whether we should adopt quality standards for video description. The majority of commenters that address this question are strongly opposed to the imposition of quality standards of any kind.[199] Other commenters do support the imposition of quality standards, with some pointing to the possible adoption of such standards in the closed captioning context as a demonstration of the need for rules.[200] Nonetheless, we decline to adopt any such standards at this time. We acknowledge that our capacity to adequately judge description quality could benefit from practical experience as entities begin implementing these rules. Nonetheless, given the quality issues that have arisen in the closed captioning context, we will invite comments on the quality of video description when we conduct the inquiry that will inform our first report to Congress under the CVAA. We also recommend that the VPAAC consider this issue, and will include any analysis they provide in the same report. If necessary, we will revisit this issue at a later date.

51. *Program Selection.* In the *NPRM,* the Commission sought comment, for informational purposes, on how programs are likely to be chosen for description.[201] The majority of commenters that address this question are strongly opposed to the Commission seeking information about program selection even for informational purposes.[202] Given the fact that only a small subset of programming will be required to be video described, the Commission also asked whether we should require that the availability of video description on certain programs be publicized in a certain way.[203] All commenters agree that this information should be widely and clearly available, and most agree that this will occur without the need for regulation.[204] We decline, at this time, to require that the availability of video description on certain programs be publicized in a certain manner. Nonetheless, we expect that programmers, stations, and systems will provide this information to viewers in an accessible manner, including on their Web sites and to companies that publish television listings information. We recommend that the VPAAC consider this issue and analyze industry best practices. In particular, we recommend that the VPAAC consider how broadcasters provide notice to MVPDs as to which programming is video described, and how effective that notice is. Both NAB and NCTA indicated that use of the ISO–639 language descriptor might be appropriate, but that the issue can be resolved through industry coordination.[205] We recommend the VPAAC examine whether this coordination has been successful.

52. *Updated A/53 Standard.* The Commission's rules incorporate the ATSC digital broadcast standard by reference, but have not been updated to reflect the 2010 revisions to the A/53 standard.[206] The *NPRM* proposed to update our rules to incorporate A/53 Part 5: 2010,[207] which deals with the provision and reception of an audio stream that has been tagged ''VI'' (''Visually Impaired'') pursuant to the ATSC standard. Commenters generally strongly support the need for and value of updating the standard.[208] NAB supports the update, but objects that updating our rules only to incorporate the latest version of Part 5 is ''illogical,'' and proposes that we initiate a new proceeding to update the entire standard at once.[209] As discussed above, a ''VI''-tagged audio stream will likely not be accessible by legacy equipment, so in the short term video description will generally not be transmitted using this tag.[210] CEA argues, however, that ''it is important that the industry as a whole begin following A/53 Part 5: 2010'' in the near future, so the update of Part 5 will help ''ensure that video description can be received by all DTV receivers''[211] on a going forward basis. There is thus a prospective benefit from this narrow update, and NAB identifies no countervailing harm.[212] Since it is clear that updating the entire standard is beyond the scope of this proceeding, we will not delay adoption of updated

[196] Comments of ACB at 7 (supporting the Commission's proposals).

[197] Thus, except as noted, a station that multicasts does not have to provide more than 50 hours of video description per quarter, all of which must be on its primary stream.

[198] Comments of NAB at 14.

[199] *See, e.g.,* Comments of APTS at 6; Comments of NCTA at 18; Comments of Verizon at 2–3; Comments of NAB at 24, 25; Comments of Joe Clark at 3; Reply of NCTA at 7; Reply of AT&T at 7–8; Reply of Cristina Hartmann at 14–16; Reply of NAB at 13.

[200] Comments of WGBH at 5; Comments of ACB at 7–8 (notes the need for quality standards in closed captioning); Reply of AAPD at 14 (notes the inconsistent quality of closed captioning and warns against a similar danger in video description).

[201] *NPRM, supra* note 2, at para. 30.

[202] Comments of APTS at 6; Comments of NCTA at 18; Comments of NAB at 25; Reply of Cristina Hartmann at 14–16.

[203] *NPRM, supra* note 2, at para. 30.

[204] Comments of NCTA at 18; Comments of NAB at 24–25; Comments of WGBH at 5–6; Comments of ACB at 2; *but see* Reply of AAPD at 9–13.

[205] Comments of NCTA at 8; Reply of NAB at 6–7.

[206] 47 CFR 73.682(d), 47 CFR 73.8000(b)(2).

[207] *NPRM, supra* note 2, at para. 31.

[208] Comments of CEA at 3; Comments of APTS at 7; Comments of WGBH at 6. *But see,* Ex Partes, Comments, and Reply of Dolby. Dolby ''supports the Commission's proposal to update the video description rules to incorporate the [2010] standard.'' Reply of Dolby at 1. Dolby prefers an alternative technical approach to the delivery of video description, however, and argues that the Commission should adopt rules that ''allow for the transition to this improved receiver-mix technology.'' Comments of Dolby at 3. We note that, while our rules can incorporate a third party standard by reference, they cannot preemptively incorporate future changes to that standard (thus the need for a proactive update in this proceeding). 1 CFR 51.1(f) (''Incorporation by reference of a publication is limited to the edition of the publication that is approved. Future amendments or revisions of the publication are not included.'').

[209] Comments of NAB at note 16.

[210] *See supra* para. 30.

[211] *NPRM, supra* note 2, at para. 31.

[212] In the NPRM implementing the Commercial Advertisement Loudness Mitigation (''CALM'') Act, released May 27, 2011, we referenced this proposed rule change and stated that ''this proposal is consistent with our proposed rules [in the CALM Act proceeding]'' and that the ''2010 ATSC A/53 Standard, Part 5, contains the new methods to measure and control audio loudness, reflected in the ATSC A/85 RP.'' *Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act,* MB Docket No. 11–93, Notice of Proposed Rulemaking, 26 FCC Rcd 8281 (2011) (citing 2010 ATSC A/53 Standard, Part 5 at 2.1 at 5 (referencing A/85) and 5.5 at 9 (Dialogue Level)).

Part 5. Accordingly, we adopt the *NPRM's* proposal and revise our rules to reflect the latest version of A/53 Part 5 adopted by ATSC.[213]

53. *Children's Programming.* Under the rules we are adopting today, broadcast stations and MVPDs required to provide 50 hours of video described programming per quarter may do so during prime time or children's programming. The Commission has defined children's programming differently in different contexts. Our limits on commercial advertising in children's programming apply to programming ''produced and broadcast primarily for an audience of children 12 years old and younger.'' [214] In contrast, our processing guidelines for children's educational and informational programming apply to programming that ''furthers the educational and informational needs of children 16 years of age and under.'' [215] Because older children with vision or other impairments can benefit from video description, the *NPRM* proposed to define children's programming in this context as programming directed at children 16 years of age and under. Commenters support this definition, agreeing that it would provide benefits ''to a wide range of blind and visually impaired children.'' [216] ACB and Joe Clark argue that, regardless of the definition, ''not all of a network's description content should be from children's programming,'' [217] or the Commission's rules ''will have failed.'' [218] NCTA objects, suggesting that ''[t]he rules adopted by the Commission in 2000 included no such prohibition, and the Commission does not have authority to add one.'' [219] Setting aside questions of authority, we agree with our predecessors regarding the potential value of these rules for children.[220] We therefore adopt the proposal to define children's programming as programming directed at children 16 years of age and under, and, as noted above,[221] to permit video described children's programming to count toward the 50-hour description requirement.

54. *Subsection G.* Section 713(f)(2)(G) of the Communications Act, as added by the CVAA, says that

> [t]he Commission shall consider extending the exemptions and limitations in the reinstated regulations for technical capability reasons to all providers and owners of video programming.[222]

In the *NPRM,* we proposed to take no action under this provision. No commenter addressed this proposal. After consideration, we decline to take action under this provision.

55. *Methods of Filing Complaints.* The rules we adopt herein permit viewers to file complaints about a failure to comply with the video description rules by ''any reasonable means,'' such as letter, facsimile transmission, telephone (voice/TRS/TTY), e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant.[223] ACB expresses concern that the exclusion of Web-based electronic filing from the list of examples means that it is not available.[224] On the contrary, anyone can file a complaint through the main FCC Web portal, and the rule as drafted permits video description complaints to be filed that way.[225] Once the rules become effective, the Commission will release a consumer advisory that will provide step-by-step instructions on how to file complaints in various formats, including via the Commission's Web site. ACB also asks for a publicly accessible database of complaints.[226] Although we do not release certain information about individual complaints because of privacy concerns, the Consumer and Governmental Affairs Bureau does periodically release reports concerning accessibility complaints, and will continue to do so.[227]

56. *Low Power Broadcast Stations.* The *NPRM* sought comment on whether the requirement to provide description and the pass-through obligation should apply to low power broadcasters under the reinstated rules, and we find that it does.[228] ACB notes that low power stations were not explicitly exempted in the previous rules and argues that they therefore should not be exempt now.[229] NAB argues, not that the rules do not apply, but that the Commission should refrain from applying them pending the conclusion of the low-power DTV transition.[230] We agree with ACB that the broad language of the original video description rules, referencing all ''television broadcast stations,'' is controlling.[231] We therefore conclude that the best reading of the reinstated rules is that they apply to all television stations, including stations in the low power broadcast service. As NAB notes, many low power broadcasters have not yet completed their transition to digital, but the record in this proceeding does not support the service-wide exemption NAB proposes. We do not, however, want to impose costs that would impede these stations from making a timely transition.[232] We are therefore prepared to entertain a petition to delay the implementation of these rules for a narrowly-crafted class of low-power broadcast stations that have not completed their transition to digital. If the petitioners can demonstrate that compliance with the video description rules on July 1, 2012 would be economically burdensome to members of that class, we could delay their implementation for an appropriate time period.[233]

57. *Mobile DTV.* The *NPRM* did not specifically seek comment on the application of the rules to Mobile DTV, but insofar as it is used by a network-affiliated broadcaster to transmit programming for display on television, it is subject to these rules.[234] NAB agrees that the CVAA ''requires mobile devices to include video description,'' but argues for a delay in applying the rules to Mobile DTV broadcasts. They explain that the current generation of Mobile DTV devices are limited, and that ''Mobile DTV receivers that support video description are not expected to be available for another two years.'' [235]

[213] ATSC Digital Television Standard, Document A/53 Part 5: 2010 (July 6, 2010).

[214] 47 CFR 73.670, note 2.

[215] 47 CFR 73.671(c).

[216] Comments of WGBH at 6; see also Comments of NAB at note 22.

[217] Comments of ACB at 2.

[218] Comments of Joe Clark at 4.

[219] Reply of NCTA at note 19.

[220] *2000 Report and Order, supra* note 2, at para. 10.

[221] *See supra* para. 4.

[222] CVAA, Title II, section 202(a), 713(f)(2)(G).

[223] Appendix A, *Final Rules* (Revised 47 CFR 79.3(e)).

[224] Comments of ACB at 8.

[225] *See http://www.fcc.gov/complaints.*

[226] Comments of ACB at 8.

[227] Past reports are available at *http://transition.fcc.gov/cgb/quarter/welcome.html.*

[228] *NPRM, supra* note 2, at paras. 9, 14.

[229] Comments of ACB at 4.

[230] Comments of NAB at note 21.

[231] *2000 Report and Order, supra* note 2, at Appendix B (Rules).

[232] The Commission recently established September 1, 2015 as the date for the completion of the low power television digital transition. *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, Second Report and Order*, FCC 11–110, released July 15, 2011.

[233] *See* CVAA, Title II, section 202(a), 713(f)(2)(D).

[234] Use of the Mobile/Handheld Digital Television Standard (A/153) allows broadcasters to provide a digital stream of video programming that can be received by compliant portable devices, even while the devices are in motion, and supports multiple audio streams. A/153 is a subsidiary element of the A/53 standard, and has not been formally adopted by the Commission, but its use is permitted under the flexible content provisions of the A/53 standard. *Dell Inc. and LG Electronics USA, Inc. Request for Waiver of Section 15.117 of the Commission's Rules,* MB Docket No. 10–111, Order, 25 FCC Rcd 9172 at para. 3 (2010).

[235] August 19, 2011 Ex Parte of NAB at 2. The CVAA also requires us to develop and apply

Given the nascency of this service, and the fact that requiring pass-through of video description with Mobile DTV broadcasts would have little benefit to consumers at this time, we agree with NAB that it is appropriate to delay the effectiveness of these rules. We therefore grant broadcasters offering Mobile DTV 24 months after the date of reinstatement of these rules (that is, until October 8, 2013) to bring those broadcasts into compliance with the video description rules.

58. *Audio Description.* ACB argues that the Commission should use the term ''audio description,'' rather than the term ''video description'' throughout our rules and in Commission actions.[236] NAB notes that it supports doing so, ''if such term is preferable to consumers and potential users of such technology.'' [237] No other commenter supported this proposal, however, indicating that at best this is an open question for the blind and visually impaired community as a whole.[238] Congress directed us to reinstate our ''video description regulations,'' [239] so absent clear evidence that this phrase is inappropriate or inaccurate, we will retain the statutory term for purposes of our rules.[240]

59. *Non-Substantive Revisions.* In addition to the revisions discussed above, we make several necessary non-substantive revisions to the rules. These include revisions and additions to the Definitions section of the prior rules,[241] changes to the second paragraph of the Procedures for Exemptions section [242] to reflect that they apply to video programming ''providers'' rather than just video programming ''distributors,'' updates to the Complaint Procedures,[243] a clarification that it is system size, rather than Operator size, that determines the applicability of the rules to MVPDs,[244] and non-substantive wording changes intended to make the meaning of the rules clearer.

60. *Other Proposals Raised.* Some parties propose additional Commission action in this area; for instance, AFB proposes that the Commission subsidize video description on public television, and ACB proposes that we require description of IP delivered content that has been aired with description on television.[245] At this time we decline to go beyond the rules we adopt in this Order. We will commence an inquiry into the state of the video description market by July 1, 2013,[246] and commenters will have an opportunity at that time to raise any issues which still appear to demand statutory or regulatory action.

IV. Procedural Matters

A. Final Paperwork Reduction Act of 1995 Analysis

61. This document contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The requirements were submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA on March 18, 2011 at the Notice of Proposed Rulemaking stage. OMB approved the proposed requirements on April 22, 2011. The requirements were adopted as proposed. The Commission will activate the burden in OMB's system and publish an effective date notice informing the public when the requirements will go into effect. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

B. Additional Information.

62. For additional information on this proceeding, contact Lyle Elder, *Lyle.Elder@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

C. Final Regulatory Flexibility Analysis

63. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') [247] an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rule Making* in this proceeding.[248] The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.[249]

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

64. This *Report and Order* reinstates the Commission's video description rules. ''Video description,'' which is the insertion of audio narrated descriptions of a television program's key visual elements into natural pauses in the program's dialogue,[250] makes video programming more accessible to individuals who are blind or visually impaired. This is in compliance with the Twenty-First Century Communications and Video Accessibility Act of 2010 (''CVAA''), which directed the Commission to reinstate the rules with certain modifications.[251] The reinstated rules require large-market broadcast affiliates of the top four national networks and multichannel video programming distributor (''MVPD'') [252] systems with more than 50,000 subscribers to provide video description.[253] Covered broadcasters are required to provide 50 hours of video-described prime time or children's programming, per quarter, and covered MVPD systems are required to provide the same number of hours on each of the five most popular nonbroadcast networks that carry at least 50 hours of non-exempt programming per calendar quarter.[254]

accessible user interface design rules to mobile devices. NAB notes that we are directed to delay the effective date of those rules for Mobile DTV devices, and argues that the video description rules themselves should also be delayed. Comments of NAB at 22 (citing CVAA at Title II, sec. 204(d)).

[236] Comments of ACB at 3.

[237] Reply of NAB at note 3.

[238] AAPD expressed indifference regarding the specific term used, so long as it is used consistently. Reply of AAPD at 13.

[239] CVAA at Title II, sec. 202(a), 713(f)(1).

[240] We will consider this issue during our upcoming inquiry, to determine whether the prevailing trend is to change this terminology to ''audio description.''

[241] Appendix A, *Final Rules* (Revised 47 CFR 79.3(a)).

[242] Appendix A, *Final Rules* (Revised 47 CFR 79.3(d)(2)(ii–iv)).

[243] Appendix A, *Final Rules* (Revised 47 CFR 79.3(e)).

[244] Appendix A, *Final Rules* (Revised 47 CFR 79.3(b)(4), (5)).

[245] Reply of AFB at 2–3; Comments of ACB at 4; *see also, e.g.,* Comments of NAB at 25 (viewers should come to the Commission for information on which programming is video described); Comments of AT&T at 2 (video description rules should limit contractual terms).

[246] CVAA, Title II, sec. 202(a), 713(f)(3) (''The Commission shall commence the following inquiries no later than 1 year after the completion of the phase-in of the reinstated regulations * * *'').

[247] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (''CWAAA'').

[248] *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* MB Docket No. 11–43, Notice of Proposed Rulemaking, 26 FCC Rcd 2975 (2011) (''*NPRM*'').

[249] *See* 5 U.S.C. 604.

[250] CVAA at Title II, section 202(a), 713(h)(1). Video description is sometimes referred to as ''audio description''; *see infra* para. 58 (discussing the Commission's use of the statutory term ''video description'').

[251] Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751 (2010) (''CVAA'') at Title II, section 202(a), 713(f)(1–2).

[252] *E.g.,* cable, direct broadcast satellite, etc.

[253] Appendix A, Final Rules (revised 47 CFR 79.3(b)).

[254] *Id.* at § 79.3(b)(1), (4).

The rules also require that all network-affiliated broadcasters (commercial or non-commercial) and all MVPDs pass through any video description provided with programming they carried, to the extent they are technically capable and not using the capacity for another program-related service.[255] This pass-through requirement will affect any small MVPD system or network-affiliated broadcaster. As required under the CVAA, we are reinstating these rules on October 8, 2011, and broadcast stations and MVPD systems subject to the rules must begin full compliance in the third quarter of 2012.

2. Legal Basis

65. The authority for the action taken in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and Sections 1, 2(a), 4(i), 303, 307, 309, 310, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303, 307, 309, 310, and 613.

3. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

66. No comments were filed in response to the IRFA.

4. Description and Estimate of the Number of Small Entities to Which the Proposals Will Apply

67. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules if adopted.[256] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction'' [257] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[258] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[259] The rule changes proposed herein will directly affect small television broadcast stations and small MVPD systems, which include cable operators and satellite video providers. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

68. Television Broadcasting. The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts.[260] Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' [261] The Commission has estimated the number of licensed commercial television stations to be 1,390.[262] According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations [263] in the United States have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (''NCE'') television stations to be 391.[264] We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [265] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

69. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

70. Satellite Telecommunications. Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million.[266] The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts.[267] Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.[268]

71. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' [269] For this category, Census Bureau data for 2007

[255] *Id.* at § 79.3(b)(3), (5).

[256] 5 U.S.C. 603(b)(3).

[257] 5 U.S.C. 601(b).

[258] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[259] 15 U.S.C. 632.

[260] *See* 13 CFR 121.201, NAICS Code 515120 (2007).

[261] *Id.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[262] *See* News Release, ''Broadcast Station Totals as of December 31, 2010,'' 2011 WL 484756 (F.C.C.) (dated Feb. 11, 2011) (''*Broadcast Station Totals*''); also available at *http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC–304594A1.pdf.*

[263] We recognize that this total differs slightly from that contained in *Broadcast Station Totals, supra,* note 56; however, we are using BIA's estimate for purposes of this revenue comparison.

[264] *See Broadcast Station Totals, supra,* note 56.

[265] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[266] *See* 13 CFR 121.201, NAICS code 517410.

[267] *Id.*

[268] *See* 13 CFR 121.201, NAICS code 517919.

[269] U.S. Census Bureau, 2007 NAICS Definitions, ''517410 Satellite Telecommunications''.

show that there were a total of 512 firms that operated for the entire year.[270] Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.[271] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Notice.

72. The second category of Other Telecommunications consists of firms ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' [272] For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year.[273] Of this total, 2,346 firms had annual receipts of under $25 million.[274] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

73. Direct Broadcast Satellite (''DBS'') Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' [275] which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees.[276] To gauge small business prevalence for the DBS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.[277] Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and EchoStar Communications Corporation (''EchoStar'') (marketed as the DISH Network).[278] Each currently offers subscription services. DIRECTV [279] and EchoStar [280] each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

74. Fixed Microwave Services. Microwave services include common carrier,[281] private-operational fixed,[282] and broadcast auxiliary radio services.[283] At present, there are approximately 31,549 common carrier fixed licensees and 89,633 private and public safety operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. Microwave services include common carrier,[284] private-operational fixed,[285] and broadcast auxiliary radio services.[286] They also include the Local Multipoint Distribution Service (LMDS),[287] the Digital Electronic Message Service (DEMS),[288] and the 24 GHz Service,[289] where licensees can choose between common carrier and non-common carrier status.[290] The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—i.e., an entity with no more than 1,500 persons is considered small.[291] For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year.[292] Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed

[270] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[271] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=900&-ds_name=EC0751SSSZ4&-_lang=en.*

[272] U.S. Census Bureau, 2007 NAICS Definitions, ''517919 Other Telecommunications'', *http://www.census.gov/naics/2007/def/ND517919.HTM.*

[273] *See* 13 CFR 121.201, NAICS code 517919.

[274] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, ''Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517919'' (issued Nov. 2010).

[275] *See* 13 CFR 121.201, NAICS code 517110 (2007). The 2007 NAICS definition of the category of ''Wired Telecommunications Carriers'' is in paragraph 7, above.

[276] 13 CFR 121.201, NAICS code 517110 (2007).

[277] *See http://www.factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[278] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* Thirteenth Annual Report, 24 FCC Rcd 542, 580, para. 74 (2009) (''*13th Annual Report*''). We note that, in 2007, EchoStar purchased the licenses of Dominion Video Satellite, Inc. (''Dominion'') (marketed as Sky Angel). *See* Public Notice, ''Policy Branch Information; Actions Taken,'' Report No. SAT–00474, 22 FCC Rcd 17776 (IB 2007).

[279] As of June 2006, DIRECTV is the largest DBS operator and the second largest MVPD, serving an estimated 16.20% of MVPD subscribers nationwide. *See 13th Annual Report,* 24 FCC Rcd at 687, Table B–3.

[280] As of June 2006, DISH Network is the second largest DBS operator and the third largest MVPD, serving an estimated 13.01% of MVPD subscribers nationwide. *Id.* As of June 2006, Dominion served fewer than 500,000 subscribers, which may now be receiving ''Sky Angel'' service from DISH Network. *See id.* at 581, para. 76.

[281] 47 CFR Part 101 *et seq.* (formerly, part 21 of the Commission's Rules) for common carrier fixed microwave services (except MDS).

[282] Persons eligible under Parts 80 and 90 of the Commission's rules can use Private-Operational Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[283] Auxiliary Microwave Service is governed by Part 74 and Part 78 of Title 47 of the Commission's Rules. Available to licensees of broadcast stations, cable operators, and to broadcast and cable network entities. Auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes TV pickup and CARS pickup, which relay signals from a remote location back to the studio.

[284] *See* 47 CFR Part 101, Subparts C and I.

[285] *See* 47 CFR Part 101, Subparts C and H.

[286] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[287] *See* 47 CFR Part 101, Subpart L.

[288] *See* 47 CFR Part 101, Subpart G.

[289] *See id.*

[290] *See* 47 CFR 101.533, 101.1017.

[291] 13 CFR 121.201, NAICS code 517210.

[292] U.S. Census Bureau, 2007 Economic Census, Sector 51, 2007 NAICS code 517210 (rel. Oct. 20, 2009), *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=700&-ds_name=EC0751SSSZ5&-_lang=en.*

Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

75. Cable and Other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' [293] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.[294] According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year.[295] Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more.[296]

76. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide.[297] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[298] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[299] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[300] Thus, under this second size standard, most cable systems are small.

77. Cable System Operators. The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [301] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[302] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[303] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[304] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

78. Open Video Services. Open Video Service (OVS) systems provide subscription services.[305] The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[306] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[307] OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' [308] The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for the OVS service, the Commission relies on data currently available from the U.S. Census for the year 2007. According to that source, there were 3,188 firms that in 2007 were Wired Telecommunications Carriers. Of these, 3,144 operated with less than 1,000 employees, and 44 operated with more than 1,000 employees. However, as to the latter 44 there is no data available that shows how many operated with more than 1,500 employees. Based on this data, the majority of these firms can be considered small.[309] In addition, we note that the Commission has certified some OVS operators, with some now providing service.[310] Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises.[311] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, at least some of the OVS operators may qualify as small entities. The Commission further notes that it has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.[312] Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have

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

[294] 13 CFR 121.201, NAICS code 517110 (2007).

[295] U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, Employment Size of Firms for the United States: 2007, NAICS code 5171102 (issued Nov. 2010) (located at *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en).*

[296] *See id.*

[297] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

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

[299] 47 CFR 76.901(c).

[300] Warren Communications News, *Television & Cable Factbook 2008,* ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[301] 47 U.S.C. 543(m)(2); *see also* 47 CFR 76.901(f) and notes 1–3.

[302] 47 CFR 76.901(f); *see FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

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

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

[305] *See* 47 U.S.C. 573.

[306] 47 U.S.C. 571(a)(3)–(4). *See 13th Annual Report,* 24 FCC Rcd at 606, para 135.

[307] *See* 47 U.S.C. 573.

[308] U.S. Census Bureau, 2007 NAICS Definitions, ''517110 Wired Telecommunications Carriers''; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[309] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

[310] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[311] *See 13th Annual Report,* 24 FCC Rcd at 606–07, para 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[312] *See http://www.fcc.gov/mb/ovs/csovscer.html (current as of February 2007).*

not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

79. These rules affect small television broadcast stations and small MVPDs by requiring them to pass through a secondary audio track, containing video description, with any described programming that is provided by a network. The description need not be passed through if the station or MVPD does not have the technical capability to pass it through, or if the entity is already using all of the secondary audio capacity associated with that program for other program-related material. ''Technical capability'' means a station or system has ''virtually all necessary equipment and infrastructure to do so, except for items that would be of minimal cost'' If any small entities are subject to the separate requirement to ''provide'' video description, we anticipate that they will do so by passing description through to viewers. This separate requirement will thus impose no distinct burden on small broadcasters or small MVPDs. These requirements may in some cases result in the need for engineering services.

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

80. 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.[313]

81. These rules may have a significant economic impact in some cases, and that impact may affect a substantial number of small entities. Although alternatives to minimize economic impact have been considered, the video description rules have been reinstated in their present form because of the Congressional mandate, and the Commission has very limited authority to revise them. However, the importance of minimizing adverse economic impact on small entities has been recognized. Exemptions from the pass-through requirement, the rule most likely to apply to small entities, are easily available for parties that will face more than minimal cost to comply. Furthermore, these rules could provide off-setting positive economic impact on small entities by increasing viewership by persons with visual impairments.

7. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

82. None.

V. Ordering Clauses

83. *It is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority contained in Sections 1, 2(a), 4(i), 303, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 303, and 613, this *report and order is hereby adopted.*

84. *It is further ordered* that parts 73 and 79 of the Commission's rules, 47 CFR parts 73 and 79, are *Amended* as set forth in Appendix A, and such rule amendments shall be effective 30 days after the date of publication of the text thereof in the Federal Register, except to the extent they contain information collections subject to PRA review. The rules that contain information collections subject to PRA review will become effective following approval by the Office of Management and Budget.

85. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *second report and order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

86. *it is further ordered* that the Commission *shall send* a copy of this second report and order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Parts 73 and 79

Civil defense, Communications equipment, Defense communications, Education, Equal employment opportunity, Foreign relations, Incorporation by reference, Mexico, Political candidates, Radio, Reporting and recordkeeping requirements, Television, Cable television.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 79 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Section 73.682 is amended by revising paragraph (d) to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(d) *Digital broadcast television transmission standard.* Effective October 11, 2011 transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: ''ATSC Standard Digital Audio Compression (AC–3)'', ATSC A/53, Parts 1–4 and 6: 2007 ''ATSC Digital Television Standard,'' (January 3, 2007), and ATSC A/53 Part 5:2010 ''ATSC Digital Television Standard: Part 5—AC–3 Audio System Characteristic,'' (July 6, 2010), except for section 6.1.2 (''Compression Format Constraints'') of A/53 Part 4: 2007 (''MPEG–2 Video Systems Characteristics'') and the phrase ''see Table 6.2'' in section 6.1.1 Table 6.1 and section 6.1.3 Table 6.3, and ATSC A/65C: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable, Revision C With Amendment No. 1 dated May 9, 2006,'' (January 2, 2006) (all standards incorporated by reference, see § 73.8000). Although not incorporated by reference, licensees may also consult ATSC A/54A: ''Recommended Practice: Guide to Use of the ATSC Digital Television Standard, including Corrigendum No. 1,'' (December 4, 2003, Corrigendum No. 1 dated December 20, 2006, and ATSC A/69: ''Recommended Practice PSIP Implementation Guidelines for Broadcasters,'' (June 25, 2002) (Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303)). ATSC A/54A and ATSC A/69 are available from Advanced Television Systems Committee (ATSC), 1750 K Street, NW., Suite 1200, Washington, DC 20006, or at the ATSC Web site: *http://www.atsc.org/standards.html.*

* * * * *

[313] 5 U.S.C. 603(c)(1)–(c)(4).

■ 3. Section 73.8000 is amended by revising paragraphs (b)(2) introductory text and (b)(2)(v) to read as follows:

§ 73.8000 Incorporation by reference.

* * * * *

(b) * * *

(2) ATSC A/53 Parts 1–4 and 6: 2007 ''ATSC Digital Television Standard,'' (January 3, 2007) and ATSC A/53 Part 5: 2010 ''ATSC Digital Television Standard: Part 5—AC–3 Audio System Characteristic,'' (July 6, 2010), as listed below:

* * * * *

(v) A/53, Part 5: 2010, ''AC–3 Audio System Characteristics'' (July 6, 2010), IBR approved for § 73.682.

* * * * *

PART 79—CLOSED CAPTIONING AND VIDEO DESCRIPTION OF VIDEO PROGRAMMING

■ 4. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 613.

■ 5. Section 79.3 is revised to read as follows:

§ 79.3 Video description of video programming.

(a) *Definitions.* For purposes of this section the following definitions shall apply:

(1) *Designated Market Areas (DMAs).* Unique, county-based geographic areas designated by The Nielsen Company, a television audience measurement service, based on television viewership in the counties that make up each DMA.

(2) *Video programming provider.* Any video programming distributor and any other entity that provides video programming that is intended for distribution to residential households including, but not limited to, broadcast or nonbroadcast television networks and the owners of such programming.

(3) *Video description/Audio Description.* The insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

(4) *Video programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station, but not including consumer-generated media.

(5) *Video programming distributor.* Any television broadcast station licensed by the Commission and any multichannel video programming distributor (MVPD), and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission.

(6) *Prime time.* The period from 8 to 11 p.m. Monday through Saturday, and 7 to 11 p.m. on Sunday local time, except that in the central time zone the relevant period shall be between the hours of 7 and 10 p.m. Monday through Saturday, and 6 and 10 p.m. on Sunday, and in the mountain time zone each station shall elect whether the period shall be 8 to 11 p.m. Monday through Saturday, and 7 to 11 p.m. on Sunday, or 7 to 10 p.m. Monday through Saturday, and 6 to 10 p.m. on Sunday.

(7) *Live or near-live programming.* Programming performed either simultaneously with, or recorded no more than 24 hours prior to, its first transmission by a video programming distributor.

(8) *Children's Programming.* Television programming directed at children 16 years of age and under.

(b) The following video programming distributors must provide programming with video description as follows:

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top 25 DMAs, as determined by The Nielsen Company as of January 1, 2011, must provide 50 hours of video description per calendar quarter, either during prime time or on children's programming, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a station in one of these markets becomes affiliated with one of these networks after the effective date of these rules, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized;

(2) Beginning July 1, 2015, commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2015, must provide 50 hours of video description per calendar quarter, either during prime time or on children's programming, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a station in one of these markets becomes affiliated with one of these networks after July 1, 2015, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized;

(3) Television broadcast stations that are affiliated or otherwise associated with any television network must pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description;

(4) Multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or children's programming, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under these rules. Initially, the top five networks are those determined by The Nielsen Company, for the time period October 2009–September 2010, and will update at three year intervals. The first update will be July 1, 2015, based on the ratings for the time period October 2013–September 2014; the second will be July 1, 2018, based on the ratings for the time period October 2016–September 2017; and so on; and

(5) Multichannel video programming distributor (MVPD) systems of any size:

(i) Must pass through video description on each broadcast station they carry, when the broadcast station provides video description, and the channel on which the MVPD distributes the programming of the broadcast station has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description; and

(ii) Must pass through video description on each nonbroadcast network they carry, when the network provides video description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description.

(c) *Responsibility for and determination of compliance.* (1) The Commission will calculate compliance on a per channel, and, for broadcasters, a per stream, calendar quarter basis, beginning with the calendar quarter July 1 through September 30, 2012.

(2) In order to meet its fifty-hour quarterly requirement, a broadcaster or MVPD may count each program it airs with video description no more than a total of two times on each channel on which it airs the program. A broadcaster or MVPD may count the second airing in the same or any one subsequent quarter. A broadcaster may only count programs aired on its primary broadcasting stream towards its fifty-hour quarterly requirement. A broadcaster carrying one of the top four commercial television broadcast networks on a secondary stream may count programs aired on that stream toward its fifty-hour quarterly requirement for that network only.

(3) Once a commercial television broadcast station as defined under paragraph (b)(1) of this section has aired a particular program with video description, it is required to include video description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description.

(4) Once an MVPD as defined under paragraph (b)(3) of this section:

(i) Has aired a particular program with video description on a broadcast station it carries, it is required to include video description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description; or

(ii) Has aired a particular program with video description on a nonbroadcast network it carries, it is required to include video description with all subsequent airings of that program on that same nonbroadcast network, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description.

(5) In evaluating whether a video programming distributor has complied with the requirement to provide video programming with video description, the Commission will consider showings that any lack of video description was de minimis and reasonable under the circumstances.

(d) *Procedures for exemptions based on economic burden.* (1) A video programming provider may petition the Commission for a full or partial exemption from the video description requirements of this section, which the Commission may grant upon a finding that the requirements would be economically burdensome.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements to provide programming with video description would be economically burdensome. The term ''economically burdensome'' means imposing significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for video description would be economically burdensome:

(i) The nature and cost of providing video description of the programming;

(ii) The impact on the operation of the video programming provider;

(iii) The financial resources of the video programming provider; and

(iv) The type of operations of the video programming provider.

(3) In addition to these factors, the petitioner must describe any other factors it deems relevant to the Commission's final determination and any available alternative that might constitute a reasonable substitute for the video description requirements. The Commission will evaluate economic burden with regard to the individual outlet.

(4) The petitioner must file an original and two (2) copies of a petition requesting an exemption based on the economically burdensome standard in this paragraph, and all subsequent pleadings, in accordance with § 0.401(a) of this chapter.

(5) The Commission will place the petition on public notice.

(6) Any interested person may file comments or oppositions to the petition within 30 days of the public notice of the petition. Within 20 days of the close of the comment period, the petitioner may reply to any comments or oppositions filed.

(7) Persons that file comments or oppositions to the petition must serve the petitioner with copies of those comments or oppositions and must include a certification that the petitioner was served with a copy. Parties filing replies to comments or oppositions must serve the commenting or opposing party with copies of such replies and shall include a certification that the party was served with a copy.

(8) Upon a finding of good cause, the Commission may lengthen or shorten any comment period and waive or establish other procedural requirements.

(9) Persons filing petitions and responsive pleadings must include a detailed, full showing, supported by affidavit, of any facts or considerations relied on.

(10) The Commission may deny or approve, in whole or in part, a petition for an economic burden exemption from the video description requirements.

(11) During the pendency of an economic burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the video description requirements.

(e) *Complaint procedures.* (1) A complainant may file a complaint concerning an alleged violation of the video description requirements of this section by transmitting it to the Consumer and Governmental Affairs Bureau at the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. Complaints should be addressed to: Consumer and Governmental Affairs Bureau, 445 12th Street, SW., Washington, DC 20554. A complaint must include:

(i) The name and address of the complainant;

(ii) The name and address of the broadcast station against whom the complaint is alleged and its call letters and network affiliation, or the name and address of the MVPD against whom the complaint is alleged and the name of the network that provides the programming that is the subject of the complaint;

(iii) A statement of facts sufficient to show that the video programming distributor has violated or is violating the Commission's rules, and, if applicable, the date and time of the alleged violation;

(iv) The specific relief or satisfaction sought by the complainant; and

(v) The complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant).

(2) The Commission will promptly forward complaints satisfying the above requirements to the video programming distributor involved. The video programming distributor must respond to the complaint within a specified time, generally within 30 days. The Commission may authorize Commission staff either to shorten or lengthen the time required for responding to

complaints in particular cases. The answer to a complaint must include a certification that the video programming distributor attempted in good faith to resolve the dispute with the complainant.

(3) The Commission will review all relevant information provided by the complainant and the video programming distributor and will request additional information from either or both parties when needed for a full resolution of the complaint.

(i) The Commission may rely on certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance. The Commission will not hold the video programming distributor responsible for situations where a program source falsely certifies that programming that it delivered to the video programming distributor meets our video description requirements if the video programming distributor is unaware that the certification is false. Appropriate action may be taken with respect to deliberate falsifications.

(ii) If the Commission finds that a video programming distributor has violated the video description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing video description in excess of its requirements.

(f) *Private rights of action are prohibited.* Nothing in this section shall be construed to authorize any private right of action to enforce any requirement of this section. The Commission shall have exclusive jurisdiction with respect to any complaint under this section.

[FR Doc. 2011–22878 Filed 9–7–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA684

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2011 total allowable catch of pollock for Statistical Area 620 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 4, 2011, through 1200 hrs, A.l.t., October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2011 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 5,618 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 1,793 mt to reflect the total amount of pollock TAC that has been caught prior to the C season in Statistical Area 620. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 620 is 3,825 mt (5,618 mt minus 1,793 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2011 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,800 mt, and is setting aside the remaining 25 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 1, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 2, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–22998 Filed 9–2–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA685

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 120 hours. This action is necessary to fully use the C season allowance of the 2011

total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 4, 2011, through 1200 hrs, A.l.t., September 9, 2011. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 19, 2011.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator, Alaska Region, NMFS, *Attn:* Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0218, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter [NOAA–NMFS–2011–0218] in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on August 27, 2011 (76 FR 53658, August 29, 2011).

As of September 1, 2011, NMFS has determined that approximately 6,300 metric tons of pollock remain in the directed fishing allowance for pollock in Statistical Area 630 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the C season allowance of the 2011 TAC of pollock in Statistical Area 630 of the GOA, NMFS is terminating the previous closure and is reopening directed fishing pollock in Statistical Area 630 of the GOA. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of pollock in Statistical Area 630 of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

In accordance with § 679.21(d)(1)(iii), the Regional Administrator, has determined that the directed fishing allowance for pollock in Statistical Area 630 of the GOA will be reached after 120 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the pollock fishery in Statistical Area 630 of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 1, 2011.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow pollock fishery in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 19, 2011.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 2, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–23003 Filed 9–2–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 174
Thursday, September 8, 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

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–11–0333; AMS–DA–11–0067; DA–11–04]

Milk in the Mideast Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider and take evidence on a proposal to modify the Pool Plant Definition in the Mideast Milk Marketing Order.

DATES: The hearing will convene at 8 a.m. on Tuesday, October 4, 2011.

ADDRESSES: The hearing will be held at the Westin Cincinnati Hotel, 21 E 5th Street, Cincinnati, Ohio 45202, (513) 621–7700.

FOR FURTHER INFORMATION CONTACT: William Francis, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Stop 0231–Room 2971–S, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–7183, e-mail: *William.Francis@ams.usda.gov*.

Persons requiring a sign language interpreter or other special accommodations should contact Paul Huber, Market Administrator, before the hearing begins at (330) 225–4758 or e-mail: *phuber@fmmaclev.com.*

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Westin Cincinnati Hotel, Cincinnati, Ohio beginning at 8 a.m. on Tuesday, October 4, 2011, with respect to a proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA). The RFA seeks to ensure that, within the statutory authority of a program, the regulatory and information collection requirements are tailored to the size and nature of small businesses. For the purpose of the RFA, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees (13 CFR 121.201). Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, has its principal place of business, has jurisdiction in equity to review the USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Administrative Law Judge at the hearing with (4) copies of such exhibits for the Official Record. Additional copies should be made available for use by other hearing participants. Any party that has submitted a proposal notice herein, when participating as a witness, is required to make their testimony—if prepared as an exhibit—and any other exhibits, available to USDA officials prior to the start of the hearing on the day of their appearance. Individual dairy farmers are not subject to this requirement.

The hearing will continue until such time as determined to have ended by the presiding Administrative Law Judge. If necessary, the schedule for the next session will be announced at the time of adjournment. Such reconvening date and time will also be posted on the AMS-Dairy Programs Web site at: *http://www.ams.usda.gov/dairy*.

The proposed amendments, as set forth below, have not received the approval of the Department.

List of Subjects in 7 CFR Part 1033

Milk marketing orders.

The authority citations for 7 CFR part 1033 read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

Proposed by Foremost Farms USA Cooperative, Inc.; National Farmers Organization, Inc.; Dairy Farmers of America, Inc.; Michigan Milk Producers Association; Dairylea Cooperative, Inc.; and Continental Dairy Products, Inc.

Proposal 1

This proposal seeks to alter the definition of a pool distributing plant within the Mideast Milk Marketing Order. Specifically, the proposal recommends that a distributing plant, which is physically located within the Mideast Milk Marketing Order, be regulated by that order if half of its total route disposition is within Federal Milk Marketing Area boundaries and its sales patterns are such that no one Order has more than 25% of its sales volume. This proposed change would only affect the Mideast Milk Marketing Order.

1. Amend § 1033.7 by revising paragraph (a) to read as follows:

§ 1033.7 Pool plant

* * * * *

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § ____.7(b) of any other Federal milk order, from which during the month 30 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area. Plants located within the marketing area with combined route disposition and transfers of at least 50% into Federal Order marketing areas but without 25% of route disposition and transfers into any one Federal Order will be regulated as a distributing plant in this Order.

* * * * *

Proposed by Dairy Programs, Agricultural Marketing Service

Proposal 2

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator of the Mideast Marketing Area, or from the Hearing Clerk, United States Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing. Copies of the transcript will also be made available online at: *http://www.ams.usda.gov/dairy*.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture, Office of the Administrator, Agricultural Marketing Service, Office of the General Counsel, Dairy Programs, Agricultural Marketing Service (Washington Office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 2, 2011.

David R. Shipman,

Acting Administrator.

[FR Doc. 2011–22945 Filed 9–7–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–PET–0047]

RIN 1904–AC57

Energy Conservation Program for Consumer Products: Request for Exclusion of 120 Volt, 100 Watt R20 Short Incandescent Reflector Lamp for Spa Applications From Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information and notice of granting of petition for rulemaking.

SUMMARY: The Department of Energy received a petition from the National Electrical Manufacturers Association requesting the initiation of a rulemaking to exclude from coverage under Energy Policy and Conservation Act standards 120 volt, 100 watt, R20 short (having a maximum overall length of 3⅝ or 3.625 inches) incandescent reflector lamps marketed for use in hot tub spas. DOE published this petition and a request for comments in the **Federal Register** on December 23, 2010. Based upon its evaluation of the petition and careful consideration of the public comments, DOE has decided to grant this petition for rulemaking. DOE seeks comments that will inform its rulemaking to determine whether 120 volt, 100 watt, R20 short incandescent reflector lamps should be excluded from energy conservation standards.

DATES: Written comments on this document and information requested must be submitted on or before October 11, 2011.

ADDRESSES: Any comments submitted must identify the Request for Information (RFI) for Spa Lamps and provide Docket Number EERE–2010–BT–PET–0047 and/or Regulatory Information Number (RIN) 1904–AC57. Comments may be submitted using any of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *E-mail: ShortLampsPetition-2010-PET-0047@ee.doe.gov.* Include docket number EERE–2010–BT–PET–0047 and/or RIN 1904–AC57 in the subject line of the message.

(3) *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

(4) *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page on the *http://www.regulations.gov* site can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/*

residential/incandescent_lamps.html. The *http://www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to submit a comment or review other public comments and the docket, please contact Ms. Brenda Edwards at (202) 586–2945 or e-mail: *Brenda.Edwards @ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Tina Kaarsberg PhD, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–1393. E-mail: *Tina.Kaarsberg@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

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I. Background

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.,* provides among other things, that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.'' (5 U.S.C. 553(e)) Pursuant to this provision of the APA, the National Electrical Manufacturers Association (NEMA) has petitioned the Department of Energy (DOE) for rulemaking to exclude from coverage a type of incandescent reflector lamp (IRL) from energy conservation standards under the Energy Policy and Conservation Act (EPCA; 42 U.S.C. 6291 *et seq.*). Specifically, NEMA seeks an exemption for 120 volt (V), 100 watt (W), R20 [1] short (having a maximum overall length (MOL) of 3⅝ inches) lamps (hereafter referred to as ''R20 short lamps'') marketed for use in hot tub spas. These lamps are sold in jurisdictions that allow pools and spas to be supplied with 120V electricity.

Amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, expanded EPCA's definition of ''incandescent reflector lamp'' to include lamps with a diameter between 2.25 and 2.75 inches (R18–R22).[2] (42 U.S.C. 6291(30)(C)(ii)) This addition made R20 lamps (having a diameter of 20/8, or 2.25, inches) covered products subject to EPCA's standards for IRLs. As explained in NEMA's petition, based upon this change to the definition, statutory standards went into effect for R20 lamps on June 15, 2008, the date 180 days after the date of enactment of EISA 2007. (42 U.S.C. 6295(i)(1)(D)(ii)) However, noncompliant R20 short lamps remained on the market until September 2010, because the two manufacturers of these lamps mistakenly believed the lamps were excluded from coverage. The manufacturers had relied upon the Federal Trade Commission's (FTC) labeling rule, 16 CFR part 305, which continues to publish the previous lamp definitions from the Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486, amendments of EPCA. As written, the FTC labeling regulations treat IRLs as general service incandescent lamps (GSILs), and erroneously continued to define GSILs as not including those lamps specifically designed for ''[s]wimming pool or other underwater service.'' 16 CFR 305.3(m)(3). This exclusion was eliminated from EPCA by section 321 of EISA 2007.[3] Upon realization that FTC definitions were incorrect and the R20 short lamps were subject to energy conservation standards, the manufacturers removed the product from the market, and, in November 2010, NEMA submitted the petition that is the subject of this notice. DOE published the petition for rulemaking in the **Federal Register** on December 23, 2010 and requested public comment. 75 FR 80731.

In this petition, NEMA asked both for a rulemaking to exclude R20 short lamps from coverage of energy conservation standards, and for a stay of enforcement pending that rulemaking. As grounds for the petition, NEMA stated that R20 short lamps qualify for an exemption under 42 U.S.C. 6291(30)(E), which allows the Secretary to exclude a fluorescent or incandescent lamp ''as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.'' In its petition, NEMA contended that a rulemaking would find that energy conservation standards for R20 short lamps do not result in significant energy savings and that the lamp is designed for special applications or has special characteristics not available in substitute lamp types. Specifically, as the lamp has a particular MOL and was specially designed to meet underwater illumination requirements of hot tub manufacturers (including designated beam spread and lumen output), there are no substitute products on the market for this application. 75 FR 80731, 80732 (Dec. 23, 2010).

Additionally, NEMA asserted that having energy conservation standards for this unique lamp type would lead to its unavailability in the United States. To the best of NEMA's and manufacturers' knowledge, the decision of the two R20 short lamp manufacturers to withdraw the product from the market has already resulted in its current unavailability. 75 FR 80731, 80732–33 (Dec. 23, 2010)

As noted above, DOE subsequently published a notice in the **Federal Register** on December 23, 2010 containing the petition and requesting public comment. 75 FR 80731. DOE received several comments from manufacturers, utilities, and environmental and energy efficiency organizations.[4] Specifically, DOE received comments from Pentair Water Pool and Spa, Inc. (Pentair) and Northwest Energy Efficiency Alliance (NEEA). It also received a joint comment from Pacific Gas and Electric Company (PG&E), Southern California Edison (SCE), Southern California Gas Company (SCGC), and San Diego Gas and Electric (SDG&E) (hereafter ''California Investor-Owned Utilities''

[1] ''R'' denotes a reflector lamp type, and ''20'' denotes diameter in ⅛ inch increments, which translates to 2.5 inches.

[2] Prior to the enactment of EISA 2007, this definition applied to lamps with a diameter which exceeds 2.75 inches. EISA 2007 modified this definition to make it applicable to IRL with a diameter which exceeds 2.25 inches.

[3] The FTC published a final rule in the **Federal Register** on July 19, 2010, which updated its regulations regarding its definition of GSIL to reflect the definitional changes provided in EISA 2007. 75 FR 41696, 41713–14. These changes are effective July 19, 2011, at which time the amendments will be reflected in the Code of Federal Regulations.

[4] NEMA's petition and associated comments can be found under Docket No. EERE–2010–BT–PET–0047.

(CA IOUs)). Natural Resources Defense Council (NRDC), the Appliance Standard Awareness Project (ASAP), the American Council for an Energy-Efficient Economy (ACEEE), Earthjustice, and the National Consumer Law Center (NCLC) (hereafter ''Energy Efficiency Organizations'') also provided joint comments. The following discussion summarizes and responds to comments on the NEMA petition.

II. Authority To Grant Exclusion

In response to the notice of NEMA's petition, several stakeholders commented on DOE's authority to exempt R20 short lamps under 42 U.S.C. 6291(30)(E).

In its petition, NEMA asserted that DOE has the authority to exempt lamps that meet the criteria set forth in 42 U.S.C. 6291(30)(E). In January 2011, NEMA submitted comments supplementing its original petition. To bolster its argument, in its supplementary statements, NEMA cited 42 U.S.C. 6295(i)(1)(D), which authorizes the Secretary to exempt a general service lamp from standards in the event that application of the standard would prevent the fulfillment of a specialized application and when the lamp is unlikely to be used in a general service lighting application. While R20 short lamps are not classified as general service lamps, NEMA pointed to 42 U.S.C. 6295(i)(1)(D) as further evidence of Congress's intent to provide a regulatory pathway for excluding lamps that serve special applications. (NEMA, No. 2.1 at p. 2) [5]

Both the CA IOUs and Energy Efficiency Organizations argued that exclusion under 42 U.S.C. 6291(30)(E) is no longer possible because the compliance date has already passed for these standards. The CA IOUs and Energy Efficiency Organizations commented that 42 U.S.C. 6291(30)(E) permits the exemption of lamps for which standards ''would not result in significant energy savings,'' and contended the conditional phrasing ''would not result,'' as opposed to the present tense wording ''are not resulting,'' means the section only applies to standards not yet in effect. (CA IOUs, No. 3.1 at p. 1; Energy Efficiency Organizations, No. 4.1 at p. 1–2)

Energy Efficiency Organizations further stated that they interpret 42 U.S.C. 6291(30)(E) as facilitating the process of determining coverage rather than retroactively excluding products from coverage. Moreover, the commenters argued that interpreting exclusion as a process occurring after standards go into effect would erode energy savings by allowing manufacturers to continually exempt products and chip away at the covered lamp market. The Energy Efficiency Organizations stated that while standards for any one lamp may generate marginal savings, standards for IRLs as a whole represent considerable energy savings. (Energy Efficiency Organizations, No. 4.1 at p. 2–3)

DOE does not believe the plain language of EPCA under 42 U.S.C. 6291(30)(E) compels an interpretation that the section only applies to standards before their compliance date. DOE finds this reading would prevent application of 42 U.S.C. 6291(30)(E). Under 42 U.S.C. 6295(o)(3), DOE is already barred from adopting standards for any product class for which the standards would not result in significant conservation of energy. Therefore, if interpreted to apply to products for which standards are not yet in effect, 42 U.S.C. 6291(30)(E) would be rendered redundant and superfluous, as both it and 42 U.S.C. 6295(o)(3) evaluate possible significant energy savings from future standards. Instead, DOE has concluded that 42 U.S.C. 6291(30)(E) contains no time bar in terms of DOE taking a rulemaking action to address any lamp for which standards would not result in significant energy savings as it is designed for special applications or has special characteristics not available in substitute lamp types. Given the broad and growing coverage of DOE's energy conservation standards for lamps, DOE believes that Congress intended 42 U.S.C. 6291(30)(E) to provide a mechanism to address both those lamps inadvertently covered by preexisting standards, as well as new lamps subsequently developed to which standards would otherwise apply.

The CA IOUs and the Energy Efficiency Organizations also argued that DOE does not have the authority to exempt R20 short lamps because of the statute's anti-backsliding provision, which prohibits DOE from prescribing amended standards that increase the maximum allowable energy use or decrease the minimum required energy efficiency, of a covered product. (42 U.S.C. 6295(o)(1)) The CA IOUs and the Energy Efficiency Organizations stated that applying an exemption to R20 short lamps would violate EPCA by decreasing the required energy efficiency of a currently covered product. (CA IOUs, No. 3.1 at p. 1; Energy Efficiency Organizations, No. 4.1 at p. 2) The Energy Efficiency Organizations added that the precedent set by *NRDC* v. *Abraham* (355 F.3d 179, 196 (2d Cir. 2004)) means that ''section 325(o)(1) must be read to restrict DOE's subsequent discretionary ability to weaken that standard at any point thereafter.'' (Energy Efficiency Organizations, No. 4.1 at p. 2)

NEMA countered that the anti-backsliding provision does not preclude excluding lamps from an existing standard because: (1) 42 U.S.C. 6291(30)(E) would be rendered superfluous if the anti-backsliding provision were to preclude DOE from considering a petition; and (2) a determination would have already been made that the exempted lamp would not produce significant energy savings if subjected to standards, thereby meeting the criteria that the exclusion would not increase allowable energy use. (NEMA, No. 2.1 at p. 2–3)

After careful review of the relevant statutory provisions and these comments, DOE has concluded that Congress intended 42 U.S.C. 6291(30)(E) to provide a mechanism for granting relief from current and future lamp standards. In reaching this conclusion, DOE notes that it is possible to read 42 U.S.C. 6291(30)(E) and 42 U.S.C. 6295(o)(1) in harmony so as to give effect to both provisions. DOE would not be changing the level of the existing energy conservation standard, and for those units that would now be excluded from the definition of ''incandescent lamp,'' there would first have to be a determination that the standard would not result in a significant energy savings for those lamps. Rather than DOE exercising discretion to weaken energy conservation standards in violation of the anti-backsliding provision, DOE is giving effect to an express statutory provision under precisely the situation for which Congress provided a mechanism for resolution.

DOE also received comments from CA IOUs and Energy Efficiency Organizations that R20 short lamp noncompliance would be better addressed through the Requests for Adjustments provision (Section 504 of the Department of Energy Organization Act, Pub. L. 95–91; codified at 42 U.S.C. 7194). The Requests for Adjustments provision (also known as ''exception relief'') allows a manufacturer to submit a hardship waiver to DOE's Office of Hearings and Appeals (OHA). OHA has a process to handle claims of ''hardship, inequity, or unfair distribution of burdens'' by making adjustments to regulations. *Id.* Specifically, the CA IOUs and the Energy Efficiency

[5] A notation in the form ''NEMA, No. 2.1 at p. 2'' identifies a written comment that DOE has received and has included in the docket of this rulemaking. This particular notation refers to a comment: (1) Submitted by NEMA; (2) in document number 2.1 of the docket, and (3) on page 2 of that document.

Organizations claim this process is better for the R20 short lamp situation because: (1) DOE can grant exceptions to certain manufacturers rather than a general exemption to the product; (2) DOE can grant exceptions for a certain period of time appropriate to the manufacturers' needs; and (3) DOE can avoid using its time and resources to carry out an additional rulemaking. (CA IOUs, No. 3.1 at p. 3; Energy Efficiency Organizations, No. 4.1 at p. 1, 4) NEEA further contended that filing a hardship petition with OHA would provide more appropriate relief for the manufacturer, but given that the OHA process allows a more specific remedy, NEEA argued that a blanket product exemption would be highly inappropriate. (NEEA, No. 5.1 at p. 1–2) In response, DOE has determined that this situation is not specific to a single manufacturer, but rather, it applies to an entire product type. Accordingly, OHA exception relief would not be an appropriate remedy for R20 short lamps, because exception relief cannot be used to alter a standard level across the board, even where it has been belatedly demonstrated that another level might be more appropriate. In such case, exception relief to specific manufacturers could preclude others from entering this market and ultimately reduce competition. Furthermore, OHA's authority to grant exception relief does not apply to energy conservation standards set by statute, but instead, it only applies to standards set pursuant to DOE's regulatory authority. The Secretary is legally required to implement the laws as enacted, so if the Secretary lacks authority to waive statutory requirements, the Secretary cannot delegate a greater power to OHA in terms of granting exception relief.

After reviewing NEMA's petition and responses to the petition, DOE has concluded that 42 U.S.C. 6291(30)(E) applies to products for which standards for fluorescent lamps and incandescent lamps are already in effect and that it grants DOE the authority to exclude by rule certain IRLs from coverage if they met the necessary statutory criteria for exclusion. Therefore, DOE has determined that the exemption of R20 short lamps must be evaluated based on energy savings and lamp application rather than through a petition for exception relief based upon hardship. For these reasons, DOE grants NEMA's petition to initiate a rulemaking to consider exclusion of R20 short lamps pursuant to 42 U.S.C. 6291(30)(E).

III. Evaluation of Stay of Enforcement

In its petition, NEMA also requested a stay of enforcement of standards for R20 short lamps pending the outcome of this rulemaking. Pentair, a manufacturer of spas, commented that its supplier has stopped supplying R20 short lamps in order to comply with the energy conservation standards, and the commenter warned that this supply stoppage will create significant hardship for both Pentair and its customers because there is no substitute for this lamp. (NEMA, No. 2.1 at p. 1) [6] Further, Pentair stated that Underwriters Laboratories specifies the use of R20 short lamps in luminaires for numerous spa products. Pentair asserted that without an equivalent replacement, its customers would be forced to replace the entire fixture in order to continue meeting local building codes that require certain wattage per square foot to ensure adequate and safe lighting levels. (NEMA, No. 2.1 at p. 1)

NEMA also warned that failure to exclude R20 short lamps will lead to their unavailability in the United States. 75 FR 80731, 80733 (Dec. 23, 2010). NEMA stated that such unavailability presents a potential marketplace problem for the public, pool and spa builders, and consumers, as they do not have any available substitutes. Further, Pentair noted that it had orders in excess of its inventory, a problem that would become worse with time. (NEMA, No. 2.1 at p. 3)

DOE has decided that given the confusion in the industry and harm likely to result in the interim, while this rulemaking is pending, DOE will not pursue enforcement action against manufacturers producing and/or selling R20 short lamps that do not comply with prescribed standards.

IV. Conclusion

After reviewing NEMA's petition and comments on the petition, DOE has concluded it has the legal authority to grant exclusions for IRLs under 42 U.S.C. 6291(30)(E). DOE will conduct a rulemaking to consider excluding R20 short lamps from coverage under energy conservation standards pursuant to the requirements specified in 42 U.S.C. 6291(30)(E) and has granted a stay of enforcement pending the outcome of the rulemaking. Accordingly, while this rulemaking is pending, DOE will not pursue enforcement action against manufacturers producing and/or selling R20 short lamps that do not comply with prescribed standards.

[6] The page number refers to the letter from Pentair included in NEMA's comment.

V. Rulemaking Overview

A. Purpose of the Rulemaking

DOE will undertake a rulemaking to consider exclusion from coverage under energy conservation for R20 short lamps pursuant to the requirements of 42 U.S.C. 6291(30)(E). Under this section, in order to exclude a fluorescent or incandescent lamp, the Secretary must make the determination, by rule, that standards for the lamp ''would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.'' *Id.* In its petition, NEMA asserted that a rulemaking to consider exclusion of R20 short lamps from standards coverage will conclude: (1) That energy conservation standards for this unique type of lamp will not result in significant energy savings; and (2) this type of lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

Therefore, in the rulemaking, DOE will evaluate the market impact of excluding R20 short lamps from coverage, including the direct loss in energy savings, as well as the potential for migration of the lamps to other markets and the associated impacts on energy savings. DOE will also determine whether R20 short lamps truly have unique characteristics not available in reasonably substitutable lamp types. DOE will conduct a market and technology analysis to identify options that meet requirements of spa applications, including technologies to make R20 short lamps more energy efficient, as well as the availability of standard-compliant substitute lamps.

DOE will consult the relevant interested parties in the rulemaking process including manufacturers (both of lamps and of spas), consumers, energy conservation and environmental advocates, and any other interested members of the public. The rulemaking will address the comments DOE has already received or subsequently receives regarding whether or not R20 short lamps meet the statutory criteria for exclusion.

B. Significance of Energy Savings of R20 Short Lamp Standards

In the rulemaking, DOE will determine whether or not energy conservation standards for R20 short lamps result in significant energy savings. Energy Efficiency Organizations have commented that an exclusion under 42 U.S.C. 6291(30)(E) can only be granted if the standards would not

result in significant energy savings either because the lamp is designed for special application or has special characteristics not available in reasonably substitutable lamp types. Subsequently, the Energy Efficiency Organizations contend that in its petition, NEMA does not make the case that it is the unique features of R20 short lamps and the unavailability of substitutes that will prevent the standards from generating significant energy savings. Instead, they contend that NEMA relies solely on the uniqueness of the 100W R20 short lamp as a basis for exclusion under 42 U.S.C. 6291(30)(E). (Energy Efficiency Organizations, No. 4.1 at p. 4)

In response, DOE does not believe that 42 U.S.C. 6291(30)(E) requires a lamp's lack of significant energy savings potential to be directly attributable to the special application or special characteristic itself. Instead, DOE believes that a more reasonable interpretation would also account for the fact that the lamps' use in special applications and special characteristics not available in substitute lamps may result in very low shipment volumes, which in turn may lead to a determination that significant energy savings would not result from application of energy conservation standards to such lamps.

In its petition, NEMA contended that due to the low market share and lower wattage of R20 short lamps, energy conservation standards will not result in significant energy savings. NEMA determined that sales of R20 short lamps represented significantly less than 0.1 percent of 2009 shipments of IRL covered by energy conservation standards. The petitioner noted that in the 2009 rulemaking for IRL standards, DOE determined that due to low market share, IRLs with rated wattages greater than 205 watts would not represent substantial potential energy savings and should, therefore, not be covered by standards. 75 FR 80731, 80733 (Dec. 23, 2010). Because the R20 short lamp market is even smaller, NEMA reasoned that these lamps similarly would not have a significant energy savings potential.

The CA IOUs disagreed with NEMA, stating that exempting R20 short lamps would put significant energy savings at risk, because the lamp has the potential to be used in other applications. (CA IOUs, No. 3.1 at p. 2) NEMA contended that market migration of unregulated R20 short lamps is improbable and that consumers would be unlikely to substitute unregulated R20 short lamps for other types of regulated residential lamps, arguing that R20 short lamps are: (1) Relatively expensive ($10–20) compared to other types of IRL used in residential applications; (2) marked for pool and spa applications, thereby deterring purchases for general lighting use; and (3) generally not found in stores where other lighting products for general residential applications are sold. 75 FR 80731, 80733 (Dec. 23, 2010).

However, the CA IOUs found that there were R20 short lamp types starting from $7.88, which is not much higher than the typical $5–9 price range of small diameter reflector lamps. (CA IOUs, No. 3.1 at p. 2) The CA IOUs also pointed out that the maximum overall length (MOL) of 3⅝ inches is not unique to R20 short lamps, as there are many small diameter reflector lamps and some larger diameter reflector lamps (PAR30) that have an MOL of less than or equal to 3⅝ inches. Therefore, the commenters argued that the MOL of R20 short lamps does not prevent it from being used in other fixtures. Additionally, the commenters argued that reflector lamps with larger MOLs can be substituted for short lamps. (CA IOUs, No. 3.1 at p. 2) The Energy Efficiency Organizations raised similar points about prices and MOL and added that other distinctive features of R20 short lamps, such as the wide beam spread or heat shields, would not prevent their use in applications that did not require these features. (Energy Efficiency Organizations, No. 4.1 at p. 3) The CA IOUs also commented that if production of the lamps were to increase, manufacturers could achieve economies of scale, which would bring down the price and further increase the chances that the R20 short lamps could serve as substitutes for other lamps covered by standards. (CA IOUs, No. 3.1 at p. 2)

NEEA also agreed with the CA IOUs' assessment of the potential for unregulated R20 short lamps to migrate to other markets and create a loophole in energy conservation standards. NEEA and the Energy Efficiency Organizations both argued that a similar situation occurred when bulged reflector (BR) lamps were excluded from EPACT 1992's IRL standards and subsequently went from being a relatively unknown product to comprising more than 40 percent of the market. (NEEA, 5.1 at p. 2–3)

DOE requests comments on the potential for unregulated R20 short lamps to be used as substitutes for other lamps covered by energy conservation standards. Specifically, DOE requests further information on whether or not the distinctive features, pricing, and spa-specific labeling and marketing of R20 short lamps would provide a sufficient deterrent to their use in other applications.

C. Special Utility of R20 Short Lamps and Unavailability of Substitutes

In the rulemaking, DOE will consider whether the R20 short lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types. NEMA asserted that R20 short lamps are used for a unique specification in hot tub spas and that there are currently no substitute products on the market for this application. 75 FR 80731, 80733 (Dec. 23, 2010). Pentair, a spa manufacturer, agreed, noting that its underwater spa lights are often used in public pools and spas regulated by local building codes that specify a wattage-per-square-foot-of-water-surface-area ratio to ensure adequate and safe lighting levels. Pentair asserted that there is no reflector type lamp with a medium base socket and required equivalent wattage that can be substituted for existing installations of the effected model of lighting for Pentair spas. (NEMA, No. 2.1 at p. 1) [7] DOE requests comments on the availability of substitute lamps that would meet both energy conservation standards and relevant spa application requirements.

In its petition, NEMA also indicated that it may not be possible to make R20 short lamps compliant with standards. NEMA noted that limited fixture space in hot tub spas requires a ''short'' lamp with a MOL of 3⅝ inches. However, the lamp must also have a wide beam spread to provide diffuse illumination. Further, the lamps must have a heat shield to protect against high temperatures damaging the cement that joins the base of the lamp to the glass envelope. 75 FR 80731, 80732 (Dec. 23, 2010). Current energy conservation standards for a 100W IRL require a minimum average lamp efficacy of 14 lumens per watt, while R20 short lamps produce 9 or 10 lumens per watt. NEMA stated that it is not possible to increase the lumen output without increasing the MOL, because a more-efficient filament would operate at a higher temperature which could cause the lamp to burst. NEMA further stated in its petition that a hotter-burning lamp in an underwater fixture could lead to other potential safety hazards. Additionally, a more-efficient filament could considerably shorten lamp life, which would be unacceptable in spa applications. *Id.*

However, the CA IOUs challenged NEMA's assertion that size and thermal constraints render it impossible to make

[7] The page number refers to the letter from Pentair included in NEMA's comment.

R20 short lamps more efficient while also meeting spa application requirements. The CA IOUs contended that despite size and thermal limitations, there are commercially-available small diameter lamps that have high efficiency, long life, and wide beam spreads. Further, the CA IOUs noted that these lamps use single-ended and double-ended halogen burners that improve energy efficiency while still meeting size requirements of spa lamps and providing sufficient lumens. (CA IOUs, No. 3.1 at p. 3) The CA IOUs cited examples such as: (1) The Philips 40W Halogena Energy Saver, an R20 halogen lamp with a double-ended halogen burner, lamp life of 3,000 hours, 540 lumen output and wide (flood) beam spread; and (2) the Philips 70W Halogena Energy Saver with double-ended burner, lamp life of 3,000 hours, and 1600 lumen output. (CA IOUs, No. 3.1 at p. 2–3) The Energy Efficiency Organizations also cite the same examples. (Energy Efficiency Organizations, No. 4.1 at p. 3) The CA IOUs also gave the example of a PAR20 [8] lamp, which typically does not have MOLs exceeding 3⅝ inches, and does have a lamp life of 3,000 hours, a wide variety of beam spreads, and the ability to accommodate single-ended halogen burners that would improve efficiency. (CA IOUs, No. 3.1 at p. 2) NEEA concurred with the CA IOUs on this matter. (NEEA, 5.1 at p. 2) DOE requests comments on the technical feasibility of making R20 short lamps compliant with the energy conservation standards and also meeting relevant spa application requirements. In particular, DOE requests any technical data indicating that high temperatures would damage the cement that joins the base of the lamp to the glass envelope and/or the feasibility of increasing the lumen output without increasing the MOL using a more-efficient filament. DOE also requests comment on whether other technologies such as compact fluorescent lamp (CFL) or light-emitting diode (LED) could meet spa application requirements.

D. Request for Information

Although, DOE welcomes comments on all aspects of this rulemaking, DOE is particularly interested in receiving comments, information, and recommendations on the following issues for the purpose of determining whether R20 short lamps meet the statutory criteria for exclusion from coverage set forth under 42 U.S.C. 6291(30)(E):

1. DOE seeks comments on the potential for unregulated R20 short lamps to be used as substitutes for other lamps covered by energy conservation standards.

2. DOE seeks comments on whether or not the distinctive features, pricing, and spa-specific labeling and marketing of R20 short lamps provide a sufficient deterrent to their use in other applications;

3. DOE requests further information on the availability of substitute lamps that would meet both energy conservation standards and relevant spa application requirements, particularly whether CFLs or LEDs could serve as substitutes; and

4. DOE requests further information on the technical feasibility of making R20 short lamps compliant with the prescribed energy conservation standards and also meeting relevant spa application requirements. In particular, DOE is interested in any technical data indicating that high temperatures would damage the cement that joins the base of the lamp to the glass envelope and/or the feasibility of increasing the lumen output without increasing the MOL using a more-efficient filament.

Issued in Washington, DC, on August 30, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–22813 Filed 9–7–11; 8:45 am]

BILLING CODE 6450–01–P

[8] "PAR" denotes parabolic aluminized reflector lamp type, and "20" is the diameter in ⅛ inches increments, which translates to 2.5 inches.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0971; Directorate Identifier 2011–CE–030–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes modified with an unapproved hopper lid modification. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Investigation of a recent Cresco 08–600 accident identified a risk of the hopper lid interfering with the opening of the canopy in the event of an emergency landing. The pilot was prevented from opening the canopy by the hopper lid in the fully forward open position. This AD is issued due to the fact that the hopper lid installation on the accident aircraft was an unapproved modification and the Fletcher FU24 hopper installation is a similar design to the Cresco 08–600.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by October 24, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090; e-mail: *karl.schletzbaum@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–2011–0971; Directorate Identifier 2011–CE–030–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

The Civil Aviation Authority, which is the aviation authority for New Zealand, has issued AD DCA/FU24/180, dated July 28, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Investigation of a recent Cresco 08–600 accident identified a risk of the hopper lid interfering with the opening of the canopy in the event of an emergency landing. The pilot was prevented from opening the canopy by the hopper lid in the fully forward open position. This AD is issued due to the fact that the hopper lid installation on the accident aircraft was an unapproved modification and the Fletcher FU24 hopper installation is a similar design to the Cresco 08–600.

The MCAI requires reviewing the aircraft records, doing a conformity inspection for an approved design hopper lid installation, and removing the hopper lid installation, if not an approved design. You may obtain further information by examining the MCAI in the AD docket.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed 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.

Costs of Compliance

We estimate that this proposed AD will affect 1 product of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product.

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

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $0, for a cost of $510 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pacific Aerospace Limited: Docket No. FAA–2011–0971; Directorate Identifier 2011–CE–030–AD.

Comments Due Date

(a) We must receive comments by October 24, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pacific Aerospace Limited Models FU24–954 and FU24A–954 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 52: Doors.

Reason

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

> Investigation of a recent Cresco 08–600 accident identified a risk of the hopper lid interfering with the opening of the canopy in the event of an emergency landing. The pilot was prevented from opening the canopy by the hopper lid in the fully forward open position. This AD is issued due to the fact that the hopper lid installation on the

accident aircraft was an unapproved modification and the Fletcher FU24 hopper installation is a similar design to the Cresco 08–600.

The MCAI requires reviewing the aircraft records, doing a conformity inspection for an approved design hopper lid installation, and removing the hopper lid installation, if not an approved design.

Actions and Compliance

(f) Unless already done, do the following actions within 150 hours time-in-service (TIS) after the effective date of this AD or within 12 calendar months after the effective date of this AD, whichever occurs first:

(1) Review the aircraft records and determine whether a hopper lid modification has been recorded. If a hopper lid modification has been recorded, determine whether the aircraft was certified for release to service after completion of the modification and whether the applicable approved technical data (supplemental type certificate (STC) or field approval) is referenced. Visually inspect for an unapproved hopper lid modification.

(2) If the hopper lid modification is an approved design, do a conformity inspection and determine whether the hopper lid modification conforms to the applicable approved technical data (supplemental type certificate (STC) or field approval).

(3) If the hopper lid modification is not an approved design (STC or field approval), before further flight, remove the hopper lid installation.

Note 1: The Frontier-Aerospace Incorporated Models Fletcher FU–24 and Fletcher FU–24A airplanes are U.S. type-certificated airplanes and do not have this unsafe condition.

Note 2: The basic hopper installation for the Pacific Aerospace Limited Model FU24–954 airplane does not include a hopper lid due to the canopy sliding partly over the hopper inlet. A separate approval must be obtained to install a hopper lid.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090; e-mail: *karl.schletzbaum@faa.gov.* 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) MCAI Civil Aviation Authority (CAA) AD DCA/FU24/180, dated July 28, 2011, for related information. 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.

Issued in Kansas City, Missouri, on August 31, 2011.

Earl Lawrence,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22933 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–357]

Schedules of Controlled Substances: Temporary Placement of Three Synthetic Cathinones Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of Intent.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of intent to temporarily schedule three synthetic cathinones under the Controlled Substances Act (CSA) pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The substances are 4-methyl-N-methylcathinone (mephedrone), 3,4-methylenedioxy-N-methylcathinone (methylone), and 3,4-methylenedioxypyrovalerone (MDPV). This action is based on a finding by the Administrator that the placement of these synthetic cathinones into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. Any final order will be published in the Federal Register and may not be issued prior to October 11, 2011. Any final order will impose the administrative, civil, and criminal sanctions and regulatory controls of schedule I substances under the CSA on the manufacture, distribution, possession, importation, and exportation of these synthetic cathinones.

FOR FURTHER INFORMATION CONTACT: Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473), which was signed into law on October 12, 1984, amended section 201 of the CSA (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into schedule I of the CSA for one year without regard to the requirements of 21 U.S.C. 811(b) if he finds that such action is necessary to avoid imminent hazard to the public safety. 21 U.S.C. 811(h); 21 CFR 1308.49. If proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling up to six months. 21 U.S.C. 811(h)(2). Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA (21 U.S.C. 812) or if there is no exemption or approval in effect under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for the substance. 21 U.S.C. 811(h)(1). The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of DEA. 28 CFR 0.100.

Section 201(h)(4) of the CSA (21 U.S.C. 811(h)(4)) requires the Administrator to notify the Secretary of Health and Human Services of her intention to temporarily place a substance into schedule I of the CSA.[1]

[1] Because the Secretary of Health and Human Services has delegated to the Assistant Secretary for Health of the Department of Health and Human Services the authority to make domestic drug scheduling recommendations, for purposes of this

The Administrator has transmitted notice of her intent to place mephedrone, methylone, and MDPV in schedule I on a temporary basis to the Assistant Secretary by letter dated June 15, 2011. The Assistant Secretary responded to this notice by letter dated July 25, 2011, and advised that based on review by the Food and Drug Administration (FDA) there are currently no investigational new drug applications (INDs) or approved new drug applications (NDAs) for MDPV, mephedrone, or methylone. The Assistant Secretary also stated that the Department of Health and Human Services has no objection to the temporary placement of MDPV, mephedrone, and methylone into schedule I of the CSA. DEA has taken into consideration the Assistant Secretary's comments. As MDPV, mephedrone, and methylone are not currently listed in any schedule under the CSA, and as no exemptions or approvals are in effect for MDPV, mephedrone, and methylone under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), DEA believes that the conditions of 21 U.S.C. 811(h)(1) have been satisfied. Any additional comments submitted by the Assistant Secretary in response to this notification shall also be taken into consideration before a final order is published. 21 U.S.C. 811(h)(4).

To make a finding that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in section 201(c) of the CSA (21 U.S.C. 811(c)). These factors are as follows: The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(c)(4)–(6). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling (21 U.S.C. 811(h)(1)) may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision. Available data and information for mephedrone, methylone, and MDPV indicate that these three synthetic cathinones have a high potential for abuse, no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision.

Synthetic Cathinones

These synthetic cathinones are not currently listed in any schedule under the CSA. Synthetic cathinones are designer drugs of the phenethylamine class which are structurally and pharmacologically similar to amphetamine, 3,4-methylenedioxymethamphetamine (MDMA), cathinone and other related substances. The addition of a beta-keto (β-keto) substituent to the phenethylamine core structure produces a group of substances that now have cathinone as the core structure. These substances have been used as research chemicals. There is no evidence in the scientific literature that these substances have any legitimate non-research uses and the Assistant Secretary has advised that there are no exemptions or approvals in effect under section 505 (21 U.S.C. 355) of the Federal Food, Drug and Cosmetic Act. In other words, these synthetic cathinones have not been approved by the FDA for human consumption.

Synthetic cathinones, like amphetamine, cathinone, methcathinone, and methamphetamine, are central nervous system (CNS) stimulants. The three synthetic cathinones proposed for control, 4-methyl-N-methylcathinone (mephedrone), 3,4-methylenedioxy-N-methylcathinone (methylone), and 3,4-methylenedioxypyrovalerone (MDPV) cause sympathomimetic effects such as agitation, tachycardia, dilated pupils, hyperthermia, diaphoresis (profuse sweating), and hypertension. Because the pharmacological effects of synthetic cathinones are similar to those of methamphetamine, cathinone, methcathinone, and MDMA, the abuse of synthetic cathinones is also likely to be similar to these substances and potentially cause serious harm to the users.

Numerous retail products marketed under the guise of ''bath salts'' and ''plant food'' have been analyzed and mephedrone, methylone, and MDPV have been identified in varying mixture profiles and quantities in these products. Mephedrone, methylone, and MDPV are the most commonly encountered synthetic cathinones. These three substances represent more than 98% of the 1429 reported synthetic cathinones that have been seized by law enforcement, as reported to the National Forensic Laboratory Information System (NFLIS), a national repository of drug evidence analysis from forensic laboratories across the United States. Of all the reports of these substances recorded by NFLIS from January 2009 to June 2011, 791 reports (55%) were MDPV, 331 reports (23%) were mephedrone, and 279 reports (20%) were methylone. Thus, these three synthetic cathinones are the subject of this notice of intent.[2]

Factor 4. History and Current Pattern of Abuse

The synthetic cathinones mephedrone, methylone, and MDPV have recently emerged on the United States' illicit drug market and are being perceived as being 'legal' alternatives to cocaine, methamphetamine, and MDMA. Although synthetic cathinones are new to the United States' illicit drug market, they have been popular drugs of abuse in Europe since 2007. MDPV is a derivative of pyrovalerone, which is a psychoactive drug that was used to treat chronic lethargy and fatigue. Research in anti-depressant and anti-parkinson agents resulted in the development and patenting of methylone. Methylone, however, has not been approved for these purposes. There are no currently accepted medical uses in treatment in the United States for mephedrone, methylone, or MDPV.

Mephedrone, methylone, and MDPV are falsely marketed as ''research chemicals,'' ''plant food,'' or ''bath salts.'' They are sold at smoke shops, head shops, convenience stores, adult book stores, and gas stations. They can also be purchased on the Internet and mailed using the U.S. Postal Service or international mail services. The packages of products containing these synthetic cathinones usually have the warning ''not for human consumption,'' most likely in an effort to circumvent statutory restrictions for these substances. Despite disclaimers that the products are not intended for human consumption, retailers promote that routine urinalysis drug tests will not typically detect the presence of these synthetic cathinones. However, analytical methods for the detection of mephedrone, methylone, MDPV, and other synthetic cathinones have recently been developed for these substances.

Evidence indicates that mephedrone, methylone, and MDPV are being abused for their psychoactive properties. Drug surveys found that these and other

Notice of Intent, all subsequent references to ''Secretary'' have been replaced with ''Assistant Secretary.''

[2] See ''Background, Data and Analysis of Synthetic Cathinones: Mephedrone (4–MMC), Methylone (MDMC) and 3,4–Methylenedioxypyrovalerone (MDPV),'' dated August 2011 in this rulemaking docket found at *http://www.regulations.gov.*

synthetic cathinones are being used as recreational drugs and are used as alternatives to illicit stimulants like MDMA and cocaine. Accordingly, mephedrone, methylone, and MDPV have been identified in human urine samples that were obtained for routine drug screenings, they have been detected in samples from drivers suspected of driving under the influence, and they have been detected by drug courts during mandatory periodic drug screens. They have also been identified in biological specimens from individuals (some exhibiting symptoms of ''extreme agitation'' or ''excited delirium'') who have been arrested for possession of a controlled substance, child endangerment, or homicide. They have been detected in samples from deceased whose causes of death were reported as drug-induced toxicity, multiple drug toxicity, or other causes (e.g., blunt force trauma from a vehicular collision or suicide).

Based on studies in the scientific literature, the marketing of products that contain mephedrone, methylone, and MDPV is geared towards teens and young adults. Accordingly, reports indicate that the main users of synthetic cathinones are young male adults. These substances are also used by mid-to-late adolescents and older adults. Many of these abusers of synthetic cathinones have a previous history of drug abuse.

According to drug surveys, the reported average amount of synthetic cathinones used per dose ranged from approximately 25 to 250 milligrams and the average amount used per session (i.e., repeated administration and binging) ranged from approximately 25 milligrams to five grams depending on the substance consumed, duration of intake, and route of administration. The most common routes of administration of these substances are nasal insufflation by snorting the powder and oral ingestion by swallowing capsules or tablets. Other reported methods of administration include injection, rectal administration, and ''bombing'' (wrapping a dose of powder in a paper wrap and swallowing). Synthetic cathinones have also been reported to be used in binges. Reasons cited for binging include to prolong the duration of effects, to satisfy a ''craving,'' or to satisfy a strong urge to re-dose.

According to information found in drug surveys, clinical case reports, and law enforcement reports, users have reported using products containing mephedrone, methylone, and MDPV with other synthetic cathinones (*e.g.,* butylone, fluoromethcathinone, 4–MEC, *etc.*), pharmaceutical agents (*e.g.,* lidocaine, caffeine, benzocaine, *etc.*), or other recreational substances (*e.g.,* amphetamine, MDMA, cocaine, gamma-butyrolactone (GBL), kratom, N,N-benzylpiperazine (BZP), and 1-(3-trifluoromethylphenyl)-piperazine (TFMPP)). Chemical analyses of seized and purchased synthetic cathinone products indicate that some products contain multiple substances. Furthermore, investigative toxicology reports of drug screens in which more than one substance was detected indicate that users have ingested products composed of drug combinations (*e.g.,* a tablet composed of MDPV and BZP) or multiple drug products (*e.g.,* a MDPV powder product and a MDMA tablet).

Factor 5. Scope, Duration and Significance of Abuse

The popularity of synthetic cathinones as recreational drugs has increased since they first appeared on the United States' illicit drug market. According to forensic laboratory reports, the first appearance of these synthetic cathinones in the United States occurred in 2009. In 2009, NFLIS registered 15 exhibits from eight states containing these three synthetic cathinones. In 2010, there were 560 reports from 29 states related to these substances registered in NFLIS and in the first two quarters of 2011 (January to June 2011) there were 391.

Based on reports to DEA from law enforcement and public health officials, synthetic cathinones are becoming increasingly prevalent and abused throughout the United States. At just one United States point of entry, the U.S. Customs and Border Protection (CBP) has encountered at least 96 shipments containing primarily mephedrone, methylone, and MDPV, as well as other synthetic cathinones like 4-MEC, butylone, fluoromethcathinone, and dimethylcathinone. Most of these shipments originated in China or India and were being shipped to destinations throughout the United States such as Arizona, Alaska, Hawaii, Kansas, Louisiana, Oklahoma, Oregon, Pennsylvania, Missouri, Virginia, Washington, and West Virginia. The American Association of Poison Control Centers, a non-profit, national organization that represents the poison control centers of the United States, reported that in 2010, poison control centers took 303 calls about synthetic cathinones. However, in just the first seven months of 2011, poison control centers have already received 4,137 calls relating to these products. These calls were received in poison control centers representing at least 47 states and the District of Columbia. Individual state poison control centers have also reported an increase in the number of calls regarding ''bath salts'' from 2009 to 2011.

Concerns over the abuse of these and other synthetic cathinones have prompted many states to control these substances. As of July 15, 2011, at least 33 states have emergency scheduled or enacted legislation placing regulatory controls on some or many of the synthetic cathinones. These states include Alabama, Arkansas, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Several countries including all members of the European Union have also placed controls on the possession and/or sale of one or more of these substances. Moreover, the use of synthetic cathinones by members of the U.S. Armed Forces is prohibited.

Factor 6. What, If Any, Risk There Is to the Public Health

The risks to the public health associated with the abuse of mephedrone, methylone, and MDPV relate to acute and long term public health and safety problems. These synthetic cathinones have become a serious drug abuse threat as there have been reports of emergency room admissions and deaths associated with the abuse of these substances.

Clinical case reports indicate that these synthetic cathinones produce a number of stimulant-like adverse effects such as palpitation, seizure, vomiting, sweating, headache, discoloration of the skin, hypertension, and hyper-reflexia. Adverse effects associated with consumption of these drugs as reported by abusers include nose-bleeds, bruxism (teeth grinding), paranoia, hot flashes, dilated pupils, blurred vision, dry mouth/thirst, palpitations, muscular tension in the jaw and limbs, headache, agitation, anxiety, tremor, and fever or sweating. Consequently, numerous individuals have presented at emergency departments in response to exposure incidents and several cases of acute toxicity have been reported for the ingestion of mephedrone, methylone, or MDPV. In addition, case reports have shown that the abuse of synthetic cathinones can lead to psychological dependence like that reported for other stimulant drugs.

According to clinical case reports, investigative toxicological reports, and

autopsy reports, mephedrone, methylone, and MDPV have been implicated in drug induced overdose deaths. In at least three reported deaths, one of these synthetic cathinones was ruled as the cause of death. Other deaths involved individuals under the influence of these synthetic cathinones who acted violently and unpredictably in causing harm to themselves or others. There have also been reports in the scientific literature of deaths caused by individuals who were driving under the influence of these synthetic cathinones.

A number of synthetic cathinones and their products, as identified by CBP and reported in the scientific literature, appear to originate from foreign sources. The manufacturers and retailers who make and sell these products do not fully disclose the product ingredients including the active ingredients or the health risks and potential hazards associated with these products. This poses significant risk to abusers who may not know what they are purchasing or the risk associated with the use of those products.

Available evidence on the overall health and social risks of mephedrone, methylone, and MDPV indicates that these substances can cause acute health problems, can potentially lead to dependency, or can cause death. The abuse of synthetic cathinones has been characterized by both acute and long term public health and safety problems and has resulted in deaths.

Finding of Necessity of Schedule I Scheduling To Avoid Imminent Hazard to Public Safety

Based on the above data and information, the continued uncontrolled manufacture, distribution, importation, exportation, and abuse of mephedrone, methylone, and MDPV pose an imminent hazard to the public safety. DEA is not aware of any recognized therapeutic uses of these synthetic cathinones in the United States. A substance meeting the statutory requirements for temporary scheduling (21 U.S.C. 811(h)(1)) may only be placed in schedule I. Substances in Schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision. Available data and information for mephedrone, methylone, and MDPV indicate that these three synthetic cathinones have a high potential for abuse, no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision.

Conclusion

This notice of intent initiates expedited temporary scheduling action and provides the 30-day notice pursuant to section 201(h) of the CSA (21 U.S.C. 811(h)). In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)), the Administrator has considered available data and information and has set forth herein the grounds for her determination that it is necessary to temporarily schedule three synthetic cathinones, 4-methyl-N-methylcathinone (mephedrone), 3,4-methylenedioxy-N-methylcathinone (methylone), and 3,4-methylenedioxypyrovalerone (MDPV) in Schedule I of the CSA to avoid an imminent hazard to the public safety.

Because the Administrator hereby finds that it is necessary to temporarily place these synthetic cathinones into Schedule I to avoid an imminent hazard to the public safety, any subsequent final order temporarily scheduling these substances will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of up to 18 months pending completion of the permanent or regular scheduling process. It is the intention of the Administrator to issue such a final order as soon as possible after the expiration of 30 days from the date of publication of this notice. Mephedrone, methylone, and MDPV will then be subject to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, possession, importing and exporting of a Schedule I controlled substance under the CSA.

Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth specific criteria for scheduling a drug or other substance. While temporary scheduling orders are not subject to judicial review (21 U.S.C. 811(h)(6)), the regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions which conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by Section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of the DEA by Department of Justice regulations (28 CFR 0.100), the Administrator hereby intends to order that 21 CFR Part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

2. Section 1308.11 is amended by adding new paragraphs (g)(6), (7) and (8) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(6) 4-methyl-N-methylcathinone—1248 (Other names: mephedrone)

(7) 3,4-methylenedioxy-N-methylcathinone—7540 (Other names: methylone)

(8) 3,4-methylenedioxypyrovalerone—7535 (Other names: MDPV)

Dated: September 1, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2011–23012 Filed 9–7–11; 8:45 am]

BILLING CODE 4410–09–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3055

[Docket No. RM2011–14; Order No. 837]

Performance Measurement for Special Postal Services

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing rules addressing reporting requirements for the measurement of the level of service the Postal Service provides in connection with Stamp Fulfillment Services, through which it fills stamp and product orders received via mail, telephone, facsimile, or Internet at a dedicated fulfillment center. The proposed rules are intended to be consistent with recent Postal Service representations about proposed service standards, measurement methods, and reporting requirements. This document informs the public of the proposed rule and invites public comment.

DATES: *Comments are due:* September 28, 2011; *reply comments are due:* October 11, 2011.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site at *http://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (for information related to the proposed rule) or *DocketAdmins@prc.gov* (for electronic filing assistance).

SUPPLEMENTARY INFORMATION:

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I. Introduction

This rulemaking is part of the series of rulemakings initiated by the Postal Regulatory Commission (Commission) to fulfill its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006). The proposed rules described herein would establish reporting requirements for the measurements of level of service afforded by the Postal Service in connection with Stamp Fulfillment Services (SFS). The reporting of level of service is required by 39 U.S.C. 3652(a)(2)(B)(i) as part of the Postal Service's annual report to the Commission and supporting documentation. This is a necessary part of the Commission's implementation of a modern system of rate regulation for market dominant products that ensures service is not impaired as a result of the greater flexibility provided to the Postal Service under the PAEA in light of the price cap requirements. *See* 39 U.S.C. 3622 and 3651.

II. Procedural History

SFS provides the fulfillment of stamp and product orders received by mail, phone, fax, or Internet at the Postal Service's SFS center in Kansas City, Missouri. Orders can include stamps, stamped cards, envelopes, stationery, and other philatelic items. A fee is charged for order processing and handling.

On July 13, 2010, the Commission added SFS to the market dominant product list pursuant to a Postal Service request.[1] On June 16, 2011, the Commission granted a Postal Service request for a temporary waiver from reporting service performance for SFS until the filing date for the 2011 Annual Compliance Report. The Commission further asked the Postal Service to either file a request for a semi-permanent exception from reporting or begin the consultation process for establishing service standards (and measurement systems) prior to August 1, 2011.[2]

By letter dated July 29, 2011, the Postal Service informed the Commission of its intent to institute an internal measurement system for SFS and asked for Commission comment.[3] The Postal Service proposed service standards, measurement methodologies, and reporting requirements. The Postal Service indicated that it will formalize its proposed service standards through a **Federal Register** notice.

On August 25, 2011, the Commission responded to the Postal Service request for comment.[4] The Commission concurred with the measurement approach that the Postal Service proposed and indicated that the Commission would initiate a rulemaking to make the Commission's reporting rules consistent with the Postal Service's reporting proposals.

III. Background of Postal Service Proposals

A. Proposed Measurement System

The Postal Service proposes to measure the time from SFS order entry to the time a SFS order is placed on a mail truck manifest for entry into the mailstream. The transit time once an order is entered into the mailstream to delivery is not included as part of the SFS measurement.

A measurement starts when an order is entered into the National Customer Management System (NCMS). NCMS manages SFS inventory, general ledger, order history, and customer accounts.

A measurement ends when the order is logically closed out in the Automated Fulfillment Equipment System (AFES).[5] The AFES system interacts with NCMS and is utilized to fulfill orders.

B. Proposed Service Standards

The Postal Service's proposed service standards vary depending upon how a customer's order was received.[6] The Postal Service proposes the following three service standards.

- Internet Orders: Non-Philatelic/Non-Custom Less than or equal to 2 business days.
- Business Level Orders: Less than or equal to 5 business days.
- Philatelic/Custom and all Other Order Sources: Less than or equal to 10 business days.

C. Proposed Service Goals

For each of the three proposed service standards, the Postal Service proposes a service goal or target of achieving each service standard at least 90 percent of the time.

D. Service Performance Measurement Reporting

The Postal Service proposes to report the percentage of time that SFS meets or exceeds the applicable proposed service standard. The Postal Service also proposes to report service variances. Service variances will report the total percentage of orders fulfilled within the applicable service standard, plus the percentage that are fulfilled 1, 2, or 3 days late. Reporting is to be disaggregated by how a customer's order was received. Percentage on time and service variance reporting are to be provided to the Commission both on a quarterly and on an annual basis.

IV. Service Performance Measurement Reporting Rules

The Commission proposes to modify section 3055.65 to include a special reporting requirement for SFS. Section 3055.65 specifies the requirements for the periodic reporting (quarterly) of service performance achievements for special services, which includes SFS.[7]

The special reporting requirement specifies that the Postal Service will report: (1) SFS on-time service performance (as a percentage rounded to one decimal place); and (2) SFS service

[1] Docket No. MC2009–19, Order No. 487, Order Accepting Product Descriptions and Approving Addition of Stamp Fulfillment Services to the Mail Classification Schedule Product Lists, July 13, 2010.

[2] Docket Nos. RM2011–1, RM2011–4 and RM2011–7, Order No. 745, Order Concerning Temporary Waivers and Semi-Permanent Exceptions from Periodic Reporting of Service Performance Measurement, June 16, 2011.

[3] Letter dated July 29, 2011 from Kevin A. Calamoneri, Managing Counsel, Corporate & Postal Business Law, United States Postal Service to Shoshana M. Grove, Secretary, Postal Regulatory Commission.

[4] Letter dated August 25, 2011 from Shoshana M. Grove, Secretary, Postal Regulatory Commission to Kevin A. Calamoneri, Managing Counsel, Corporate & Postal Business Law, United States Postal Service.

[5] A logical slosure is an indication that an order has been fulfilled, packaged, laveled, and placed on a manifest for pickup by a Postal Service truck before entering the mailstream.

[6] The Postal Service's proposed service standards are not the subject of this rulemaking and can best be addressed by interested persons through a response to the Postal Service's upcoming **Federal Register** notice on this subject matter.

[7] Note that section 3055.31(e) currently requires quarterly data to be aggregated to an annual level and reported to the Commission.

variance (as a percentage rounded to one decimal place) for orders fulfilled within +1 day, +2 days, and +3 days of their applicable service standard.

Both items shall be disaggregated by customer order entry method. The Postal Service currently proposes three customer order entry methods: (1) Internet Orders: Non-Philatelic/Non-Custom; (2) Business Level Orders; and (3) Philatelic/Custom and all Other Order Sources. By generically referring to the three proposed methods as ''customer order entry method,'' the Postal Service is provided flexibility to propose other methods to the Commission for future implementation without requiring a rule change.

V. Designation of Public Representative

Pursuant to 39 U.S.C. 505, James F. Callow is designated as the Public Representatives in this proceeding to represent the interests of the general public.

VI. Solicitation of Comments

Interested persons are invited to comment on the rules proposed in this rulemaking. Comments are due no later than 20 days after publication of this order in the **Federal Register**. Reply comments are due no later than 30 days after publication of this order in the **Federal Register**.

VII. Ordering Paragraphs

It is ordered:

1. The Commission proposes to amend its rules of practice and procedure by modifying the periodic reporting of service performance achievements for special services found in 39 CFR 3055.65.

2. Docket No. RM2011–14 is established to consider the above changes to the Commission's rules of practice and procedure.

3. Interested persons may file initial comments no later than 20 days after publication of this order in the **Federal Register**.

4. Interested persons may file reply comments no later than 30 days after publication of this order in the **Federal Register**.

5. Pursuant to 39 U.S.C. 505, James F. Callow is designated as the Public Representative in this proceeding to represent the interests of the general public.

6. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

List of Subjects in 39 CFR Part 3055

Administrative practice and procedure; Postal Service; Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Postal Regulatory Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3055—[Amended]

1. The authority citation for part 3055 continues to read as follows:

Authority: 39 U.S.C. 503, 3622(a), 3652(d) and (e), 3657(c).

2. In § 3055.65, add paragraph (d) to read as follows:

§ 3055.65 Special Services.

* * * * *

(d) Additional reporting for Stamp Fulfillment Service. For Stamp Fulfillment Service, report:

(1) The on-time service performance (as a percentage rounded to one decimal place), disaggregated by customer order entry method; and

(2) The service variance (as a percentage rounded to one decimal place) for orders fulfilled within +1 day, +2 days, and +3 days of their applicable service standard, disaggregated by customer order entry method.

[FR Doc. 2011–22899 Filed 9–7–11; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–0594; FRL–9456–5]

Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Yolo-Solano Air Quality Management District portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound emissions from expandable polystyrene product manufacturing operations. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by October 11, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–0594, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions.

2. E-mail: *steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: Yolo-Solano Air Quality Management District Rule 2.41, Expandable Polystyrene Manufacturing Operations. In the Rules and Regulations section of this **Federal**

Register, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment 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.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 8, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–22973 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2009–0767; FRL–8888–7]

RIN 2070–AJ52

Glymes; Proposed Significant New Use; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** of July 12, 2011, concerning a proposed significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 14 glymes. Since publication, EPA has received a request for additional time to submit comments. This document extends the comment period for 30 days, from September 12, 2011 to October 12, 2011.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0767, must be received on or before October 12, 2011.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of July 12, 2011.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Amy Breedlove, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–9823; *e-mail address: breedlove.amy@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:

This document extends the public comment period established in the **Federal Register** of July 12, 2011 (76 FR 40850) (FRL–8877–8). In that document, EPA proposed a SNUR for 14 glymes, designated proposed significant new uses for the 14 glymes, and asked for public comment on several topics. EPA requested comment on whether any of the chemical substances included in the identified glyme category are sufficiently dissimilar from the rest such that they should be removed from the category, or whether any additional chemical substances are sufficiently similar such that they should be added to the category. Comments were also requested on whether any of the additional unconfirmed uses listed in the proposed rule are actual ongoing uses in a consumer product, and whether there are any other ongoing uses in a consumer product of the other chemicals listed in the SNUR. EPA is hereby extending the comment period, which was set to end on September 12, 2011, to October 12, 2011.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the July 12, 2011 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 1, 2011.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011–22988 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Chapter II

[Docket No. FRA–2009–0041, Notice No. 2]

RIN 2130–AC12

Systems for Telephonic Notification of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings

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

ACTION: Notice of public hearing.

SUMMARY: On March 4, 2011, FRA published a notice of proposed rulemaking that would require certain railroads to develop a system for telephonic notification of unsafe conditions at highway-rail and pathway grade crossings. FRA is announcing a public hearing to provide interested persons an opportunity to provide comments on the proposal and to discuss further development of the regulation. The Rail Safety Improvement Act of 2008 requires the development and implementation of these telephonic notification systems.

DATES: A public hearing will be held on September 29, 2011, in Washington, DC and will commence at 9 a.m.

ADDRESSES: *Public Hearing.* The public hearing will be held at the Courtyard Washington Capitol Hill/Navy Yard, Admiral Room I & II, located at 140 L Street, SE., Washington, DC 20003.

Attendance: Any persons wishing to make a statement at the hearing should notify FRA's Docket Clerk, Michelle Silva, by telephone, e-mail, or in writing, at least five business days before the date of the hearing. Ms. Silva's contact information is as follows: FRA, Office of Chief Counsel, Mail Stop 10, 1200 New Jersey Avenue, SE., Washington, DC 20590; *telephone:* 202–493–6030; *e-mail: michelle.silva@dot.gov.* For information on facilities or services for persons with disabilities or to request special assistance at the meeting, please contact by telephone or e-mail as soon as possible, Larry Woolverton at 202–493–6212 or *larry.woolverton@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Beth Crawford, Transportation Specialist, Grade Crossing Safety and Trespass Prevention, Office of Safety Analysis, FRA, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590 (*telephone:* 202–493–6288), *beth.crawford@dot.gov;* or Matthew Navarrete, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey

Avenue, SE., Mail Stop 10, Washington, DC 20590 (*telephone:* 202–493–0138), *matthew.navarrete@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the hearing is to receive oral comments in response to a notice of proposed rulemaking (NPRM) proposing regulations that would require certain railroads to implement systems for telephonic notification of unsafe conditions at highway-rail and pathway grade crossings. *See* 76 FR 11992–12012 (March 4, 2011). Interested parties are invited to present oral statements and to proffer information and views at the hearing. The hearing will be informal and will be conducted by a representative designated by FRA in accordance with FRA's Rules of Practice (49 CFR 211.25). The hearing will be a non-adversarial proceeding; therefore, there will be no cross examination of persons presenting statements or proffering evidence. An FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed; those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which the initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing. A transcript of the discussions will be made part of the public docket in this proceeding.

Public Participation Procedures. Any person wishing to participate in the public hearing should notify the Docket Clerk by mail or at the address or fax number provided in the *Attendance* section of this notice at least five working days prior to the date of the hearing and submit three copies of the oral statement that he or she intends to make at the proceeding. The notification should identify the party the person represents, the particular subject(s) the person plans to address, and the time requested. The notification should also provide the Docket Clerk with the participant's mailing address and other contact information. FRA reserves the right to limit participation in the hearing of persons who fail to provide such notification. FRA reserves the right to limit the duration of presentations if necessary to afford all persons with the opportunity to speak.

Background

In section 205 of the Rail Safety Improvement Act of 2008, Public Law 110–432, 122 Stat. 4872 (Oct. 16, 2008) (codified at 49 U.S.C. 20152) (hereinafter RSIA), Congress directed the Secretary of Transportation (Secretary) to issue a regulation, requiring railroads to establish a telephonic notification system for the public to report unsafe conditions at highway-rail and pathway grade crossings. While the statute vests certain responsibilities with the Secretary, those responsibilities have been delegated to the FRA Administrator. *See* 49 CFR 1.49(oo); 74 FR 26981 (June 5, 2009); *see also* 49 U.S.C. 103(g).

In an NPRM issued on March 4, 2011, FRA proposed various amendments to its regulations on grade crossing safety. The primary amendments proposed would require a railroad that dispatches a train through a public or private highway-rail or pathway grade crossing to establish and maintain a system that allows a member of the public to call the railroad and report an emergency or other unsafe condition at the crossing. Upon receiving such a report, the railroad may be required to warn all trains authorized to operate through the crossing of the reported unsafe condition, inform local law enforcement of the reported unsafe condition, and must either investigate the report itself or request that the railroad with maintenance responsibility for the crossing investigate the report. If the report is substantiated, the railroad with maintenance responsibility for the crossing would be required to take certain actions to remedy the condition found. The purpose of the hearing is to receive oral comments in response to the requirements related to a telephonic notification system as proposed in the NPRM.

FRA encourages all interested persons to participate in the hearing, at the addresse noted above. We encourage participants wishing to make oral statements to plan on attending the entire hearing, since FRA may not be able to accommodate competing requests to appear at specific times.

Issued in Washington, DC, on September 2, 2011.

Robert Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations, Federal Railroad Administration.

[FR Doc. 2011–23008 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2010–0049; MO 92210–0–0008–B2]

RIN 1018–AX89

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Listing of Arctostaphylos franciscana as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list *Arctostaphylos franciscana* (Franciscan manzanita), as endangered under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. After review of all available scientific and commercial information, we find that listing *A. franciscana* as an endangered species under the Act is warranted. Accordingly, we herein propose to list *A. franciscana* as an endangered species pursuant to the Act. This proposed rule, if made final, would extend the Act's protections to this species. We believe that critical habitat is not determinable at this time due to lack of knowledge of what physical and biological features are essential to the conservation of the species, or what other areas outside the site that is currently occupied, may be essential for the conservation of the species. The Service seeks data and comments from the public on this proposed listing rule and whether the designation of critical habitat for the species is prudent and determinable.

DATES: We will accept comments received or postmarked on or before November 7, 2011. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** by October 24, 2011.

ADDRESSES: (1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter FWS–R8–ES–2010–0049, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Send a Comment or Submission.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2010–0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Karen Leyse, Listing Coordinator, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; by telephone at 916–414–6600; or by facsimile at 916–414–6712. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(2) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) Additional information regarding the threats in the five listing factors:

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

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

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; and

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

We are particularly interested in information regarding threats from vandalism, disease (particularly transmission of *Phytophthora* sp.), climate change, collection of cuttings and seeds by the public, and regulations that may be addressing those threats.

(6) What physical or biological features are essential to the conservation of the species.

(7) The reasons why areas should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531, *et seq.*), including the possible risks or benefits of designating critical habitat, including vandalism, *Phytophthora* sp. being brought in by hikers and recreationists, collection of seeds and cuttings, and any other risks associated with publication of maps designating any area on which this plant may be located, now or in the future, as critical habitat.

(8) Specific information on:

(a) The amount and distribution of habitat for the *Arctostaphylos franciscana;*

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of this species, should be included in a critical habitat designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of this species and why.

(9) Information on the projected and reasonably likely impacts of changing environmental conditions resulting from climate change on *Arctostaphylos franciscana* and its habitat.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office 2800 Cottage Way, Room W–2605, Sacramento, California 95825 (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted; (b) warranted; or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. In this rule, we have determined that the petitioned action to list *Arctostaphylos franciscana* is warranted, and we are proceeding with publishing a proposed rule to list the species.

Previous Federal Actions

On December 23, 2009, we received a petition dated December 14, 2009, from the Wild Equity Institute, the Center for Biological Diversity, and the California Native Plant Society, requesting that *Arctostaphylos franciscana* be listed as endangered on an emergency basis under the Act and that critical habitat be designated. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and actual and potential causes of decline. On January 26, 2010, we acknowledged the receipt of the petition in a letter to Wild Equity

Institute. In that letter we responded that we had reviewed the information presented in the petition and determined that issuing an emergency rule temporarily listing the species as per section 4(b)(7) of the Act was not warranted. Our rationale for this determination was that, although only a single plant of this species remained in the wild, the individual had recently been transplanted to a new location on Federal land.

The transplanted plant is considered to be the single remaining plant in the wild, despite having been transplanted on the Presidio of San Francisco (the Presidio), a unit of the National Park Service's system, on the San Francisco peninsula. Additionally, a conservation plan (Chasse *et al.,* 2009, pp. 1–44) and associated Memorandum of Agreement (MOA) (referred to herein as California Department of Transportation (Caltrans) *et al.* 2009) signed by five Federal and State wildlife and land management agencies (conservation partners), successfully addressed the concerns raised by the petition to the extent that none of those concerns constituted an ''emergency posing a significant risk to the well-being of the species'' (50 CFR 424.20(a)). The Federal agencies participating in these efforts were the National Park Service (NPS) and the Service. The State of California was represented by Caltrans and the California Department of Fish and Game (CDFG). The Presidio Trust, a wholly owned government corporation that jointly manages the Presidio with the NPS, also participated (71 FR 10608; March 2, 2006; NPS 2006).

The original habitat of the plant was threatened by the ongoing redevelopment of Doyle Drive, but that threat was removed by the translocation of the plant to a new location. Potential immediate threats applicable to the new location, including the danger that the plant might not survive the move and transplantation, were addressed by provisions in the conservation plan for collecting and propagating rooted clones, seeds, and cuttings from the original plant. The conservation plan provides for the long-term propagation, and eventual reestablishment in wild populations, of all remaining genetic lines, including those from the surviving wild plant and from individuals surviving in botanical gardens. It also includes long-term monitoring provisions. While these provisions did not remove the need for further review of the species' status, they appeared to be effective for protecting the species in the short term. We also indicated that we would make an initial finding in Fiscal Year 2010 regarding whether the petition presented substantial information to indicate that listing may be warranted. The 90-day finding was published on August 10, 2010 (75 FR 48294). This notice constitutes the 12-month finding on the December 23, 2009, petition to list *Arctostaphylos franciscana* as endangered.

Arctostaphylos franciscana was originally proposed for listing as an endangered species under the Act in 1976 (41 FR 24524; June 16, 1976). In 1980, it was included in the list of Category 1 candidates for listing, as one of the taxa retaining a high priority for addition to the list subject to confirmation of extant populations. At the time, the species was thought to be extinct in the wild although known to be extant in cultivation (45 FR 82480; December 15, 1980). It is included as a ''species of concern'' in the Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula (Service 2003, p. 95). In October 2009, 62 years after the loss of the last known wild plants, one individual *A. franciscana* plant was located in the wild on the Presidio. The Presidio is under joint management by the Golden Gate National Recreation Area (GGNRA), a part of the NPS, and by the Presidio Trust. The *A. franciscana* plant is located in the portion of the Presidio that is managed by the Presidio Trust. The plant is considered to be wild because it has been moved to an undeveloped area of the Presidio that is managed as natural habitat. Although the plant is currently receiving care associated with its transplantation, it is not receiving the level of protection, water, and nutrients that plants in a botanical garden may receive.

The *Arctostaphylos franciscana* plants that exist in cultivation fall into three categories: (a) Cuttings and rooted specimens that were collected from the Laurel Hill Cemetery and transplanted to various managed botanical gardens in San Francisco, Berkeley, and Claremont prior to 1947; (b) specimens currently being propagated in greenhouses from cuttings and layers taken from the wild plant in 2010; and (c) specimens of unknown origin that are sold in the nursery trade or have been transplanted into home gardens. We consider the single wild plant and plants identified in (a) and (b) above to be the listable entity under the Act. Our rationale for not including plants identified in item (c) above is outlined below.

The *Arctostaphylos franciscana* plants found in botanical gardens may represent from one to six genetically distinct plants, other than the single wild plant (Vasey 2011b, pp. 2, 3; Chasse 2011a, p. 1; Chasse 2011b, p. 1; Chasse *et al.* 2009, p. 7) and may contribute genetic material in the form of cuttings for efforts to expand the number of wild plants. The botanical garden plants are not considered part of the wild population and, therefore, are not being addressed in this 12-month finding and proposed rule although they will be considered to be listed if this proposed rule becomes final. The cuttings and layers that were collected from the wild plant currently being propagated in greenhouses will be used to establish additional populations of the species by being planted with plants propagated from the botanical garden *A. franciscana* specimens. We have concluded that the third category of plants, those cultivated for private or commercial uses, will not aid in the conservation or the recovery of the species in the wild because cultivated plants may be hybrids and bred for landscape use and thus offer minimal conservation contribution.

Species Information

Species Biology

Arctostaphylos franciscana is a low, spreading-to-ascending evergreen shrub in the heath family (Ericaceae) that may reach 0.6 to 0.9 meters (m) (2 to 3 feet (ft)) in height when mature (Chasse *et al.* 2009, p. 5). Its leaves are about 1.5 to 2 centimeters (cm) (0.59 to 0.79 inches (in)) long, are isofacial (have the same type of surface on both sides), and are oblanceolate (longer than they are wide and wider towards the tip) (Eastwood 1905, p. 201; Chasse *et al.* 2009, p. 39). Its mahogany brown fruits are about 6 to 8 millimeters (mm) (0.24 to 0.32 in) wide, while its urn-shaped flowers measure about 5 to 7 mm (0.2 to 0.28 in) long (Wallace 1993, p. 552; Service 2003, p. 57).

A closely related species, *Arctostaphylos montana* ssp. *ravenii* (Raven's manzanita), listed as federally endangered, looks similar but has a more prostrate growth habit, more rounded leaves, smaller and less reddish fruits, and smaller and more spherical flowers (Service 2003, pp. 55, 57). Another somewhat similar appearing species, though not as closely related, is *A. uva-ursi* (bearberry), which can be distinguished by its lack of isofacial leaves (Chasse *et al.* 2009, p. 39).

In the wild, *Arctostaphylos franciscana* is an obligate-seeding species (it reproduces primarily from seed after a fire or other disturbance rather than from burls) (Vasey 2010, p. 1). *Arctostaphylos* species are members of the chaparral plant community,

which have a variety of triggers for seed germination including heat, smoke, and light (Keeley 1987, p. 434). The germination requirements for *A. franciscana* have not yet been studied; however, other *Arctostaphylos* species have germinated after being exposed to charate (ground charred wood) (Keeley 1987, pp. 435, 440).

The seeds of *Arctostaphylos* are dispersed primarily by mammals, including coyotes, foxes, and rodents (T. Parker pers. comm., 2011; Vasey 2011a, p. 1). Animals such as coyotes and foxes eat the *Arctostaphylos* fruit and may travel long distances before depositing their scat. Any undigested fruit left in the scat can then be harvested by rodents and either eaten or buried. Parker (2010b, p. 1) found that 70 percent of the fruits buried by rodents were located deeper than 2 centimeters (cm) (0.78 inch (in)), which is the maximum soil depth at which seeds are typically killed by wildfire.

Genetics and Taxonomy

At one point *Arctostaphylos franciscana* and *A. montana* ssp. *ravenii,* along with *A. montana* ssp. *montana* (Mount Tamalpais manzanita), were considered to be subspecies of *A. hookeri* (Hooker's manzanita). However, recent taxonomic revisions have established *A. montana* ssp. *ravenii* and *A. franciscana* as separate species. These revisions have been based primarily on genetic comparisons, including the fact that *A. franciscana* is diploid (with 13 pairs of chromosomes) while *A. montana* ssp. *ravenii* is tetraploid (with 26 chromosome pairs) (Service 2003, p. 95; Parker *et al.* 2007, pp. 149, 150; Chasse *et al.* 2009, p. 6).

Distribution and Habitat

Known historical occurrences and collections of *Arctostaphylos franciscana* are from serpentine maritime chaparral, a plant community dominated by *Arctostaphylos* (manzanita) and *Ceanothus* (California lilac) species, on the San Francisco Peninsula. This area is part of a region that Willis Linn Jepson named the Franciscan Area, one of 10 areas that he considered to have the highest concentration of endemic plant species in California (Jepson 1925, pp. 11–14). An endemic species is one that is native to and restricted to a particular geographical area. Native habitats have been largely converted to urban areas of the City of San Francisco and habitat that might support *A. franciscana* is now mostly lost to development (Chasse 2010, p. 2; Gluesenkamp 2010, p. 7).

Chasse (2009, pp. 6, 7) has noted that information on the plant community that historically included *Arctostaphylos franciscana* is largely missing from the literature. Early records describe the species as growing ''on rocky ground'' (Eastwood 1905, p. 202), on ''bare, stony bluff'' (Brandegee 1908, as cited in Chasse 2009, p. 6) and with coast live oak (*Quercus agrifolia*), coast blue blossom (*Ceanothus thyrsiflorus*), and coyote brush (*Baccharis pilularis*) (Wieslander 1938, cited in Service 2003, p. 95). *Arctostaphylos franciscana* was also observed ''forming flat masses over serpentine outcroppings and humus-filled gravel and flopping down over the sides of gray and chrome rocks. *Ericameria, Baccharis,* Ferns, Buckwheats, and Golden Yarrow grow among it; and over it stand Toyons and Live Oaks.'' Additionally, *A. montana* ssp. *ravenii* was found at nearly all *A. franciscana* locations. These observations, along with the geology and climate of historical sites, indicate that the species' community likely consisted of a mosaic of coastal scrub, barren serpentine maritime chaparral, perennial grassland, with occasional woodland of coast live oak and toyon shrubs and small trees (Chasse 2009, pp. 6, 7).

Parker (2007, pp. 8–11) examined the prehistoric distribution of *Arctostaphylos* in California and the geologic changes that helped lead to the number and location of *Arctostaphylos* species present today. *Arctostaphylos* evolved at least 15 million years ago during the Miocene epoch, corresponding with an earlier period of global warming; however, only during the last 1.5 million years have large numbers of new fossil types of the genus appeared. Currently there are at least 95 species and subspecies of *Arctostaphylos* within California. The large number of species is thought to be a response to significant changes in climate and physical geography that occurred approximately 1.5 million years ago. Tectonic changes in the landscape resulted in a diversity of new niches that selected for new species. Additionally, glacial advances and retreats during the last 2 million years have impacted the distribution of plants as well as created two possible paths of *Arctostaphylos* evolution.

One potential path is that populations of *Arctostaphylos* species moved in response to climatic changes but also left behind remnant populations of formerly more widespread species that persisted in isolated areas. Secondly, new species could have resulted from hybridization between rapidly migrating species and the remnant populations of other *Arctostaphylos* species. The San Francisco Bay area was a forested river valley during the last glacial period. At the end of the last glacial period, the climate became warmer and drier, and conditions became more favorable for *Arctostaphylos.* The area from San Francisco Bay to Monterey now contains 42 species or subspecies of *Arctostaphylos,* 32 of which are narrow endemics. Researchers have accepted that the obligate-seeder life history also promotes a more rapid rate of speciation in contrast to the vegetative regeneration of burl-sprouting species (Wells 1969, p. 264), which is evidenced by the fact that nearly all of the 32 narrow endemics in the San Francisco Bay to Monterey area are obligate-seeders.

Arctostaphylos franciscana is considered to be endemic to the San Francisco peninsula, California, and historically occurred in areas with serpentine soils and bedrock outcrops, greenstone, and mixed Franciscan rock, typically growing in mixed populations with *A. montana* ssp. *ravenii* (Service 2003, pp. 95, 96; Chasse *et al.* 2009, p. 6). The Doyle Drive site was comprised of disturbed soil over serpentinite (Chasse *et al.* 2009, p. 3). Serpentine soil restricts the growth of many plants due to its high nickel and magnesium concentrations, and thus tends to support unique plant communities (Brooks 1987, pp. 19, 53; Service 2003, p. 16) because relatively few plant species can tolerate such soil conditions. Such conditions generally result in semibarren soil and a lack of competing plants that benefits serpentine-tolerant plants such as *A. franciscana* (Bakker 1984, p. 79).

The coastal upland habitat of *Arctostaphylos franciscana* is influenced by cool, humid conditions and frequent summer fog. The serpentine chaparral plant community, of which *A. franciscana* is a part, may have been present historically in the southeastern portion of the San Francisco area (for example, in Potrero Hill, Bayview Hill) but the cumulative effects of burning by native Americans, grazing during the Spanish/Mexican period and later, more grazing and gathering of firewood during the U.S. military period may have converted the maritime chaparral to grassland or depauperate coastal scrub (Chasse 2010, p. 2). Prior to 1947, *A. franciscana* was known from three locations: the Masonic and Laurel Hill Cemeteries in San Francisco's Richmond district, and Mount Davidson in the south-central part of San Francisco (Service 2003, pp. 16, 62, 95; Chasse *et al.* 2009, p. 4). Unconfirmed sightings were also noted at a possible fourth location near Laguna and Haight Streets. By 1947, the

Masonic and Laurel Hill Cemetery sites were removed and the grounds destroyed in preparation for commercial and urban development (Chasse *et al.* 2009, p. 7). The Mount Davidson and the Laguna and Haight Streets locations were lost to urbanization as well. Until October 2009, *A. franciscana* had not been seen in the wild since 1947 (Chasse *et al.* 2009, pp. 3, 7), although no systematic surveys are known to have taken place to search for potential remaining individuals (Chasse 2010, p. 1).

Between 1930 and 1947, prior to the loss of the wild plants, botanists collected cuttings and rooted specimens from confirmed wild *Arctostaphylos franciscana* plants representing possibly one to six distinct individuals, and propagated them in botanical gardens (Vasey 2011b, p. 2; Chasse 2011a, p. 1; Chasse 2011b, p. 1; Service 2003, p. 96; Chasse *et al.* 2009, p. 7). The number of distinct individuals depends on whether more than one of the botanical garden specimens were started from cuttings of the same individual (which would mean multiple plants would have identical genotypes) or whether all the specimens originated from separate plants (in which case all the specimens would have different genotypes) (Vasey 2011b, pp. 2, 3; Chasse 2011a, p. 1; Chasse 2011b, p. 1). Genotype is defined as the genetic constitution of an individual.

Accession records for the botanical garden specimens indicate that some specimens collected and planted prior to 1947 did not survive and that others are duplicates of original collections leaving only three specimens confirmed to have been original plants transplanted from Laurel Hill (Chasse 2011b, p. 1). Further genetic work will verify whether plants with differing morphological features prove to be additional *A. franciscana* individuals. Although some of the botanical garden specimens may have different genotypes, which is the result of sexual reproduction (sprouting from seed) rather than clonal reproduction, all of the botanical garden specimens are currently considered to be *A. franciscana* until further genetic work can be conducted. The number of existing distinct individuals cannot currently be determined because a suitable genetic sampling technique has not yet been developed (Chasse 2011a, p. 1). Modern collections of this plant at East Bay Regional Park District's Botanical Garden at Tilden Regional Park, Strybing Arboretum, Rancho Santa Ana Botanic Garden, Claremont, and UC Berkeley Botanical Garden include some of the original specimens from Laurel Hill, as well as specimens propagated vegetatively after the species was thought to have been extinct in the wild (Chasse *et al.* 2009, pp. 6–8).

In October 2009, an ecologist identified a plant growing in a concrete-bound median strip along Doyle Drive in the Presidio as *Arctostaphylos franciscana* (Chasse *et al.* 2009 pp. 3, 4; Gluesenkamp 2010, p. 7). The plant's location was directly in the footprint of a roadway improvement project designed to upgrade the seismic and structural integrity of the south access to the Golden Gate Bridge (Caltrans *et al.* 2009, p. 1; Chasse *et al.* 2009, p. 10). The identification of the plant as *A. franciscana* has since been confirmed with 95 percent confidence based on morphological characteristics (Chasse *et al.* 2009 pp. 3, 4; Vasey and Parker 2010, pp. 1, 5). Additional tests of ploidy level indicate that the plant is diploid, consistent with *A. franciscana* (Vasey and Parker 2010, p. 6). Molecular genetic data also indicate that the plant is *A. franciscana* (Parker 2010a). Based on the best available scientific information, we consider the individual found along Doyle Drive in October 2009 to be *A. franciscana* (Vasey and Parker 2010, pp. 1, 5–7

Several agencies, including the Service, established an MOA and conservation plan for the species (see *Previous Federal Actions* section above). The conservation partners concluded that leaving the plant undisturbed at its original site would compromise public safety and cultural resources by the potential curtailment or redesign of the roadway improvement project (Chasse *et al.* 2009, pp. 9, 10).

The conservation plan evaluated potential translocation sites, established procedures for preparation of the new site and for the translocation itself, and called for management and monitoring (both short- and long-term) of the translocated plant and all newly propagated plants, with the goal of eventually establishing self-sustaining populations of the species in the wild (Chasse *et al.* 2009, pp. 23–27, 29–30). Following recommendations in the conservation plan, the *Arctostaphylos franciscana* plant was moved successfully to a new site within the Presidio in January 2010. Subsequent monitoring reports indicate the translocated plant continues to do well at its new location (Yam 2010, pp. 1, 3–14, Young 2010a, p. 1).

Cuttings from the plant, both from nonrooted stems and from layering stems (stems that have rooted at their leaf nodes), were taken for vegetative propagation prior to its translocation in January 2010 (Chasse *et al.* 2009, pp. 10–16, 40–42, Young 2010a, p. 1). This material was distributed to seven locations including UC Berkeley Botanic Garden, Regional Parks Botanic Garden, UC Santa Cruz Botanical Garden, San Francisco Botanical Garden, Cal Flora Nursery, Presidio Nursery, and the Presidio Trust Forester (Young, 2011). A total of 1,346 seeds were collected in July and August, 2010, from the plant (Young 2010a, p. 1; Frey 2010, p. 1).

The plan calls for eventual propagation of seeds (including seeds collected from the soil around the plant's original location), and for genetic testing of resulting plants. Seeds fertilized in the wild could result from cross-pollination by pollen from another individual *Arctostaphylos franciscana* or a closely related species and would produce a genetically unique individual (Chasse *et al.* 2009, p. 13). Additionally, because the roots of most *Arctostaphylos* individuals establish a mutually beneficial association with species of mycorrhizal fungi living in the soil, the conservation plan established means by which the soil for propagating cuttings and seeds should be inoculated with spores from such fungi (Chasse *et al.* 2009, p. 9). Propagation of *A. franciscana* seed and inoculation of seeds and cuttings by mycorrhizal fungi have not yet occurred. Soil surrounding the wild plant is being examined for presence of a seedbank but no *A. franciscana* seed has yet been found (Young 2011, p. 1). Propagation methods for *A. franciscana* seed will be developed using seed of a surrogate species, *A. montana* ssp. *montana,* which was collected from Mount Tamalpais in 2010 (Young 2011, p. 1). Outplanting of two rooted *A. franciscana* cuttings took place at the UC Santa Cruz Arboretum in January 2011 (Kriegar 2011, unpaginated)

Summary of Information Pertaining to the Five Factors

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the following 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; and (E) other natural or manmade factors affecting its continued existence. Listing

actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during our review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

All known habitat originally occupied by *Arctostaphylos franciscana* has been lost to urban development (Chasse *et al.* 2009, pp. 4, 7). The range of the species is now limited to a single transplanted plant on the Presidio. In January 2010, after the newly discovered wild plant was moved to the Presidio, the plant's habitat at Doyle Drive was destroyed as part of a Caltrans highway improvement project. The loss of the plant's native serpentine chaparral habitat to development and the curtailment of the species' range restrict the species' current and future ability to naturally reproduce and expand its range.

The remaining area of potential habitat for the species on the San Francisco peninsula has not yet been determined but is very limited as a result of past urban development. Although areas of greenstone or serpentine soils remain on the peninsula, the residual effects of urbanization (primarily habitat fragmentation and degradation) have resulted in reducing the remaining greenstone/serpentine soils into areas of about 0.4 hectare (ha) (1 acre (ac)) or less in size with some up to 2.4 ha (6 ac). These small remnant areas may no longer be suitable for reestablishment of *A. franciscana* due to factors such as dominance by other plant species (Chasse pers. comm., 2011). Currently, these small, isolated parcels are subject to ''edge effects'' such as increased invasion of weed species that would compete with *A. franciscana* for limited resources (water, nutrients, space).

Small isolated parcels have also been shown to be dryer than larger parcels and the habitat on these smaller parcels has become desiccated due to lack of surrounding vegetation, thus potentially leading to increased plant stress (Murcia 1995, p. 58). Urban barriers such as streets and buildings have been found to impose a high degree of isolation on chaparral species and to result in trends for decreased numbers of native plant species and concurrent increased numbers of nonnative plant species in habitat fragments over time (Soule *et al.* 1992, pp. 41–43); Alberts *et al.* (unpubl.) as cited in Soule *et al.* 1992, p. 41). These effects of the urbanization of the San Francisco peninsula are expected to continue to affect these remnant parcels into the future and to pose a threat to establishment of additional *A. franciscana.*

Additionally, nitrogen deposition poses a current and continuing threat to remnant habitat that might otherwise be found to be suitable for *Arctostaphylos franciscana*. Weiss and Luth (2003, p. 1) have conducted research on the effects of nitrogen deposition in a serpentine grassland south of the San Franciscan peninsula, which has bearing on threats to *A. franciscana*. Weiss and Luth found that nitrogen deposition from automobiles on Highway 280 was responsible for higher nitrogen levels in the soil within 400 m (1,312 ft) on the west side and 100 m (328 ft) on the east side of the roadway. Grass cover was higher in these areas. Native species within this zone are thought to be at long-term risk from invasions of nitrogen-loving grasses and other weedy plant species. The entire northern San Francisco peninsula, with the exception of the Presidio and Golden Gate Park, has been urbanized, and four major highways travel across the peninsula (Highways 1, 101, 280, and 480). Urban areas and roadways are a continuous source of nitrogen deposition from automobiles, trucks, and industrial and home heating (Weiss 1999, p. 1477). Invasions of nitrogen-loving plants into nitrogen-limited grasslands and shrublands appears to be a common response to atmospheric nitrogen deposition (Weiss and Luth 2003, p. 1) and may partly explain why the ecosystem that existed on the San Francisco peninsula has been so altered.

The one remaining wild plant is subject to multiple threats. The Presidio Trust's Vegetation Management Plan provides for the protection and management of rare plants on the Presidio (further discussed in *Factor D*). However, in some cases when the Trust has acted as a project proponent on the Presidio, direct project impacts to federally listed species and their habitat have resulted. For example, actions by the Presidio Trust and NPS related to management and remediation of former Army landfills on the Presidio have impacted federally listed plant species, including the *Lessingia germanorum* (San Francisco lessingia), and their habitat. Remediation of a large landfill near the transplanted *Arctostaphylos franciscana* plant is ongoing (M. Frey, pers. comm., 2011a) and has the potential to impact the plant and its habitat due to their close proximity to the remediation site. The remaining remediation activities involve the use of heavy equipment to complete final recontouring and to bring in soil to the site, followed by installation of plants, and restoration of original habitat features at the landfill (Presidio Trust 2011a, p. 2, M. Frey, pers. comm., 2011b).

We are not aware of any specific proposals by the Presidio Trust for other activities in or near the habitat of the remaining wild *A. franciscana* plant. However, the Presidio Trust Act contains a sunset clause that could result in the transfer of Presidio holdings to the General Services Administration for disbursement, if the Trust operations are not self-sufficient by 2013. The Presidio Trust Act is discussed under *Factor D* below; however, the potential that lands could be transferred and become available for development presents a threat that additional habitat loss could occur within the foreseeable future.

Based on the best scientific and commercial information available, we consider the present or threatened destruction, modification, or curtailment of the species habitat or range to be a high-magnitude and ongoing (imminent) threat to the wild population of *Arctostaphylos franciscana.* The current fragmented and degraded condition of most remaining serpentine/greenstone soil habitat on the San Francisco peninsula threatens the ability of the species to expand its range. The threats of possible development and change in management of the habitat may further limit the species' propagation and expansion, and could potentially threaten the only remaining wild plant in the foreseeable future.

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

Overutilization of the species is possible due to the popularity of *Arctostaphylos franciscana* for landscape use, as evidenced by the widespread use of cultivars of this species in the commercial nursery trade. *Arctostaphylos franciscana* is specifically recommended for use in erosion control on steep slopes (Theodore Payne Foundation 2009, p. 1; Sierra Club 2011, p. 1).

The attention and media coverage generated by the discovery of a species thought to be extinct may result in efforts by the public to visit the plant and possibly collect cuttings or seed. Although the location of the transplanted plant has not been disclosed, it was planted in a heavily used area in the Presidio near common-use trails with unrestricted access by the public. The Presidio is a National Park and is part of the Golden Gate National Recreation Area; the Presidio is open to the public 24 hours a day, every day of the week and receives 5 million visitors annually. Because of the Presidio's proximity to the City of San Francisco and because the Park has no entrance fees and contains restaurants, trails, and businesses that can be accessed by car, foot, or public transport, it receives heavy use. The Presidio Trust and NPS are making serious efforts not to disclose the location of the translocated plant. The Presidio Trust and NPS are concerned that public knowledge of the plant's location would lead to authorized and unauthorized group tours by plant enthusiasts that would overwhelm the *Arctostaphylos franciscana* and compact the soil (T. Thomas, pers. comm., 2011).

No damage to the plant has been observed to date; however, trampling or the taking of cuttings could occur if the identification and location of the plant become known. Similarly, another extremely rare plant, *Arctostaphylos montana* ssp. *ravenii* is also located on the Presidio. Its location has not been revealed to the public by NPS in order to protect the plant from vandalism although it was federally listed as endangered in 1979.

Based on the best scientific and commercial information available, we consider the overutilization for commercial and recreational purposes to be a high-magnitude and ongoing (imminent) threat to wild *Arctostaphylos franciscana* plants. Although captively propagated *A. franciscana* are available to residents for use in private gardens, collection of wild individuals is a threat to the species, and we expect it may be a threat in the foreseeable future, particularly if the location of the plant becomes known to the public.

Factor C. Disease or Predation

Transplantation of the single wild *Arctostaphylos franciscana* plant may have caused stress to the plant, and thereby made the plant more susceptible to predation and disease. In this case, stress and root damage may result from a number of sources including compaction of soil from foot traffic around the plant (Hammitt and Cole 1998, p. 52), too little or too much water, and improper planting depth. A fungal infection called twig blight is also a potential concern, particularly during wet years (Service 2003, p. 69). Some twig blight was observed in the wild plant during winter of 2009–2010, but it subsided during the dry summer months (Chasse 2010, p. 2).

The soil-borne pathogen, *Phytophthora cinnamomi,* has long been known as a world-wide threat to commercial and ornamental plants. *Phytophthora cinnamomi* is a fungus-like organism most closely related to diatoms and kelp (Kingdom Stramenopila) rather than to the true fungi (Kingdom Fungi or Eumycota). It is an introduced exotic pathogen in North America whose native range is unknown, but is suspected to be southeast Asia. Human-related activities, including the international plant trade have facilitated spread of *P. cinnamomi* into many habitats worldwide (Swiecki *et al.* in press, p. 3). *Phytophthora cinnamomi* was introduced to California early in the 20th century and recently has been identified as a serious threat to the State's native plants and their habitats (Swiecki *et al.* in press, p. 3).

Phytophthora cinnamomi has been the cause of the decline and death of rare *Arctostaphylos* species, including the federally threatened *A. pallida* (pallid manzanita) in the Oakland Hills of the East San Francisco Bay region, and federally threatened *A. myrtifolia* (Ione manzanita) near Ione in the Sierra Nevada foothills, and of other woody native species in the San Francisco Bay area (Swiecki *et al.* in press, pp. 3–5). This organism causes root decay but can also kill above-ground portions of some plants (Swiecki *et al.* in press, p. 3). *Phytophthora cinnamomi* is persistent in soil, and once introduced to native habitat, it cannot be eradicated (Swiecki *et al.* in press, p. 3). *Phytophthora cinnamomi* is transmitted by contaminated shoes, tools, and infested soil clinging to tires, and by using contaminated nursery stock, including native plant stock. Many areas showing plant mortality caused by *P. cinnamomi* are associated with hiking trails, landscaping with ornamental plants, and, in one case at the Apricum Hill Preserve, with use by visitors including researchers, agency personnel, and students (Swiecki *et al.* in press, p. 4).

This pathogen poses a significant threat in the foreseeable future to *A. franciscana* through the potential for infestation by the public and by staff who regularly work with the plant. It is not possible to predict when the pathogen might infect the single plant since the disease is generally transmitted directly or indirectly by humans or human activity. The pathogen could be introduced from soil on contaminated shoes and tools, or from cuttings of *A. franciscana* plants that are currently being grown in a number of nurseries in the San Francisco Bay area that could become contaminated. Swiecki *et al.* (in press, p. 6) tested *A. menziesii* plants purchased from four nurseries and found them to be infested with four *Phytophthora* species that cause root infections or stem cankers, including *P. cinnamomi.* Crown rot, which is caused by *P. cinnamomi,* is known to occur in *A. myrtifolia* and *A. viscida* (Swiecki *et al.* in press, p. 3), and is a concern when outplanting nursery-grown plants to wild locations (Chasse *et al.* 2009, p. 17). However, crown rot has not been observed in the wild plant (Chasse 2010, p. 2).

Arctostaphylos franciscana cuttings are proposed to be planted with the transplanted *A. franciscana* to facilitate cross-pollination of the different genotypes. Should the wild plant become contaminated with *P. cinnamomi,* the result would be the decline and death of the wild plant and the permanent contamination of the soil and seedbank beneath the plant. Any seedlings that germinate from this seedbank would also very likely be contaminated and not survive. Any cuttings that become contaminated will also die of the pathogen. The Golden Gate National Parks Conservancy staff in charge of propagation and care of *A. franciscana* cuttings are aware of the threat of contamination and rigorously follow clean procedures to prevent infection to the cuttings or the wild plant; however, a risk of contamination continues to exist because current fungicides do not eradicate 100 percent of *Phytophthora* spores (Young 2010b, p. 1). The cuttings and layers have been dispersed to seven different locations and growers, which, while decreasing the risk of complete loss of plant

material, also increases the risk of exposure to disease.

After being transplanted, the wild plant became severely infested with the larvae of a native leaf roller moth (*Argyrotaenia franciscana*) (Estelle 2010, p. 1). Treatment for the infestation was hand removal of the larvae and all infected leaves, which resulted in the removal of some of the new growth on the plant (Young 2010a, p. 1; Estelle 2010, p. 1). A parasitic wasp emerged from one leaf roller moth larva that had been captured, indicating that the moth has natural enemies (M. Frey 2010, p. 2). The moth has not been known to kill plants and does not appear to be a serious threat at this time; however, the moth species was found to have five overlapping generations in a year (Estelle 2010, p. 1), so monthly removal of moth larvae and pupae is planned (Frey 2010, p. 2). The leaf roller moth infestation in early 2010 did not permanently damage the plant; new growth has been observed, and the plant began blooming in November 2010 (Frey 2010, p. 2).

We conclude that the best scientific and commercial information available indicates that *Arctostaphylos franciscana* is threatened by disease and predation. We consider predation to be a relatively minor (low magnitude) but ongoing (imminent) threat to the wild population of the species. Although the leaf roller moth has not been known to kill *Arctostaphylos* species, the moth produces five overlapping generations per year and severely damaged the leaves in 2010. We consider infection of the plant by *P. cinnamomi* to be a high-magnitude and ongoing (imminent) threat to *A. franciscana* because only one plant occurs in the wild and the disease is easily and quickly spread by multiple vectors.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms protecting *Arctostaphylos franciscana* derive primarily from the location of the single known wild plant on Golden Gate National Recreation Area lands on the Presidio, which are administered by the Presidio Trust. The Presidio Trust was established by the Presidio Trust Act of 1996 to manage the leasing, maintenance, rehabilitation, repair, and improvement of property within the Presidio (Presidio Trust Act, as amended, Section 104(a)). The Presidio Trust is directed to preserve the natural, scenic, cultural, and recreational resources on the Presidio, but also is directed to ensure that the Presidio becomes financially self-sufficient by 2013 (Presidio Trust 2002, pp. 1, 2, 12). The Presidio Trust Act directed that the Presidio Trust design a management program to reduce expenditures of the NPS and increase revenues to the Federal Government to the maximum extent possible (Presidio Trust Act, pp. 5, 6). The Presidio Trust Management Plan was published in May 2002.

Federal regulations at the Presidio, which offer some protection to *Arctostaphylos franciscana,* include regulations that prohibit disturbing, injuring, removing, possessing, digging, defacing, or destroying from its natural state, any plant or parts thereof. Unauthorized introduction of plants and plant seeds is also prohibited, offering limited protection against invasive nonnative species. Additional regulations require that special events be permitted by the Trust, and provide for restricting visitor use to address resource conflicts (36 CFR, part 1002).

The Presidio Trust and the NPS have developed a Vegetation Management Plan for the Presidio. For special status plants, the plan provides an objective to preserve and enhance rare plant habitats by evaluating species-specific habitat needs and giving high priority to actions that preserve and enhance those habitats (Presidio Trust 2001, Chapter 3, unpaginated).

Future management of the Presidio, and of *Arctostaphylos franciscana* and its habitat, are uncertain because of differences in the missions of the Presidio Trust and NPS. The Presidio Trust is a new model for National Park management in that the Trust is directed to preserve the natural, scenic, cultural, and recreational resources on the Presidio, and at the same time ensure that the Presidio becomes financially self-sufficient by 2013 (Presidio Trust 2002, pp. 1, 12), which means that generation of revenue is a consideration for its activities as well as resource protection. The cost of operation and care are higher for this park than for most National Parks because of the Presidio's large number of structures and cultivated landscapes (Presidio Trust 2011, unpaginated). In 2002, the Trust adopted a management program designed to reduce expenditures of the NPS and to increase revenues to the Federal Government to the maximum extent possible (Presidio Trust 2002, p. 1; Presidio Trust Act, as amended 2001, p. 6). The mission of NPS on the Presidio as stated in the Golden Gate National Recreation Area Act (16 U.S.C. 460bb), although similar to the Presidio Trust Act regarding the protection of natural, historic, scenic, and recreational values, does not include the mandate to ensure that the Presidio becomes financially self-sufficient.

The future status of the Presidio as National Park land is uncertain, as explained in the Presidio Trust Act, Section 104(o) Reversion, which states: If, at the expiration of 15 years, the Trust has not accomplished the goals and objectives of the plan required in section 105(b) of the Presidio Trust Act, then all property under the administrative jurisdiction of the Trust pursuant to section 103(b) of this Act shall be transferred to the Administrator of the General Services Administration to be disposed of in accordance with the procedures outlined in the Defense Authorization Act of 1990 (104 Stat. 1809) and any real property so transferred shall be deleted from the boundary of the Golden Gate National Recreation Area. In the event of such transfer, the terms and conditions of all agreements and loans regarding such lands and facilities entered into by the Trust shall be binding on any successor in interest (Presidio Trust Act, Section 104(o), p. 9). This clause indicates that lands currently considered National Parks lands could be disbursed to the private sector and subject to development within the near future.

The Presidio Trust is subject to section 7 consultation under the Act, which would confer protections to the plant should it be listed under the Act. For example, actions by the Presidio Trust and NPS related to management and remediation of former Army landfills on the Presidio have impacted federally listed plant species including the federally endangered *Lessingia germanorum* (San Francisco lessingia) and federally endangered *Clarkia franciscana* (Presidio clarkia). Because those plant species are federally listed, the Presidio Trust has consulted with the Service to minimize such impacts. *Arctostaphylos franciscana* does not currently have these protections.

The species is not listed under the California Endangered Species Act. The conservation plan and MOA are not regulatory in nature, and are not legally enforceable by third parties (Caltrans 2009, p. 8; Chasse *et al.* 2009, p. 3), limiting their usefulness in enforcing protections for the plant. Although general protections are provided for plants on National Parks, existing regulatory mechanisms are inadequate to protect the last known wild specimen of *Arctostaphylos franciscana,* or any other such wild specimens that may be established or found to exist.

Based on the best scientific and commercial information available, we consider the inadequacy of existing regulatory mechanisms to be a threat of moderate-to-low magnitude to the species. We expect this threat to

continue into the future unless the species is listed under the Act, and thus we consider the threat to be ongoing (imminent).

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Potential threats to the species include changes in environmental conditions resulting from climate change, trampling, or disturbance by people visiting the Presidio, change in fire frequency, loss of genetic diversity, and stochastic (chance) events.

Climate Change

Changes in environmental conditions resulting from climate change may cause presently suitable habitat to become unsuitable for endemic California plants in general, due to projected changes in temperature and rainfall (Loarie *et al.* 2008, pp. 1–2). A U.S. Geological Survey (USGS) study in National Park lands in northern California and Oregon is being conducted to examine trends in climate, ocean conditions, and other features (Madej *et al.* 2010, p. 7). In these National Park lands, variation in abiotic factors (for example, precipitation, fog, and air and ocean temperatures) regulates many ecological processes, including the distribution of vegetation and frequency of disturbance from fires, floods, landslides, and pest species. The preliminary results of the USGS study show an increase in average maximum summer air temperatures at Golden Gate National Recreation Area, located near the Presidio, and a reduction statewide in fog frequency (Madej *et al.* 2010, p 24; Johnstone and Dawson, 2010, p. 4535).

Summer fog is important to upland coastal vegetation and partly determines the distribution of coastal species (Johnstone and Dawson 2010, p. 4533). Besides serpentine soil and cool air temperatures, (Parker 2010c, p. 1), summer fog is one of the primary habitat requirements for *Arctostaphylos franciscana* (Vasey 2010, p. 1). Summer fog results from the presence of two phenomena that may be affected by changes in environmental conditions resulting from climate change: Upwelling of cold, coastal ocean water and a temperature inversion of hot air flowing toward the ocean over a cool, humid marine air layer below (Vasey 2010, p. 1; Johnstone and Dawson 2010, p. 4533). Fog reduces sunlight and air temperature, and raises humidity. Summer fog provides a source of water for plants, including *Arctostaphylos* species, by condensing in the plant canopy and falling directly as water to the soil and being taken up by the plant's roots or by being taken up directly by leaves (Johnstone and Dawson 2010, p. 4533; Vasey 2010, p.1).

Fog frequency is highest in north and central California and declines in Oregon and Southern California. Mean fog frequency in the California region, quantified by cloud ceiling height measured at airports, has decreased since 1951 (Johnstone and Dawson 2010; p. 4535). Research by Vasey suggests that most coastal endemic *Arctostaphylos* species are more vulnerable to drought stress than those found in interior California and could be threatened by a decrease in coastal summer fog (Vasey 2010, p. 1). Vasey has found that obligately seeding *Arctostaphylos* species, such as *A. franciscana,* are better hydrated in areas that receive fog. He also found that obligately seeding species are more vulnerable to vascular cavitation (air bubbles forming in water vessels in the plant) when the rate of evapotranspiration of water through the leaves becomes too great (Vasey 2010, p. 1). This disruption of water flow can lead to branch death and possible death of the entire plant (Vasey 2010, p. 1).

Reduced soil moisture from loss of summer fog may also result in a reduction of seed germination and seedling survival. Additionally, the ability of *A. franciscana* to track future climate changes by establishing new plants in new habitat may be limited because of its association with serpentine and greenstone bedrock outcrops (Service 2003, pp. 95, 96) and because remaining soils derived from serpentine and greenstone bedrock on the peninsula are limited in area and largely fragmented (Chasse 2010, p. 1). If the trend towards a warmer, drier climate continues as shown in data from Madej *et al.* (2010, p. 24) and Johnstone and Dawson (2010, p. 4535), the climate may become too warm or dry to support *A. franciscana.* Natural movement of the species by seed dispersal to reach cooler, moister areas to the north would be blocked by barriers such as the San Francisco Bay.

Alteration of the Natural Fire Regime

Fire, in addition to soil type and climate, plays an important role in the determination of plant distribution (Keeley 2007, p. 19). The chaparral plant community, of which *Arctostaphylos* is an important member, is adapted to specific fire regimes that vary in different areas in California. In the San Francisco East Bay region, the current fire rotation interval is estimated at about 100 years (Keeley 2007, p. 20). Factors that affect the fire frequency in the San Francisco Bay area are a short fire season, moist climate, the local human population density, and changes in human behavior. Due to prevailing ocean winds and frequent fogs, the average relative humidity along the coast is moderate to high throughout the year. The exceptions typically occur in the fall, when changing prevailing weather patterns allow dry northeasterly winds from the State's interior to reduce humidity in the coastal area to around 20 percent, thereby creating dry and windy conditions that typify high fire danger (GGNRA 2005, pp. 136, 140).

Fire frequency in the San Francisco Bay area has varied substantially in the last several thousand years. Not only have fire regimes changed with changing climate, fire regimes have changed as patterns of human utilization of the landscape have changed. Disturbances by fire occurred at long intervals in the pre-human period, then at shorter intervals during the late Native American and Spanish-Mexican period, at moderate intervals during the European settlement period, and have generally returned to long intervals in the modern period (GGNRA 2005, pp. 144–147). The natural fire regime has been heavily altered by the urbanization of San Francisco and the fragmentation of remaining undeveloped lands. The City of San Francisco is essentially built out, with the exception of small isolated parcels and undeveloped hilltops. Lands administered by the NPS and the Presidio Trust are surrounded by other land uses and close to the wildland-urban boundary where landscape plants and nonnative plants contribute to vegetative buildup (GGNRA 2005, pp. 130–131) that can increase fire danger. In addition, fire suppression has been prevalent during the last 100 years. This altered fire regime has led to an increase in crown and surface fuels, contributing to high-intensity fires (GGNRA 2005, p. 147). These administered lands could eventually be identified as suitable for outplanting *Arctostaphylos franciscana* seedlings, but the specific habitat characteristics for the species are not known at this time.

Two opposing types of changes in fire frequency can threaten *Arctostaphylos franciscana.* First, ''senescence risk'' occurs when too little fire leads to the loss of a species that is dependent on fire for regeneration from seeds or sprouts. The second is ''immaturity risk,'' which is a threat especially to obligate-seeding species. In this case, wildfires that occur too frequently will kill plants before they can reach reproductive maturity and produce seed (Keeley 2007, p. 18). Wildfire can

substantially reduce the number of live seeds in the soil (Odion and Tyler 2002, p. 1). Odion and Tyler (2002 p. 1) found that a controlled burn in a 40-year-old stand of *A. morroensis* (Morro manzanita) substantially reduced the seedbank to 33 percent of that which had accumulated in the soil since the previous burn 40 years earlier. Three years after the burn, the new population of *A. morroensis* that had germinated from the seedbank was less than half the size of the original population (Odion and Tyler 2002, p. 1). Odion and Tyler (2002 p. 2) concluded that if viable seed densities in the soil are too low because fires are too frequent to allow seeds to accumulate in the soil, the population may risk extinction.

The fire return interval for this general area, and, therefore, for this species, is currently approximately 100 to 125 years (T. Parker pers. comm., 2011, Vasey 2011a, p. 1). The long fire return interval is not thought to be a threat to the mature *Arctostaphylos franciscana* plant at the Presidio or to future seedlings that are likely to be outplanted in the future as a result of efforts by the NPS and the Presidio Trust. Infrequent fire would allow the mature plant at the Presidio to produce seed to build up a sufficiently large seedbank to withstand seed loss from wildfire, and would allow the growth of outplantings. However, if fire continues to be excluded from these areas and the fire return interval greatly exceeds the natural return interval, over time the loss of fire may also result in the loss of the mature plant and individual outplanted seedlings due to competition by plants, including nonnative plants, that could encroach upon the manzanita.

Other aspects of the altered fire regime within the remaining undeveloped lands of San Francisco pose greater threats to the species. Alteration of the fire regime has led to an increase in crown and surface fuels in some areas, leading NPS fire planners to conclude that it is difficult to predict where the changed fire regime will ultimately lead, given the trend to warmer and drier climate conditions (Madej *et al.* 2010, p. 24; Johnstone and Dawson, 2010, p. 4535), and the climatic correlation with fire frequency (GGNRA 2005, pp. 147, 148). In the past, large fires have occurred within areas that are typically subject to maritime climatic conditions. Such fires include the 1923 Berkeley Fire; the October 1991 Oakland Fire (Keeley 2005, p. 286) that burned 607 ha (1,500 ac); the October 1995 fire at Point Reyes National Seashore that burned 4,999 ha (12,354 ac) (GGNRA 2005, p. 151); and the 1,133-ha (2,800-ac) 2009 Lockheed Fire north of the City of Santa Cruz (The Associated Press 2009). On the Presidio, fire history data show that 17 fires occurred between 2000 and 2009, with no fires in some years and as many as 5 fires in other years. All fires were contained at 0.04 ha (0.1 ac) or less (A. Forrestel, pers. comm., 2011a, 2011b). In the same period, approximately four wildfires occurred in the Marin Headlands, directly to the north of the Presidio across the Golden Gate, while recent fire history records for all areas of the GGNRA show the potential for larger wildfires in the maritime zone (GGNRA 2005, pp. 150–155).

Although the Presidio is located within a highly urbanized setting, substantial areas of open space within the Presidio itself and within the adjacent GGNRA lands harbor an interspersed mixture of vegetative types, including native vegetation, landscaped grounds, and forest (GGNRA 2005, pp. 190–199; Presidio Trust 2011, unpaginated). Grasslands are now dominated by nonnative annual grasses and forbs, which burn with greater intensity and have a more rapid rate of spread (GGNRA 2005, p. 192). A fire model prepared by the GGNRA indicates that areas managed by the GGNRA on the western and southwestern borders of Presidio Trust lands present a moderate and moderate-high fire hazard (GGNRA 2005, p. E–7). As a result of the altered fire regime, infrequent fires may burn larger and hotter than previously occurred, potentially increasing the loss of seedbanks when such fires do occur. As a result of the altered fire regime, the incidence of wildfire may also increase, which would be detrimental to *Arctostaphylos franciscana* by killing mature plants, seedlings, and seeds in the seedbank. In obligate-seeding species, such as *A. franciscana,* fire normally kills the adult plants, which are then replaced by plants that germinate from seed in the soil seedbank after the fire. A wildfire that would kill the single wild *A. franciscana* would be an especially serious threat to the future of the species because no *A. franciscana* seedbank has been found in soil collected from the area beneath the wild plant (Young 2011, p. 1).

Trampling

Trampling by people could impact the wild plant, and its offspring, or any herbarium-raised plants that are restored to the wild, if they are placed in areas subject to regular foot traffic. The translocated wild plant has been planted in an active native plant management area that receives heavy public use; however, it is protected by a cable and post fence from public access and is monitored (Chasse *et al.* 2009, pp. 20–28). The post and cable fence was placed along an adjacent trail so that people do not enter the immediate area around the plant. The fence currently appears to be working well (Young 2010a, p. 1); however, a single trampling event could result in damage or the death of the wild plant. As noted under *Factor B,* the Presidio Trust and NPS have made continuous efforts not to reveal the location of *Arctostaphylos franciscana.* They are concerned that public knowledge of the *A. franciscana* location would attract large numbers of plant enthusiasts who may damage the *A. franciscana* and compact the soil (T. Thomas, pers. comm., 2011).

Roots grow into soil to maintain stability and to extract water and nutrients; however, soil compaction from trampling increases the resistance of the soil to root penetration and thus diminishes the plant's ability to extract sufficient water and nutrients. Soil compaction also reduces water infiltration rates from rainfall and reduces soil aeration by collapsing the larger pores in the soil. Reduced soil oxygen levels from loss of soil pores also can reduce root growth, which further reduces water and nutrient uptake (Hammitt and Cole 1998, p. 52). Soil compaction also inhibits seed germination and establishment of new plants. Smooth, dense soil makes it difficult for the radicle (the seedling's primary root) to penetrate the soil for stability, water, and nutrients (Hammitt and Cole 1998, p. 52). Trampling has also been found to cause considerable damage to mycorrhizal fungi in seedling roots (Waltert *et al.* 2002, p. 1). As noted in the Distribution and Habitat section, most *Arctostaphylos* species form strong symbiotic associations with soil mycorrhizal fungi, which form an external sheath surrounding the plant's roots; all water and nutrients pass through this sheath to the plant's roots rather than directly from the soil to the plant's roots (Chasse 2009, p. 12). Damage from trampling will not only impact the wild plant by reducing its ability to take up water and nutrients, but will also reduce the ability of any seedlings germinating near the wild plant to survive.

Vandalism

The location of the *Arctostaphylos franciscana* plant within the Presidio is near common-use trails and an area that is available for rent for private and public events. Threats to *A. franciscana*

include damage from vandalism and interested visitors. Vandalism to trees was reported in the Presidio in the early 2000's (T. Thomas pers. comm. 2011). Severe vandalism was observed in Golden Gate Park, located approximately 1.5 mi (2.4 km) south of the Presidio, in summer 2010 where more than 40 trees and 30 rose bushes were killed by unknown persons for unknown reasons (King 2010, unpaginated, Gordon 2010, unpaginated). The post and cable fence protecting *A. franciscana* in the Presidio is approximately 30 ft (9.1 m) from the plant and is not constructed to completely exclude visitors.

Loss of Genetic Diversity

Any new population starting from the single wild plant is likely to have reduced genetic variation compared to historical populations. The generation with the smallest number of individuals has the greatest effect on the genetic variation of subsequent generations. Even if the number of plants is expanded, it may not reverse the previous genetic loss known as the ''bottleneck effect'' (Allendorf and Luikart 2007, p. 158). Bottlenecks generally have a greater and more lasting effect on the loss of genetic variation in species that have slow growth rates (long-lived species with few offspring) (Allendorf and Luikart 2007, p. 133). The age of the single wild *A. franciscana* plant is estimated at 60 years, and no other *A. franciscana* plants or seedlings were found associated with the wild plant.

Reduced genetic variation may result in the plant's offspring not being able to adapt to changes in habitat such as those noted above in the discussion on climate change (decrease in fog and increase in temperature), or loss of pollinators (see pollinator discussion below). *Arctostaphylos franciscana* may be capable of self-pollination. In general, self-pollination results in a decrease in genetic variation in the offspring of a plant (Allendorf and Luikart, 2007, p. 123); therefore, a loss of genetic variation is expected if *A. franciscana* is dependent on self-pollination to produce seed. In a study on the effects of habitat fragmentation on a non-self-pollinating plant (Lennartsson 2002, pp. 3065, 3066, 3068), the author found that fragmented populations exhibited dramatically reduced seed set and population viability, both caused by a reduction in number of pollinators. Threats associated with reduced seed production are discussed further in the following section on Stochastic Events and Small Population Size.

Stochastic Events and Small Population Size

Chance events constitute a serious threat to the species. Because the known population of *Arctostaphylos franciscana* in the wild is currently limited to a single plant, the species is extremely vulnerable to stochastic events—normal but damaging environmental perturbations and catastrophes such as droughts, storm damage, and fires, from which large, wide-ranging populations can generally recover, but which may lead to extirpation of small, isolated populations (Gilpin and Soule 1986, pp. 25–31). Suitable pollinators may be critical for seed production for this obligately seeding species. If pollinators are not present or are in insufficient numbers, viable seeds may not be produced to develop and maintain the seedbank. Pollinators have been observed on the wild plant; however, no surveys have yet taken place to identify the most important pollinators. The most frequent pollinators seen have been bees and bumblebees; however, hummingbirds and butterflies have also been seen visiting the *A. franciscana* flowers, likely because few other plants are blooming during the winter months when *A. franciscana* blooms (M. Vasey, pers. comm. 2010). Although the loss of the seed produced in a single year would not likely lead to the extirpation of the species, a continued reduction of the seed crop or dependence on self-pollination would reduce the seedbank, the genetic variation, and the potential for expansion of the population.

The wild plant is also threatened by the Allee effect, which is a decline in population growth rate due to declining plant density (Akçakaya *et al.* 1999, p. 86). For the wild plant, the Allee effect may result from a lack of other available *Arctostaphylos franciscana* plants with which to cross-pollinate and produce viable seed. The wild plant is the single remaining individual of its species in the wild and is currently dependent on its potential ability to self-pollinate, which may be limited, and the efforts of researchers and Presidio staff to provide additional plants of different genotypes from botanical garden specimens (if they are proven to be *A. franciscana*) to cross-pollinate with the wild plant to produce new plants and populations.

Hybridization

Cultivars of *Arctostaphylos franciscana* are used in the commercial nursery trade. The cultivars are likely descended from some of the last wild *A. franciscana* plants known to exist in the 1940s and are located in at least four botanical gardens (Chasse *et al.* 2009, pp. 7, 8). Since hybridization between diploid species of manzanita is well recognized (Chasse *et al.* 2009, p. 5), there is a good chance that many of these commercially available specimens have resulted from hybridization. Because of the threat of cross-pollination from hybrids or other species (Allendorf *et al.* 2001, pp. 613, 618–621), any propagation or reintroduction programs for *A. franciscana* must account for subsequent contamination and swamping of the *A. franciscana* gene pool. The conservation plan does take this into account by recommending that future outplantings of nursery-raised plants avoid areas that could facilitate cross-pollination (Chasse *et al.* 2009, p. 31). Appropriate outplanting areas will be determined by *A. franciscana* experts in conjunction with the NPS, the Presidio Trust, and the Golden Gate National Parks Conservancy (Chasse *et al.* 2009, p. 31). Although cross-pollination of the wild plant with hybrids is possible, we do not know the magnitude of this threat.

We conclude that the best scientific and commercial information available indicate that *A. franciscana* is threatened by other natural or manmade factors affecting its continued existence, and that these factors include changes in environmental conditions resulting from climate change, change in fire frequency, trampling, vandalism, loss of genetic diversity, loss of pollinators, stochastic events, effects of small population size, and hybridization. Cumulatively, we consider these threats to be of high magnitude and imminent.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether *Arctostaphylos franciscana* is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the *A. franciscana.* We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with *A. franciscana* experts and other Federal and State agencies.

This status review identified threats to *Arctostaphylos franciscana* attributable to each of the five listing factors identified in section 4(a)(1) of the Act. The primary threat to *A. franciscana* is from the present or threatened destruction, modification, or curtailment of the species' habitat or

range (*Factor A*). All original occupied habitat of the species has been lost, and its current range has been reduced to a single location supporting a single *A. franciscana* plant. The last wild plant was moved from its habitat, which was subsequently destroyed during a highway construction project, and transplanted to the Presidio in San Francisco. Remaining potential habitat for the species on the San Francisco peninsula has not yet been determined or surveyed. It is unknown whether there is sufficient suitable habitat to support a viable population of the species. Although greenstone and serpentine soils remain on the peninsula, the majority of this land has been fragmented into areas of 0.40 ha (1 ac) with a few approximately 2.4 ha (6 ac) in size. Additionally, potential disparity in the mission of the Presidio Trust and NPS and the possible transfer of Presidio lands to the General Services Administration and the private sector may result in potential future loss or modification of the plant and its habitat.

Overutilization (*Factor B*) is a threat because the current known wild population consists of one individual plant, and manzanita plants are popular for landscaping and other horticultural purposes. *Arctostaphylos franciscana* is thus highly vulnerable to removal from the wild as a result of collection or damage from people collecting cuttings or seeds.

The species is threatened to a lesser degree by disease and predation (*Factor C*). Stress from transplanting of the wild plant may have weakened the plant and made it more susceptible to disease and predation. The plant was heavily infested with a native leaf roller moth after being transplanted; however, the caterpillars and damaged foliage were removed, and the plant has produced new foliage and flowers. Twig blight, a fungal infection, was observed on the plant during the winter of 2009–2010, but the infection subsided during the dry season. A serious and lethal problem among *Arctostaphylos* species in the wild and in the native plant nursery trade is the pathogen *Phytophthora cinnamomi,* which cannot be controlled once introduced to a plant or habitat. Many of the *A. franciscana* cuttings are being grown in commercial or university nurseries for outplanting with the wild plant. Although the use of clean propagation techniques has been requested by the staff in charge of the project, the risk of infection of the cuttings and wild plant by *P. cinnamomi* is still a threat.

Existing regulatory mechanisms (*Factor D*) afford certain protections for *Arctostaphylos franciscana* because the plant is located on lands administered by the NPS Golden Gate National Recreation Area and the Presidio Trust. However, as mentioned above, these protections are not guaranteed into the future because the Presidio Trust Act dictates that, if the goals and objectives of the Presidio Trust Management Plan are not met by 2013, property shall be transferred to the Administrator of the General Services Administration to be disposed of in accordance with procedures outlined in the Defense Authorization Act. Therefore, lands on the Presidio could be disbursed to the private sector and subject to development. We, therefore, consider existing regulatory mechanisms to be inadequate to protect *A. franciscana.*

The species is also threatened by other natural or manmade factors affecting its continued existence (*Factor E*). These factors include changes in environmental conditions resulting from climate change, changes in fire frequency, trampling, loss of genetic diversity, stochastic events, small population size, and hybridization. Effects of changes in environmental conditions resulting from climate change on the plant's habitat are expected to include increased air temperature and reduced summer fog, both resulting in warmer and drier conditions than those to which the plant is adapted. A shift in the timing of flowering of the *Arctostaphylos franciscana* and availability of suitable pollinators or loss of pollinators due to climate change could affect the plants' ability to set seed. Warming and drying of the plant's habitat would likely also increase the frequency of wildfire that would result in death of the wild plant and its future seedlings if fire occurs before the plants are able to produce viable seeds.

Loss of mature *Arctostaphylos* plants to fire is a natural phenomenon; however, this species is currently represented by a single mature plant. Therefore, to our knowledge, the loss of the plant would result in extinction of the species in the wild. Loss of genetic diversity has likely already occurred due to the reduction of the species to a single wild plant and may continue by limiting this generally outcrossing species to self-pollination. Reduced genetic diversity may also limit the species' ability to adapt to changes in habitat such as those resulting from climate change (decrease in fog and increase in temperature) or loss of pollinators. The species is extremely vulnerable to stochastic environmental events such as droughts, storm damage, and fires, from which large, wide-ranging populations can generally recover, but which would likely drive a species consisting of a single plant to extinction.

Based on our evaluation of all scientific and commercial information available regarding the past, present, and future threats faced by *Arctostaphylos franciscana,* we have determined that the continued existence of *A. franciscana* is threatened by residual effects from habitat loss, climate change, loss of genetic diversity, change in fire frequency, vandalism, predation, and inadequate regulatory mechanisms. Because the species faces these threats throughout its extremely limited range, we find that *A. franciscana* is warranted for listing throughout its range and, therefore, find it unnecessary to analyze whether it is endangered or threatened in a significant portion of its range.

Status Evaluation

The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. The species *A. franciscana* currently exists as a single plant on the San Francisco Presidio. Because the range of the species is restricted to a single plant, the risks presented by the threats noted in *Factors A* through *E* are more intensified than they would be were the species more widespread or numerous.

The species is affected primarily by small area of remaining suitable habitat and loss of natural disturbance regime, as a result of past urban development and ongoing changes in environmental conditions resulting from climate change, as well as loss of genetic diversity. Additionally, the species is threatened by factors including collection or vandalism, disease, predation, loss of pollinators, and inadequate regulatory mechanisms. These interrelated factors have and will continue to result in threats to the continued existence of the species. Based on our evaluation of the best available scientific and commercial information and given the current population size (one plant), and severely limited distribution throughout its historical range, we have determined the species is in danger of extinction throughout all of its range and thus meets the definition of an endangered species. Because the species is in danger of extinction now, as opposed to in the foreseeable future, *A. franciscana* meets the definition of an endangered species rather than a threatened species.

On the basis of our careful evaluation of the best available scientific and commercial information regarding the past, present, and future threats to the species as discussed above relative to the listing factors, we have determined that listing is warranted, and we propose to list *Arctostaphylos franciscana* as an endangered species throughout its range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may also occur on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California would be eligible for Federal funds to implement management actions that promote the protection and recovery of *Arctostaphylos franciscana.* Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation, or both, as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the National Park Service or Presidio Trust; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; permitting of construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. If *Arctostaphylos franciscana* were listed, the last wild specimen (including any plants propagated from the wild plant) and the botanical garden specimens (*i.e.,* those plants previously collected from the wild and subsequently propagated) would be protected by all prohibitions of section 9(a)(2) of the Act, which protects listed plants in areas of Federal jurisdiction such as the Presidio. Plants of unknown origin that have been or are being sold in the nursery trade or have been transplanted into home gardens would not be considered part of the listed entity. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. *Arctostaphylos franciscana* has not been listed by the State of California, therefore, State laws do not apply. Listing would also require Federal agencies to avoid actions that might jeopardize the species (16 U.S.C. 1536(a)(2)), and would provide opportunities for funding of conservation measures and land acquisition that would not otherwise be

available to them (16 U.S.C. 1534, 1535(d)).

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825 (telephone 916–414–6600; facsimile 916–414–6712).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, and transplantation.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical and biological features that are essential to the conservation of the species, and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Critical Habitat Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

We have done a preliminary evaluation to determine if the designation of critical habitat for *Arctostaphylos franciscana* is prudent and determinable at this time. On the basis of that evaluation, we have determined that the designation of critical habitat may not be prudent for this species due to an increased degree of threat.

If the designation of critical habitat would increase threats to a species or if there are no benefits to a critical habitat designation, then a not prudent finding is warranted. A critical habitat designation may result in increased awareness of the specific area where the individual *Arctostaphylos franciscana* plant is likely to occur, which may result in increased threats for a species with such an extremely limited distribution—a single plant. Manzanitas are popular ornamental plants for landscaping and horticulture, and manzanita cuttings are easily propagated. Its rarity would make *A. franciscana* especially desirable to certain individuals who may try to take

cuttings or collect seeds from the *A. franciscana* plant (see *Factor B*). Vandalism of shrubs and trees has occurred recently within the Presidio and in Golden Gate Park (see *Factor E*); greater awareness of the specific location of where the individual *A. franciscana* plant occurs may result in increased risk of vandalism of the plant. Also, increased visitation of the individual plant that may result from critical habitat designation may result in increased risk of trampling and disease transmission of soil-borne pathogens to *A. franciscana* (see *Factor C*).

Because of the potential increased threats that may result from the identification of the specific areas containing features essential to the conservation of the species or specific essential areas as critical habitat, we have preliminarily determined that the designation of critical habitat for *Arctostaphylos franciscana* may not be prudent at this time. However we have not made our final determination and we are, therefore, seeking information from the public regarding threats to the species and its habitat and whether the risks of designation of critical habitat would outweigh the benefits of this determination. Please see *Information Requested* above for specific information we are seeking for making our determination whether the designation of critical habitat would be prudent at this time.

Further, we are currently unable to identify the physical or biological features for *Arctostaphylos franciscana,* because information on the full range of the physical or biological features that are considered essential to the conservation of this species is not known at this time. Little information is available on the historical populations that existed prior to habitat alteration from grazing and burning by Euro-American settlers (Keeley 2005, p. 285; Cooper 1922, p. 76) and prior to development of the city of San Francisco. We cannot be sure that the historical records of extirpated occurrences and the currently known record of *A. franciscana* represent the full extent of the species' predisturbance range and habitat (Chasse 2010, p. 1). Some records are available as noted in the Distribution and Habitat section of this rule; however, they may simply be the only locations that were recorded rather than being representative of optimum habitat.

The single remaining wild plant was found on a previously disturbed highway median, which was highly unlikely to represent natural habitat conditions. The remaining greenstone/serpentine habitat on the San Francisco peninsula, which is highly fragmented and not occupied by *A. franciscana,* may not be suitable for supporting populations of the species. Because of the limited information available related to the species' physical or biological requisites, we are not currently able to identify the specific areas that contain the appropriate physical or biological features essential to the conservation of *A. franciscana* or otherwise identify areas that may be essential for its conservation without additional information. Therefore, since the physical or biological requirements of the species are not sufficiently known, we find that critical habitat for *A. franciscana* is not determinable at this time.

We are, therefore, seeking information from the public regarding which physical or biological features or specific areas may be essential to the conservation of *Arctostaphylos franciscana*. Please see *Information Requested* section for specific information we are seeking to assist us in trying to identify the biological requirements for *A. franciscana*.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our determination of status for this species is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during the public comment period on our specific assumptions and conclusions regarding the proposal to list *Arctostaphylos franciscana* as endangered and our proposed finding regarding critical habitat for this species.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposal in the **Federal Register**. Such requests must be sent to the address shown in **ADDRESSES**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

References Cited

A complete list of all references cited is available on the Internet at *http://*

www.regulations.gov and upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary authors of this notice are the staff members of the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding an entry for ''*Arctostaphylos franciscana* (Franciscan manzanita)'' to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
*	*	*	*	*	*		*
Arctostaphylos franciscana.	Franciscan manzanita.	U.S.A. (CA)	Ericaceae	E	XXX	NA	NA
*	*	*	*	*	*		*

Dated: August 27, 2011.

Gregory E. Siekaniec,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–22990 Filed 9–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0059; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Snowy Plover and Reclassify the Wintering Population of Piping Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the snowy plover (*Charadrius alexandrinus*) as endangered or threatened and to reclassify the wintering population of piping plover (*Charadrius melodus*) as endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned actions may be warranted. This finding is based on our determination that the petition did not identify listable entities. Therefore, we are not initiating a status review for either species 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 snowy plover or the piping plover or their respective habitats at any time.

DATES: The finding announced in this document was made on September 8, 2011.

ADDRESSES: This finding is also available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2011–0059. 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, Panama City Field Office, 1601 Balboa Avenue, Panama City, FL 32405. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Don Imm, Project Leader, Panama City Field Office (see **ADDRESSES**), by telephone at 850–769–0552 ext. 238, or by facsimile to 850–763–2177. 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 at the time that the petition was submitted to us. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and to 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 a 12-month finding.

Petition History

On September 5, 2000, we received a petition dated September 4, 2000, from Robert R. Reid, Jr., on behalf of the Alabama Audubon Council, Alabama Environmental Council, and Alabama Ornithological Society (petitioners), requesting that the snowy plover be listed as threatened or endangered, and that the wintering population of piping plover be reclassified from threatened to endangered under the Act, and that critical habitat be designated under the

Act for both species. The petition was submitted concurrently with comments in response to the request for public comments contained in our proposal to designate critical habitat for wintering piping plover (July 6, 2000; 65 FR 41782) and our extension of the comment period for that proposal (65 FR 64414; October 27, 2000). We responded to the petitioner's comments related to the critical habitat rulemaking in the final rule for the designation of critical habitat for wintering piping plover (66 FR 36038; July 10, 2001).

The petition mentions common threats to both species, provides brief examples of potential population declines, and discusses the petitioners' views on how consultations would benefit from critical habitat designations. The petition also discusses the petitioners' views on the economic advantages of critical habitat and mentions that ''inhabited'' and ''uninhabited'' lands should be included in the critical habitat designations. Few references were provided to support the statements in the petition.

The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a); however, no scientific name for either species was included in the petition. In an October 11, 2000, letter to the petitioners, we acknowledged receipt of the petition. We determined that issuing an emergency regulation temporarily listing either species under section 4(b)(7) of the Act was not warranted. We notified the petitioners that, due to court orders and judicially approved settlement agreements for other listing and critical habitat determinations under the Act that required nearly all of our listing and critical habitat funding for fiscal year 2001, we would not be able to further address the petition at that time, but we anticipated addressing the action when workload and funding allowed. Funding limitations have prevented the Service from responding to the petition until now. This finding addresses the petition. In separate sections below, we address the petitioners' requests to list the snowy plover as threatened or endangered and to reclassify the wintering population of piping plover as endangered.

Snowy Plover (*Charadrius alexandrinus*)

Species Information

Snowy plovers are small shorebirds, about 6.7 inches (17 centimeters (cm)) long. The plumage is pale gray or brown above, and pure white below. Their bills and legs are dark (Gore 1996, p. 73). Snowy plovers require expansive, open dry sandy beaches for breeding, and both dry and tidal sand flats for foraging (Woolfenden 1978, p. 9). They primarily feed on small crustaceans, mollusks, worms, and insects that they glean from beaches and sand flats. They nest on open, dry white sand where a typical clutch of three eggs is laid in a slight depression, sometimes lined with bits of shell (Woolfenden 1978, p. 9). In Florida, nests have been documented as early as February, with pair bonding reported as early as January (Gore and Chase 1989, p. 8).

Two subspecies of snowy plover that nest in North America were recognized by the American Ornithological Union (AOU) in 1957 (5th edition of its Check-list, pp. 168–169): The western snowy plover (*Charadrius alexandrinus nivosus*) and the Cuban or Southeastern snowy plover (*C. a. tenuirostis*). Since that time, however, the AOU has not conducted a review of this subspecies distinction. The AOU stopped listing subspecies as of the 6th edition (1983) of its Check-list, although it recommended the continued use of the 5th edition for taxonomy at the subspecific level. The AOU has not formally or officially reviewed the subspecific treatment of most North American birds. In the 7th edition (1998, p. xii) of the Check-list, the AOU explained that its decision to omit subspecies ''carries with it our realization that an uncertain number of currently recognized subspecies, especially those formally named early in this century, probably cannot be validated by rigorous modern techniques.''

Page *et al.* (1995, p. 3) state that two subspecies of snowy plover have been recognized for North America (and partially in South and Central Americas): *Charadrius alexandrinus tenuirostris* is found on the Gulf Coast east of Louisiana through Florida, the Bahama Islands, the north coast of the Yucatan Peninsula, the Greater and Lesser Antilles, and islands off the north coast of Venezuela; and *C. a. nivosus* is found elsewhere in the United States and Mexico (including coastal California and Baja California; locally in the Great Basin of California, Oregon, Nevada, and Utah; very locally in southern Saskatchewan, central Montana, southern Wyoming, central and eastern Colorado, and southern Arizona; sparsely but widely distributed over southeast New Mexico and east through north central Texas, central Oklahoma, and central Kansas; the southern Texas coast into northeast Mexico; and the central Mexican plateau) (AOU 1957, pp. 168–169; Cramp 1983, p. 153). Others (Oberholser 1974, p. 312; Johnsgard 1981, pp. 191–192; Jacobs 1986, p. 3; Gore 1996, p. 74) have stated that *C. a. tenuirostris* includes birds in coastal Texas and northeastern Mexico, as well as birds of the interior Great Plains.

Gorman (2000, pp. 36–38) performed genetic studies that concluded the Greater Antillean snowy plovers, represented only by samples from Puerto Rico, were clearly differentiated from mainland birds in Florida. Furthermore, Florida birds were much more closely related to other continental populations of *Charadrius alexandrinus nivosus* than to Puerto Rican *C. a. tenuirostris.* Among birds east of the Rocky Mountains, Texas coastal and Great Plains birds appeared to be more closely related to other eastern birds than birds west of the Rocky Mountains.

Gorman (2000, pp. 36–38) admits that, in the absence of further sampling, it is not clear whether all snowy plover populations in the West Indies and Bahamas would be grouped with birds from Puerto Rico or with birds from east of the Rocky Mountains. Differentiation among the eastern continental U.S. populations is apparently insufficient to warrant separate populations. Thus, these results suggest that snowy plovers east of Louisiana, including Florida, along the Gulf Coast may be grouped with Great Plains and other Gulf Coast birds. The Service accepts the characterization of the snowy plover as two subspecies in North America, *Charadrius alexandrinus nirvosus* and *C. a. tenuirostris.*

It is not clear which demarcation the petitioners relied upon for the petition request, because neither a species nor subspecies scientific name was provided for the snowy plover in the petition. At times, the petitioners reference inclusion of the Texas coastline as part of the ''Gulf Coast'' snowy plover range; yet most references to population data are from Florida and, possibly, Alabama. No reference is made to the Caribbean population. The genetic studies performed by Gorman were reported earlier in the same year as the petition, and may not have been available to the petitioners prior to submission of the petition. Gorman (2000, pp. 36–38) made a recommendation that small management units based on demographic considerations might be adopted. Regardless of the petitioners' intention, they failed to provide a scientific name and to clearly identify the petitioned entity of the snowy plover.

Previous Federal Actions

The Pacific Coast vertebrate population segment of *Charadrius alexandrinus nivosus,* the Western snowy plover, was listed as threatened under the Act on March 5, 1993 (58 FR 12864). The Pacific coast population is defined as those individuals that nest within 50 miles of the Pacific Ocean on the mainland coast, peninsulas, offshore islands, bays, estuaries, or rivers of the United States and Baja California, Mexico. No other populations of the snowy plover are currently federally listed as threatened or endangered species.

Evaluation of Listable Entity

Upon receipt of a petition to list, delist, or reclassify a species, we are to consider whether such petition ''clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved'' (50 CFR 424.14(b)(2)(i)). Throughout the subject petition, the term ''snowy plover'' is used with references to the ''Gulf Coast'' without providing a scientific name or distinguishing the snowy plover as a species, subspecies, or population. At the time of receipt of the petition, the Pacific Coast population of the Western snowy plover was listed as a threatened species (March 5, 1993; 58 FR 12864). The snowy plover breeding and wintering ranges provided in the petition identified ranges of both the *Charadrius alexandrinus nivosus* and *C. a. tenuirostris.* Thus, the petition did not fully identify what constituted the entity and as petitioned, did not, therefore, meet the ''listable entity'' requirement for a substantial finding.

Piping Plover (*Charadrius melodus*)

Species Information

The piping plover is a small (6.7 to 7.1 inches (17 to 18 cm)) pale-colored migratory shorebird that breeds in three separate areas of North America: The Northern Great Plains, the Great Lakes, and the Atlantic Coast. The piping plover winters in coastal areas of the United States from North Carolina to Texas, along the coast of eastern Mexico, on Caribbean islands from Barbados to Cuba, and the Bahamas (Plissner and Haig 1997, pp. 8–9). Information from observation of color-banded piping plovers indicates that the winter ranges of the breeding populations overlap to a significant degree (Plissner and Haig 1997, pp. 9–11; Wemmer 2000, p. 47). The source breeding population of a given wintering individual bird cannot be determined in the field unless the individual bird has been banded or otherwise marked.

Piping plovers spend about two-thirds of the year on migratory and wintering grounds. Piping plovers begin arriving on the wintering grounds in July, with some late-nesting birds arriving in September. A few individuals can be found on the wintering grounds throughout the year, but sightings are rare in late May, June, and early July. Migration is poorly understood, but preliminary data suggest that plovers use inland and coastal stopover sites when migrating from interior breeding areas to wintering grounds (McConnaughey *et al.* 1990, p. 19). Observations of color-marked birds in Alabama indicated wintering plovers were least mobile from late November through late January (Johnson and Baldassarre 1988, p. 221). Concentrations of spring and fall migrants also have been observed along the Atlantic Coast (Service 1996, pp. 129–138). In late February, piping plovers begin leaving the wintering grounds to migrate back to breeding sites.

Habitat on the wintering grounds consists of exposed sandflats, beaches, washovers and algal flats. Mudflats and sandflats provide foraging areas where piping plovers feed primarily on marine and freshwater invertebrates. Foraging accounted for about 75 percent of observed piping plover behavior in an Alabama study (Johnson and Baldassarre 1988, p. 217). The number of plovers foraging in an area may be dependent on density of food sources (Zonick 2000, p. 90).

Two subspecies of piping plover, *Charadrius melodus melodus* (Atlantic Coast of North America) and *C. m. circumcinctus* (Northern Great Plains of North America), were recognized by the American Ornithological Union (AOU) in 1957 (5th edition of its Check-list 1957, pp. 167–168) and in 1983 (6th edition of its Check-list 1983, pp. 170–171). However, the AOU has not conducted a review of this subspecies distinction since that time. The Service accepts the characterization of the piping plover as two subspecies in North America, *C. m. melodus* and *C. m. circumcinctus.*

Previous Federal Actions

On December 11, 1985 (50 FR 50726; effective January 10, 1986), the piping plover (*Charadrius melodus)* was listed as endangered in the Great Lakes watershed of both the United States and Canada, and as threatened in the remainder of its range in the United States (Northern Great Plains, Atlantic and Gulf Coasts, Puerto Rico, Virgin Islands), Canada, Mexico, Bahamas, and the West Indies. The threatened status included all piping plover when on their wintering grounds.

Protection of the entire species *Charadrius melodus* under the Act reflects its status range wide. However, the Service has consistently recognized three separate breeding populations of piping plovers, on the Atlantic Coast, Great Lakes, and Northern Great Plains. A recovery plan established delisting criteria for the Atlantic Coast breeding population (Service 1996, pp. 57–58). A joint recovery plan specified separate delisting criteria for the Great Lakes and Northern Great Plains breeding populations (Service 1988, pp. 54–55). After the September 4, 2000, petition was submitted to the Service, critical habitat was designated for the Great Lakes (66 FR 22938; May 7, 2001) and Northern Great Plains breeding populations (67 FR 57637; September 11, 2002), and for piping plovers from the three breeding populations while on the wintering grounds (66 FR 36038; July 10, 2001).

Evaluation of Listable Entity

The petition asserts the ''Need to Designate the Wintering Gulf Population of Piping Plover as Endangered'' (petition, p. 6). The petition focused solely on conditions along the Gulf coast and the status of the piping plover along the Gulf coast. The petition did not differentiate between species, subspecies, and distinct population segments, nor did the petition include a scientific name in its recommendation to change the status of the piping plover to endangered within the Gulf of Mexico. However, the petitioners were responding to a proposed rule to designate critical habitat for the piping plover (*Charadrius melodus*) while on its wintering grounds (65 FR 41782; July 6, 2000) in the same document as the petition. The Service accepts the petition as a request to reclassify wintering piping plover of the listed entity *(C. melodus*) from a threatened to an endangered species.

Upon receipt of a petition to list, delist, or reclassify a species, we are to consider whether such petition ''clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved'' (50 CFR 424.14(b)(2)(i)). Under the Act, a species is defined as including any subspecies of fish or wildlife of plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532).

Piping plovers on their wintering or migration grounds, such as the Gulf coast, do not constitute a valid entity. The listing (50 FR 50726; December 11, 1985) of the species classified all piping plovers on the Great Lakes watershed breeding grounds as endangered and all other piping plover as threatened including on their breeding grounds in the Northern Great Plains and Atlantic Coast and on their migration and wintering grounds. This, along with the proposed designation of critical habitat for wintering piping plover, may have given the impression that the piping plover constitutes a listable entity while on its wintering grounds. However, this is not the case. Birds from all three of the recognized breeding grounds use and share the same Gulf coast wintering habitats. Thus, the birds on the wintering grounds are all of the listed entity *(C. melodus*) but from three separate recognized breeding grounds. Thus, the petition's identification of a ''Gulf wintering population of piping plover'' is, therefore, not a listable entity.

Finding

In summary, on the basis of our determination under section 4(b)(3)(A) of the Act, the petition does not present substantial information indicating that listing the snowy plover as threatened or endangered is warranted, because the entity as petitioned is not listable. No scientific name of the petitioned entity was provided, and there are two subspecies of the snowy plover accepted for North America.

The petition also does not present substantial information indicating that reclassifying piping plover while wintering on the Gulf coast as endangered is warranted, because the entity as petitioned is not listable. The piping plover, as currently listed, represents all of the three recognized breeding entities wherever they reside or winter in their life cycle. The petition does not specify a listable entity for the requested reclassification.

Although we will not review the status of the snowy plover or the piping plover at this time, we encourage interested parties to continue to gather data that will assist with the conservation of these species. If you wish to provide information regarding the snowy plover or piping plover, you may submit your information or materials to the Project Leader, U.S. Fish and Wildlife Service Panama City Field 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 U.S. Fish and Wildlife Service, Panama City Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service Panama City 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.*).

Dated: August 22, 2011.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–22900 Filed 9–7–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 76, No. 174

Thursday, September 8, 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

Agricultural Marketing Service

[Doc. No. AMS–PY–11–0064]

Regulations for the Inspection of Eggs (Shell Egg Surveillance), Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this document announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to a currently approved information collection in support of the shell egg surveillance portion of the Regulation for the Inspection of Eggs—7 CFR part 57.

DATES: Comments received by November 7, 2011 will be considered.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to David Bowden, Jr., Chief; Standards, Promotion & Technology Division; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0259; Washington, DC 20250–0259, fax (202) 720–2930. Comments should reference the document number (AMS–PY–11–0064) and the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection at the above address during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments received will be posted without change, including any personal information provided.

All responses to this document will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Contact Sara Lutton, Standards, Promotion, & Technology Division; Poultry Programs, AMS, U.S. Department of Agriculture; 1400 Independence Avenue, SW., Stop 0259; Washington, DC 20250–0259; phone (202) 720–0976; fax (202) 720–2930.

SUPPLEMENTARY INFORMATION:

Title: Regulations for the Inspection of Eggs (Egg Products Inspection Act).

OMB Number: 0581–0113.

Expiration Date of Approval: March 31, 2012.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1056 (EPIA)) to provide, in part, a mandatory inspection program to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs.

The EPIA authorizes the Department to issue regulations, to assure that only eggs fit for human food are used for such purposes.

Under the shell egg surveillance program, shell egg handlers are required to register with USDA. Quarterly, a State or Federal surveillance inspector visits each registered handler to verify that shell eggs packed for consumer use are in compliance, that restricted eggs are being disposed of properly, and that adequate records are being maintained.

The information and recordkeeping requirements in this request are essential to carry out the intent of Congress, to administer the mandatory inspection program, and to take regulatory action, in accordance with the regulations and the EPIA. The forms within this collection package require the minimum information necessary to effectively carry out the requirements of the regulations, and their use is necessary to fulfill the intent of the EPIA.

The information collected is used only by authorized representatives: AMS, Poultry Programs' national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies. The information is used to assure compliance with the EPIA and the regulations and to facilitate regulatory action. The Agency is the primary user of the information; secondary users include each authorized State agency that have a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.31 hours per response.

Respondents: State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

Estimated Number of Respondents: 853.

Estimated Number of Responses: 6,274.

Estimated Number of Responses per Respondent: 7.35.

Estimated Total Annual Burden on Respondents: 1936.58.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

Dated: September 2, 2011.

David Shipman,

Acting Administrator.

[FR Doc. 2011–22943 Filed 9–7–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture,

Agricultural Research Service, intends to grant to Western Seed Multiplication, Inc. of Wadmalaw Island, South Carolina, an exclusive license to the cowpea variety described in Plant Variety Protection Certificate Number 200500007, ''Whippersnapper,'' issued on September 20, 2007.

DATES: Comments must be received on or before October 11, 2011.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; *telephone:* 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's rights in this plant variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this variety as Western Seed Multiplication, Inc. of Wadmalaw Island, South Carolina has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2011–22898 Filed 9–7–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest; Montana; Divide Travel Plan EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Helena National Forest is preparing an Environmental Impact Statement (EIS) to analyze the effects of proposed changes to the existing motorized public access routes and prohibitions within the Divide travel planning area for wheeled and over-snow motorized vehicles. Consistent with Forest Service travel planning regulations, the designated wheeled motorized routes within the Divide Travel Planning Area will be displayed on a Motor Vehicle Use Map (MVUM) and made available to the public free of charge. Upon publishing the MVUM, public use of wheeled motor vehicles other than in accordance with designations would be prohibited.

DATES: Comments received as a result of the December 2008 scoping for the Divide Environmental Assessment will be included when compiling the comments received during this scoping process established by this Notice of Intent and do not need to be re-submitted. However, commenter will need to express interest during the upcoming Draft EIS 45 day comment period to participate in subsequent administrative review. Any new or additional comments concerning the scope of the analysis must be received by October 11, 2011. The draft environmental impact statement is expected October 2011 and the final environmental impact statement is expected mid winter 2012.

ADDRESSES: Send written comments to the Helena National Forest, ATTN: Divide Travel Plan; 2880 Skyway Drive, Helena, MT 59602. Comments may also be sent via e-mail to: *comments-northern-helena@fs.fed.us,* or via facsimile to 406–449–5436 with ''Divide Travel Plan'' in the subject line.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

FOR FURTHER INFORMATION CONTACT: Lori Wood, Helena District Ranger or Jaime Tompkins, Divide Travel Plan Interdisciplinary Team Leader at the Helena National Forest Supervisor's Office located at 2880 Skyway Drive, Helena, MT 59602, phone 406–449–5201 or at the HNF Web page at *http://www.fs.fed.us/R1/Helena.*

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 Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The overall objective of this proposal is to provide a manageable system of designated public motorized access routes and areas within the Divide area, consistent with and to achieve the purposes of Forest Service travel management regulations at 36 CFR part 212 subpart B. The existing system of available public motor vehicle routes and areas in the Divide area is the culmination of multiple agency decisions over recent decades. Public motor vehicle use of the majority of this available system continues to be manageable and consistent with the current travel management regulation. Exceptions have been identified, based on public input and the criteria listed at 36 CFR 212.55, and in these cases changes are proposed to meet the overall objectives.

Proposed Action

The HNF proposes the following changes to the existing motorized public access routes and prohibitions within the Divide travel planning area. These proposed changes would: reduce open road densities, reduce the total miles of open roads, and reduce the miles of motorized routes in two of the four Inventoried Roadless Areas (IRAs) within the project area (Jericho Mountain and Electric Peak). No areas would be designated for off-route wheeled motorized use other than the limited acception for dipsersed camping and parking. Consistent with the travel planning regulations at 36 CFR 212 Subpart B, the resulting available public motorized access routes and areas would be designated on a Motor Vehicle Use Map and public use of a motor vehicle other than in accordance with those designations would be prohibited as per 36 CFR 261.13. Following are the proposed changes within the Divide Planning Area:

- Close approximately 40 miles of roads to wheeled motorized vehicles year-long. Approximately 30 miles are currently open to highway legal vehicles year-long with no restrictions, and approximately 10 miles are open for part of the year with restrictions and different dates.
- Open approximately 106 miles of road to over-snow motorized use 12/2—5/15. Approximately 64 miles of these routes are in areas where cross country over-snow use is already permissable. Approximately 42 miles of the 106 miles are currently open; however, the use period dates are different.

• Close approximately 6.8 miles of road to over snow motorized vehicle travel.

• Places seasonal restrictions on all trails open to motorized wheeled vehicles 50'' or less. There are no seasonal restrictions in the existing condition.

• Approximately 4 miles of trail would be open to wheeled motorized vehicles 50'' or less from 5/15–10/14.

• Approximately 8.8 miles of the Continental Divide National Scenic Trail (CDNST) would be closed to wheeled motorized use.

• Closure of creek/river fords until the fords can be replaced by bridges, bottomless arches or culverts in the following locations FSR #4100 across the Little Blackfoot River; FSR #495–D1 across two unnamed streams in Section 28 and FSR #227–D1 across the Little Blackfoot River at Larabee Gulch.

• Installation of signs to clarify changes to the transportation system on the ground.

• Wheeled motorized vehicle travel for camping would be allowed within 300 feet of designated system routes, including roads and trails (unless signed otherwise) as long as: (1) No new permanent routes are created by this activity; (2) no damage to existing vegetation, soil, or water resource occurs; (3) travel off-route does not cross streams; and (4) travel off-route does not traverse riparian or wet areas.

• Designated roads or trails includes all terminal facilities, trailheads, parking lots, and turnouts associated with the road or trail. The designation would also include parking a motor vehilce on the side of the road when it is safe to do so without causing damage to NFS resource or facilities, unless prohibited by state law, a traffic sign, or an order (36 CFR 261.54). Parking would be limited up to 30 feet from the edge of the road surface.

Public use of a motor vehicle on routes and areas not included in the above designations, including currently available unauthorized routes of approximately 7 miles, would become prohibited pursuent to 36 CFR 212.50 and 261.13 at the time the Motor Vehicle Use Map is published.

Possible Alternatives

The following alternatives were developed in preparation of an environmental assessment and may represent reasonable or required alternatives to consider in the environmental impact statement.

Alternative 1—No Action

This alternative respresents the existing, baseline condition or trends by which the other alternatives are compared. Under the no action alternative, mangement of public motorized access would continue through the pre-existing system of prohibitions, including those decisions made in the Off-Highway Vehicle Record of Decision and Plan Amendment for Montana, North Dakota and portions of South Dakota (2001). This alternative would not implement the requirements of the 2005 travel management regulation at 36 CFR part 212 subpart B.

Alternative 2

During the 2008 scoping process, this alternative was presented as the proposed action. It was developed using the current Forest Transportation System maps, information from the 2004 Helena Roads Analysis, field verification, and public input from the 2008 scoping process. It provides more opportunities for motorized use on roads and trails including winter travel use.

Alternative 3

This alternative was developed in response from the 2008 scoping process input regarding wildlife security issues, non-motorized uses, and general resource concerns relative to erosion and sedimentation from road conditions. It reduces motorized use on the CDNST and would reduce potential resource impacts in areas such as Sweeny Creek and Kading/Limburger Springs areas.

Responsible Official

The Responsible Official is Kevin T. Riordan, Helena Forest Supervisor.

Nature of Decision To Be Made

The responsible official will decide whether to implement the proposed action, no action or other alternatives considered under analysis. He will consider the comments, disclosures of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision. Upon completion of this plan, an implementation plan would be developed that would analyze methods for closure of routes identified from this decision. Additional NEPA may be required prior to implementation.

Preliminary Issues

Public input from the 2008 scoping process identified several areas of particular interest to the public. Many comments spoke specifically to the CDNST, and Sweeny Creek, Kading/Limburger Springs, and Electric Peak areas. These areas generated the most public interest regarding motorized and non-motorized uses.

Forest Plan Consistancy

Preliminary analysis indicates this proposal may require a programmatic amendment to the HNF plan for the project area regarding the standard for the hiding cover/open road density index. The proposed programmatic plan amendment would establish a new standard for elk security for those herd units within the project area. As a result, the Forest Plan standard would be amended specifically at this time and place as it relates to the Divide Travel Planning Area.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Public comments received during the December 2008 scoping process for the initial Environmental Assessment were taken into consideration in developing the above Alternatives. These comments do not need to be resubmitted; the HNF requests that only new or additional be submitted. Comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Public meetings will not be held; however, if an individual, group or organization have any questions or would like to set up a meeting please contact Lori Wood, Helena District Ranger or Jaime Tompkins, Divide Travel Plan Interdisciplinary Team Leader at the Helena National Forest office located at 2880 Skyway Drive, Helena, MT 59602, or phone 406–449–5201.

Dated: August 31, 2011.

Kevin T. Riordan,

Forest Supervisor.

[FR Doc. 2011–22929 Filed 9–7–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Butte County Resource Advisory Committee will meet in Oroville, CA. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review Cycle 2 project applications for potential funding recommendations to National Forest Supervisors.

DATES: The meeting will be held September 26, 2011 from 6–9:30 p.m. This meeting was rescheduled from August 29, 2011.

ADDRESSES: The meeting will be held at the Feather River Ranger District Conference Room located at 875 Mitchell Ave, Oroville, CA Written comments may be submitted as described under Supplementary Information. 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 Plumas National Forest Supervisor's Office. Please call ahead to 530–283–7850 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: (or for special needs): Lee Anne Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.* Other RAC information may be obtained at *http://www.fs.usda.gov* and *http://www.fs.fed.us/srs.* 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. Please make requests a minimum of 5 days in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Committee Review of Cycle 2 project applications for potential funding recommendations to Lassen, Plumas or Mendocino National Forest Supervisors. An agenda and other information will be posted at *http://www.fs.fed.us/srs.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less after being recognized by the Committee Chair.

A summary of the meeting will be posted at *http://www.fs.fed.us/srs* within 21 days of the meeting.

August 31, 2011.

Laurence Crabtree,

Acting Forest Supervisor .

[FR Doc. 2011–22936 Filed 9–7–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA664

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is revising the agenda for a public meeting of its Scientific and Statistical Committee (SSC) on September 14, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, September 14, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Hilton Providence, 21 Atwells Avenue, Providence, RI 02903; *telephone:* (401) 831–3900; *fax:* (407) 751–0007.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The original meeting notice published on August 26, 2011 (76 FR 53415). The meeting was to be held on September 14 and 15, however, the meeting for September 15th is cancelled.

Wednesday, September 14, 2011

The Scientific and Statistical Committee will recommend ABCs for the Northeast Multispecies Fishery Management Plan for FY 2012–14. Additionally, the SSC will develop comments on terms of reference for upcoming assessments for Atlantic sea herring and Southern New England yellowtail flounder scheduled for the 54th Stock Assessment Workshop (SAW) in 2012.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 1, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–22914 Filed 9–7–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA687

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council), it's Groundfish Advisory Panel and Plan Development Team along with its Scientific and Statistical Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The workshop will be held on Tuesday, October 25, 2011 at 8:30 a.m.

and Wednesday, October 26, 2011 at 8:30 a.m.

ADDRESSES: The workshop will be held at the Holiday Inn By the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 772–4017.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The New England Fishery Management Council (NEFMC) will host a ''lessons learned'' workshop following a year of sector operations under the regulations initiated by the Council in Amendment 16 to the Northeast Multispecies (Groundfish) Plan. Topics to be discussed include: What elements of sector management have worked, or not, over the past year; sector annual reports; Northeast Fisheries Science Center one-year sector performance report; comparison of Amendment 16 goals and objectives vs. outcomes; and problems that have impeded sector operations, among other issues.

Following reports on sector performance and presentations from sector representatives, the Council will consider recommendations for improvements to the sector program for inclusion in its priorities discussion at the NEFMC meeting in Newport, RI in November, 2011.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: September 2, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–22970 Filed 9–7–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA688

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: A public meeting of the Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) Groundfish Subcommittee will be held to review at least two new assessments of west coast groundfish species and new rebuilding analyses for seven west coast groundfish species. This meeting is a work session which is open to the public.

DATES: The SSC Groundfish Subcommittee meeting to review new groundfish stock assessments and rebuilding analyses will be held beginning at 8:30 a.m., Monday, September 26, 2011 and will continue through Friday, September 30, 2011. The meeting will convene at 8:30 a.m. and will end at 5:30 p.m. or as necessary to complete business each day during the week.

ADDRESSES: The SSC Groundfish Subcommittee meeting will be held at the National Oceanic and Atmospheric Administration (NOAA) Western Regional Center's Sand Point Facility, Alaska Fisheries Science Center, Traynor Room in Building 4, 7600 Sand Point Way NE., Seattle, WA 98115–6349; *telephone:* (206) 526–4000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Fishery Management Council; *telephone:* (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the SSC Groundfish Subcommittee meeting is to review new draft stock assessments for bocaccio and darkblotched rockfish, and possibly a new draft assessment for widow rockfish pending a decision by the SSC at their September 13–15 meeting in San Mateo, CA. Further, the SSC Groundfish Subcommittee will review new draft rebuilding analyses and other pertinent information for bocaccio, canary rockfish, darkblotched rockfish, Pacific ocean perch, widow rockfish, yelloweye rockfish, and petrale sole, work with the Stock Assessment Teams to make necessary revisions, and ultimately produce an SSC Groundfish Subcommittee report for use by the Council family and other interested persons. These new assessments and rebuilding analyses will be used to analyze 2013–14 harvest specifications and to develop or modify rebuilding plans for these species.

No management actions will be decided at this SSC Groundfish Subcommittee meeting. The SSC Groundfish Subcommittees' role will be development of recommendations and reports for consideration by the SSC and the Council at its November meeting in Costa Mesa, CA.

Entry to the NOAA Western Regional Center's Sand Point Facility requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NOAA Western Regional Center's Facility, will be issued to non-Federal employees participating in the meeting.

Although non-emergency issues not contained in the meeting agendas may come before the meeting participants for discussion, those issues may not be the subject of formal action during these meetings. SSC Groundfish Subcommittee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the meeting participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: September 2, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–22971 Filed 9–7–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA689

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a four-day meeting Monday through Thursday, September 26–29, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Monday, Tuesday, Wednesday and Thursday, September 26–29, starting at 9 a.m. on Monday, and at 8 a.m. on Tuesday, Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Coco Key Hotel and Resort, 50 Ferncroft Rd. Danvers, MA 01923; *telephone:* (978) 750–2500; *fax:* (978) 750–7959. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; *telephone:* (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Monday, September 26, 2011

Following introductions and any announcements, the NMFS Regional Administrator will swear in new members and the Council will elect 2011–2012 officers. These exercises will be followed by brief reports from the NEFMC Chairman and Executive Director, NOAA Fisheries Regional Administrator (Northeast Region), Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission, and staff from the Vessel Monitoring Systems Operations and Law Enforcement offices. There also will be a review of any experimental fishery permit applications that have been made available for review since the June Council meeting. An open period for public comments will follow at which any interested party may provide brief comments on issues relevant to Council business but not listed on the meeting agenda. During the afternoon session the NMFS Regional Administrator and Acting Science Center Director will provide a follow-up summary of actions taken in response to an April 2011 report commissioned by NMFS that reviewed the fisheries management process in the Northeast in the context of the effectiveness of the relationship among Council, the NMFS Regional Office and the Northeast Fisheries Science Center. The Council Chairman and staff will provide similar reports on this topic. The day will conclude with a preliminary discussion of the Council's 2012 fisheries management priorities.

Tuesday, September 27, 2011

The Council's Monkfish Committee will summarize its discussion about goals and objectives for Amendment 6 to the Monkfish Fishery Management Plan (FMP) and seek approval as appropriate. The Skate Committee report will follow in which it will ask for final Council approval of a fishery specifications package for 2012–2013. Possible changes could affect the annual catch limits, total allowable landings and include monitoring adjustments. The Council then will receive a summary of the most recent Stock Assessment Workshop/Stock Assessment Review Committee meeting findings concerning the status of three winter flounder stocks. The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) will provide a general update on its activities and review two offshore energy proposals that are currently available for public comment. The Scientific and Statistical Committee (SSC) chairman will review the committee's recommendations concerning ABC's for a number of groundfish stocks in the Northeast multispecies complex and the whiting and hake stocks that are regulated under the Multispecies Fishery FMP. The Council is scheduled to take final action on Framework 23 to the Scallop FMP. The alternatives proposed relate to four specific issues: (1) A turtle deflector dredge for scallop dredge vessels; (2) Revisions to the yellowtail flounder accountability measures proposed in Amendment 15; (3) Modification to how catch in state waters is accounted for in the limited access general category management program for the Northern Gulf of Maine area; and (4) An adjustment to when a scallop vessel declares into the scallop fishery to improve scallop fleet operations.

Wednesday, September 28, 2011

The Groundfish Committee Report will include a range if items: (1) Approval of a scoping document for an amendment to consider accumulation limits and fleet diversity in the groundfish fishery; (2) An update on the upcoming sector workshop scheduled for October; (3) An update on Framework Adjustment 47 to the Northeast Multispecies FMP, including recommendations that address accountability measures for ocean pout, windowpane flounder, Atlantic halibut, and Atlantic wolffish, alternative Georges Bank yellowtail flounder rebuilding strategies, and ABCs for fishing year 2012–2014; (4) A report on the 2011 Transboundary Resources Assessment Committee's review of the status of Eastern Georges Bank cod and haddock, and Georges Bank yellowtail flounder; and (5) Consideration and possible approval of the Transboundary Management Guidance Committee's recommendations for fishing year 2012 quotas for Eastern Georges Bank cod and haddock, and Georges Bank yellowtail flounder. Two reports will be presented to the Council during the afternoon session. The first is an overview of the report ''At-sea and Dockside Monitoring Programs in the Northeast'' and the second will be an update to the NEFSC Report ''Performance of the Northeast Groundfish Fishery Interim Report for Fishing Year 2010 (May 2010–January 2011).'' During the Whiting Committee Report the Council intends to approve management alternatives for inclusion in a Draft Environmental Impact Statement for Multispecies FMP Amendment 19 (to address the small mesh fishery which includes stocks of red hake, silver hake, offshore hake).

Thursday, September 29, 2011

The Council will review the Draft Terms of Reference for the upcoming benchmark stock assessment for herring scheduled for June 2012 and forward any recommendations to the Northeast Regional Coordinating Committee. The Herring Committee will review and ask for approval of a Draft Environmental Impact Statement for Amendment 5 to the Atlantic Herring FMP for the purpose of further review and comment at public hearings. During the discussion the Council intends to address any outstanding/unresolved issues regarding the management alternatives under consideration, review Herring Advisory Panel comments regarding Amendment 5 and review/discuss the Amendment 5 impact analyses. It also could identify preferred alternatives for public hearings.

Amendment 5 alternatives currently address adjustments to the fishery management program and reporting requirements for vessels and dealers, measures to address trip notification requirements, carrier vessels, and transfers of herring at-sea. It also may include a catch monitoring program that could maximize sampling and address net slippage, alternatives to allocate observer coverage on limited access herring vessels, river herring bycatch and criteria for midwater trawl vessel access to year-round groundfish closed areas.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 2, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–22972 Filed 9–7–11; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, September 14, 2011; 11 a.m.–12 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 6, 2011.

Todd A Stevenson,

Secretary.

[FR Doc. 2011–23110 Filed 9–6–11; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, September 14, 2011, 10–11 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Decisional Matter: Proposed Standard for Play Yards.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: September 6, 2011.

Todd A. Stevenson,

Secretary.

[FR Doc. 2011–23109 Filed 9–6–11; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 11–C0010]

Sunsations 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). Published below is a provisionally-accepted Settlement Agreement with Sunsations Inc., containing a civil penalty of $60,000.00.

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 September 23, 2011.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11–C0010, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Mary B. Murphy, Assistant General Counsel, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7809.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 1, 2011.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Sunsations Inc., including its officers, agents, directors, and assigns (collectively, ''Sunsations''), and the staff of the United States Consumer Product Safety Commission (''Commission'' or ''Staff'') 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. Sunsations is a corporation, organized and existing under the laws of Virginia, with its principal offices located in Virginia Beach, Virginia. At all relevant times, Sunsations sold apparel, accessories, and other products.

Staff Allegations

4. Between March 2008 and November 2010, Sunsations sold and/or held for sale various children's upper outerwear products with drawstrings at the hood or neck. Specifically, from March 2008 through July 2009, Sunsations sold and/or held for sale children's upper outerwear products with drawstrings at the hood or neck (sweatshirts), manufactured by GJC International and Top Image USA. From May 2009 through November 2010, Sunsations sold and/or held for sale

children's upper outerwear products with drawstrings at the hood or neck (sweatshirts), manufactured by Exist Inc. and Ragwear. The products identified in this paragraph are referenced collectively in this document as the ''Sweatshirts.''

5. The Sweatshirts were sold and/or held for sale to consumers by Sunsations.

6. The Sweatshirts are ''consumer product[s],'' and, at all relevant times, Sunsations was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(5), (8), and (13), 15 U.S.C. 2052(a)(5), (8), and (13).

7. In February 1996, 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, Staff recommends that no children's upper outerwear sizes 2T to 12 be manufactured or sold to consumers with hood and neck drawstrings.

8. In June 1997, ASTM adopted a voluntary standard (ASTM F1816–97) incorporating the Guidelines. The Guidelines state that firms should be aware of the hazards of children's upper outerwear products with drawstrings at the hood or neck and should ensure that garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website 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 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 sets forth the reporting requirements of CPSA section 15(b), 15 U.S.C. 2064(b).

10. Sunsations' distribution in commerce of the Sweatshirts 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 December 3, 2009 and March 10, 2011, the Commission announced Sunsations' recalls of the Sweatshirts.

12. Sunsations had presumed and actual knowledge that the Sweatshirts 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). Sunsations had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that the Sweatshirts created an unreasonable risk of serious injury or death. Pursuant to CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), Sunsations was required to inform the Commission immediately of the defect and risk.

13. Sunsations knowingly failed to inform the Commission immediately about the Sweatshirts, 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 Sunsations to civil penalties.

Response of Sunsations

14. Between April 2006 and July 2009, Staff alleged that Sunsations sold and/or held for sale various children's upper outerwear products with drawstrings at the hood or neck. From May 2009 through November 2010, Staff also alleged that Sunsations sold and/or held for sale upper outerwear products manufactured by Exist Inc. and Ragwear, labeled sizes ''S,'' ''M,'' and ''L,'' and bearing drawstrings at the hood or neck, which Staff alleged were equivalent to children's sizes 2T through 12. Sunsations and its agents, officers, and employees deny Staff's allegations in paragraphs 4–13 above, including the allegation that Sunsations violated the CPSA.

15. Sunsations maintains that it never received any information that would support the conclusion that any hooded sweatshirts it sold were defective, within the meaning of the CPSA, until Staff contacted Sunsations in July 2009. Specifically, Sunsations maintains that it never received the Commission's 2006 letter.

16. Immediately after Staff contacted Sunsations in July 2009, Sunsations initiated a recall of all defective products and offered consumers a full refund. The recall encompassed garments sold by stores in Virginia Beach, Virginia, Ocean City, Maryland, and North Carolina from April 2006 through July 2009.

17. In December 2009, Sunsations initiated a recall of sweatshirts manufactured by GJC International and Top Image USA and offered consumers a full refund for sweatshirts sold at stores in Virginia Beach, VA, Ocean City, MD, and North Carolina from April 2006 to July 2009. In March 2011, Sunsations initiated a recall of sweatshirts manufactured by Exist Inc. and Ragwear and offered consumers a full refund for sweatshirts sold at stores in Virginia Beach, Virginia, Ocean City, Maryland, and North Carolina from May 2009 through November 2010.

18. The Agreement and Order do not constitute an admission of liability on the part of Sunsations.

Agreement of the Parties

19. Under the CPSA, the Commission has jurisdiction over this matter and over Sunsations.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Sunsations, or a determination by the Commission, that Sunsations knowingly violated the CPSA.

21. In settlement of Staff's allegations, Sunsations shall pay a civil penalty in the amount of sixty thousand dollars ($60,000.00). 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 electronically to the Commission *via http://www.pay.gov.*

22. The Commission will not seek any additional civil penalties from Sunsations for possible violations of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), regarding the alleged violations, or with respect to information contained in the Full Reports under CPSC § 15(b), 15 U.S.C. 2064(b), and 16 CFR 1115.13(d), as of the date of the signing of this agreement.

23. Sunsations shall conduct a comprehensive review of its existing apparel inventory for purposes of identifying any upper outerwear bearing drawstrings at the hood or neck (''Drawstring Garments''), irrespective of whether such garments are are sized, marketed, or otherwise intended for use by children. Through this review, an Inventory Review Completion Report will be prepared and submitted to Staff by Sunsations no later than ten (10) calendar days of service of the Commission's final Order accepting the agreement. A purpose of this inventory review is to provide guidance to Sunsations for determining what constitutes children's upper outerwear within the meaning of the ASTM

F1816–97 voluntary standard and related Commission guidelines.

24. Sunsations shall designate an employee to serve as its Product Safety Manager (''Manager''). The Manager's duties will include, but will not be limited to, reviewing Sunsations' current and future purchases of upper outerwear to ensure that Sunsations does not purchase for sale or distribute in commerce, children's upper outerwear with drawstrings at the neck or hood.

25. The Inventory Review Completion Report shall include, to the extent available, the following information:

a. A description (by style number) of the Drawstring Garments in inventory that Sunsations reviewed, and the approximate number of units of each Drawstring Garment that Sunsations holds in inventory as of the date of signing of this agreement;

b. The style, most recent date(s) of purchase, the identity of the company/ies from which the Drawstring Garments was/were purchased, and (if applicable) the period of time during which Sunsations sold or offered for sale the Drawstring Garments;

c. One sample of each available size of each Drawstring Garment identified during the course of the inventory review;

d. A description of the step(s) Sunsations has taken to ameliorate the strangulation hazards posed by each of the Drawstring Garments;

e. The identity of the Manager who Sunsations has designated as responsible for Product Safety;

f. A proposal outlining the methods by which the Manager will ensure that, from this point forward, Sunsations does not purchase children's upper outerwear bearing drawstrings; and

g. The following certification signed by an officer of Sunsations:

Pursuant to 28 U.S.C. 1746, I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that the information is true and correct. I am aware that there are significant penalties for submitting false information to federal officials, including the possibility of fines and imprisonment.

h. The report shall be directed to the following Staff: Seth Popkin, Lead Trial Attorney, Office of the General Counsel, Division of Compliance, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

26. Sunsations will not be liable for possible violations of subsection 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), based on any information that Sunsations reports to the Commission as part of the Inventory Review Completion Report described in paragraph 25 above. However, Sunsations remains potentially liable for other possible violations of section 19(a) of the CPSA, 15 U.S.C. 2068(a), for information reported to the Commission after the date of the signing of this agreement. Except as expressly provided in this document, nothing in this Agreement is intended, nor may it be construed to alter Sunsations' potential liabilities under any and all applicable laws, statutory provisions, regulations, rules, standards, and/or bans enforced and administered by the Commission.

27. 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 CFR 1118.20(e). In accordance with 16 CFR 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**.

28. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Sunsations 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 Sunsations 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.

29. The Commission may publicize the terms of the Agreement and the Order.

30. The Agreement and the Order shall apply to, and be binding upon, Sunsations and each of its successors and assigns.

31. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Sunsations and each of its successors and assigns to appropriate legal action.

32. 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.

33. 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 Sunsations agree that severing the provision materially affects the purpose of the Agreement and the Order.

34. Sunsations represents that before making this Agreement it has consulted with its attorneys, and that its attorneys have participated in negotiating the substance of this Agreement and have reviewed the language of the Agreement. Sunsations represents that it is fully satisfied with the services of its attorneys with respect to the Agreement, and that it has entered into the Agreement voluntarily and with full knowledge of its legal rights.

Sunsations Inc.

Dated: August 11, 2011. By:

Yaron Sibony, *President, Sunsations Inc., 353 Village Road, Virginia Beach, VA 23454.*

U.S. Consumer Product Safety Commission Staff.

Cheryl A. Falvey, *General Counsel.*

Mary B. Murphy, *Assistant General Counsel, Office of the General Counsel.*

Dated: August 12, 2011. By:

Jason E. Yearout, *Trial Attorney, Division of Compliance, Office of the General Counsel.*

Order

Upon consideration of the Settlement Agreement entered into between Sunsations Inc. (''Sunsations'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Sunsations, 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 Sunsations shall pay a civil penalty in the amount of sixty thousand dollars ($60,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via *http://www.pay.gov.* Upon the failure of Sunsations to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Sunsations at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 1st day of September, 2011.

By Order of the Commission.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–22879 Filed 9–7–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 11–33]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–33 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 2, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

AUG 3 0 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-33, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Norway for defense articles and services estimated to cost $95 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Norway.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$45 million
Other	$50 million
Total	$95 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Procurement and installation of 4 AN/USQ–78B Acoustic Processor Technology Refresh (APTR), 4 AN/ASQ–227 Aircraft Mission Computers, and 2 Tactical Mobile Acoustic Support Systems on four Royal Norwegian Air Force P–3C aircraft, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support.

(iv) *Military Department:* Navy (LCF).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* August 30, 2011.

Policy Justification

Norway—Procure and Install Equipment on P–3C Aircraft

The Government of Norway has requested a possible sale for the procurement and installation of 4 AN/USQ–78B Acoustic Processor Technology Refresh (APTR), 4AN/ASQ–227 Aircraft Mission Computers, and 2 Tactical Mobile Acoustic Support Systems on four Royal Norwegian Air Force P–3C aircraft, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering, technical and logistics support services, and other related elements of logistical and program support. The estimated cost is $95 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a NATO ally that has been, and continues to be, an important force for economic and political stability.

The proposed sale will update hardware and ensure the sustainment of data provided to the United States as part of various data sharing agreements already in place with the Government of Norway in the area of anti-submarine warfare. Norway will have no difficulty absorbing the additional equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Lockheed Martin Corporation in Owego, New York. Offset agreements associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractors.

Implementation of this proposed sale will require U.S. Government and contractor representatives to travel to Norway to participate in periodic program technical reviews, training and support visits, and maintenance and support visits semi-annually for a period of four years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–22930 Filed 9–7–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10 (a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is for the Committee to receive a follow-up briefing from the Sexual Assault Prevention and Response Office and the Services on the Committee's requests for information concerning sexual assault and sexual harassment. Additionally, the Committee will develop and approve recommendations for the 2011 report. The meeting is open to the public, subject to the availability of space.

Interested persons may submit a written statement for consideration by the Defense Advisory Committee on Women in the Services. Individuals submitting a written statement must submit their statement to the Point of Contact listed below at the address detailed below no later than 5 p.m., Tuesday, September 20, 2011. If a written statement is not received by Tuesday, September 20, 2011, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Advisory Committee on Women in the Services until its next open meeting. The Designated Federal Officer will review all timely submissions with the Defense Advisory Committee on Women in the Services Chairperson and ensure they are provided to the members of the Defense Advisory Committee on Women in the Services. If members of the public are interested in making an oral statement, a written statement should be submitted as above. After reviewing the written comments, the Chairperson and the Designated Federal Officer will determine who of the requesting persons will be able to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the Designated Federal Officer and will depend on time available and if the topics are relevant to the Committee's activities. Two minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Thursday, September 22, 2011 from 4:15 p.m. to 5 p.m. in front of the full Committee. Number of oral presentations to be made will depend on the number of requests received from members of the public.

DATES: September 22, 2011, 8 a.m.–5 p.m.; September 23, 2011, 8 a.m.–12 p.m.

ADDRESSES: Sheraton National Hotel, 900 Orme St, Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Bowling or DACOWITS Staff at 4000 Defense Pentagon, Room 2C548A, Washington, DC 20301–4000. E-mail: Robert.bowling@osd.mil. Telephone (703) 697–2122. Fax (703) 614–6233.

SUPPLEMENTARY INFORMATION:

Meeting Agenda

Thursday, September 22, 2011, 8 a.m.–5 p.m.

—Welcome, introductions, and announcements.
—Receive briefings from the Sexual Assault Prevention and Response Office on sexual assault and harassment information.
—Receive briefings from the Services on sexual assault and harassment information.
—Public Forum.

Friday, September 23, 2011, 8 a.m.–12 p.m.

—Committee develops and approves recommendations for 2011 report.

Dated: September 2, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23002 Filed 9–7–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement/Overseas Environmental Impact Statement for Military Readiness Activities in the Mariana Islands Training and Testing Study Area and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations parts 1500–1508), and

Executive Order 12114, the Department of the Navy (DoN) announces its intent to prepare an Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) to evaluate the potential environmental effects associated with maintaining military readiness training and research, development, testing, and evaluation (hereafter referred to as ''training and testing'') activities conducted in the Mariana Islands Training and Testing (MITT) EIS/OEIS Study Area. The MITT Study Area includes the existing Mariana Islands Range Complex (MIRC), additional areas on the high seas, and a general transit corridor between Hawaii to MITT where training and testing activities may occur. The MIRC is the only major Navy range complex in the Study Area.

The DoN is preparing this EIS/OEIS to renew current regulatory permits and authorizations, address current training and testing not covered under existing permits and authorizations, and to obtain those permits and authorizations necessary to support force structure changes and emerging and future training and testing requirements including those associated with new platforms and weapons systems within the MITT Study Area, starting in 2015, thereby ensuring critical Department of Defense (DoD) requirements are met.

The DoN will invite the National Marine Fisheries Service, United States (U.S.) Fish and Wildlife Service (Pacific Islands Fish and Wildlife Office), and U.S. Air Force, to be cooperating agencies in preparation of the EIS/OEIS.

DATES AND ADDRESSES: Five public scoping meetings will be held between 5 and 8 p.m. on:

1. Thursday, September 22, 2011, at the University of Guam, Leon Guerrero School of Business and Public Administration Building, Anthony Leon Guerrero Multi-Purpose Room 129, Mangilao, Guam 96923.
2. Friday, September 23, 2011, at the Southern High School Cafeteria, #1 Jose Perez Leon Guerrero Drive, Santa Rita, Guam 96915.
3. Monday, September 26, 2011, at the Multi-Purpose Center in Susupe, Saipan 96950.
4. Tuesday, September 27, 2011, at the Tinian High School Cafeteria, San Jose Village, Tinian, MP 96952.
5. Wednesday, September 28, 2011, at the Sinapalo Elementary School Cafeteria, Sinapalo I, Songsong Village, Rota, MP 96951

Each of the five scoping meetings will consist of an informal, open house session with information stations staffed by DoN representatives. Meeting details will be announced in local newspapers. Additional information concerning meeting times will be available on the EIS/OEIS Web page located at: *http://www.mitt-eis.com.*

FOR FURTHER INFORMATION CONTACT: Ms. Nora Macariola-See, Naval Facilities Engineering Command, Pacific. Attention: MITT EIS/OEIS, 258 Makalapa Drive, Suite 100, Building 258, Floor 3, Pearl Harbor, Hawaii 96860–3134.

SUPPLEMENTARY INFORMATION: The DoN's proposed action is to conduct military training and testing activities, including the use of active sonar and explosives, within the MITT Study Area. While the majority of training and testing activities take place in established training and testing areas, some activities, such as sonar maintenance and gunnery exercises are conducted concurrent with normal transits.

The MIRC is one component of the MITT Study Area, encompassing 501,873 square nautical miles of open ocean. In addition to the areas covered within the MIRC, the Study Area also includes additional areas on the high seas and transit corridors where training and testing activities may occur.

The proposed action is to conduct military training and testing activities in the MITT study area. The purpose of the proposed action is to achieve and maintain military readiness to meet the requirements of Title 10 of the U.S. Code, thereby ensuring that the DoN and other Services meet their mission to maintain, train, and equip combat-ready military forces capable of winning wars, deterring aggression, and maintaining freedom of the seas.

Three alternatives will be analyzed in the MITT EIS/OEIS. The No Action Alternative would continue baseline training and testing activities, as defined by existing environmental planning documents.

Alternative 1 consists of baseline training and testing activities and overall expansion of the Study Area plus adjustments to types and levels of activities as necessary to support current and planned military training and testing requirements. This Alternative considers activities conducted throughout the Study Area and mission requirements associated with force structure changes, including those resulting from the development, testing, and ultimate introduction of new platforms (vessels, aircraft) and weapons systems.

Alternative 2 consists of Alternative 1 plus the establishment of new range capabilities, modifications of existing capabilities, adjustments to type and tempo of training and testing activities, and the establishment of additional locations to conduct training and testing activities within the Study Area.

Resource areas that will be addressed because of the potential effects from the Proposed Action include, but are not limited to, ocean and biological resources (including marine mammals and threatened and endangered species), terrestrial resources, air quality, noise, cultural resources, transportation, regional economy, recreation, and public health and safety.

The scoping process will be used to identify community concerns and local issues that will be addressed in the EIS/OEIS. Federal agencies, state agencies, local agencies, the public, and interested persons are encouraged to provide comments to the DoN to identify specific issues or topics of environmental concern that the commenter believes the DoN should consider. All comments provided orally or in writing at the scoping meetings, will receive the same consideration during EIS/OEIS preparation. Written comments must be postmarked no later than November 7, 2011, and should be mailed to: Naval Facilities Engineering Command, Pacific, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96869–3134, Attention: MITT EIS/OEIS Project Manager.

Dated: September 1, 2011.

L.M. Senay,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2011–22985 Filed 9–7–11; 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, Privacy, Information and

Records Management Services, Office of Management, 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 November 7, 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: September 2, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan (Direct Loan) Program, Federal Perkins Loan (Perkins) Program, and Teacher Education Assistance for College and Higher Education (TEACH) Grant Program: Discharge Application: Total and Permanent Disability.

OMB Control Number: 1845–0065.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 30,000.

Total Estimated Number of Annual Burden Hours: 15,000.

Abstract: The Discharge Application: Total and Permanent Disability serves as the means by which an individual who is totally and permanently disabled, as defined in § 437(a)(1) of the Higher Education Act of 1965, as amended, applies for discharge of his or her Direct Loan, Federal Family Education Loan, or Perkins loan program loans, or Teacher Education Assistance for College Higher Education Grant service obligation. The form collects the information that is needed by the U.S. Department of Education to determine the individual's eligibility for discharge based on total and permanent disability.

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 4709. 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. 2011–23004 Filed 9–7–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 11, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: August 31, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Migrant Education Program Regulations and Certificate of Eligibility.

OMB Control Number: 1810–0662.

Agency Form Number(s): N/A.

Frequency of Responses: Annually; biennially; once.

Affected Public: Individuals or households; not-for-profit institutions.

Total Estimated Number of Annual Responses: 230,048.

Total Estimated Annual Burden Hours: 408,633.

Abstract: The regulations for Title I, Part C establish minimum requirements for a State Educational Agency (SEA) comprehensive needs assessment, plan for service delivery, and program evaluation. The regulations also establish minimum requirements for documenting eligibility, re-interviewing,

and establishing a system of quality controls. The Secretary will use the information collected to monitor the accuracy of program eligibility determinations, make needed improvements, and adjust State Migrant Education Program (MEP) allocations based on reported defect rates.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4619. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–22968 Filed 9–7–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 11, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 1, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title of Collection: Correction Action Plan.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually; quarterly.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 60.

Total Estimated Annual Burden Hours: 975.

Abstract: Pursuant to Section 107(a) of the Rehabilitation Act of 1973, as amended, the Rehabilitation Services Administration (RSA) must conduct periodic monitoring of the Vocational Rehabilitation (VR) programs in each state. As a result of this monitoring, RSA may require that VR agencies to develop a Corrective Action Plan (CAP) in order to resolve findings of non-compliance. The CAP must contain the specific steps that the agency will take to resolve each finding, timelines for the completion of each step and methods for evaluating that the findings have been resolved. RSA requires the agency to report progress toward completion of the CAP on a quarterly basis.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4654. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–22969 Filed 9–7–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 11, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 1, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title of Collection: Program Improvement Plan.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually; quarterly.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 20.

Total Estimated Annual Burden Hours: 125.

Abstract: Pursuant to Section 106 of the Rehabilitation Act of 1973, as amended, Vocational Rehabilitation agencies found to be out of compliance with federal requirements as a result of failing to meet established performance standards must develop for Rehabilitation Service Administration (RSA) approval a program improvement plan (PIP) using the on-line form located on the RSA management information system. The PIP must contain goals established by the agency, including measurable targets, by which it will assess its progress toward meeting the required minimum performance levels, along with strategies for the achievement of the goals. In accordance with regulations at 34 CFR 361.89(c), RSA reviews an agency's progress toward achieving the goals established in the PIP. For this purpose, it requires that the agency report its progress on a quarterly basis.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4656. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–22976 Filed 9–7–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before October 11, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: September 1, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: Annual Progress Report for the Access to Telework Program under the Rehabilitation Act of 1973, as Amended.

OMB Control Number: 1820–0687.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 19.

Total Estimated Annual Burden Hours: 219.

Abstract: Nineteen states currently have Access to Telework programs that provide financial loans to individuals with disabilities for the purchase of computers and other equipment that support teleworking for an employer or self-employment on a full or part-time basis. These grantees are required to report annual data on their programs to the Rehabilitation Services Administration. This information collection provides a standard format for the submission of those annual performance reports and a follow-up survey to be administered to individuals who receive loans.

The proposed instrument eliminates an entire section of optional information that is not required for submission by the Telework grantees, further reducing the burden from approximately 12.5 hours to 11 hours per state. Section C. Telework Optional Data Elements, which are not annual reporting requirements for the Telework grantees, has been proposed for removal from the current instrument. The information

collected in this optional data section includes: 1. Types of Telework programs (partnership loans or revolving loans), 2. Interest Rates (lowest and highest interest rates established by policy), 3. Loan Amounts (lowest and highest loan amounts established by policy), 4. Repayment Terms (shortest and longest repayment terms established by policy), and Loan Guarantee Requirement, the percentage of the loans that must be repaid by the alternative financing program to the lender in case of default as established by the agreement with the lender. Since the data reported under C. Telework Optional Data Elements of the current instrument is not required, grantees did not report this information uniformly across programs. If every grantee doesn't report in this section, then the data can't be reported in aggregate form. This optional section contains information about program features and descriptions that may or may not change on an annual basis. Since there is limited utility to the annual reporting of this optional information, the decision was made to further reduce the burden to all grantees by eliminating this section from the current instrument in the Management Information System.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4657. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–22974 Filed 9–7–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Supporting Effective Educator Development Grant Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information: Supporting Effective Educator Development Grant Program Notice inviting applications for new awards for FY 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.367D.

Dates:

Applications Available: September 8, 2011.

Deadline for Notice of Intent to Apply: October 11, 2011.

Deadline for Transmittal of Applications: November 7, 2011.

Deadline for Intergovernmental Review: January 6, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Supporting Effective Educator Development Grant Program provides funding for grants to national non-profit organizations to support projects that are supported by at least moderate evidence, as defined in this notice, to recruit, select, and prepare or provide professional enhancement activities for teachers or for teachers and principals.

Priorities: This notice contains three absolute priorities, two competitive preference priorities, requirements, and definitions that are explained in the following paragraphs. We are establishing these three absolute priorities, two competitive preference priorities, requirements, and definitions for the FY 2012 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). Applicants are required to designate the priority or priorities under which they are submitting their proposal. These priorities are:

Absolute Priorities: Under 34 CFR 75.105(c)(3), we consider only applications that meet one or more of these priorities.

Absolute Priority 1: Teacher and principal recruitment, selection, and preparation.

Under this priority, the Secretary provides funding to support the creation or reform of practices, strategies, or programs that are designed to increase the number or percentage of teachers (or teachers and principals) who are highly effective (as defined in this notice), especially for teachers (or teachers and principals) who serve concentrations of high-need students (as defined in this notice), by identifying, recruiting, and preparing highly effective teachers (or teachers and principals). To meet this priority, applicants must propose a plan demonstrating that teacher or principal participation in the applicant's proposed activities will be determined through a rigorous, competitive selection process.

Absolute Priority 2: Professional development/enhancement of teachers of English language arts with a specific focus on writing.

Under this priority, the Secretary provides funding to support projects that will increase the quality of student literacy and writing by creating or reforming practices, strategies, or programs that improve teachers' knowledge, understanding, and teaching of English language arts with a specific focus on writing through high-quality professional development or professional enhancement programs.

Absolute Priority 3: Advanced certification and advanced credentialing.

Under this priority, the Secretary provides funding to support projects that encourage and support teachers (or teachers and principals) seeking advanced certification or advanced credentialing through high-quality professional enhancement programs designed to improve teaching and learning for teachers or for teachers and principals. To meet this priority, applicants must demonstrate or propose a plan to demonstrate that the award of the advanced certification or advanced credential will be determined on the basis of a rigorous evaluation with multiple measures that include measures of student academic growth.

Competitive Preference Priorities: Competitive Preference Priorities 1 and 2 and most of the accompanying definitions come from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486). For this FY 2012 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to five additional points to an application that meets Competitive Preference Priority 1. Furthermore, we award up to three additional points to an application that meets Competitive Preference Priority 2. These points are

in addition to any points the application earns under the selection criteria. Addressing these competitive preference priorities is optional, and applicants may choose to respond to none, one, or both of the competitive preference priorities for this competition.

These priorities are:

Competitive Preference Priority 1: Supporting programs, practices, or strategies for which there is strong evidence of effectiveness (0–5 points).

Projects that are supported by strong evidence (as defined in this notice).

Competitive Preference Priority 2: Improving Productivity (0–3 points).

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (*i.e.,* outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Definitions:

Carefully matched comparison group design means a type of quasi-experimental study (as defined in this notice) that attempts to approximate an experimental study (as defined in this notice). More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (*e.g.,* the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (*e.g.,* the same test of reading skills administered in the same way to both groups).

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

High-need students means students at risk of educational failure, such as students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

Highly effective principal means a principal whose students, overall and for each subgroup as described in section 1111(b)(3)(C)(xiii) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender), achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers.

Highly effective teacher means a teacher whose students achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of student growth. Eligible applicants may include multiple measures, provided that teacher effectiveness is evaluated, in significant part, based on student growth. Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA.

Interrupted time series design means a type of quasi-experimental study (as defined in this notice) in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an ''interruption'' of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity) but have limited generalizability (*i.e.,* moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

National non-Profit Organization means a non-profit organization of national scope that carries out its activities in multiple States.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design (as defined in this notice) and can support causal conclusions (*i.e.,* minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed and well-implemented (as defined in this notice) quasi-experimental studies (as defined in this notice) include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental

study (as defined in this notice) design that closely approximates an experimental study (as defined in this notice). In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score (''cut score'') to the treatment group and assignment of those below the score to the comparison group.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (*i.e.,* studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (*i.e.,* studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of ''Reasons for Not Meeting Standards'' at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons*).

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, requirements, and definitions. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first Supporting Effective Educator Development Grant Program competition, and, therefore, it qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the absolute priorities, selection criteria, requirements, and definitions in this notice under section 437(d)(1) of GEPA. These priorities, selection criteria, requirements, and definitions will apply to the FY 2012 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Program Authority: Public Law 112–10, Department of Defense and Full-Year Continuing Appropriations Act, 2011.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: Approximately $24,680,000 will be available for this competition. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $5,000,000–$15,000,000 per award.

Estimated Average Size of Awards: $8,300,000.

Estimated Number of Awards: 1–5 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months. We anticipate that initial awards under this competition will be made for a one-year (12 month) period.

III. Eligibility Information

1. *Eligible Applicants:* National non-profit organizations.

2. *Evidence Standards:* To be eligible for an award, an application for an award under this program must be supported by at least moderate evidence, as defined in this notice.

3. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Soumya Sathya, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4C131, Washington, DC 20202–5960 or by e-mail: *soumya.sathya@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent to Apply: October 11, 2011. The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent to Soumya Sathya at: *soumya.sathya@ed.gov.*

Eligible entities that fail to provide this e-mail notification may still apply for funding. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We suggest you limit the application narrative Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except for titles, headings, footnotes, quotations, references, captions, charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, or letters of support.

3. *Submission Dates and Times:*

Applications Available: September 8, 2011.

Deadline for Notice of Intent to Apply: October 11, 2011.

Deadline for Transmittal of Applications: November 7, 2011.

Applications for grants under this competition must be submitted electronically using the Grant.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: January 6, 2012.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *http://www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Supporting Effective Educator Development Grant Program, CFDA number 84.367D must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Supporting Effective Educator Development Grant Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.367, not 84.367D).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- 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. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described

elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Soumya Sathya, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4C131, Washington, DC 20202–5960. FAX: (202) 401–8466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.367D) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.367D) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your

grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR or, in other cases, were developed by the Department specifically for this competition pursuant to the requirements of section 437(d)(1) of the General Education Provisions Act. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. In addressing each criterion, applicants are encouraged to make explicit connections to relevant aspects of responses to other selection criteria.

A. *Significance* (25 points). The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers:

(1) The national significance of the proposed project.

(2) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the subject area in which the applicant would carry out project activities.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

B. *Quality of the Project Design and Services* (30 points). The Secretary considers the quality of the design and services of the proposed project. In determining the quality of the design and services of the proposed project, the Secretary considers:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(2) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(3) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

C. *Quality of the Management Plan and Personnel* (20 points). The Secretary considers the quality of the management plan for the proposed project and of the personnel who will carry out the proposed project. In determining the quality of the management plan and the project personnel, the Secretary considers:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator, key project personnel, and project consultants or subcontractors.

(2) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(3) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

D. *Sustainability* (25 points). The Secretary considers the adequacy of resources to continue the proposed project after the grant period ends. In determining the adequacy of resources and the potential for utility of the proposed project's activities and products by other organizations, the Secretary considers:

(1) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(2) The extent to which the proposed project is likely to yield findings and products (such as information, materials, processes, or techniques) that may be used by other agencies and organizations.

(3) The extent to which the evaluation conducted as part of the project will provide guidance about effective strategies suitable for replication or testing in other settings.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable, has a history of unsatisfactory performance, has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable, has not fulfilled the conditions of a prior grant, or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Transparency and Open Government Policy:* After awards are made under this competition, all of the submitted successful applications, together with reviewer scores and comments, will be posted on the Department's Web site. Given the types of projects that may be proposed under this program, some applications may include confidential commercial information. *Confidential commercial information* is defined as information the disclosure of which could reasonably be expected to cause substantial competitive harm. Upon submission, applicants should identify any information contained in their application that they consider to be confidential commercial information. Applicants are encouraged to identify only the specific information that the applicant considers to be proprietary and list the page numbers on which this information can be found in the appropriate Appendix section, under ''Other Attachments Form,'' of their applications. In addition to identifying the page number on which that information can be found, eligible applicants will assist the Department in making determinations on public

release of the application by being as specific as possible in identifying the information they consider proprietary. Please note that, in many instances, identification of entire pages of documentation would not be appropriate.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The overall purpose of the Supporting Effective Educator Development Grant Program is to support projects by national non-profit organizations that are supported by at least moderate evidence, as defined in this notice, to recruit, select, and prepare or provide professional enhancement activities for teachers or for teachers and principals. We have established the following performance measures for the Supporting Effective Educator Development Grant Program: For absolute priorities 1 and 2, the percentage of teacher and principal participants who serve concentrations of high-need students, are highly effective, and serve for at least two years, and the cost per such participant. For absolute priority 3, the percentage of teacher participants who receive advanced certification or advanced credentialing and are highly effective, and the cost per such participant. Grantees will report annually on each component of these measures.

6. *Continuation Awards:* Contingent upon the availability of funds and each grantee's substantial progress towards accomplishing the goals and objectives of the project as described in its approved application, after the initial 12 month project period we may make continuation awards to grantees for the remaining 24 months of the program. Review of each grantee's progress may include consideration of evidence of promising practices and a strong evaluation design.

Additionally, in making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Soumya Sathya, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4C131, Washington, DC 20202–5960. Telephone: (202) 260–0819, or by e-mail: *soumya.sathya@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 2, 2011.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–23011 Filed 9–7–11; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9461–3]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1755.09; Regulatory Innovation Pilot Projects (Renewal); was approved on 08/02/2011; OMB Number 2010–0026; expires on 08/31/2014; Approved with change.

EPA ICR Number 2277.03; NESHAP for Area Sources: Electric Arc Furnace Steelmaking Facilities; 40 CFR part 63 subparts A and YYYYY; was approved on 08/03/2011; OMB Number 2060–0608; expires on 08/31/2014; Approved without change.

EPA ICR Number 1679.07; NESHAP for Marine Tank Vessel Loading Operations; 40 CFR part 63 subparts A and Y; was approved on 08/03/2011; OMB Number 2060–0289; expires on 08/31/2014; Approved without change.

EPA ICR Number 1947.05; NESHAP for Solvent Extraction for Vegetable Oil Production; 40 CFR part 63 subparts A and GGGG; was approved on 08/03/2011; OMB Number 2060–0471; expires on 08/31/2014; Approved without change.

EPA ICR Number 2260.04; Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (Renewal); 40 CFR 5.2634; was approved on 08/03/2011; OMB Number 2090–0029; expires on 08/31/2014; Approved without change.

EPA ICR Number 1681.07; NESHAP for Epoxy Resin and Non-Nylon Polyamide Production; 40 CFR part 63 subparts A and W; was approved on 08/03/2011; OMB Number 2060–0290; expires on 08/31/2014; Approved without change.

EPA ICR Number 2020.05; Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington; 40 CFR 49.122, 49.124, 49.126, 49.127, 49.130–49.135, 49.138, and 49.139; was approved on 08/03/2011; OMB Number 2060–0558; expires on 08/31/2014; Approved without change.

EPA ICR Number 1676.06; Clean Air Act Tribal Authority (Renewal); 40 CFR parts 35, 49, 50, 81; was approved on 08/04/2011; OMB Number 2060–0306; expires on 08/31/2014; Approved without change.

EPA ICR Number 2268.03; NESHAP for Paint Stripping and Miscellaneous Surface Coating at Area Sources; 40 CFR part 63 subparts A and HHHHHH; was approved on 08/04/2011; OMB Number 2060–0607; expires on 08/31/2014; Approved without change.

EPA ICR Number 2425.01; Use of Surveys in Developing Improved Labelling for Insect Repellent Products; was approved on 08/04/2011; OMB Number 2070–0180; expires on 08/31/2014; Approved with change.

EPA ICR Number 2391.02; Federal Implementation Plans to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Final Rule); 40 CFR parts 51, 75, 96 and 97; was approved on 08/08/2011; OMB Number 2060–0667; expires on 07/31/2014; Approved without change.

EPA ICR Number 1550.09; Conflict of Interest Rule #1 (Renewal); 40 CFR 486; was approved on 08/15/2011; OMB Number 2030–0023; expires on 08/31/2014; Approved with change.

EPA ICR Number 2203.04; Amendments to the Protocol Gas Verification Program, and Minimum Competency Requirements for Air Emission (Final Rule); 40 CFR parts 72 and 75; was approved on 08/17/2011; OMB Number 2060–0626; expires on 08/31/2014; Approved without change.

EPA ICR Number 1684.17; Emissions Certification and Compliance for On-highway Heavy Duty Engines (Final Rule for Clean Alternative Fuel Conversions); 40 CFR part 85 subpart F; and 40 CFR part 1042 subparts C, D, G and H; was approved on 08/17/2011; OMB Number 2060–0287; expires on 08/31/2014; Approved without change.

EPA ICR Number 2405.01; Underground Storage Tank: Information Request Letters, Pacific Southwest Region (Region IX) (New); 40 CFR part 280; was approved on 08/19/2011; OMB Number 2009–0002; expires on 08/31/2014; Approved with change.

EPA ICR Number 1826.05; Transition Program for Equipment Manufacturers (Renewal); 40 CFR 89.102, 1039.625, 1039.626, 1039.630, 1054.625, 1054.626, 1054.635, 1068.250 and 1068.255; was approved on 08/22/2011; OMB Number 2060–0369; expires on 08/31/2014; Approved without change.

EPA ICR Number 1596.08; Significant New Alternatives Policy (SNAP) Program; 40 CFR part 82 subpart G; was approved on 08/30/2011; OMB Number 2060–0226; expires on 08/31/2014; Approved without change.

EPA ICR Number 1230.27; Prevention of Significant Deterioration and Nonattainment New Source Review (Final Rule for Review of New Sources and Modifications in Indian Country); 40 CFR 49.166–49.175, 51.160–51.166, 51 Appendix S, and 52.21–52.24; was approved on 08/31/2011; OMB Number 2060–0003; expires on 04/30/2012; Approved without change.

Withdrawn

EPA ICR Number 2435.01; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery 2 (New); Withdrawn from OMB on 08/19/2011.

Dated: September 1, 2011.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2011–22989 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0280, FRL–9461–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; 2011 Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 11, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2011–0280, to (1) EPA, either online using *http://www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency Office of Solid Waste and Emergency Response (Mail Code 5303P), 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (703) 308–5477; *fax number:* (703) 308–8433; *e-mail address: vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 29, 2011 (76 FR 17414), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received four comments during the comment period, which are addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No EPA–HQ–RCRA–2011–0280, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270.

Use EPA's electronic docket and comment system at www.regulations.gov, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: 2011 Hazardous Waste Report, Notification of Regulated Waste Activity, and Part A Hazardous Waste Permit Application and Modification.

ICR numbers: EPA ICR No. 0976.15, OMB Control No. 2050–0024.

ICR Status: This ICR is scheduled to expire on November 30, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR will combine two separate ICRs into one: the ''Notification of Regulated Waste Activity and 2011 Hazardous Waste Report'' ICR and the ''RCRA Hazardous Waste Permit Application and Modification, Part A'' ICR (currently EPA ICR number 0262.12, OMB control number 2050–0034).

Both Sections 3002 and 3004 of RCRA require EPA to establish standards for recordkeeping and reporting of hazardous waste generation and management. Section 3002 applies to hazardous waste generators and Section 3004 applies to hazardous waste treatment, storage, and disposal facilities. In addition, Sections 3002 and 3004 require the submission of a report, at least every 2 years, of the quantity and nature of hazardous waste generated and managed during one year. This is mandatory reporting. The information for the required reporting year (every odd year) is collected via a mechanism known as the Hazardous Waste Report (EPA Form 8700–13 A/B). This form is also known as the ''Biennial Report'' form.

Section 3010 of RCRA requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes handled. The facility is then issued an EPA Identification number. The facilities are required to use the Notification Form (EPA Form 8700–12) to notify EPA of their hazardous waste activities. This form is also known as the ''Notification'' form.

Section 3005 of RCRA requires treatment, storage, and disposal facilities (TSDFs) to obtain a permit. To obtain the permit, the TSDF must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. The RCRA Hazardous Waste Part A Permit Application form (EPA Form 8700–23) defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. This form is also known as the ''Part A'' form. [Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. There is no form for Part B, and the burden is covered under a separate ICR.]

The information from all three forms is entered into a national database. EPA uses the information to identify the universe of regulated waste generators, handlers, and managers and their specific regulated waste activities. EPA also uses this information to ensure that regulated waste is managed properly, that statutory provisions are upheld, and that regulations are adhered to by facility owners or operators.

Burden Statement: The annual public reporting burden for the 2011 Hazardous Waste Report is estimated to average 12 hours per respondent, and includes time for reviewing instructions, gathering data, completing and reviewing the forms, and submitting the report. The recordkeeping requirement is estimated to average 5 hours per response and includes the time for filing and storing the 2011 Hazardous Waste Report submission for three years.

The annual public reporting and recordkeeping burden for the Notification of Regulated Waste Activity is estimated to average 1 hour per response for the initial notification, and 1 hour per response for any subsequent notifications.

The annual public reporting and recordkeeping burden for the Part A Permit Application is estimated to average 20 hours per response for an initial application and 10 hours per response for a revised application.

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

Respondents/Affected Entities: Entities potentially affected by this action are business or other for-profit as well as State, Local, or Tribal governments.

Estimated Number of Respondents: 56,672.

Frequency of Response: once.

Estimated Total Annual Hour Burden: 440,243.

Estimated Total Annual Cost: $18,267,341, includes $18,022,415 annualized labor costs and $244,926 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 18,110 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due mainly to a projected increase of 179,980 in the number of responses to the 2011 Hazardous Waste Report compared to the 2009 Hazardous Waste Report.

Dated: August 31, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–22992 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2010–0910; FRL–9461–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; PCBs, Consolidated Reporting and Recordkeeping Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: PCBs, Consolidated Reporting and Record Keeping Requirements; EPA ICR No. 1446.10, OMB No. 2070–0112. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before October 11, 2011.

ADDRESSES: Submit your comments, referencing docket ID Number EPA–HQ–OPPT–2010–0910 to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *oppt.ncic@epa.gov* or by mail to: Document Control Office (DCO), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, *Mail Code:* 7407T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Pamela Myrick, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Mail code: 7408–M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–554–1404; *e-mail address: TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 29, 2010 (75 FR 82007), EPA sought comments on this renewal pursuant to 5 CFR 1320.8(d). EPA received two comments during the comment period, which are addressed in the Supporting Statement. Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA EPA–HQ–OPPT–2010–0910, which is available for online viewing at *http://www.regulations.gov*, or in person inspection at the OPPT Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Pollution Prevention and Toxics Docket is 202–566–0280. Use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in *http://www.regulations.gov*. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in *http://www.regulations.gov*. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: PCBs, Consolidated Reporting and Record Keeping Requirements.

ICR Status: This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Section 6(e)(1) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), directs EPA to regulate the marking and disposal of PCBs. Section 6(e)(2) bans the manufacturing, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner. Section 6(e)(3) establishes a process for obtaining exemptions from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. Since 1978, EPA has promulgated numerous rules addressing all aspects of the life cycle of PCBs as required by the statute. The regulations are intended to prevent the improper handling and disposal of PCBs and to minimize the exposure of human beings or the environment to PCBs. These regulations have been codified in the various subparts of 40 CFR part 761. There are approximately 100 specific reporting, third-party reporting, and recordkeeping requirements covered by 40 CFR part 761.

To meet its statutory obligations to regulate PCBs, EPA must obtain sufficient information to conclude that specified activities do not result in an unreasonable risk of injury to health or the environment. EPA uses the information collected under the 40 CFR part 761 requirements to ensure that PCBs are managed in an environmentally safe manner and that activities are being conducted in compliance with the PCB regulations. The information collected by these requirements will update the Agency's knowledge of ongoing PCB activities, ensure that individuals using or disposing of PCBs are held accountable for their activities, and demonstrate compliance with the PCB regulations. Specific uses of the information collected include determining the efficacy of a disposal technology; evaluating exemption requests and exclusion notices; targeting compliance inspections; and ensuring adequate storage capacity for PCB waste. This collection addresses the several information reporting requirements found in the PCB regulations.

Responses to the collection of information are mandatory (see 40 CFR part 761). Respondents may claim all or part of a notice as CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

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

part 9 and included on the related collection instrument or form, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 1.27 hours per response. Burden is defined in 5 CFR 1320.3(b).

Respondents/Affected Entities: Entities potentially affected by this action are persons who currently possess PCB items, PCB-contaminated equipment, or other PCB waste.

Frequency of Collection: On occasion.

Estimated average number of responses for each respondent: Varies.

Estimated No. of Respondents: 538,335.

Estimated Total Annual Burden on Respondents: 685,335 hours.

Estimated Total Annual Labor Costs: $21,842,536.

Changes in Burden Estimates: This request reflects a decrease of 10,720 hours (from 696,055 hours to 685,335 hours) in the total estimated respondent burden from that currently in the OMB inventory. This decrease reflects improved estimates of the number of respondents EPA expects to be affected by this information collection, based on EPA's actual experience in administering this program. The Supporting Statement provides details about the change in burden estimate. The change is an adjustment.

Dated: September 1, 2011.

John Moses, Director,

Collection Strategies Division.

[FR Doc. 2011–22991 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9461–1]

New York State Prohibition of Discharges of Vessel Sewage; Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination.

SUMMARY: Notice is hereby given that, pursuant to Clean Water Act, Section 312(f)(3) (33 U.S.C. 1322(f)(3)), the State of New York has determined that the protection and enhancement of the quality of the New York State areas of the Long Island Sound (LIS or Sound) requires greater environmental protection, and has petitioned the United States Environmental Protection Agency (EPA), Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

New York State has proposed to establish a ''Vessel Waste No Discharge Zone'' for the Long Island Sound that encompasses approximately 760 square miles, and includes the open waters, harbors, bays and navigable tributaries of the Sound and a portion of the East River, from the Hell Gate Bridge in the west to the northern bounds of Block Island Sound in the east. Today's action does not pertain to the waters of Mamaroneck Harbor, Huntington-Northport Bay Complex, Port Jefferson Complex, Hempstead Harbor and Oyster Bay/Cold Spring Harbor Complex, which have been previously designated as No Discharge Zones. The New York State Department of Environmental Conservation (NYSDEC) certified the need for greater protection of the water quality. EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State areas of the Long Island Sound.

EPA published a tentative affirmative determination on April 11, 2011 in the **Federal Register**. Public comments were solicited for 30 days and the comment period ended on May 11, 2011. EPA received a total of twenty (20) comments via letter and e-mail. The comment tally was ten (10) in favor and ten (10) questioning or opposing the No Discharge Zone designation. All the relevant comments received have been considered in the final affirmative determination. This **Federal Register** document will address all comments submitted in response to the April 11, 2011 (76 FR 19989)), **Federal Register** document.

Response to Comments

1. *Comment:* Several commenter's including boaters, county legislators, non-governmental organizations, and community advocates expressed strong support of EPA's action to establish a vessel waste no discharge zone for the New York State portions of the LIS. One commenter further pointed out this action will reduce pathogens and chemicals, aid lobster population and further protect and restore the LIS.

EPA Response: EPA is in full agreement that designating the NYS portions of the LIS is an important step to further protect this valuable natural resource, water quality and habitats throughout the entire LIS waterbody.

2. *Comment:* One commenter stated that this application should be denied until New York State can adequately cover the area with at least one pumpout facility for every 150 vessels. Another commenter argued that the sixty eight (68) cited pumpout facilities, while on paper produces the claimed ratio of 1:179.3 boats, ignores the disparate location of these facilities compared to the many harbors, marinas and yacht clubs that cover the hundreds of miles of shoreline that are involved.

EPA Response: The criterion established pursuant to the Clean Vessel Act (CVA) for an adequate number of pumpouts is one pumpout per 300 to 600 vessels. Overall, the NYS area of the LIS exceeds this criterion, with a ratio of one pumpout station for every 179.3 vessels. Therefore, EPA's determination of adequacy is justified. EPA recognizes the importance of adequate pumpouts to service the boating activity within a given waterbody, and notes that all of the pumpouts are located in the vicinity of a port, where the vast majority of vessels' trips begin and end, so they are conveniently located and accessible. In addition, pumpout vessels (''honey dippers'') can be hired to provide water-based mobile pumpout services to vessels anywhere in the Sound. Pumpout vessels can be found by searching business listings for pumpout boats, mobile pumpout, or septic boats.

3. *Comment:* Several commenters stated that discharges from vessels with the required Marine Sanitation Devices (MSDs) are a relatively small source of pollution compared to the pollution caused by agricultural run-off, lawn fertilizer runoff and discharges of untreated sewage from Combined Sewer Overflows (CSOs), and therefore, banning vessel sewage discharges is unnecessary and unfair. Another commenter stated that vessel owners had spent thousands of dollars to install MSDs, and therefore banning discharges from those devices would be unfair.

EPA Response: These comments go beyond the scope of EPA's authority in this action. Because EPA's authority here is limited to determining whether adequate pumpout facilities exist, it cannot base its determination on whether vessel sewage is comparable in quantity or impact to other sources of pollution, or whether banning such discharges is otherwise unfair to boaters. However, it is noted that the sewage discharged from MSDs is treated with chlorine, quaternary ammonia and formaldehyde, which can all pose threats to the marine environment, especially, if present in substantial,

concentrated amounts. EPA agrees with the NYSDEC, which certifies that the protection and enhancement of the waters of LIS require greater environmental protection than the applicable Federal standard. The designation of the LIS No Discharge Zone is an important step in further protecting the water quality, habitats and resources of the Sound.

4. *Comment:* One commenter stated that, while it is a good idea to make it illegal to discharge waste in Long Island Sound, there are not enough pumpout stations in the Port Jefferson area, noting that one of the town's pumpouts has been out of service for years, and that one of the pumpout boats is only in service on Friday through Sunday during the summer.

EPA Response: There are ten (10) pumpout facilities serving the Port Jefferson area, which are adequate to serve between 3,000 and 6,000 recreational vessels, as well as seven (7) pumpout facilities serving the neighboring Smithtown Bay area.

5. *Comment:* One commenter stated that New York State's petition should have been posted at *http://www.reglations.gov* so the public could review it, and determine whether it addresses the needs of commercial vessels.

EPA Response: In its April 11, 2011 **Federal Register** notice, EPA provided all of the factual information that it relied on in making its tentative affirmative determination and established a 30-day comment period. In addition, EPA's contact information was published in the notice in case further information was needed. Therefore, all of the relevant information was publicly available, and the public had a full opportunity to comment and/or request additional information.

6. *Comment:* Some commenters stated that the pumpout facilities that serve recreational vessels may not be reasonably available to commercial vessels, including ferries, towboats and barges, because some of those commercial vessels are too large to dock where the recreational vessel pumpout facilities are located and may carry more sewage than a recreational pumpout facility can accept. Some commenters also stated that pumpout trucks are not adequate because they are not available 24 hours a day, do not have adequate capacity to accept all of the sewage on some commercial vessels, and would add substantial cost to their operations. One commenter stated that the pumpout trucks could not service the Bridgeport/Port Jefferson Ferries because waiting in port for the pumpout to be completed would disrupt the ferry schedule.

EPA Response: EPA agrees that some commercial vessels are different from recreational vessels in terms of size, draft, and sewage holding capacity. In response to these comments, EPA and New York State gathered additional information from the commenters about the holding capacity of their commercial vessels, and gathered information from commercial pumpout providers about the availability of alternative pumpout facilities that can serve commercial vessels, and found that pumpout boats and pumpout trucks are widely available for hire throughout the New York side of the LIS, are able to reach commercial vessels either on the water or on commercial docks, and have more than adequate capacity to pumpout even the largest holding tank reported by the commenters. Specifically, the largest holding tank reported by the commenters was 2,500 gallons, while the largest pumpout truck capacity is 4,000 gallons. Significantly, the commenters reported that most commercial vessel holding tanks are under 1,000 gallons, while EPA and New York State found that many pumpout trucks have capacities greater than 1,000 gallons. One commercial vessel operator stated that pumpout facilities do exist at some commercial ports as well. Regarding the Bridgeport/Port Jefferson Ferry, EPA confirmed by a site visit, that a pumpout truck could drive close to the ferry and access the holding tank to pump it out while the ferry is at dock. Arrangements for a pumpout truck service could be made when the ferry is in port thus avoiding any disruption to the ferry schedule. Finally, the comments about the cost of commercial pumpout services are beyond the scope of EPA's determination, which is limited to whether adequate pumpout facilities are reasonably available.

FOR FURTHER INFORMATION CONTACT: Moses Chang (212) 637–3867, e-mail address: *chang.moses@epa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the State of New York (NYS or State) has petitioned the United States Environmental Protection Agency, Region 2, (EPA) pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State areas of the Long Island Sound. Adequate pumpout facilities are defined as one pumpout station for 300–600 boats under the Clean Vessel Act: Pumpout Station and Dump Station Technical Guidelines (**Federal Register**, Vol. 59, No. 47, March 10, 1994).

The Long Island Sound is one of the nation's premier water bodies, and supports a variety of possible uses—fish and shellfisheries, fish spawning areas, breeding grounds, valuable wildlife habitats, bathing beaches, commercial and recreational boating, and a profusion of recreational resources.

In 1985, recognizing the Sound's ecological and economic value, New York State partnered with Connecticut and the EPA to create and support the Long Island Sound Study (LISS). The Sound was recognized as an Estuary of National Significance under the Clean Water Act in 1988, and as such, is one of the nation's twenty-eight (28) National Estuary Programs.

The ecological, economic, and recreational resources provided by the Long Island Sound are vulnerable to the effects of poor water quality. The Sound was once home to some of the most productive shellfish beds in the nation, but many have now closed due to pathogen, low dissolved oxygen, and excessive nutrient contamination.

The State of Connecticut designated the Connecticut portion of the Long Island Sound as a No-Discharge Zone in 2007. Previously established No Discharge Zones in both New York State and Connecticut have made important reductions in vessel waste as a source of water pollution in the Long Island Sound. Degradation of any area, however, affects the whole. Extending the No Discharge Zone designation to the remainder of the Long Island Sound would therefore be a positive component of an overall strategy to protect and improve these waters and would create a unified approach to vessel waste for the entirety of this waterbody.

In order for EPA to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State areas of the Long Island Sound, the State must demonstrate that the pumpout-to-vessel ratio does not exceed 1:600. In its petition, the State described the recreational and commercial vessels that use the Sound, and the pumpout facilities that are available for their use.

The recreational vessel population, 11,693, was estimated using 2008 recreational vessel registrations. In addition to recreational vessels, the Sound is used by commercial vessels. The majority of commercial vessels are small fishing vessels, tankers, tugs, or barges. Because the small fishing vessels are comparably sized to the bulk of recreational vessels, they can make use

of the existing vessel pumpouts that are available for recreational vehicles. The small commercial vessel population, 500, was estimated based on aerial photographs used to develop the 1996 Statewide Clean Vessel Plan. The figures for recreational and small commercial vessels were then compared to the number of pumpouts available to determine the applicable ratio and whether the requirement is met. There are fifty-two (52) pumpout facilities funded by the Clean Vessel Assistance Program (CVAP) in the relevant areas of the Sound. Of those, twenty-six (26) discharge to a holding tank and twenty-six (26) discharge to a municipal wastewater treatment plant. There are also sixteen (16) other (non-CVAP funded) pumpouts available for recreational and small commercial vessels that either discharge to a holding tank or to a municipal wastewater treatment plant. Therefore, the total number of pumpouts available for the 12,193 recreational and small commercial vessels that use the Sound is sixty-eight (68), and the pumpout-to-vessel ratio for those vessels is 1:179.3 (68:12,193).

The number of large commercial vessels was estimated using the following information sources: ballast manifests; U.S. Coast Guard assessments; correspondence with operators of ferries, cruise ships, towboats and barges; the State University of New York (SUNY); and the Port Authority of New York and New Jersey. Based on the information from those sources, on any given day, the numbers of large vessels in the New York waters of the Long Island Sound is less than fifty (50), partially due to complex navigational issues. These vessels have access to mobile pumpout facilities (*i.e.,* ''honey-dipper'' trucks or boats), or may access pumpout facilities at their origination or destination ports outside of the Sound, thus reducing the need for services within the Sound.

A list of the pumpout facilities in New York areas of the Sound and adjacent nearby waters, along with their phone numbers, locations, hours of operation, water depth and fees, is provided as follows:

LIST OF PUMPOUTS IN THE PROPOSED LIS NDZ AREA

No.	Name	Location	Contact information	Dates/Days/Hours of operation	Water depth (feet)	Fee
1	Wright Island Marina	Milton Harbor, New Rochelle.	914–235–8013	Memorial Day to Labor Day; daily; 9 a.m.–5 p.m.	10	$5.00.
2	Nichols Yacht Yard, Inc.	Mamaroneck Harbor, Mamaroneck.	914–698–6065	Apr 15–Oct 15; daily; 9 a.m.–5 p.m.	8	Free.
3	Village of Mamaroneck—Harbor Island East and West Basin.	Mamaroneck Harbor, Mamaroneck.	914–777–7703; VHF 16.	Apr–Nov; Mon–Sun (in season); 24 hours.	8.5	Free.
4	City of Rye—Municipal Boat Basin.	Milton Harbor, Rye	914–967–2011; VHF 16.	Apr 1–Oct 31; Mon–Sun; 8 a.m.–8 p.m.	5	Free.
5	Town of Huntington—Cold Spring Harbor Replace.	Cold Spring Harbor, Huntington.	631–351–3049; VHF 9.	May 1–Oct 31; Mon–Sun; 8 a.m.–8 p.m.	6	Free.
6	Village of Greenport—Boat Engine Replacement.	Greenport Harbor, Greenport.	631–477–2385; VHF 9.	May 1–Oct 31; Mon–Sun; 8 a.m.–5 p.m.	N/A	$5.00.
7	Port of Egypt Marine, Inc.	Southold Bay, Southold.	631–765–2445	Apr–Nov; Mon–Sun; 7:30 a.m.–5 p.m.	4	$5.00.
8	Claudio's Marina	Greenport Harbor, Greenport.	631–477–0355; VHF 9.	Apr 1–Nov 1; Mon–Sun; 8 a.m.–5 p.m.	10	Free.
9	Albertson Marine Inc	Southold Bay, Southold.	631–765–3232; VHF 16 & 18.	Apr–Dec (Closed Sundays, Jan–Mar); Mon–Sun, 8 a.m.–5 p.m. (Sun 9 a.m.-3 p.m.).	5	$5.00.
10	Fishers Island Yacht Club Boat.	Southold Bay, Fisher's Island.	631–788–7036; VHF 73.	Memorial Weekend to Columbus Day; Sat, Sun, & Holidays; 9 a.m.–6 p.m.	10	Free.
11	Old Dock Bluff Park Replace.	Stony Brook Harbor, Smithtown.	631–360–7514; VHF 16.	Apr–Oct; Mon–Sun; 24 Hrs.	4	Free.
12	Town of Smithtown—Long Beach Mooring Area.	Stony Brook Harbor, St. James.	631–360–7643; VHF 16.	Apr–Oct; Mon–Sun; 24 hours.	4	Free.
13	Coecles Harbor Marina and Boatyard, Inc.	Coecles Harbor, Shelter Island.	631–749–0700; VHF 9.	May 15–Oct 12; Mon–Sun; 8 a.m.–5 p.m.	6	$5.00.
14	Village of Northport—Pumpout Boat.	Northport Harbor, Northport.	631–261–7502; VHF 9.	May 15–Oct 15; Mon–Sun; 9 a.m.–5 p.m.	N/A	Free.
15	Town of Huntington—Woodbine Marina.	Northport Harbor, Northport.	631–351–3192; VHF 9.	May 1–Oct 31; Mon–Sun; 8 a.m.–8 p.m.	6	Free.
16	Town of Huntington—South Town Dock.	Huntington Harbor, Halesite.	631–351–3049; VHF 9.	May 1–Oct 31; Mon–Sun; Boats 8 a.m.–8 p.m.; Stationary station 24 hours.	10	Free.

LIST OF PUMPOUTS IN THE PROPOSED LIS NDZ AREA—Continued

No.	Name	Location	Contact information	Dates/Days/Hours of operation	Water depth (feet)	Fee
17	Town of Huntington—Mill Dam Marina Pumpout.	Huntington Harbor, Huntington.	631–351–3049; VHF 9.	Apr 1–Sept 30; Mon–Sun; 24 hours.	6	Free.
18	Town of Huntington—Huntington Boat Pumpout.	Lloyd Harbor, Huntington.	631–351–3049; VHF 9.	Apr 20–Nov 30; Sat, Sun, & Holidays; 10 a.m.–8 p.m.	8	Free.
19	Town of Huntington—Halesite Marina Pumpout.	Huntington Harbor, Huntington.	631–351–3049; VHF 9.	Apr 1–Sept 30; Mon–Sun; 24 hours.	10	Free.
20	Town of Huntington—Halesite Marina Boat.	Huntington Harbor, Huntington.	631–351–3049; VHF 9.	Memorial Day to Labor Day; Sat & Sun; 10 a.m.–8 p.m.	N/A	Free.
21	Town of Huntington—Gold Star Battalion.	Huntington Harbor, Huntington.	631–351–3049; VHF 9.	May 1–Oct 31; Mon–Sun; 8 a.m.–8 p.m.	8	Free.
22	Huntington Yacht Club.	Huntington Harbor, Huntington.	631–427–4949; VHF 68.	Apr 15–Nov 15; Mon–Sun; 8 a.m.–8 p.m.	8	$5.00.
23	Town of Huntington—Mill Dam Marina Pumpout Upgrade.	Huntington Harbor, Huntington.	631–351–3049; VHF 9.	Apr 1–Dec 31; Mon–Sun; 24 hours.	10 low tide	Free.
24	Town of Brookhaven-Port Jefferson Boat-Replacement.	Port Jefferson and Setauket Harbors & Conscience Bay, Port Jefferson.	631–473–3052; VHF 73.	May 15–Sept 15; Weekends & Holidays; 8 a.m.–4 p.m.	N/A	Free.
25	Town of Brookhaven-Mt. Sinai Boat-Replacement.	Mt. Sinai Harbor, Port Jefferson.	631–473–3052; VHF 73.	Mid-May to Mid-Sept; Weekends & Holidays; 8 a.m.–4 p.m.	N/A	Free.
26	NYCDEP—World's Fair Marina.	East River, Flushing	631–595–4458; VHF 71.	May 1–Oct 31; Mon–Sun; 8 a.m.–6 p.m.	8	Free.
27	NYCDEP—Bayside Marina.	Little Neck Bay, Flushing.	718–595–4458; VHF 72.	May 1–Oct 31; Mon–Sun; 24 hours.	4–12	Free.
28	Capri Marine & Yachting Center.	Manhasset Bay, Port Washington.	516–883–7800; VHF 9 & 71.	May 1–Oct 31; Mon–Sun; 8 a.m.–10 p.m.	1.5	Free.
29	Town of Oyster Bay—Theodore Roosevelt Beach & Marina Upgrade.	Oyster Bay	516–624–6180	N/A	N/A	Free.
30	Town of Oyster Bay—Tappen Beach & Marina.	Hempstead Harbor, Glenwood Landing.	516–624–6180; VHF 9.	Jan–Dec; Mon–Sun; 24 hours.	7–8	Free.
31	Sea Cliff Yacht Club	Hempstead Harbor, Sea Cliff.	516–671–7374; VHF 9.	May 15–Sept 15; Mon–Fri; 9 a.m.–5 p.m.	8	$5.00.
32	Town of North Hempstead—Port Washington Dock Pump Replacement.	Hempstead Harbor, Port Washington.	516–767–4622; VHF 9 & 16.	May 15–Nov 1; Mon–Sun; 24 hours.	7	Free.
33	Town of North Hempstead—Manorhaven Beach Park.	Manhasset Bay, Port Washington.	516–767–4622	May 15–Nov 1; Wed–Sun; 8 a.m.–4 p.m.	6	Free
34	Town of North Hempstead—Bar Beach Park.	Hempstead Harbor, Port Washington.	516–767–4622; VHF 9 & 16.	Apr–Oct; Mon–Sun; 24 hours.	6	Free.
35	Manhasset Bay Marina (Port Washington)—1995 Project.	Manhasset Bay, Port Washington.	516–883–8411; VHF 9 & 71.	Apr 1–Oct 1; Mon–Sun; 24 hours.	15	Free.
36	Inspiration Wharf, c/o Ventura Management Corp.	Manhasset Bay, Port Washington.	516–883–7800; VHF 7 & 9.	May 1–Oct 31; Mon–Sun; 8 a.m.–10 p.m.	6	Free.
37	U.S. Merchant Marine Academy.	Little Neck Bay, Kings Point.	516–773–5798	Jan–Dec; Mon–Sun; 9 a.m.–3 p.m.	6	Free.
38	Glen Cove Yacht Service & Repair, Inc.	Hempstead Harbor, Glen Cove.	516–676–0777	Apr–Oct; Mon–Sun; 24 hours.	6	$5.00.

LIST OF PUMPOUTS IN THE PROPOSED LIS NDZ AREA—Continued

No.	Name	Location	Contact information	Dates/Days/Hours of operation	Water depth (feet)	Fee
39	City of Glen Cove—Glen Cove Yacht Club.	Hempstead Harbor, Glen Cove.	516–676–1625	N/A	7	Free.
40	Brewer Marina at Glen Cove.	Hempstead Harbor, Glen Cove.	800–331–3077; VHF 9 & 16.	May 1–Oct 31; Mon–Sun; 7:30 a.m.–4 p.m.	6	$5.00.
41	NYCDEP—Locust Point Marina.	Pelham Bay, Bronx	718–595–4458; VHF 68.	May 1–Oct 31; Mon–Sun; Sunrise to Sunset.	4	Free.
42	City Island Yacht Sales—Pumpout Boat.	Pelham Bay, City Island.	718–885–2300; VHF 9.	Apr 1–Dec 8; Mon–Sun; 8 a.m.–4:30 p.m.	N/A	$5.00.
43	City of New Rochelle—Municipal Marina.	New Rochelle Creek & Lower Harbor, New Rochelle.	914–235–7339; VHF 9 & 16.	Apr–Nov 30; Mon–Sun; 24 hours.	8	Free.
44	Town of Oyster Bay—Theodore Roosevelt Beach & Marina Boat Rep.	Oyster Bay Harbor and Mill Neck Bay, Oyster Bay.	516–624–6180; VHF 9.	Apr 1 to Mid-Nov; 7 days/week; 24 hours.	7–8	Free.
45	Haven Marina	Manhasset Bay, Port Washington.	516–883–0937	May–Sept; Mon–Sun; Sunrise to Sunset.	8	Free.
46	Town of Smithtown—Long Beach Park East Replacement.	Stony Brook Harbor, St. James.	631–360–7620; VHF 16.	Apr–Oct; Mon–Sun; 24 hours.	4	Free.
47	West Shore Marine	Esopus-Lloyd-Marlborough, Marlboro.	VHF 16 & 19	Mon–Sat, 8 a.m.–5 p.m.; Sun, 10 a.m.–5 p.m.	N/A	Free.
48	City of New Rochelle—Pumpout Boat.	Echo Bay, New Rochelle.	914–235–7339; VHF 9.	Memorial Day to Labor Day; Fri–Mon; 8 a.m.–4 p.m.	N/A	Free.
49	City of New Rochelle—Municipal Marina.	New Rochelle Creek & Lower Harbor, New Rochelle.	914–235–7339; VHF 9 & 16.	Apr–Nov 30; Mon–Sun; 24 hours.	8	Free.
50	Town of Huntington—Mill Dam Boat.	Huntington Harbor, Huntington.	631–351–3049; VHF 9.	Apr 20–Sept 30; Sat, Sun & Holidays; 10 a.m.–8 p.m.	8	Free.
51	Manhasset Pumpout Boat.	Manhasset Bay, Syosset.	516–677–5853	Fri–Sun & Holidays; 10 a.m.–6 p.m.	Varies	Free.
52	North Hempstead Pumpout Boat.	Manhasset Bay	516–767–4622; VHF 9 or 71.	Apr 1–Oct 30; Mon–Fri; 9 a.m.–3 p.m.	Varies	Free.
53	Tappen Marina Pumpout Boat.	Oyster Bay Harbor and Mill Neck Bay, Oyster Bay.	516–677–5853; VHF 9.	June–Oct; Fri–Mon; 8 a.m.–6 p.m.	Varies	Free.
54	Western Waterfront Pier.	Oyster Bay Harbor, Oyster Bay.	VHF 9	Memorial Day to Labor Day; 7 days/week; 24 hours.	N/A	Free.
55	Theodore Roosevelt Pumpout Boat.	Oyster Bay Harbor and Mill Neck Bay, Oyster Bay.	516–677–5853; VHF 9.	Mid-Apr to Oct 31; Thu–Sun; 10 a.m.–6 p.m.	Varies	Free.
56	Soundview Boat Ramp.	Northport Harbor, Northport.	631–351–3255; VHF 9.	Memorial Day to Labor Day; Sat & Sun; 8 a.m.–8 p.m.	6′ at low tide; 12′ at high tide.	Free.
57	Island Boat Yard	West Neck Harbor, Shelter Island.	631–749–3333; VHF 9.	Apr 15–Oct 15; Mon–Sun; 9 a.m.–5 p.m.	15	$5.00.
58	Port Jefferson Marina	Port Jefferson Harbor, Port Jefferson.	631–331–3567; VHF 9 for marina, VHF 73 for pumpout boats.	Boats: May to Mid-Sept; Fri, Sat, & Sun; 8 a.m.–6 p.m. Barge: May–Nov; 7 days/week; 24 hours.	11	Free.
59	Brewer Yacht Yard	Greenport Harbor, Greenport.	631–477–9594; VHF 9.	Year-round however they do winterize. If requested, can run the pumpout in winter conditions. 7 days/week, 24 hours.	8	Free for self service; $5.00 for assistance from attendant.

LIST OF PUMPOUTS IN THE PROPOSED LIS NDZ AREA—Continued

No.	Name	Location	Contact information	Dates/Days/Hours of operation	Water depth (feet)	Fee
60	Brewer Yacht Yard	Greenport Harbor, Greenport.	631–477–0828; VHF 9.	5 days/week, year-round; Mon–Fri 7:30 a.m.–4 p.m.; Sat in off season 8–12; Sat in season 7:30 a.m.–7 p.m.	7–8	N/A.
61	Brick Cove Marina	Southold Harbor, Southold.	631–477–0830	Mar–Dec; Mon–Fri, 7 a.m.–4 p.m.; Sat 9 a.m.–5 p.m.; Sun 1:30 p.m.–4 p.m.	6	Yes, for non-marina customers.
62	Goldsmith's Boat Shop.	Southold Bay, Southold.	631–765–1600	Year round; 7 days/week (closed Sun in Jan & Feb); 8:30 a.m.–4:30 p.m. (Sun 9 a.m.–4:30 p.m.).	6	N/A.
63	Mt. Sinai Yacht Club	Mt. Sinai Harbor, Mt. Sinai.	631–473–2993; VHF 16.	May 15–Oct 1; May & June, open Fri, Sat, & Sun; June to Labor Day, open 7 days/week; 9 a.m.–6 p.m.	20	None for members; $15 for outside boaters.
64	Mt. Sinai Marina	Mt. Sinai Harbor, Mt. Sinai.	631–928–0199; VHF 9 & 73.	Marina: Mother's Day to 1st weekend in Nov. Pumpout boats: May to Mid-Sept (8 a.m.–6 p.m.).	6	Free.
65	Old Man's Boatyard	Mt. Sinai Harbor, St. James.	631–473–7330	Apr 15–Oct 15; Mon–Fri; 8 a.m.–4 p.m.	8	$50 for pumpout.
66	Danford's Marina	Port Jefferson Harbor, Port Jefferson.	631–928–5200; VHF 9.	May 1–Oct 31; 7 days/week; 7 a.m.–9 p.m.	3–10	Free.
67	Knutson West Marina	Huntington Harbor, Huntington.	631–549–7842	N/A	N/A	N/A.
68	Seymour's Boatyard	Northport Harbor, Northport.	631–261–6574	Apr 15–Oct 31; 7 days/week; hours vary.	7	N/A.

Based on the above, EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the New York State areas of the Long Island Sound.

Dated: August 15, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2011–22997 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9460–8; Docket ID No. EPA–HQ–ORD–2011–0485]

Vulnerability Assessments in Support of the Climate Ready Estuaries Program: A Novel Approach Using Expert Judgment, Volume I: Results for the San Francisco Estuary Partnership and Volume II: Results for the Massachusetts Bays Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Comment Period and Letter Peer-Review.

SUMMARY: EPA is announcing a 30-day public comment period for the draft documents titled, *Vulnerability Assessments in Support of the Climate Ready Estuaries Program: A Novel Approach Using Expert Judgment, Volume I: Results for the San Francisco Estuary Partnership* (EPA/600/R–11/058a) and *Vulnerability Assessments in Support of the Climate Ready Estuaries Program: A Novel Approach Using Expert Judgment, Volume II: Results for the Massachusetts Bays Program* (EPA/600/R–11/058b). The EPA also is announcing that Eastern Research Group, an EPA contractor for external scientific peer review, will select two independent groups of experts to conduct a letter peer-review of the same draft documents. The documents were prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development, in collaboration with the San Francisco Estuary Partnership (SFEP), the San Francisco Bay Conservation and Development Commission, and the Massachusetts Bays Program (MBP). The reports are pilot ecological vulnerability assessments using a novel methodology, based on expert judgment, to inform adaptation planning under EPA's

Climate Ready Estuaries Program. To demonstrate the novel methodology, two ecosystem processes were selected for each assessment: sediment retention in salt marshes (for both SFEP and MBP) and community interactions (of wading shorebirds and their mudflat prey for SFEP, and of the saltmarsh sharp-tailed sparrow and key species of nesting habitat grasses for MBP). This study assesses (1) Relationships among key physical and ecological variables that regulate each process, (2) relative sensitivities of these relationships under current and future climate change scenarios, (3) degree of confidence about these relationships, and (4) implications for management. The results of this study are designed to support the SFEP's and MBP's adaptation planning efforts as well as those of other estuary managers.

EPA intends to forward the public comments that are submitted in accordance with this notice to the external peer-reviewers for their consideration during the letter review. When finalizing the draft document, EPA intends to consider any public comments received in accordance with this notice. EPA is releasing these draft documents for the purpose of pre-dissemination peer review under applicable information quality guidelines. These documents have not been formally disseminated by EPA. They do not represent and should not be construed to represent any Agency policy or determination.

The draft documents are available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.*

DATES: The 30-day public comment period begins September 8, 2011, and ends October 11, 2011. Technical comments should be in writing and must be received by EPA by October 11, 2011.

ADDRESSES: The two draft documents, *Vulnerability Assessments in Support of the Climate Ready Estuaries Program: A Novel Approach Using Expert Judgment, Volume I: Results for the San Francisco Estuary Partnership and Vulnerability Assessments in Support of the Climate Ready Estuaries Program: A Novel Approach Using Expert Judgment, Volume II: Results for the Massachusetts Bays Program*, are available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at http://*www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, the EPA number of the requested publication, and the document title, *Vulnerability Assessments in Support of the Climate Ready Estuaries Program: A Novel Approach Using Expert Judgment, Volume I: Results for the San Francisco Estuary Partnership or Vulnerability Assessments in Support of the Climate Ready Estuaries Program: A Novel Approach Using Expert Judgment, Volume II: Results for the Massachusetts Bays Program.*

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Jordan West, NCEA; telephone: 703–347–8584; facsimile: 703–347–8694; or e-mail: *west.jordan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

For this project, an exercise was designed to elicit judgments from experts in a workshop setting, regarding climate change effects on two ecosystem processes for each pilot assessment: sediment retention and community interactions. This method is based on a novel application of expert elicitation (a process for obtaining the judgments of groups of experts to characterize each expert's beliefs about relationships of interest) for use in a two-day workshop using two groups of seven expert participants each. EPA has investigated the utility of expert elicitation and provides recommendations for ''best practices'' through an Expert Elicitation Task Force White Paper (see *http://www.epa.gov/spc/expertelicitation/index.htm*).

The exercise involved elicitation of qualitative judgments about the sensitivity of ecosystem processes to physical and ecological variables, using ''influence diagrams'' to depict the relationships among variables. For each ecosystem process, an influence diagram was developed that identified the key process variables and their interrelationships (influences). Using a coding scheme, each expert characterized the type and sensitivity of each influence under both current and future climate change scenarios.

The experts also discussed the high impact of certain influences on sediment retention and community interactions, relative to other influences in the diagram, and the potential for threshold changes.

These reports show how climate-sensitive pathways can be identified and linked to management options in the context of planning documents in order to support adaptation to climate change.

II. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2011–0485, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments;
- *E-mail: ORD.Docket@epa.gov;*
- *Fax:* 202–566–1753;
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752; and
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit one unbound original with pages numbered consecutively and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0485. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided,

unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: August 12, 2011.

Darrell A. Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2011–22993 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before October 11, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via e-mail *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via e-mail *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–xxxx.

Title: Construction requirements; Interim reports—Sections 27.14(g)–(l).

Form No.: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 2,208 respondents; 2,208 responses.

Estimated Time per Response: 5 to 15 hours.

Frequency of Response: Third party disclosure requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is 47 U.S.C. 154, 301, 302(a), 303, 309, 332, 336, and 337 unless otherwise noted.

Total Annual Burden: 15,450 hours.

Annual Cost Burden: $3,310,700.00.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collected will be used by the Commission to determine the progress made by licensees to meet specific performance requirements, and the manner in which their spectrum is being utilized, and to determine whether licensees have complied with the Commission's performance benchmarks. The Commission will also use the information to evaluate whether further assessment of the rules or other actions are necessary in the event spectrum is being stockpiled or warehoused, or if it is otherwise not being made available despite existing demand.

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, CG Docket No. 02–278.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; not-for-profit institutions.

Number of Respondents and Responses: 50,151 respondents; 147,409,229 responses.

Estimated Time per Response: .004 hours (15 seconds) to 1 hour.

Frequency of Response: Recordkeeping requirement; Annual, on occasion and one-time reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found in the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102–243, December 20, 1991, 105 Stat. 2394, which added Section 227 of the Communications Act of 1934, [47 U.S.C. 227] Restrictions on the Use of Telephone Equipment.

Total Annual Burden: 684,433 hours.

Total Annual Cost: $3,989,700.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries'', in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010. A system of records for the do-not-call registry was created by the Federal Trade Commission (FTC) under the Privacy Act. The FTC published a notice in the **Federal Register** describing the system. *See* 68 FR 37494, June 24, 2003.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) was completed on June 28, 2007. It may be reviewed at: *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: The reporting requirements included under this OMB Control Number 3060–0519 enable the Commission to gather information regarding violations of the Do-Not-Call Implementation Act (Do-Not-Call Act). If the information collection was not conducted, the Commission would be unable to track and enforce violations of the Do-Not-Call Act. The Do-Not-Call rules provide consumers with several options for avoiding most unwanted telephone solicitations.

This national do-not-call registry supplements the current company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. Any company, which is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years.

However, a provision of the Commission's rules allows consumers to give specific companies permission to call them through an express written agreement. Nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship are exempt from the ''do-not-call'' registry requirements.

On September 21, 2004, the Commission released the *Safe Harbor Order* establishing a limited safe harbor in which persons will not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days. The Commission also amended its existing national do-not-call registry safe harbor to require telemarketers to scrub their lists against the do-not-call database every 31 days.

On December 4, 2007, the Commission released the *DNC NPRM* seeking comment on its tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration.

On June 17, 2008, the Commission released a *Report and Order* in CG Docket No. 02–278, FCC 08–147, amending the Commission's rules under the Telephone Consumer Protection Act (TCPA) to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five year registration period. Specifically, the Commission modifies § 64.1200(c)(2) of its rules to require sellers and/or telemarketers to honor numbers registered on the Registry indefinitely or until the number is removed by the database administrator or the registration is cancelled by the consumer.

In accordance with the Do-Not-Call Improvement Act of 2007, the Commission revises its rules to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Do-Not-Call Registry to protect consumer privacy rights.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–22911 Filed 9–7–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–1473]

Emergency Access Advisory Committee; Announcement of Date of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the Emergency Access Advisory Committee's (''Committee or EAAC'') next meeting. The September meeting will continue deliberations to develop recommendations to the Commission as required in the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA).

DATES: The Committee's next meeting will take place on Friday, September 9, 2011, 10:30 a.m. to 3:30 p.m. (EST), at the headquarters of the Federal Communications Commission (FCC).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Cheryl King, Consumer and Governmental Affairs Bureau, 202–418–2284 (voice) or 202–418–0416 (TTY), *Cheryl.King@fcc.gov* (e-mail) or Patrick Donovan, Public Safety and Homeland Security Bureau, 202–418–2413, *Patrick.Donovan@fcc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment and appointment of members and Co-Chairpersons of the EAAC, an advisory committee required by the CVAA, Public Law 111–260, which directs that an advisory committee be established, for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the next generation 9–1–1 system (NG9–1–1). The purpose of the EAAC is to determine the most effective and

efficient technologies and methods by which to enable access to NG9–1–1 emergency services by individuals with disabilities. In order to fulfill this mission, the CVAA directs that within one year after the EAAC's members are appointed, the Committee shall conduct a national survey, with the input of groups represented by the Committee's membership, after which the Committee shall develop and submit to the Commission recommendations to implement such technologies and methods.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–23009 Filed 9–7–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME:

Tuesday, September 13, 2011 at 10 a.m. and

Thursday, September 15, 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.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2011–23144 Filed 9–6–11; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 9, 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 August 9, 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 also directs the Desk to maintain its existing policy of reinvesting principal payments on all domestic securities in the System Open Market Account in Treasury securities in order to maintain the total face value of domestic securities at approximately $2.6 trillion. 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, August 31, 2011.

William B. English,

Secretary, Federal Open Market Committee.

[FR Doc. 2011–22896 Filed 9–7–11; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee at its meeting held on August 9, 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.

GENERAL SERVICES ADMINISTRATION

[Notice-CPO–2011–01; Docket 2011–0006; Sequence 15]

Senior Executive Service (SES) Performance Review Board

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members to the General Services Administration SES Performance Review Board. The Performance Review Board assures consistency, stability, and objectivity in the performance appraisal process.

DATES: *Effective* September 8, 2011.

FOR FURTHER INFORMATION CONTACT: Teresa N. Nasif, Director of Executive Resources, Office of the Chief People Officer, General Services Administration, 1275 First Street, NE., Washington, DC 20002, (202) 501–1207.

SUPPLEMENTARY INFORMATION: Section 4313(c)(1) through (5) of title 5 U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review board(s). The board is responsible for making recommendations to the appointing and awarding authority on the performance appraisal ratings and performance awards for the SES employees.

The following have been designated as members of the Performance Review Board of the General Services Administration:

Susan F. Brita, Deputy Administrator—Chair.

Gail T. Lovelace, Assistant Administrator and Chief Leadership Officer.

Anthony E. Costa, Chief People Officer.

David E. Foley, Deputy Commissioner, Public Buildings Service.

Jon A. Jordan, Deputy Commissioner, Federal Acquisition Service.

Sonny Hashmi, Deputy Chief Information Officer.

Linda Chero, Regional Administrator for Federal Acquisition Service, Mid-Atlantic Region.

Mary A. Ruwwe, Regional Commissioner for Public Buildings Service, Heartland Region.

Dated: August 30, 2011.

Martha Johnson,

Administrator.

[FR Doc. 2011–22935 Filed 9–7–11; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Subcommittee for Dose Reconstruction Reviews (SDRR), Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 9 a.m.–5 p.m., September 29, 2011.

Place: Cincinnati Airport Marriott, 2395 Progress Drive, Hebron, Kentucky 41018, *Telephone:* (859) 334–4611, *Fax:* (859) 334–4619.

Status: Open to the public, but without a public comment period. To access by conference call dial the following information 1 (866) 659–0537, Participant Pass Code 9933701.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters To Be Discussed: The agenda for the Subcommittee meeting includes: Discussion of dose reconstruction cases under review (sets 7–10); DCAS dose reconstruction quality management and assurance activities.

The agenda is subject to change as priorities dictate.

In the event an individual wishes to provide comments, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, *Telephone:* (513) 533–6800, *Toll Free:* 1 (800) CDC–INFO, *E-mail: ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: August 29, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–22934 Filed 9–7–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Ethics Subcommittee (ES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Time and Date: 1 p.m.–1:30 p.m., October 5, 2011.

Place: Teleconference.

Status: Open to the public, limited only by availability of telephone ports. The public is welcome to participate during the public comment period. A public comment period is tentatively scheduled for 3 p.m.–3:15 p.m. To participate in the teleconference, please dial (877) 928–1204 and enter code 4305992.

Purpose: The ES will provide counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists and practitioners.

Matter To Be Discussed: The ES will review workgroup progress on developing practical tools to assist state, tribal, local, and territorial health departments in their efforts to address public health ethics challenges.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Drue Barrett, PhD, Designated Federal Officer, ACD, CDC—ES, CDC, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333. Telephone (404) 639–4690. *E-mail: dbarrett@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 31, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–22931 Filed 9–7–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Policy

AGENCY: Administration for Children and Families.

ACTION: Final policy issuance.

SUMMARY: This document contains the final Administration for Children and Families (ACF) Tribal Consultation Policy outlining the policy to engage in meaningful consultation with federally recognized tribes and the procedures and processes to be followed by tribes and the ACF bureaus and offices when the need for consultation is requested or required.

DATES: The effective date of this policy is the date of signature by the Acting Assistant Secretary for Children and Families.

ADDRESSES: You can download a copy of this policy at the following Internet address: *http://www.acf.hhs.gov/tribal/index.html.*

FOR FURTHER INFORMATION CONTACT: Lillian Sparks, Commissioner, Administration for Native Americans, 370 L'Enfant Promenade, SW., Washington, DC 20447. *Telephone:* 202–401–5590.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2009, President Obama signed the Memorandum for the Heads of Executive Departments and Agencies titled ''Tribal Consultations.'' The President stated that his Administration is committed to regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175. Accordingly, President Obama directed each agency head to submit to the Director of the Office of Management and Budget (OMB) within 90 days after the date of the memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175.

The Department of Health and Human Services (HHS) has taken its responsibility to comply with Executive Order 13175 very seriously over the past decade, including the initial implementation of a Department-wide policy on tribal consultation and coordination in 1997, and through multiple evaluations and revisions of that policy. The most recent version of the HHS Tribal Consultation Policy was signed by Secretary Kathleen Sebelius on December 14, 2010. As a result of the commitment to tribal consultation by President Obama and Secretary Sebelius, the Administration for Children and Families (ACF) convened a Tribal Federal Workgroup (TFWG) to develop a draft Tribal Consultation Policy for ACF. Below is a timeline of activities leading to the final ACF Tribal Consultation Policy that is published with this report.

- June 22, 2010, Principal Deputy Assistant Secretary David A. Hansell, on behalf of the Assistant Secretary for Children and Families Carmen R. Nazario, established the Native American Affairs Advisory Committee.
- July 23, 2010, Acting Assistant Secretary David A. Hansell sent a letter to all tribal leaders requesting nominations from each of the ten ACF regions to participate in an ACF TFWG.
- August 23–24, 2010, the TFWG met for the first time in Washington, DC, to develop the first draft of the ACF Tribal Consultation Policy.
- August 24, 2010, Acting Assistant Secretary David A. Hansell sent a letter to all tribal leaders announcing the 2010 ACF Tribal Consultation Session to be held in Washington, DC, to discuss the draft policy and ACF programs.
- September 2, 2010, ACF published a **Federal Register** (FR) notice formally announcing the 2010 ACF Tribal Consultation Session. 75 FR 53975 (Sep. 2, 2010).
- September 16–17, 2010, the TFWG held a second workgroup meeting in Minneapolis, Minnesota, to continue development of the draft ACF Tribal Consultation Policy.
- September 28, 2010, ACF held a Tribal Resource Day in Washington, DC. This session focused on the interoperability of ACF's various programs. This event was attended by 150 registered participants.
- September 29, 2010, ACF held a Tribal Consultation Session in Washington, DC. This session focused on the draft ACF Tribal Consultation Policy and ACF program issues. This event was attended by 150 registered participants.
- September 30, 2010, the ACF TFWG met in Washington, DC, to discuss and incorporate, where possible, suggestions to the draft Consultation Policy that were presented during the ACF Tribal Consultation Session.
- December 16, 2010, the revised ACF Tribal Consultation Policy was published in the FR seeking comments for 45 days. 75 FR 78709 (Dec. 16, 2010). The comment period closed on January 31, 2011.
- March 7–8, 2011, the ACF TFWG met for a fourth and final time in Washington, DC, to review and incorporate, where possible, the recommendations to the ACF Tribal Consultation Policy.

Explanation and Summary of Comments: Fourteen written comments were received from tribal leaders and tribal organizations in response to the FR notice published on December 16, 2010, requesting public comment on the draft ACF Tribal Consultation Policy.

General comments on the policy included the following: (1) The draft policy should include urban Indian representation; (2) HHS and ACF must develop a self-governance compacting pilot program for tribes; (3) ACF should apply the HHS Tribal Consultation Policy by simply substituting ''ACF'' for ''HHS'' throughout the document; and (4) it is difficult to determine if the terms ''ACF'' and ''ACF program offices'' are meant to be used interchangeably. ACF's response to these comments are: (1) We will refer to the HHS policy that states government-to-government as the basis for consultation; (2) the Department as a whole is looking at ways to expand self-governance and ACF is also looking closely at this issue; (3) there are directives under the HHS policy for each operating division to further refine their process and ACF is taking this opportunity to create a division-wide policy for all ACF programs; and (4) ''ACF'' and ''ACF program offices'' are interchangeable and a definition for ACF was added to the policy that specifically states this.

1. Introduction

It was suggested that the first paragraph of the policy under the introduction section should be exchanged with the second paragraph, and the opening statement regarding President Obama's Executive Memorandum be moved to either the Background section or some sort of History section. ACF did not accept this comment as the Workgroup wanted to acknowledge the current directive by the current Administration as the impetus for the development of this consultation policy.

2. Purpose

One comment suggested that the *Purpose* section might be an appropriate place to state clearly that this policy applies to all offices of ACF. This comment was accepted and the policy was revised accordingly in this section.

Two comments recommended that a statement be added to the policy that ACF shall also abide by the HHS Consultation policy. This comment was accepted and the policy was revised accordingly in this section.

A third comment stated that the policy needed to contain specific language requiring that consultation be more than a request for comments. This comment is addressed in *Section 6. Consultation Principles,* which addresses the meaning of consultation.

3. Background

One comment stated that the language in the original HHS Tribal Consultation Policy was more respectful and protective of Indian sovereignty than the ACF language and recommended a change to use the language in the HHS policy. This comment was accepted and the language was incorporated in the policy under *Section 3. Background.*

4. Tribal Sovereignty

One comment stated that under the Federal Trust Doctrine, the United States and its individual agencies of the Federal Government owe a duty of protection and a fiduciary duty to tribes. It was suggested that ACF address in its policy how it plans to meet its trust responsibility to protect tribal resources and treaty rights ''to the fullest extent possible.'' ACF added language that the policy does not diminish any rights and is using language consistent with the HHS Tribal Consultation Policy. The

Workgroup felt that the language ''to the fullest extent possible'' might be seen as limiting ACF's responsibility to tribes and therefore declined to accept the suggestion.

5. Background on ACF

A comment suggested adding language that clearly binds ACF to follow the HHS Consultation Policy. This comment was accepted and is addressed under *Section 2. Purpose;* the ACF Tribal Consultation Policy will comply with the overall HHS Tribal Consultation Policy.

Another comment suggested that the Native American Affairs Advisory Council (NAAAC) would be better served if there were a tribal component to it to advise ACF of specific priorities, the effect ACF programs have on the priorities, and to more effectively focus limited resources to respond to local tribal needs and priorities. ACF's response was the NAAAC serves as an internal working group to provide better coordination, collaboration and promote interoperability within ACF. ACF will continue to utilize TFWGs that incorporate tribal leadership to inform ACF leadership and develop ACF-wide policies, including the Tribal Consultation Policy.

6. Consultation Principles

Again, a comment suggested adding language that clearly binds ACF to follow the HHS Tribal Consultation Policy to supplement and not repeat HHS policy. ACF's response to this comment was that ACF policy will comply with HHS policy and language has been added to *Section 8. Consultation Process,* to further clarify the steps necessary by either ACF or tribe(s) to initiate consultation. There is also a process to resolve an impasse in *Section 11. ACF–Tribal Conflict Resolution.* A similar comment recommended that a substantive, stand-alone paragraph be inserted stating: ''ACF is bound by the HHS Tribal Consultation Policy in full. Nothing in the ACF Tribal Consultation Policy shall be construed as diminishing any of the obligations imposed on ACF by the HHS Tribal Consultation Policy. When any provision of the ACF Tribal Consultation Policy conflicts with the HHS Tribal Consultation Policy, the HHS Tribal Consultation Policy controls.'' ACF's response to this comment was the Workgroup added a stand-alone paragraph to *Section 2. Purpose.*

Another comment requested clarification on the meaning of an ''enhanced form of communication'' because ''enhanced communication'' may be interpreted as simply requiring ACF to send a letter to a tribal official offering to initiate consultation without additional follow through or communication on actions that affect tribal interests. This ACF policy clarifies that either the U.S. Government or an Indian Tribe can initiate consultation, and the steps and timeline for an ACF response, as well as a reporting of outcomes is included in this policy.

Another comment felt that the definition of ''consultation'' was too vague. It was recommended that the definition should incorporate more of the intergovernmental concepts of Executive Order 13175. ACF would like to refer the commenter to *Section 7. Consultation Parties* of the policy, wherein ACF outlines the parties to the consultation process and the government-to-government nature of the process.

Another comment recommended that the ACF policy contain a clear statement, similar to the HHS policy, that consultation shall take place with *Indian tribes.* In the HHS Tribal Consultation Policy, *Section 7. Consultation Participants and Roles,* it states for Indian tribes, ''The government-to-government relationship between the U.S. and Federally recognized Indian Tribes dictates that the principle focus for HHS consultation is Indian tribes * * *'' This comment is addressed in the ACF policy under *Section 2. Purpose.*

Several comments were received regarding the scope and duration of consultation. There was a recommendation to restore the foundational language from the HHS Tribal Consultation Policy as the core policy statement in the ACF Tribal Consultation Policy. ACF's response to the above comments is ACF will follow HHS policy that institutes a protocol for tribal officials (elected or designated authorized representatives). ACF also modified paragraph 2 of this section to further address these comments.

7. Consultation Parties

A comment to this section stated that meaningful consultation requires consultation between tribal leaders and decision makers within ACF—both the administrative agency decision makers and the regional staff with decision-making authority over day-to-day issues. ACF's response to this comment was that ACF Regional Administrators will play a facilitative role and assist with resolving programmatic issues. Their responsibilities do not extend to policy making.

8. Consultation Process

One comment to this section asked that ACF ensure the policy includes a spirit of interactive dialogue, concluded by a consensus of the decision between the tribe and agency representative to be implemented. ACF's response to this comment was that this is the intent of the policy and is included in the definition of consultation.

Other comments centered on the possible limitation of actions (legislative proposal, new rule adoption, and other policy changes) that cause ACF to consult with the tribes. ACF's response to these comments was that the concerns have been addressed in this policy and have expanded the description of the process in this section. In addition, a definition of ''action'' has been added to *Section 13. Definitions.*

Two comments addressed the parties who can initiate consultation and recommended that consultation can be initiated by either the tribe(s) or the agency, and appropriate information be provided to the other party(ies) when consultation is requested. ACF agreed with these comments and expanded the description of the process in this section.

Another comment addressed the ACF definition of a tribe's representative for consultation and stated that this is a departure from the HHS Tribal Consultation Policy which makes designation of the tribal representative the tribe's choice. ACF points out that consultation parties are addressed in *Section 7. Consultation Parties* of the policy and includes elected or appointed leaders and authorized representatives as appropriate tribal representatives.

One comment addressed the proper notification of consultation and method of consultation ''as determined by ACF'' as being restrictive to open dialogue. ACF removed ''as determined by ACF'' to meet the concern that ACF is the only determinant of need for or method of tribal consultation.

Two comments addressed the need to provide sufficient notice for consultation to ensure meaningful consultation. ACF has addressed this concern and has committed to providing no less than a 30 day notice of subject, date, time, and location of meeting.

Two comments addressed the methods of consultation ''as determined by the parties.'' It was recommended that ACF identify examples for the method of consultation. ACF accepted the comments and addressed them by revising the section to include examples of methods of consultation.

Two other comments addressed meetings as acceptable methods of consultation and asked ACF to clarify by specifically identifying the meetings as consultation meetings. ACF accepted the comments and addressed this accordingly in the policy.

One comment addressed using correspondence as an appropriate method of consultation and asked for further clarification to state that consultation may occur in the form of written communications. ACF accepted this comment and revised this section accordingly.

Another comment regarding correspondence recommended language on how ACF should respond to tribes when using correspondence as the method of consultation. ACF felt this comment was directed more towards individual Bureau/Office required consultations which is addressed in *Section 9. ACF Consultation and Communication Responsibilities, C.* of the policy.

Two comments were received on the use of the FR as an appropriate method of consultation and asked that this method be removed from the policy. ACF's response to this recommendation was tribal and Federal budgets may at times preclude face-to-face or teleconference meetings; therefore, a FR notice remains a method to communicate and receive input on issues. Also the FR is a useful tool for soliciting input for broad-based issues. However, the FR should be used in conjunction with other methods. The policy was revised accordingly to include language stating, ''The **Federal Register** will not be used as a sole method of communication for consultation.''

Two comments were received on the ''Reporting of Outcome'' asking ACF to develop a process to report back to tribes on actions taken or to be taken to resolve issues/concerns such as sending out an email alert informing tribes that reports are available and specifically where they can be obtained on the Web site. ACF will widely distribute reports using all available methods of communication, including emailing and web hosting of documents. This issue is also addressed in *Section 9. ACF Consultation and Communication Responsibilities, C., 4., 5.,* and *8.* of the policy.

One comment addressed the issue of State compliance with ACF program requirements while serving Indian populations. The commenter recommended ACF provide an opportunity for nonbinding mediation between State and tribal officials. The commenter went on to state, ''If mediation results in an impasse, ACF should take tangible, constructive and/or disciplinary steps to enforce accountability.'' ACF's response was that the policy for noncompliance of States is outside the purview of this Tribal Consultation Policy.

One comment was received about the provision at *Section 8., J. Meaningful Outcomes,* which was added after the September 29, 2010, consultation session. The commenter advised ACF that it believed the provision opposes the true objectives of tribal consultation. The commenter recommended that language from the HHS Tribal Consultation Policy be used in lieu of the ACF language in this section. ACF disagreed with this comment and advised that this section reflects that all parties have engaged in a meaningful dialogue regarding ACF policies.

Comments were received regarding ACF facilitating consultations and outcomes between tribe(s) and States administering ACF programs. ACF accepted the comments and the revisions are reflected in this section, in *Section 9. ACF Consultation and Communication Responsibilities, C. Individual Consultation Responsibilities.* The TFWG also noted that the Office of Intergovernmental Affairs has the authority to facilitate consultations between States and HHS programs.

A comment regarding waivers in this section recommended that the policy make it clear that this section applies to all agencies under ACF. ACF added language in *Section 2. Purpose,* to emphasize that this policy (including this section) applies to all ACF offices.

A comment that the ACF policy omits ''consistent with the applicable Federal policy objectives'' (as included in E.O. 13175) and replaces it with, ''to achieve established ACF program objectives'' substantially diminishes tribal flexibility. ACF policy complies with HHS policy and is intended to supplement that policy and not repeat the HHS Tribal Consultation Policy verbatim. ACF is willing to provide waivers in compliance with Executive Order 13175, *Consultation and Coordination With Indian Tribal Governments,* and Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking.* However, ACF did not accept a recommendation to remove the language ''to the extent practicable and permitted by law.'' ACF believes this language ensures that ACF will not commit itself to consultation in situations where consultation is not practicable (e.g., in an emergency or disaster situation where human services needs must be expediently assessed).

One comment stated that it is unclear under the current draft which party would bear the burden of proof when there is a dispute over a consultation outcome. The commenter strongly believes the program office should do so as it has the duty, in accordance with its trust responsibility to tribal nations, to ensure that its policies and programs meet the needs of tribal communities. A similar comment stated that the ACF policy places the ''elevation of issues'' under the waiver section and ''limits sovereign prerogatives'' that are recognized in the HHS Tribal Consultation Policy. The commenter recommended that the elevation of issues appear with the conflict resolution section and include the following statement from the HHS policy: ''Indian tribes may elevate an issue of importance to a higher or separate decision-making authority.'' ACF agreed with both of the comments and has outlined the process to elevate an issue for conflict resolution in the policy.

9. ACF Consultation and Communication Responsibilities

One comment asked ACF to clarify how the States and Regional Offices will be woven into the consultation policies. ACF would like to point the commenter to the revisions to *Section 9., C. Individual Program Consultation Responsibilities, 7.*

Another comment asked ACF to set the annual date for an Annual Tribal Consultation session in a manner that provides plenty of notice to tribes for planning purposes. ACF accepted this comment and states there will be a minimum of 30 days notice for tribal consultation meetings.

A comment regarding ''Individual Program Consultation Responsibilities'' asked ACF to provide regional consultations to afford as many affected tribes the opportunity to attend by directing Regional Office principals to arrange and initiate consultation. ACF's response was that ACF participates in the HHS Regional Consultations and encourages tribes to attend these events to address ACF issues.

One comment asked ACF to provide a single point of contact (SPOC) for information to tribes and keep it current. ACF agreed with this comment and advises that this information will be kept current on the ACF Web site.

One comment asked that all internal manuals, procedures, protocols, guidelines, and forms that set forth the processes by which HHS takes actions that affect tribes be amended to integrate

the tribal consultation requirements. ACF stated that the ACF consultation policy is a supplemental document that should be read in conjunction with ACF manuals and procedures. ACF will provide a briefing for staff on the ACF Tribal Consultation Policy once it is completed and reference the HHS Tribal Consultation Policy.

One comment urged ACF to consider holding regional consultation sessions in addition to the agency-wide annual consultation sessions proposed by the consultation policy. The commenter believes that by conducting regional consultation sessions, ACF can develop priorities for the national meeting, as well as foresee the specific types of agency actions that will require tribal consultation in the future. ACF's response was that due to fiscal constraints, ACF will continue to participate in the HHS regional consultation meetings and encourage tribes to participate in these sessions to address ACF policy. In addition, tribes can request consultation following the process outlined in *Section 8. Consultation Process.*

10. ACF Performance and Accountability

One comment supported the proposed use of ACF's Annual Performance Plan and suggested the creation of ACF TFWGs that ''will develop and discuss agency-wide policies that impact Indian tribes'' to gauge the efficacy of the policy. In addition to providing meetings with representatives from tribal organizations and forums for tribal viewpoints, the commenter proposed that these workgroups should also convene to monitor the success of the consultation policy. Further, as another means to ensure accountability, it is recommended that ACF strengthen its communication and coordination with HHS. For example, the commenter suggested that when ACF proposes legislation, new or amended regulations, or other policy initiatives, it should report to the Secretary about what the tribal implications may be and what consultation preceded the proposal. It was also recommended that in order to foster consistency within the Department, ACF should report to HHS its training activities and other programs intended to raise awareness of the unique situations faced by tribes. ACF agreed with these comments and will continue to put forth efforts in this regard.

A comment was received to define ''various partners'' or remove it from paragraph of this section because it is unclear as to who the partners are. ACF agrees to remove the words because we are unable to clearly define who the partners may be.

Another comment on this section was to elaborate in greater detail its compliance with *Section 6. Objectives,* of the HHS Tribal Consultation Policy on accountability—there should be more attention paid to outlining the process for determining whether compliance is happening. The commenter suggested if ACF program offices ''design indicators to ensure accountability * * *,'' that this be a topic specifically discussed with the tribes for ideas on how to measure performance. ACF would like to direct the commenter to *Section 10. ACF Performance and Accountability, D.,* of the policy where the formulation of indicators is discussed.

One comment referred to the HHS Tribal Consultation Policy, *Section 13. Evaluation, Recording of Meetings and Reporting,* regarding measuring the level of satisfaction of the Indian tribes on an annual basis and noted that this language is missing from the ACF Tribal Consultation Policy. Although the ACF policy is meant to supplement the HHS policy, the commenter believed this language should be included in the ACF policy as well. ACF's response was that ACF works with the HHS Office of Intergovernmental Affairs (IGA) and will comply with HHS Tribal Consultation Policy, *Section 13.*

One comment recommended that the ACF policy be enhanced by including a requirement for ACF to conduct at a minimum an annual satisfaction survey of the tribes to achieve the objectives of President Obama's memorandum of November 9, 2010. ACF's response was that ACF will be a part of the HHS Consultation Progress Report to the Office of Management and Budget.

Another comment recommended that a mechanism be adopted for the tribes to report on agency compliance, including sanctions for non-compliance or poor performance. ACF disagreed with this comment and stated that it is not feasible at this time.

11. ACF-Tribal Conflict Resolution

One comment recommended that effective tribal liaisons be hired within key ACF program divisions to advocate for tribes. ACF's response to this recommendation is the creation of new positions and subsequent hiring is a matter of budget/resources. ACF already has designated individuals within each program office who represent their office on an internal workgroup. A listing of the designated individuals can be found on the ACF Tribal webpage at *http://www.acf.hhs.gov/tribal/index.html.*

One comment recommended that the policy include a Conflict Resolution section, and should discuss what process can be used to address any issues. ACF accepted this recommendation and this section has been expanded to detail the conflict resolution process.

Another comment recommended that the policy include a stay of a proposed action until that consultation process has been completed in compliance with the policy. ACF's response was that *Section 8. Consultation Process,* requires consultation to occur prior to any action that will significantly impact a tribe or tribes. *Section 11* also incorporates the stay of a proposed action until the resolution of the conflict resolution process as well.

12. Workgroups and Advisory Committees

One comment recommended a change to ''ACF may convene Tribal/Federal Workgroups'' to ''ACF will convene Tribal/Federal Workgroups.'' The commenter also recommended adding a section stating ACF understands the workgroups and advisory committees do not take the place of formal tribal consultation. ACF accepted this recommendation and modified the wording in this section and also added that the convention of workgroups is subject to available funding.

Another comment on this section asked that ACF seek input from the tribe(s) when the need to convene a TFWG is indicated. ACF accepted this recommendation and ACF will seek tribal nominations when convening a TFWG.

One comment suggested that TFWGs be required to participate in any ACF new hire orientation training that addresses the government-to-government relationship with tribes, with particular attention to the differences between American Indian tribes and Alaska Native tribes' structure of governance, land jurisdictions, and tribal-State relations. ACF stated that it will encourage all TFWG members to participate in the online training available at *http://tribal.golearnportal.org/.*

Another comment addressed the language used to define tribal official. ACF removed language to clarify that ACF TFWG will comply with HHS and the Federal Advisory Committee Act (FACA).

One comment wanted clarification on whether or not the need to include retaining ACF's ''right to meet with various representatives of organizations on an individual basis'' is necessary. The commenter asked that ACF clarify

this requirement by including language such as, ''ACF understands that organizations cannot and do not represent all tribes.'' A similar comment advised that these meetings have been construed by some ACF program offices as tribal consultation. This section should clearly state that ACF meetings with various associations, organizations, or committees are not to be construed as tribal consultation. ACF's response to all the above comments was that meetings in groups as described in this section, A–E, will not be construed as tribal consultation and a statement to that effect is added in *Section 12. Workgroups and Advisory Committees, F.*

One comment asked ACF to emphasize the importance of holding States accountable for their actions when implementing ACF programs. ACF's response is that ACF will work to ensure States are fully compliant with ACF programs and serve all populations the State included in their application, see *Section 9. ACF Consultation and Communication Responsibilities, C. Individual Program Consultation Responsibilities, 7.*

13. Definitions

In response to a comment regarding the possible limitation of the definition for ''action,'' a new definition for ''action'' has been added to this section. Also in response to the comment regarding ''ACF'' and ''ACF program office'' and their interchangeability, a definition for the ''Administration for Children and Families (ACF)'' has been added to clarify that the terms are interchangeable throughout the document.

One comment asked ACF to delete the definition for ''consortia of tribes'' as it is not used in the body of the ACF policy. In response to this comment, ACF believes it is important for ACF to acknowledge that several tribes operate programs in consortia and have retained the definition.

One comment recommended that ACF delete the definition of ''Indian Organization,'' stating this is a completely different definition from the one appearing in the HHS policy, it is not used in the body of the ACF policy, and the HHS definition makes an important point about their role that is omitted here: ''The government does not participate in government-to-government consultation with these entities; rather these organizations represent the interests of tribes when authorized by those tribes.'' ACF did not accept the recommendation to delete the definition; rather, it expanded the definition by adopting the HHS Tribal Consultation Policy definition.

One commenter supported the inclusion of the definition of ''Indian tribe'' as articulated in Public Law 93–638 (25 U.S.C. 450b). They urged that the policy continue to utilize the definition of ''Indian tribe'' as articulated in Public Law 93–638 (25 U.S.C. 450b(e)) rather than the Federally Recognized Tribe List Act of 1994, (25 U.S.C. 479a). ACF accepted the suggestion to keep the definition from 25 U.S.C. 450b(e) in the ACF Tribal Consultation Policy. Regarding the definition of ''Indian,'' one commenter mentioned that the definition of Indian as a member of a federally recognized tribe rather than a member of an Indian tribe, as defined under the Self-Determination Act definition, excludes many Alaska Native people who are not members of tribes, but who are shareholders in Alaska Native corporations. ACF agreed and has used the broadest definition for Indian and the concern is satisfied with using 25 U.S.C. 450b(d).

A definition for ''Joint Tribal Federal Workgroups and/or Task Forces'' has been added to clarify that working with these workgroups does not constitute tribal consultation.

One comment recommended the deletion of the term and definition of ''Inter-Tribal Organization'' because it is not used in the body of the ACF policy, nor does it appear in the HHS policy. ACF accepted this recommendation and deleted the term and definition.

One comment recommended the deletion of the term and definition of ''Non-Recognized Tribe'' because it is not used in the body of the ACF policy, nor does it appear in the HHS policy. ACF accepted this recommendation and deleted the term and definition.

One comment recommended the deletion of the term and definition of ''Reservation'' because it is not used in the body of the ACF policy, nor does it appear in the HHS policy. ACF accepted this recommendation and deleted the term and definition.

One comment recommended the deletion of the term and definition of ''Self Government'' because it is not used in the body of the ACF policy, nor does it appear in the HHS policy. ACF accepted this recommendation and deleted the term and definition.

One comment recommended the deletion of the term and definition of ''Tribal Resolution'' because it is not used in the body of the ACF policy, nor does it appear in the HHS policy. ACF accepted this recommendation and deleted the term and definition.

One comment recommended the deletion of the term and definition of ''Tribal Self-Governance'' because it is not used in the body of the ACF policy, nor does it appear in the HHS policy. ACF accepted this recommendation and deleted the term and definition.

16. Retention of Executive Branch Authorities

One comment regarding Section 16 discussed the absence of mechanisms to enforce agency compliance with this policy. Another comment was concerned by the lack of any right to enforce this consultation duty in court. ACF's response to both comments was that in the absence of statutory authority, there is no right of action against the Federal Government.

Drafting information: The principal authors of this policy are Lillian Sparks, Commissioner, Administration for Native Americans, and the ACF Tribal Federal Workgroup composed of representatives from the 10 Regional Offices and at-large Indian organizations. Other members of ACF, HHS, and federally recognized Indian tribes also participated in its development.

SUPPLEMENTARY INFORMATION: The final ACF Tribal Consultation Policy is provided below.

1. Introduction
2. Purpose
3. Background
4. Tribal Sovereignty
5. Background on ACF
6. Consultation Principles
7. Consultation Parties
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9. ACF Consultation and Communication Responsibilities
10. ACF Performance and Accountability
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12. Workgroups and Advisory Committees
13. Definitions
14. Acronyms
15. Policy Review
16. Retention of Executive Branch Authorities
17. Effective Date

1. Introduction

On November 5, 2009, President Obama signed an Executive Memorandum reaffirming the government-to-government relationship between Indian tribes and the Federal Government, and directing each executive department and agency to consult with tribal governments prior to taking actions that affect this population. The importance of consultation with Indian tribes was affirmed through Presidential Memoranda in 1994, 2004, and 2009, and Executive Order 13175 in 2000.

The U.S. Department of Health and Human Services (HHS) and Indian tribes share the goal of eliminating health and human service disparities of American Indians and Alaska Natives (AI/AN) and ensuring that access to critical health and human services is maximized.

2. Purpose

The Administration for Children and Families (ACF), as an Operating Division within HHS, hereby establishes a consultation policy with federally recognized Indian tribes. The purpose of the ACF Tribal Consultation Policy is to build meaningful relationships with federally recognized tribes by engaging in open, continuous, and meaningful consultation. True consultation leads to information exchange, mutual understanding, and informed decision-making.

ACF is bound by the HHS Tribal Consultation Policy in full. Nothing in the ACF Tribal Consultation Policy shall be construed as diminishing or waiving the HHS Tribal Consultation Policy. The ACF Tribal Consultation Policy shall not conflict with the HHS Tribal Consultation Policy and applies to all offices of ACF.

This ACF Tribal Consultation Policy document was developed based upon:

1. Executive Memorandum ''Tribal Consultation,'' November 5, 2009;
2. Executive Order 13175, reaffirmed in 2009;
3. HHS Tribal Consultation Policy (established in 2005, and amended in 2010);
4. Input from an ACF Tribal Federal Workgroup (TFWG) convened to develop the draft ACF Consultation Policy;
5. Input from tribes to ensure a consultation policy that reflects the goals of all partners involved; and
6. Input of all of the programs and regions within ACF, many of which already consult with AI/ANs.

3. Background

Since the formation of the Union, the United States (U.S.) has recognized Indian tribes as sovereign nations. A unique government-to-government relationship exists between AI/AN Indian tribes and the Federal Government. This relationship is grounded in the U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders, as well as political, legal, moral, and ethical principles. This relationship is derived from the political relationship that Indian tribes have with the Federal Government.

An integral element of this government-to-government relationship is that consultation occurs with Indian tribes. ACF program offices shall provide an opportunity for meaningful consultation between tribes and ACF in policy development, as set forth in this policy. The Executive Memorandum titled ''Tribal Consultation'' reaffirmed this government-to-government relationship with Indian tribes on November 5, 2009. The implementation of this policy is in recognition of this special relationship.

This special relationship is affirmed in statutes and various Presidential Executive Orders including, but not limited to:

- Older Americans Act, Public Law 89–73, as amended (42 U.S.C. 3001 *et seq.*);
- Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended (25 U.S.C. 450 *et seq.*);
- Native American Programs Act, Public Law 93–644, as amended (42 U.S.C. 2991 *et seq.*);
- Indian Health Care Improvement Act, Public Law 94–437, as amended (25 U.S.C. 1601 *et seq.*);
- Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193 (42 U.S.C. 1305 *et seq.*);
- Head Start for School Readiness Act of 2007, Public Law 110–134, as amended (42 U.S.C. 9801 *et seq.*);
- Patient Protection and Affordable Care Act (ACA), Public Law 111–148 (42 U.S.C. 18001 *et seq.*);
- Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110–351 (42 U.S.C. 1305 *et seq.*);
- Presidential Executive Memorandum to the Heads of Executive Departments dated April 29, 1994;
- Presidential Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, November 6, 2000; and
- Presidential Memoranda, Government-to-Government Relationship with Tribal Governments, September 23, 2004; and Tribal Consultation, November 5, 2009.

4. Tribal Sovereignty

This policy does not waive or diminish any tribal governmental rights, including treaty rights, sovereign immunities, or jurisdiction. Additionally, this policy does not diminish any rights or protections afforded other ai/an persons or entities under federal law.

Our nation, under the law of the u.s. And in accordance with treaties, statutes, executive orders, and judicial decisions, has recognized the right of indian tribes to self-government and self-determination. Indian tribes exercise inherent sovereign powers over their members and territory. The u.s. Continues to work with indian tribes on a government-to-government basis to address issues concerning tribal self-government, tribal trust resources, tribal treaties, and other rights.

The constitutional relationship among sovereign governments is inherent in the very structure of the constitution, and is formalized in and protected by article i, section 8. Self-determination and meaningful involvement for indian tribes in federal decision-making through consultation in matters that affect indian tribes have been shown to result in improved program performance and positive outcomes for tribal communities. The involvement of indian tribes in the development of public health and human services policy allows for locally relevant and culturally appropriate approaches to public issues.

Tribal self-government has been demonstrated to improve and perpetuate the government-to-government relationship and strengthen tribal control over federal funding that it receives, and its internal program management.

5. Background on ACF

Acf provides national leadership and direction to plan, manage, and coordinate the nationwide administration of comprehensive and supportive programs for vulnerable and at-risk children and families. Acf oversees and finances a broad range of programs for children and families, including native americans, persons with developmental disabilities, refugees, and legal immigrants, to help them develop and grow toward a more independent, self-reliant life. These programs, carried out by state, county, city, and tribal governments, and public and private local agencies, are designed to promote stability, economic security, responsibility, and self-sufficiency.

Acf coordinates development and implementation of family-centered strategies, policies, and linkages among its programs, and with other federal, tribal, and state programs serving children and families. Acf's programs assist families in financial crisis, emphasizing short-term financial assistance, and education, training, and employment for the long term. Its programs for children and youth focus on those children and youth with special problems, including children of low-income families, abused and

neglected children, those in institutions or requiring adoption or foster family services, runaway youth, children with disabilities, migrant children, and native american children. Acf promotes the development of comprehensive and integrated community and home-based modes of service delivery where possible. The following offices are located in acf:

- Administration on children, youth and families (ACYF).
  - Children's bureau (CB).
  - Family and youth services bureau (FYSB).
- Office of the deputy assistant secretary for early childhood development.
- Administration on developmental disabilities (ADD):
  - President's committee for people with intellectual disabilities (PCPID), an advisory committee to the president of the united states and health and human services secretary.
- Administration for native americans (ANA).
- Office of administration.
- Office of community services (OCS).
- Office of child care (OCC).
- Office of child support enforcement (OCSE).
- Office of family assistance (OFA):
  - Temporary assistance for needy families bureau (TANF).
- Office of head start (OHS).
- Office of human services emergency preparedness and response (OHSEPR).
- Office of legislative affairs and budget (OLAB).
- Office of planning, research and evaluation (opre).
- Office of refugee resettlement (ORR).
- Office of regional operations (ORO).

In June 2010, ACF established the native american affairs advisory council (NAAAC). This council will function as an internal agency workgroup to support the assistant secretary for children and families, the commissioner of ana, and all acf program and regional offices that provide services to native americans. On behalf of the assistant secretary, administration for children and families, the commissioner of ANA is the chair of the NAAAC and ANA is the lead office to coordinate the activities.

One of the responsibilities of NAAAC is to facilitate the development of the acf tribal consultation policy, in conjunction with the office of the assistant secretary for children and families and in consultation with tribes.

The members of NAAAC are the acf program and regional offices that have native american constituents or work with native american communities. These offices include the administration on children, youth and families (children's bureau, and the family and youth services bureau); the administration on developmental disabilities; the administration for native americans; the office of child care; the office of child support enforcement; the office of community services; the office of family assistance (tribal temporary assistance for needy families (tribal tanf)); the office of head start; the office of planning, research and evaluation; and the office of regional operations. The following regions will be represented: region i, region ii, region iv, region v, region vi, region vii, region viii, region ix, and region x.

6. Consultation Principles

Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinions among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process that results in effective collaboration and informed decision-making with the ultimate goal of reaching consensus on issues. ACF will consult, as defined in this document and as practicable and permitted by law, with indian tribes before taking action that will significantly affect indian tribes.

The acf policy is to conduct timely, respectful, meaningful, and effective two-way communication and consultation with tribes wherein elected officials and other authorized representatives of the tribal governments provide input prior to any action that either acf or one or more tribes determines has or may have significantly affected one or more indian tribes, and before any such action or further action is taken. An action that triggers consultation is any legislative proposal, new rule adoption, or other policy change that either acf or a tribe determines may significantly affect indian tribes. Acf or a tribe may determine that an action may significantly affect one or more indian tribes and by appropriate communication initiate tribal consultation. An action is considered to significantly affect tribes if there exists a reasonable presumption that it has or may have substantial direct effects on one or more indian tribes, on the relationship between the federal government and indian tribes, on the amount or duration of acf program funding, on the delivery of acf program services to one or more tribes, or on the distribution of power and responsibilities between the federal government and indian tribes.

7. Consultation Parties

Consultation parties are:

A. The ACF assistant secretary, acf deputy assistant secretaries, ACF central office principals, or their designee; and

B. Tribal president, tribal chair or tribal governor, or an elected or appointed tribal leader, or their authorized representative(s).

Each party will identify their authorized representatives with delegated authorities to negotiate on their behalf.

8. Consultation Process

A. A consultation is initiated:

1. When either acf or one or more tribes makes a written request for a consultation.

a. Either acf or a tribe may determine an action significantly affects or may affect one or more indian tribes.

b. An action that triggers consultation is any legislative proposal, new rule adoption, or policy change that either acf or a tribe determines may significantly affect indian tribes.

2. An action is considered to significantly affect tribes if there exists a reasonable presumption that it has or may have substantial direct effects on:

a. One or more indian tribes;

b. The amount or duration of acf program funding for one or more tribes;

c. The delivery of acf program services to one or more tribes;

d. The relationship between the federal government and indian tribes; or the distribution of power and responsibilities between the federal government and indian tribes.

B. A consultation request by acf or tribe(s) should:

1. Identify the subject issue(s) for resolution.

2. Identify the applicable program(s), policy, rule, regulation, statute, and authorizing legislation.

3. Identify the related concerns such as state-tribal relations, related programs, complexity, time constraints, funding and budget implications.

4. Identify the affected and potentially affected indian tribe(s).

C. ACF will acknowledge receipt of the tribal consultation request within 14 calendar days after receipt of the request.

D. ACF shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of policies that have tribal implications.

E. To the extent practicable and permitted by law, acf shall not promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on indian tribes, or that is not required by statute, unless:

1. Funds necessary to pay the direct costs incurred by the indian tribe in complying with the action are provided by the federal government; or

2. Acf, prior to the formal promulgation of the regulation,

a. Consulted with tribal officials early and throughout the process of developing the proposed regulation;

b. Provided a tribal summary impact statement in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register** (FR), which consists of a description of the extent of acf's prior consultation with tribal officials, a summary of the nature of their concerns and ACF's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

c. Made available to the assistant secretary any written communications submitted to acf by tribal officials.

F. To the extent practicable and permitted by law, ACF shall not promulgate any regulation that has tribal implications and that preempts tribal law unless ACF, prior to the formal promulgation of the regulation:

1. Consulted with tribal officials early and throughout the process of developing the proposed regulation;

2. Provided a tribal summary impact statement in a separately identified portion of the preamble to the regulation as it is to be issued in the fr, which consists of a description of the extent of acf's prior consultation with tribal officials, a summary of the nature of their concerns and acf's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

3. Made available to the assistant secretary any written communications submitted to acf by tribal officials.

G. Proper notice of the tribal consultation and the level of consultation shall be communicated to all affected and all potentially affected indian tribes within 45 calendar days after receipt of the tribal request. Appropriate forms of notice include a ''dear tribal leader letter'' signed by the assistant secretary, broadcast e-mail, fr, and other outlets. The notice will provide at least 30 days notice of subject, location, date, and time.

H. Consultation will occur through a combination of one or more methods, and will include additional actions and participants as determined by the parties. The following are examples of methods of consultation:

1. Meeting(s): one or more meetings for consultation with affected and potentially affected indian tribes to discuss all pertinent issues related to the legislative proposal, new rule adoption, or other policy change that may significantly affect the tribe(s) using a single purpose meeting, or a national or regional forum, if appropriate, when the consultation is determined to include all tribes. Meetings can be face-to-face, by teleconference call, and other forms of new technologies.

2. Correspondence: written communications for consultation exchanged between acf and the indian tribe(s) provide affected and potentially affected indian tribes an opportunity to identify concerns, potential impacts, proposed alternatives or flexibilities, and provide acf with the opportunity to identify resources and other considerations relevant to the issue(s) raised. All correspondence will identify the manner in which tribal comments will be solicited.

3. **Federal Register** (FR): when one or more meetings are not practicable, notices in the fr may be used as the method of consultation to solicit comment from tribes about broad-based issues including concerns, potential impacts, proposed alternatives or flexibilities. Such notices will include clear and explicit instructions for the submission of comments that provide adequate time, a minimum of 45 days, for tribal responses. The fr will not be used as a sole method of communication for consultation.

I. *Reporting of outcome:* all national and regional consultation meetings and recommended actions shall be recorded and made available to indian tribes.

ACF program offices will provide a detailed report on their consultation sessions, which summarizes the discussions, specific recommendations, and responses, and solicits tribal feedback on the consultation process, within 45 calendar days of the conclusion of the consultation process. The acf report will be available on the program offices' Web sites.

Once the consultation process is complete and a proposed policy is approved and issued, the final policy must be broadly distributed to all Indian tribes and it will be independently posted on the ACF webpage and also linked to several appropriate tribal and inter-tribal organization Web sites.

J. *Meaningful Outcomes:* The consultation process and activities conducted within the scope of the ACF policy should result in a meaningful outcome for both ACF and tribes. Before any final policy decisions are adopted that significantly affect Indian tribes, the proposed outcome of a consultation shall be widely publicized and circulated for review and comment to affected Indian tribes, inter-tribal organizations, and within HHS, when appropriate, practicable and permitted by law.

Good faith implementation of ACF programs and a cooperative working relationship with tribes in support of ACF programs is the primary meaningful outcome. ACF will work with States to emphasize the importance of working cooperatively with tribes.

ACF shall facilitate meaningful consultations and outcomes between tribe(s) and one or more States administering ACF programs, shall report the outcome of its efforts to affected tribes, and shall make a good faith effort to ensure all parties fully comply with ACF program requirements.

K. *Waivers:* The intent of this policy is to provide increased ability to address issues impacting Indian tribes. ACF will, consistent with HHS Tribal Consultation Policy and as practicable and permitted by law, utilize flexible approaches to enable tribes to achieve established ACF program objectives, including consideration of waivers of statutory and regulatory requirements and other alternatives that preserve the prerogatives and authority of Indian tribes.

L. *Elevation of Issues:* Indian tribes may elevate an issue of importance to a higher or separate decision-making authority, detailed in *Section 11. ACF–Tribal Conflict Resolution.*

9. ACF Consultation and Communication Responsibilities

ACF will conduct an annual agency-wide tribal consultation each year, in addition to the tribal consultations required by several ACF program offices. The following will guide ACF's coordination of the various sessions. NAAAC will work with the program offices to coordinate ACF required consultations, on required topics and in required regions, to maximize the time and resources of Indian tribes and program offices.

A. ACF Annual Tribal Consultation Session

1. ACF will hold, at a minimum, an agency-wide annual tribal consultation session to discuss ACF budget, programs and policies impacting tribal programs. ANA, working through

NAAAC, will be the lead agency to coordinate the annual tribal consultation session.

2. Every ACF program office Principal, or their designee, will be required to participate in the annual ACF tribal consultation.

3. NAAAC will coordinate with the program offices to prepare and disseminate a written report within 45 calendar days of the conclusion of the annual ACF tribal consultation.

4. ACF will post this report on its Web site within 7 days of the final report completion.

5. The annual ACF tribal consultation session will not supplant any tribal consultation sessions that are required by law to be conducted by ACF program offices.

B. Special Statutory Consultation Requirements

1. The following ACF Offices have programs that require consultation with Indian tribes in accordance with their authorizing statutes.

- Office of Head Start.
- Children's Bureau.
- Family and Youth Services Bureau.

2. ACF program offices will conduct tribal consultation sessions that are required by law, including in conjunction with the Annual ACF Tribal Consultation Session.

C. Individual Program Consultation Responsibilities

1. Each individual program office will meet with Indian tribes and AI/AN grantees regarding programmatic concerns at the request of the Indian tribe or AI/AN grantee.

2. An official staff contact will be designated as responsible for the initial coordination and facilitation of the program office interaction with tribes and Native American organizations and to serve as the program single point of contact for interaction with offices and workgroups within HHS on AI/AN issues. This contact will be kept current on the ACF Web site.

3. ACF program offices will acknowledge requests for consultation within 14 calendar days of receipt of the request.

4. ACF program offices will acknowledge and report on unresolved issues with the tribe in a timely manner. ACF program offices will acknowledge issues within 14 calendar days after the conclusion of the consultation.

5. Feedback will be provided by ACF program offices to tribes on the resolution of issues for which consultation has been requested within 45 calendar days of the conclusion of the consultation.

6. ACF program offices will ensure intra-agency coordination with Regional Offices to facilitate communication and outreach on consultations held in the Region. Regional Offices will facilitate State participation as appropriate.

7. ACF program offices and Regional Offices will provide assistance in efforts to resolve tribal-State issues.

8. ACF program offices will provide a written report on the consultations, which summarizes the discussions, recommendations, and responses, within 45 calendar days after the conclusion of the last consultation.

D. HHS Tribal Consultations

ACF will participate in the Annual Budget Consultation Session and Annual Regional Tribal Consultations.

10. ACF Performance and Accountability

A. Implementation of this policy shall be made part of the Annual Performance Plan for ACF Senior Management as a critical performance element in those offices where there are specific tribal activities.

B. ACF program offices will design indicators to ensure accountability among program managers, and central office and Regional Office staff in carrying out the HHS and ACF tribal consultation policies.

C. ACF will ensure that all personnel working with Indian tribes receive appropriate training on consultation, this policy, and working with tribal governments.

D. As part of the Department's annual measurement of the level of satisfaction of Indian tribes with the consultation process and the activities conducted under this policy, Indian tribes' satisfaction with ACF will be recorded and evaluated to determine whether the intended results were achieved and to solicit recommendations for improvement from tribes.

11. ACF-Tribal Conflict Resolution

A. Should an impasse arise between ACF and a tribe(s) concerning ACF compliance with the consultation policy or outcome of consultation, a tribe may invoke the conflict resolution process by filing a written notice of conflict resolution and any action that is the subject of an impasse will be stayed until the conflict resolution process with ACF is complete to the extent practicable and permitted by law. Authorized tribal representatives shall have the opportunity to meet with the Assistant Secretary for Children and Families, and/or a Deputy Assistant Secretary, and/or the Commissioner for the Administration for Native Americans, and/or the ACF Regional Administrator(s) for the Regional Offices that provide services to the affected tribes. The goal is to accomplish the following:

1. Clarify all aspects of the issue(s) at an impasse;

2. Explore the alternative position(s) available to resolve the impasse;

3. Clearly state the issue(s) that the parties can accept on the record;

4. Form acceptance of recommended actions; and

5. Facilitate coordination of resolution(s) for parties.

B. In cases where a tribe(s) is not satisfied with the resolution of an issue or issues after consultation with ACF, a tribe(s), consistent with the government-to-government relationship, may elevate an issue of importance to the Secretary of the Department of Health and Human Services, through the Office of Intergovernmental Affairs (IGA), for decision.

12. Workgroups and Advisory Committees

A. To maximize the expertise and knowledge of individuals working in tribal communities, ACF will convene TFWGs, subject to available funding, to develop and discuss agency-wide policies that impact Indian tribes, prior to formal tribal consultation sessions on the policies.

The TFWG will work in accordance with the HHS policy on tribal workgroups and will follow procedures to ensure compliance with the Federal Advisory Committee Act (FACA). See the HHS Tribal Consultation Policy, Addendum 1, for further explanation of TFWG.

B. ACF has a standing internal working group made up of staff representatives from each ACF program office. This Native American Affairs Workgroup meets once a month to work on tribal issues at the program, ACF, and HHS level.

C. ACF retains the right to meet with various representatives of organizations on an individual basis.

D. For policies that impact more than federally recognized Indian tribes,[1] ACF will develop forums to provide opportunities for input and dialogue for State-recognized tribes; Native American organizations, including Native Hawaiians and Native American Pacific Islanders; urban Indian centers; tribally controlled community colleges

[1] These groups, while not federally recognized tribes, are eligible to receive funding under certain ACF programs in the same manner as federally recognized tribes. ACF will make every effort to seek the input of these groups when changes to policy impact these groups as well.

and universities; Alaska Region Corporations; and others as defined in program office guidance.

E. Program offices may still convene their individual working groups to work on program specific policies. Program offices will ensure that these working groups operate within the FACA guidelines and requirements.

F. ACF does not participate in government-to-government consultation with entities described in *Section 12., A–E,* and these meetings do not take the place of tribal consultation.

13. Definitions

A. Action—Any legislative proposal, new rule adoption, or policy change that either ACF or a tribe(s) determines may significantly affect an Indian tribe(s).

B. Agency—Any authority of the United States that is an ''agency'' under 44 U.S.C. 3502(1) other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

C. Administration for Children and Families (ACF)—All the offices that make up the organization of ACF. The acronyms ''ACF'' and ''ACF program offices'' are used interchangeably.

D. Communication—The exchange of ideas, messages, or information by speech, signals, writing, or other means.

E. Consortia of tribes—Two or more federally recognized Indian tribes.

F. Consultation—An enhanced form of communication, which emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties, which leads to mutual understanding and comprehension. Consultation is integral to a deliberative process, which results in effective collaboration and informed decision-making with the ultimate goal of reaching consensus on issues.

G. Coordination and Collaboration—Working and communicating together in a meaningful government-to-government effort to create a positive outcome.

H. Critical Event—Planned or unplanned event that has or may have a substantial impact on Indian tribe(s), *e.g.* issues, policies, or budgets which may come from any level within HHS.

I. Deliberative Process Privilege—Privilege exempting the government from disclosure of government-agency materials containing opinions, recommendations, and other communications that are part of the decision-making process within the agency.

J. Executive Order—An order issued by the government's executive on the basis of authority specifically granted to the Executive Branch (as by the U.S. Constitution or a Congressional Act).

K. Federally recognized tribal governments—Indian tribes with whom the Federal Government maintains an official government-to-government relationship, usually established by a Federal treaty, statute, executive order, court order, or a Federal Administrative Action. The Bureau of Indian Affairs (BIA) maintains and regularly publishes the list of federally recognized Indian tribes.

L. Indian—A person who is a member of an Indian tribe (25 U.S.C. 450b(d)). Throughout this policy, Indian is synonymous with American Indian/Alaska Native.

M. Indian Organization—(1) Those federally recognized, tribally constituted entities that have been designated by their governing body to facilitate HHS communications and consultation activities. (2) Any regional or national organizations whose board is comprised of federally recognized tribes and elected/appointed tribal leaders. The Government does not participate in government-to-government consultation with these entities; rather, these organizations represent the interests of tribes when authorized by those tribes.

N. Indian tribe—An Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (*43 U.S.C. 1601 et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)).

O. Joint Tribal Federal Workgroups and/or Task Forces—A group composed of individuals who are elected tribal officials, appointed by federally recognized tribal governments and/or Federal agencies to represent their interests while working on a particular policy, practice, issue, and/or concern.

P. Native American (NA)—Broadly describes the people considered indigenous to North America.

Q. Native American Affairs Advisory Council (NAAAC)—An internal agency work group established to support the Assistant Secretary for Children and Families, the Commissioner of the Administration for Native Americans, and all ACF program and Regional Offices that provide services to Native Americans.

R. Native Hawaiian—Any individual whose ancestors were natives of the area, which consists of the Hawaiian Islands prior to 1778 (42 U.S.C. 3057k).

S. Policies that have tribal implications—Refers to regulations, legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

T. Sovereignty—The ultimate source of political power from which all specific political powers are derived.

U. State recognized tribes—Tribes that maintain a special relationship with the State government and whose lands and rights are usually recognized by the State. State recognized tribes may or may not be federally recognized.

V. Substantial Direct Compliance Costs—Those costs incurred directly from implementation of changes necessary to meet the requirements of a Federal regulation. Because of the large variation in tribes, ''substantial costs'' is also variable by Indian tribe. Each Indian tribe and the Assistant Secretary shall mutually determine the level of costs that represent ''substantial costs'' in the context of the Indian tribe's resource base.

W. To the Extent Practicable and Permitted by Law—Refers to situations where the opportunity for consultation is limited because of constraints of time, budget, legal authority, *etc.*

X. Treaty—A legally binding and written agreement that affirms the government-to-government relationship between two or more nations.

Y. Tribal Government—An American Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Z. Tribal Officials—Elected or duly appointed officials of Indian tribes or authorized Indian organizations.

AA. Tribal Organization—The recognized governing body of any Indian tribe; any legally established organization of American Indians and Alaska Natives which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the community to be served by such organization and which includes the maximum participation of Indian tribe members in all phases of its activities (25 U.S.C. 450b).

14. Acronyms

ACF Administration for Children and Families

AI/AN American Indian/Alaska Native

AI/AN/NA American Indian/Alaska Native/Native American

ANA Administration for Native Americans

BIA Bureau of Indian Affairs

Division Staff Division and/or Operating Division

EO Executive Order

FACA Federal Advisory Committee Act

FR **Federal Register**

HHS U.S. Department of Health and Human Services

NAAAC Native American Affairs Advisory Council

OPDIV Operating Divisions of HHS

SPOC Single Point of Contact

TFWG Tribal/Federal Workgroup

U.S. United States

U.S.C. United States Code

15. Policy Review

ACF shall review and, if necessary, revise its Tribal Consultation Policy no less than every 2 years. Should ACF determine that the policy requires revision, the TFWG will be convened to develop the revisions.

16. Retention of Executive Branch Authorities

Nothing in this policy waives the Government's deliberative process privilege, including when the Department is specifically requested by Members of Congress to respond to or report on proposed legislation. The development of such responses and related policy documents is a part of the deliberative process by the Executive Branch and should remain confidential.

Nothing in the Policy creates a right of action against the Department for failure to comply with this Policy nor creates any right, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any individual.

17. Effective Date

This policy is effective on the date of signature by the Assistant Secretary for Children and Families and shall apply to all ACF program offices.

Dated: August 18, 2011.

George H. Sheldon,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2011–22825 Filed 9–7–11; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 2, 2011, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Paul Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *Fax:* 301–847–8533, *e-mail: EMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 2, 2011, the committee will discuss supplemental new drug applications 21–687 and 21–445, VYTORIN (ezetimibe/simvastatin) and ZETIA (ezetimibe) tablets, respectively, MSP (Merck/Schering-Plough) Singapore Company, LLC. Simvastatin lowers lipids (fats that circulate in the bloodstream, including cholesterol) by inhibiting 3-hydroxy-3-methyl-glutaryl-CoA reductase, which is an enzyme involved in producing lipids in the body, and ezetimibe lowers lipids by inhibiting the absorption of cholesterol from the intestine. The proposed indication (use) of ZETIA in combination with simvastatin or VYTORIN is to reduce major cardiovascular events in patients with chronic kidney disease based on the results of the Study of Heart and Renal Protection (SHARP). SHARP was a clinical trial that studied the effect of VYTORIN compared with placebo on the occurrence of major cardiovascular events in patients with chronic kidney disease who did not have a history of myocardial infarction or coronary revascularization (heart bypass surgery or opening heart vessels with a balloon or stents). The primary outcome of major cardiovascular events was defined as the first occurrence of either nonfatal myocardial infarction, cardiac death, stroke, or coronary or noncoronary revascularization (including nontraumatic amputation). The primary analysis demonstrated that assignment to VYTORIN significantly reduced the relative risk of a major cardiovascular event by 16% compared to placebo.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 19, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 11, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the

speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 12, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 1, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–22863 Filed 9–7–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The SSA–NIH Collaboration To Improve the Disability Determination Process: Validation of IRT–CAT Tools

SUMMARY: 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 Clinical Center, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The SSA–NIH Collaboration to Improve the Disability Determination Process: Validation of IRT–CAT tools. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The Epidemiology and Biostatistics section in RMD will be collecting information through a contractor (Boston University—Health and Disability Research Institute (BU–HDR)) and subcontractor for validation of the Computer Adaptive Tests which are being developed to assist in the SSA disability determination process. The utilization of CAT technology could potentially allow the SSA to collect more relevant and precise data about human functioning in a faster, more efficient fashion. To validate the CAT assessments that have been developed, the contractor will administer both the BU–HDR CAT and established legacy instruments in a small sample of adults who report their current employment status as ''permanently disabled''. Individuals will complete the CAT tools for the functional domains of Physical Demands and Interpersonal Interactions along with established legacy instruments. For the domain of physical function, individuals will complete the BU–HDR CAT; the PROMIS Item Bank v 1.0—Physical Functioning © PROMIS Health Organization and PROMIS Cooperative Group; and The Short Form (36) Health Survey™ (SF–36). For the domain of interpersonal interactions, individuals will complete the BU–HDR CAT, the SF–36 and the BASIS–24© (Behavior and Symptom Identification Scale). Data collected will be used to validate the BU–HDR CAT tools. Without this information, completion of the BU–HDR CAT tools will not be possible. *Frequency of Response:* Once. *Affected Public:* Individuals who have opted in to participate in web surveys through a survey research firm. *Type of Respondents:* Adults who indicate ''permanently disabled'' as a working status. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report. The annual reporting burden is as follows:

A.12–1—ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Patients	1,000	1	0.5	500.00
Totals				500.00

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Meghan Gleason, Rehabilitation Medicine Department, Clinical Research Center, NIH, Building 10, Room 1–2420, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 443–9085 or E-mail your request, including your address to: *meghan.gleason@nih.gov.*

DATES: *Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: August 29, 2011.

Elizabeth K Rasch,

Chief, Epidemiology and Biostatistics Section, Rehabilitation Medicine Department, Clinical Research Center, National Institutes of Health.

[FR Doc. 2011–22999 Filed 9–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging Notice of Closed 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 on Aging Special Emphasis Panel; Aminergic Function and Brain Aging II.
Date: October 21, 2011.
Time: 12:30 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Cell Models for AD.
Date: October 31, 2011.
Time: 12 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Health and Aging in Africa.
Date: November 15, 2011.
Time: 2:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22987 Filed 9–7–11; 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, RFA Panel: Selected Topics in Transfusion Medicine.
Date: September 26–27, 2011.
Time: 11:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892. (301) 301 806–7314. *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AREA: Reproductive Sciences.
Date: October 4, 2011.
Time: 5:30 p.m. to 8 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: Dianne Hardy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, Bethesda, MD 20892. 301–435–1154. *dianne.hardy@nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Biomedical Computing and Health Informatics Study Section.
Date: October 6, 2011.
Time: 8 a.m. to 5:30 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: Melinda Jenkins, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892. 301–437–7872. *jenkinsml2@mail.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Clinical and Integrative Diabetes and Obesity Study Section.
Date: October 6, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892. 301–408–9901. *sheardn@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Host Interactions with Bacterial Pathogens Study Section.
Date: October 6, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.
Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892. (301) 435–1149. *elzaataf@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group, Neurotechnology Study Section.
Date: October 6, 2011.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Delfina, 530 Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Robert C. Elliott, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892. 301–435–3009. *elliotro@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetic Variation and Evolution Study Section.
Date: October 6–7, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892. (301) 435–1045. *corsaroc@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Societal and Ethical Issues in Research Study Section.

Date: October 6, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Karin F. Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892. 301–254–9975. *helmersk@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Health Disparities and Equity Promotion Study Section.

Date: October 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Delia Olufokunbi Sam, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892. 301–435–0684. *olufokunbisamd@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

Date: October 6, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Sooja K. Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892. (301) 435–1780. *kims@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics A Study Section.

Date: October 6–7, 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: Michael M. Sveda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892. 301–435–3565. *svedam@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genomics, Computational Biology and Technology Study Section.

Date: October 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Barbara J. Thomas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892. 301–435–0603. *bthomas@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Cellular Mechanisms in Aging and Development Study Section.

Date: October 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: John Burch, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892. 301–408–9519. *burchjb@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Social Psychology, Personality and Interpersonal Processes Study Section.

Date: October 6–7, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892. (301) 435–1258. *micklinm@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Myocardial Ischemia and Metabolism Study Section.

Date: October 6, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Lawrence E. Boerboom, PhD, Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892. (301) 435–8367. *boerboom@nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Pathogenic Eukaryotes Study Section.

Date: October 6–7, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Tera Bounds, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892. 301 435–2306. *boundst@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Immunity and Host Defense Study Section.

Date: October 6–7, 2011.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA 22314.

Contact Person: Patrick K Lai, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892. 301–435–1052. *laip@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—A Study Section.

Date: October 6–7, 2011.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: David B. Winter, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892. 301–435–1152. *dwinter@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Psychology, Personality and Interpersonal Processes.

Date: October 6, 2011.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Martha M. Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892. 301–435–3575. *faradaym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Non-HIV Microbial Vaccine Development.

Date: October 7, 2011.

Time: 8 a.m. to 8 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: Scott Jakes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892. 301–495–1506. *jakesse@mail.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: August 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–22982 Filed 9–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0055]

Critical Infrastructure Partnership Advisory Council

AGENCY: Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Critical Infrastructure Partnership Advisory Council (CIPAC) Plenary Meeting will be held on Thursday, October 6, 2011, at the Renaissance Washington Downtown Hotel, Washington, DC. The meeting will be open to the public.

DATES: The CIPAC Plenary will be held on Thursday, October 6, 2011, from 8:30 a.m.–4:45 p.m. Registration will begin at 7:30 a.m. Please note that the meeting may adjourn early if the committee has completed its business. For additional information, please consult the CIPAC Web site, *http://www.dhs.gov/cipac,* or contact the CIPAC Secretariat by phone at 703–235–3999 or by e-mail at *cipac@dhs.gov.*

ADDRESSES: The meeting will be held at the Renaissance Washington Downtown Hotel, 999 Ninth Street, NW., Washington, DC 20001.

While this meeting is open to the public, participation in the CIPAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

Immediately following the committee member deliberation and discussion period, there will be a limited time period for public comment. This public comment period is designed for substantive commentary that must pertain only to matters involving critical infrastructure protection and resiliency. Off-topic questions or comments will not be permitted or discussed. To accommodate as many speakers as possible, oral presentations will be limited to three (3) minutes per speaker, with no more than 60 minutes for all speakers. Parties interested in presenting must register in person at the meeting location. Oral presentations will be permitted on a first come, first served basis, and given based upon the order of registration; all registrants may not be able to speak if time does not permit.

Written comments are welcome at any time prior to or following the meeting. Written comments may be sent to Nancy Wong, Department of Homeland Security, National Protection and Programs Directorate, 245 Murray Lane, SW., Mail Stop 0607, Arlington, VA 20598–0607. For consideration in the CIPAC deliberations, written comments must be received by Nancy Wong by no later than October 5, 2011, identified by **Federal Register** Docket Number DHS–2011–0055 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting written comments.
- *E-mail: CIPAC@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 703–603–5098.
- *Mail:* Nancy Wong, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, SW., Mail Stop 0607, Arlington, VA 20598–0607

Instructions: All written submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Written comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the CIPAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Renee Murphy, Section Chief Partnership Programs, Partnership and Outreach Division, Office of Infrastructure Protection, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, SW., Mail Stop 0607, Arlington, VA 20598–0607, telephone 703–235–3999 or via e-mail at *CIPAC@dhs.gov.*

SUPPLEMENTARY INFORMATION: CIPAC represents a partnership between the Federal Government and critical infrastructure owners and operators and provides a forum in which they can engage in a broad spectrum of activities to support and coordinate critical infrastructure protection and resilience.

The CIPAC will meet to discuss issues relevant to the protection and resilience of critical infrastructure. The October 6, 2011, meeting will include panel discussions among participating members regarding current issues in critical infrastructure protection.

Information on Services for Individuals with Disabilities:

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the CIPAC Secretariat at 703–235–3999 as soon as possible.

Dated: August 26, 2011.

Nancy Wong,

Designated Federal Officer for the CIPAC.

[FR Doc. 2011–22960 Filed 9–7–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2010–0070]

Privacy Act of 1974; Department of Homeland Security National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records

AGENCY: Privacy Office; DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security is providing an update notice relating to the Department of Homeland Security system of records titled, ''Department of Homeland Security National Protection and Programs Directorate—001 National Infrastructure Coordinating Center Records System of Records.'' The Department will not claim Privacy Act exemption (k)(3) as originally published in the SORN and Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, 75 FR 69603, on November 15, 2010. This system of records will allow the Department of Homeland Security National Protection and Programs Directorate National Infrastructure Coordinating Center, an extension of the National Operations Center, to collect, plan, coordinate, report, analyze, and fuse infrastructure information related to all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from Federal, state, local, Tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals into the National Infrastructure Coordinating Center.

DATES: Submit comments on or before October 11, 2011. This new system will be effective October 11, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0070 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Emily Andrew (703–235–2182), Privacy Officer, National Protection and Programs Directorate, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) National Protection and Programs Directorate (NPPD) proposes to update the DHS system of records titled, ''DHS/NPPD—001 National Infrastructure Coordinating Center (NICC) Records System of Records.'' The Department will not claim Privacy Act exemption (k)(3), as originally published in the SORN and Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, 75 FR 69603, on November 15, 2010.

This system of records will allow DHS/NPPD, including the NICC (an extension of the National Operations Center (NOC)) to collect, plan, coordinate, report, analyze, and fuse infrastructure information related to all-threats and all-hazards, law enforcement activities, intelligence activities, man-made disasters and acts of terrorism, natural disasters, and other information collected or received from Federal, state, local, Tribal, and territorial agencies and organizations; foreign governments and international organizations; domestic security and emergency management officials; and private sector entities or individuals into the NICC.

The NICC provides the mission and capabilities to assess the operational status of the nation's 18 critical infrastructures and key resources (CIKR) sectors during normal operations and incident management activities, supports information sharing with National Infrastructure Protection Plan (NIPP) partners, and owners and operators of critical infrastructure facilities, and facilitates information sharing across and between the 18 national sectors.

The NICC is both an operational component of the NPPD Office of Infrastructure Protection (IP) and a watch operations element of the DHS NOC. The NICC operates 24 hours a day, 7 days a week, 365 days a year to facilitate coordination and information sharing with the CIKR sectors. The NICC produces consolidated CIKR reports for incorporation into situational awareness reports and for inclusion into the common operating picture.

DHS is authorized to implement this program primarily through the Homeland Security Act of 2002 as codified within 6 U.S.C. 321d(b)(1), § 515. This system has an effect on individual privacy that is balanced by the need to collect, plan, coordinate, report, analyze, and fuse CIKR information coming into and going out of the NICC as well as the NOC. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to appropriate Federal, state, Tribal, local, international, foreign agency, or other appropriate entity including the private sector in their role aiding the NICC in their mission; to agencies, organizations or individuals for the purpose of an audit; to agencies, entities, or persons during a security or information compromise or breach; to an agency, organization, or individual when there could potentially be a risk of harm to an individual; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act (PRA).

Based on the information contained within this system of records, the NICC develops reports that are shared both within DHS and with the CIKR sectors. The NICC creates two reports, one with PII and one without. The one without PII is what is shared broadly with the CIKR sectors as well as the state and local fusion centers. Consistent with DHS's information sharing mission, information contained in the DHS/NPPD—001 NICC Records System of Records may be shared with other DHS components, as well as appropriate Federal, state, local, Tribal, territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a verifiable need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

The information within this system that meets the functional standard of the National Suspicious Activity Reporting Initiative will be placed into the DHS/ALL—031 Information Sharing Environment Suspicious Activity Reporting Initiative (September 10, 2010, 75 FR 55335).

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to their

records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/NPPD—001NICC Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/NPPD—001

SYSTEM NAME:

DHS/NPPD—001 NICC Records System of Records.

SECURITY CLASSIFICATION:

Unclassified, For Official Use Only, Law Enforcement Sensitive, and Classified.

SYSTEM LOCATION:

Records are maintained at the Department of Homeland Security (DHS) National Protection and Programs Directorate (NPPD) National Infrastructure Coordinating Center (NICC) Headquarters in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by the system may include:

- Federal, state, local, Tribal, and territorial officials; foreign government and international officials; domestic security and emergency management officials; and private sector individuals who request assistance from, provide information to, are the subject of, or participate with the NICC in activities related to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters related to national infrastructure;
- Individuals who request assistance from the NICC related to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters related to national infrastructure;
- Individuals who provide information to the NICC related to all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters, including Suspicious Activity Reports (SARs) related to national infrastructure;
- Individuals who are the subject of, or are linked in any manner to, all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters with NICC implications;
- Individuals participating with, involved in, or the subject of domestic security or law enforcement operations, with NICC implications, where activity is planned or has taken place;
- Individuals participating with or involved in emergency management and first responder operations, with NICC, and where activity is planned or has taken place;
- Individuals involved in natural disasters where activity is planned or has taken place;
- Individuals derived from intelligence information of interest to the NICC; and
- Individuals who make inquiries concerning all-threats and all-hazards, man-made disasters and acts of terrorism, and natural disasters related to national infrastructure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system may include:

- Full name;
- Date and place of birth;
- Social Security Number (Many state, local, Tribal, territorial, domestic security, emergency management, and private sector individuals, organizations and agencies collect/use SSNs as an identifier and therefore may be shared with the Department);
- Citizenship;
- Contact information including phone numbers and e-mail addresses;
- Address;
- Physical description including height, weight, eye and hair color;
- Distinguishing marks including scars, marks, and tattoos;
- Automobile registration information;
- Watch list information;
- Medical records;
- Financial information;
- Results of intelligence analysis and reporting;
- Ongoing law enforcement investigative information;
- Historical law enforcement information;
- Information systems security analysis and reporting;
- Public source data including commercial databases, media, newspapers, and broadcast transcripts;
- Intelligence information including links to terrorism, law enforcement and any criminal and/or incident activity, and the date information is submitted;
- Intelligence and law enforcement information obtained from Federal, state, local, Tribal, and territorial agencies and organizations, foreign governments and international organizations; law enforcement, domestic security and emergency management officials; and private sector entities or individuals;
- Information provided by individuals, regardless of the medium, used to submit the information;
- Information obtained from the Federal Bureau of Investigation's (FBI) Terrorist Screening Center (TSC), or on terrorist watchlists, about individuals known or reasonably suspected to be engaged in conduct constituting, preparing for, aiding, or relating to terrorism;
- Data about the providers of information, including the means of transmission of the data; (e.g., where it is determined that maintaining the identity of the source of investigative lead information may be necessary to provide an indicator of the reliability and validity of the data provided and to support follow-on investigative purposes relevant and necessary to a legitimate law enforcement or homeland security matter, such data may likely warrant retention. Absent such a need, no information on the provider of the information would be maintained);
- Scope of terrorist, law enforcement, or natural threats to the homeland;
- National disaster threat and activity information;
- The date and time national disaster information is submitted, and the name of the contributing/submitting individual or agency;
- Limited data concerning the providers of information, including the means of transmission of the data may also be retained where necessary. Such information on other than criminal suspects or subjects is accepted and maintained only to the extent that the information provides descriptive matters relevant to a criminal subject or organization and has been deemed factually accurate and relevant to ongoing homeland security situational awareness and monitoring efforts.
- Name of the contributing or submitting agency, organization, or individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, as codified within 6 U.S.C. 321d(b)(1), § 515 provides DHS, including the NICC and NOC, with authority to collect the information.

PURPOSE(S):

The purpose of this system is to provide the mission and capabilities to assess the operational status of the nation's 18 critical infrastructures and key resources (CIKR) sectors during normal operations and incident management activities, support information sharing with NIPP Partners, and the owners and operators of critical infrastructure.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, state, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To appropriate Federal, state, local, Tribal, or foreign governmental agencies or multilateral governmental organizations or critical infrastructure partners for the purpose of protecting the vital interests of a data subject or other persons, including to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantinable disease or to combat other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

I. To a Federal, state, Tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, or charged with investigating, prosecuting, enforcing or implementing civil or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

J. To Federal and foreign government intelligence or counterterrorism agencies or state, local, Tribal or territorial components, and critical infrastructure partners where DHS becomes aware of an indication of a threat or potential threat to national or international security.

K. To Federal and foreign government intelligence or counterterrorism agencies or state, local, Tribal or territorial components, and critical infrastructure partners where the information is or may be terrorism-related information and such use is to assist in anti-terrorism efforts.

L. To an organization or individual in either the public or private sector, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS' officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Much of the data within this system does not pertain to an individual; rather, the information pertains to locations, geographic areas, facilities, and other things or objects not related to individuals. However, some personal information is captured. Personal data may be retrieved by name, social security number and other identifiers listed under the Categories of Records Section.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict

controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

The NICC is working with the NPPD and DHS Records Officer to develop a NARA approved retention schedule.

SYSTEM MANAGER AND ADDRESS:

Director, National Infrastructure Coordinating Center, Department of Homeland Security, Washington, DC 20528.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security is proposing to exempt this system from the notification, access, and amendment procedures of the Privacy Act. However, DHS/NPPD will consider individual requests to determine whether or not information may be released. Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to NPPD FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.''

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from subject individuals, other Federal, state, local and Tribal agencies and organizations, domestic and foreign media, including periodicals, newspapers, and broadcast transcripts, public and classified data systems, reporting individuals, intelligence source documents, investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to the limitation set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

Dated: August 16, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–22903 Filed 9–7–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0494]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0009, Oil Record Book for Ships. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 11, 2011.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2011–0494], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

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

(3) *Hand deliver:* 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.

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, a copy is 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: 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 collections; (2) the accuracy of the estimated burden of the collections; (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. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2011–0494], and must be received by October 11, 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–2011–0494], 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–2011–0494'' in the ''Keyword'' box. 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. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period 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–2011–0494'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in 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.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: [1625–0009].

Privacy Act

Anyone can search the electronic form of all 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 the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (76 FR 35228, June 16, 2011) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: Oil Record Book for Ships.
OMB Control Number: 1625–0009.
Type of Request: Revision of a currently approved collection.
Summary: The Act to Prevent Pollution from Ships (APPS) and the International Convention for Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78), require that information about oil cargo or fuel operations be entered into an Oil Record Book (CG–4602A). The requirement is contained in 33 CFR 151.25.
Need: This information is used to verify sightings of actual violations of the APPS to determine the level of compliance with MARPOL 73/78 and as a means of reinforcing the discharge provisions.
Forms: CG–4602A.
Respondents: Operators of vessels.
Frequency: On occasion.
Burden Estimate: The estimated burden has increased from 19,425 hours to 20,221 hours a year.

Dated: August 31, 2011.

C.A. Mathieu,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–22916 Filed 9–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3335–EM; Docket ID FEMA–2011–0001]

Maryland; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Maryland (FEMA–3335–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* August 29, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Maryland is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 27, 2011.

The counties of Allegany, Anne Arundel, Calvert, Caroline, Carroll, Cecil, Charles, Frederick, Harford, Howard, Montgomery, Prince George's, St. Mary's, and Washington for emergency protective measures (Category

B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23014 Filed 9–7–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N078; 40136–1265–0000–S3]

Proposed Establishment of Everglades Headwaters National Wildlife Refuge and Conservation Area

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft land protection plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to establish a national wildlife refuge and conservation area in Polk, Osceola, Highlands, and Okeechobee Counties, in central and south Florida. A draft Land Protection Plan (LPP) and Environmental Assessment (EA) for the establishment of the proposed refuge and conservation area were prepared with input from Federal, State, and local agencies; Native American tribal nations; various non-governmental organizations; and the public. The EA considers the biological, environmental, and socioeconomic impacts of establishment of the refuge and conservation area and evaluates alternatives. The LPP describes the alternative we propose for the establishment of the refuge and conservation area.

DATES: To ensure consideration of your comments, we must receive your written comments by October 24, 2011. We will schedule public meetings during this public review and comment period. We will also inform the public of the public review and comment period and the dates, locations, and times of public meetings through mailings, press releases, and the Service's Everglades Headwaters webpage: *http://www.fws.gov/southeast/evergladesheadwaters.*

ADDRESSES: You may obtain a copy of the draft LPP and EA via U.S. mail at Everglades Headwaters Proposal, Fish and Wildlife Service, P.O. Box 2683, Titusville, FL 32781–2683, via e-mail at *EvergladesHeadwaters Proposal@fws.gov,* or by calling the Merritt Island National Wildlife Refuge Complex at 321/861–0067 (telephone). Alternatively, you may download the document from our Internet Site at *http://www.fws.gov/southeast/evergladesheadwaters.* You may submit comments on the draft LPP and EA to the above postal address, e-mail address, or to 321/861–1276 (fax).

FOR FURTHER INFORMATION CONTACT: Ms. Cheri M. Ehrhardt, Natural Resource Planner, at 321/861–2368 (telephone) or Mr. Charlie Pelizza, Refuge Manager, at 772/562–3909, extension 244 (telephone).

SUPPLEMENTARY INFORMATION: We propose to establish a national wildlife refuge and conservation area in Polk, Osceola, Highlands, and Okeechobee Counties in central and south Florida. The proposed refuge and conservation area would carry out many valuable functions, including the following: (1) Conduct landscape-scale strategic habitat conservation necessary to conserve important resources through partnerships and responsible stewardship; (2) protect and enhance habitats for Federal trust species and species of management concern, with special emphasis on species listed under the Endangered Species Act; (3) protect State-listed species; (4) protect and enhance biological diversity; (5) protect and enhance prairie, scrub, sandhill, flatwoods, and various wetland habitats within this landscape; (6) protect the headwaters, groundwater recharge, and watershed of the Kissimmee Chain of Lakes, Kissimmee River, and Lake Okeechobee region, which would help improve water quantity and quality in the Everglades watershed; (7) protect and enhance habitat corridors and implement other wildlife adaptation strategies to help buffer the impacts of climate change; and (8) provide opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation, while promoting activities that complement the purposes of the refuge and other protected lands in the region.

Recognizing the generations of responsible stewardship within this working rural landscape, this proposal seeks to work with willing landowners to secure a legacy of conservation lands for future generations to enjoy. This proposal aims to protect and restore one of the great grassland and savanna landscapes of eastern North America, conserving one of the nation's prime areas of biological diversity. Further, the proposal aims to address the threats from habitat fragmentation, urban development, and altered ecological processes, and the impacts from global climate change. Key species and habitats of concern for this area include: Florida grasshopper sparrow, Everglades snail kite, Florida black bear, Audubon's crested caracara, red-cockaded woodpecker, and the cutthroat wetlands habitats. By working with willing landowners, the Service is proposing to establish a national wildlife refuge and conservation area on 150,000 acres by focusing fee title acquisition activities on 50,000 acres of refuge area, while supporting landscape-scale conservation activities and focusing conservation easements on another 100,000 acres.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: April 27, 2011.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2011–23051 Filed 9–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM–Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management-Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Fourth Principal Meridian, Minnesota

T. 141 N., R 41 W.

The plat of survey represents the dependent resurvey and corrective dependent resurvey of a portion of the South, East, and West boundaries, and a portion of the subdivisional lines; the dependent resurvey and survey of portions of the subdivision of Sections 6, 12, 16, and 32; the dependent resurvey and survey of portions of Rham's subdivision in Section 32; and the survey of two unnamed parcels in Section 32, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted August 25, 2011.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 1, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–22941 Filed 9–7–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L19100000–BK0000–LRCSM1101300]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Louisiana.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM—Eastern States office in Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management—Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands surveyed are:

Saint Helena Meridian, Louisiana

T. 12 S., R 11 E.

The plat of survey represents the survey of two parcels of land referenced as the New Basin Canal Lighthouse and the United States Coast Guard Station located on Lake Pontchartrain, of the Saint Helena Meridian, in the State of Louisiana, and was accepted August 25, 2011.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: September 1, 2011.

Dominica Van Koten,

Chief Cadastral Surveyor.

[FR Doc. 2011–22940 Filed 9–7–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–11–L14200000–BJ0000]

Filing of Plats of Survey, Wyoming and Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on the dates indicated.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys and supplementals were executed at the request of the Bureau of Land Management, and are necessary for the management of resources. The lands surveyed are:

The supplemental plat showing corrected bearing and updated lottings and areas based on the plat approved April 27, 1938, Township 27 North, Range 72 West, Sixth Principal Meridian, Wyoming, Group No. 838, was accepted April 7, 2011.

The plat and field notes representing the dependent resurvey of a portion of the south boundary, and portions of the subdivisional lines, and the survey of certain sections, Township 36 North, Range 111 West, Sixth Principal Meridian, Wyoming, Group No. 813, was accepted June 1, 2011.

The supplemental plat correcting the distance of the West half of the South boundary of section 34, Township 21 North, Range 95 West, Sixth Principal Meridian, Wyoming, along the Fifth Standard Parallel North, was accepted June 1, 2011, and based upon the dependent resurvey plat of Township 20 North, Range 95 West, accepted September 29, 2005.

The supplemental plat correcting the bearing along the Twelfth Standard Parallel North from the true point for the standard ¼ section corner of section 32 to the witness corner for the standard ¼ section corner of section 32, and the

distance from the witness corner for the standard ¼ to the standard W. 1/16 section corner of section 32, Township 49 North, Range 78 West, Sixth Principal Meridian, Wyoming, was accepted June 1, 2011 and based upon the dependent resurvey plat of Township 49 North, Range 78 West, accepted February 3, 2006.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 27, Township 13 North, Range 91 West, Sixth Principal Meridian, Wyoming, Group No. 812, was accepted July 20, 2011.

The field notes representing the remonumentation of the ¼ section corner of sections 11 and 14, Township 56 North, Range 77 West, Sixth Principal Meridian, Wyoming, Group No. 850, was accepted July 20, 2011.

The plat and field notes representing the corrective dependent resurvey of a portion of the subdivisional lines and the subdivision of section 23, Township 31 North, Range 49 West, Sixth Principal Meridian, Nebraska, Group No. 165, was accepted July 20, 2011.

The amended field notes to revise and/or correct certain corner descriptions in the dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections, Township 31 North, Range 49 West, Sixth Principal Meridian, Nebraska, were accepted July 20, 2011 and linked to Group No. 152 which was accepted June 2, 2006.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: September 1, 2011.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2011–22932 Filed 9–7–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO921000–L13200000–EL0000, COC–74895]

Notice of Invitation to Participate; Exploration for Coal in Colorado License Application COC–74895

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, and to Bureau of Land Management (BLM) regulations, all interested parties are hereby invited to participate with Peabody Sage Creek Mining, LLC, on a pro rata cost-sharing basis, in its program for the exploration of coal deposits owned by the United States of America in lands located in Routt County, Colorado.

DATES: This notice was published in the *Steamboat Pilot and Craig Daily Press,* once each week for two consecutive weeks beginning the week of July 17, 2011, prior to publication in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both Peabody Sage Creek Mining, LLC, and the BLM as provided in the **ADDRESSES** section below by October 11, 2011 or 10 calendar days after the last publication of this notice in the *Steamboat Pilot and Craig Daily Press* newspaper, whichever is later.

ADDRESSES: Copies of the exploration plan are available for review during normal business hours in the following offices (case file number COC–74895): BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and BLM, Little Snake Field Office, 455 Emerson Street, Craig, Colorado 81625. Any party electing to participate in this exploration program shall notify the BLM State Director, in writing, at the BLM Colorado State Office at the address above and Peabody Sage Creek Mining, LLC, Attn: Mike Ludlow, 36600 CR 27, Hayden, Colorado, 81639.

FOR FURTHER INFORMATION CONTACT: Kurt M. Barton at (303) 239–3714, *kbarton@blm.gov*; or Jennifer Maiolo at (970) 826–5077, *jmaiolo@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Peabody Sage Creek Mining, LLC, has applied to the BLM for a coal exploration license. The purpose of the exploration program is to obtain geologic information about the coal. The BLM regulations at 43 CFR part 3410 require the publication of an invitation to participate in the coal exploration in the **Federal Register**. The Federal coal resources included in the exploration license application are located in the following described lands in Routt County, Colorado:

Sixth Principal Meridian

T. 5 N., R. 87 W., 6th P.M.
Sec. 4, All;
Sec. 5, Lots 2, 3, 5, and 6, SE¼NE¼, and NE¼SE¼;
Sec. 6, SE¼NW¼, NE¼SW¼, and Lots 5–11, inclusive;
Sec. 7, SW¼, S½NW¼, W½NE¼, SE¼, and SE¼NE¼;
Sec. 8, SE¼, W½SW¼, SE¼NE¼, SW¼NW¼, and NE¼NW¼;
Sec. 9, All;
Sec. 21, W½NE¼;
Sec. 22, N½, and NW¼SW¼.
T. 6 N., R. 87 W., 6th P.M.
Sec. 29, S½, and S½N½;
Sec. 30, S½NE¼, SE¼NW¼, E½SW¼, SE¼, and Lots 2–4, inclusive;
Sec. 31, All;
Sec. 32, NW¼, SW¼, SE¼, and W½NE¼;
Sec. 33, W½SW¼.
T. 5 N., R. 88 W., 6th P.M.
Sec. 1, S½NE¼, SE¼NW¼, E½SW¼, SE¼, and Lots 5–7, inclusive; and
Sec. 12, E½.

These lands contain 6,197 acres, more or less.

The proposed exploration program is fully described in, and will be conducted pursuant to, an exploration plan to be approved by the BLM.

Authority: 43 CFR 3410.2–1(c)(1).

Helen M. Hankins,

State Director.

[FR Doc. 2011–22951 Filed 9–7–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0311–6924; 2280–665]

Landmarks Committee of the National Park System Advisory Board Meeting

AGENCY: National Park Service.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act [5 U.S.C. Appendix (1988)], that a meeting of the Landmarks Committee of the National Park System Advisory Board will be held beginning at 1 p.m. on November 8, 2011, at the following location. The meeting will continue beginning at 9 a.m. on November 9 and 10, 2011.

DATES: November 8, 2011, at 1 p.m.; November 9–10, 2011, at 9 a.m.

Location: The Finn Forum, 2nd Floor, Ray Group International, 900 15th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Historic Landmarks Program, National Park Service; 1849 C Street, NW., (2280), Washington, DC 20240; Telephone (202) 354–2216; *E-mail: Patty_Henry@nps.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the Landmarks Committee of the National Park System Advisory Board is to evaluate nominations of historic properties in order to advise the National Park System Advisory Board of the qualifications of each property being proposed for National Historic Landmark (NHL) designation, and to make recommendations regarding the possible designation of those properties as National Historic Landmarks to the National Park System Advisory Board at a subsequent meeting at a place and time to be determined. The Committee also makes recommendations to the National Park System Advisory Board regarding amendments to existing designations and proposals for withdrawal of designation. The members of the Landmarks Committee are:

Mr. Ronald James, Chair;
Dr. James M. Allan;
Dr. Cary Carson;
Dr. Darlene Clark Hine;
Mr. Luis Hoyos, AIA;
Dr. Barbara J. Mills;
Dr. William J. Murtagh;
Dr. Franklin Odo;
Dr. William D. Seale;
Dr. Michael E. Stevens.

The meeting will be open to the public. Pursuant to 36 CFR part 65, any member of the public may file, for consideration by the Landmarks Committee of the National Park System Advisory Board, written comments concerning the National Historic Landmarks nominations, amendments to existing designations, or proposals for withdrawal of designation.

Comments should be submitted to J. Paul Loether, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service; 1849 C Street, NW., (2280), Washington, DC 20240; *E-mail: Paul_Loether@nps.gov.*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The National Park System Advisory Board and its Landmarks Committee may consider the following nominations:

Nominations:

Alabama

• United States Post Office and Courthouse, Montgomery, AL.

Arizona

• Murray Springs Clovis Site, Cochise County, AZ.
• Poston Elementary School, Unit I, La Paz County, AZ.

California

• Nuestra Señora Reina De La Paz, Kern County, CA.
• Port of Nova Albion Historic and Archeological District, Marin County, CA.

Colorado

• Trujillo Homestead, Alamosa County, CO.

Georgia

• U.S. Post Office and Courthouse, Atlanta, GA.

Iowa

• Davis Oriole Earthlodge Site, Mills County, IA.

Indiana

• The Republic Building, Columbus, IN.

Louisiana

• U.S Court Of Appeals—Fifth Circuit, New Orleans, LA.

Massachusetts

• Central Congregational Church, Boston, MA.

Michigan

• S.S. BADGER (Car Ferry), Ludington, MI.

Nevada

• Mckeen Motorcar #22, Carson City, NV.

New Mexico

• Mission San José De Los Jémez And Giusewa Pueblo Site, Sandoval County, NM.

New York

• Stepping Stones (Bill and Lois Wilson House), Katonah, NY.
• University Heights Campus, Nyu (Bronx Community College, Cuny), Bronx, NY.

Ohio

• Central Branch, National Home For Disabled Volunteer Soldiers/Dayton Veterans. Administration Home, Dayton, OH.

Rhode Island

• United Congregational Church, Newport, RI.

Wisconsin

• Village of Greendale, Village of Greendale, WI.

Proposed Amendments to Existing Designations:

Nantucket Historic District, Nantucket County, MA (updated and additional documentation).

Wawona Hotel Historic District, Yosemite National Park, CA (additional documentation, boundary and name change).

Dated: August 22, 2011.

J. Paul Loether,

Chief, National Register of Historic Places and National Historic Landmarks Program; National Park Service, Washington, DC.

[FR Doc. 2011–22904 Filed 9–7–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0811–8231; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before August 13, 2011. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW, MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 23, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Pima County

Barrio Anita, Roughly bounded by W. Speedway Blvd., UPRR, N. Granada Ave., St. Mary's Rd. & I–10., Tucson, 11000682

Barrio Santa Rosa, Roughly bounded by W. 18th St., S. Russell Ave., W. 22nd St., S. 9th Ave., & S. Meyer Ave., Tucson, 11000683

ARKANSAS

Ashley County

Hamburg Cemetery Historic Section, 800 E. Parker St., Hamburg, 11000684

Benton County

Camp Crowder Gymnasium, 205 Shiloh Dr., Sulpher Springs, 11000685

Clark County

Okolona Colored High School Gymnasium, 767 Layne St., Okolona, 11000686

Ronoake Baptist Church, N. end of Ronoake Baptist Church Rd., Gurdon, 11000687

Drew County

Monticello Commercial Historic District, Bounded roughly by Trotter Ave., Edwards St., Railroad Ave. & Chester St., Monticello, 11000688

Garland County

Central Methodist Episcopal Church South, 1100 Central Ave., Hot Springs, 11000689

Ouachita Avenue Historic District, Bounded by Ouachita Ave., Orange St., Central Ave. & Olive St., Hot Springs, 11000690

Ouachita County

Clifton and Greening Streets Historic District (Boundary Increase III), 140 California St., Camden, 11000691

Pulaski County

Tower Building, 323 Center St., Little Rock, 11000692

Sebastian County

Camp Chaffee Tank Destroyer Battalion Historic District, (World War II Home Front Efforts in Arkansas, MPS) Roughly bounded by Terry St., Ward Ave., Ellis St. & Darby Ave., Fort Smith, 11000693

Washington County

Price Produce and Service Station, (Arkansas Highway History and Architecture MPS) 413, 415 & 417 E. Emma Ave., Springdale, 11000694

Springdale Poultry Industry Historic District, 317 & 319 E. Emma & 316 E. Meadow Aves., Springdale, 11000695

CALIFORNIA

Santa Clara County

Shoup, Paul, House, 500 University Ave., Los Altos, 11000696

DELAWARE

New Castle County

Water Witch Steam Fire Engine Company No. 5, 1814 Gilpin Ave., Wilmington, 11000697

FLORIDA

Manatee County

Benjamin, Judah P. Memorial, 3708 Patton Ave., Ellenton, 11000698

IDAHO

Benewah County

St. Maries Masonic Temple No. 63, 208 S. 8th St., St. Maries, 11000699

MARYLAND

Baltimore County

Dundalk—Liberty—Cornwall Gardens, 7003 Dunmanway, Dundalk, 11000700

MONTANA

Missoula County

Carlton Community Church, 20075 Old MT 93, Florence, 11000701

OREGON

Multnomah County

Bowers, George W. and Hetty A., House, 114 NE. 22nd Ave., Portland, 11000702

SOUTH CAROLINA

Richland County

Calhoun, John C., State Office Building, 1015 Sumter St., Columbia, 11000703

VERMONT

Washington County

Smith, E.L., Roundhouse Granite Shed, 23 Burnham Meadows, Barre, 11000704

Request for REMOVAL has been made for the following resources:

ARKANSAS

Howard County

Boyd, Adam, House E. of Center Point on AR 26, Center Point, 76000415

Clardy—Lee House, AR 26, Center Point, 77000255

Russey—Murray House, S. of Center Point on AR 4, Center Point, 76000417

Saline County

North Fork Saline River Bridge (Historic Bridges of Arkansas MPS) AR 9 over Saline R. Paron, 95000642

[FR Doc. 2011–22897 Filed 9–7–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Environmental Impact Statement/ Environmental Impact Report and Notice of Public Meetings for the Joint Operations Center Relocation Project, Sacramento County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and public meetings.

SUMMARY: The Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) have made available for public review and comment the joint draft environmental impact statement/ environmental impact report (Draft EIS/ EIR) for the Joint Operations Center (JOC) Relocation Project.

The proposed new JOC would provide the special needs, essential services, and requisite office space for the combined occupancy of Reclamation, DWR, and the National Weather Service (NWS) that are lacking at the existing Interim JOC on El Camino. Special needs are defined as two control centers, a flood operations center, backup power supplies, primary and backup communication systems, intense computer infrastructure, and physical and cyber security systems. The new JOC also must meet State essential service criteria, described further below.

DATES: Submit written comments on the Draft EIS/EIR on or before November 7, 2011.

Two public meetings are scheduled with DWR and Reclamation staff. Oral or written comments will be received at these meetings regarding the project's environmental effects. The meetings will be held on September 22, 2011 from 2 to 4 p.m. and from 6 to 8 p.m. in Sacramento.

ADDRESSES: Submit written comments on the Draft EIS/EIR to Mr. Doug Kleinsmith, Division of Environmental Affairs, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825. E-mail electronic comments to *dkleinsmith@usbr.gov.*

The public meetings will be held at the Sacramento State Aquatics Center, 1901 Hazel Avenue, Gold River, CA 95670.

To request a compact disc of the Draft EIS/EIR, please contact Mr. Doug Kleinsmith as indicated above, or call 916–978–5034. The Draft EIS/EIR may be viewed at Reclamation's Web site at *http://www.usbr.gov/mp/cvo/joc.html.* See Supplementary Information section for locations where copies of the Draft EIS/EIR are available for public review.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Kleinsmith, Natural Resources Specialist, at 916–978–5034, or e-mail at *dkleinsmith@usbr.gov*; or Mr. John Engstrom, DWR Program Manager, at 916–651–8745, or e-mail at *engstrom@water.ca.gov.*

SUPPLEMENTARY INFORMATION: The new JOC would accommodate approximately 600 employees and be approximately

200,000 square feet. The preliminary design concepts being considered in the Draft EIS/EIR are one three-story building or two two-story buildings. The new JOC would occupy approximately 16 acres of land, including access roads and parking lots.

The criteria used by Reclamation, DWR, NWS, and the California Department of General Services to identify alternative JOC locations require that the site:

- Be along or adjacent to a major traffic thoroughfare and within an approximately 25-minute drive time from downtown Sacramento (DWR headquarters);
- Be outside of the designated 200-year floodplain;
- Maintain a secure perimeter;
- Have a lower risk of incompatible adjacent development;
- Allow line-of-sight for specialized communications systems and equipment, as well as redundant communication systems;
- Have availability of reliable and redundant power service;
- Have access to public transportation such as bus service and/or light rail.

Copies of the Draft EIS/EIR are available for public review at the following locations:

- Bureau of Reclamation, Regional Library, 2800 Cottage Way, Sacramento, CA 95825–1898, 916–978–5593.
- California Department of Water Resources, Division of Management Services, 1416 Ninth Street, Room 354, Sacramento, CA 95814.
- Rancho Cordova Public Library, 9845 Folsom Boulevard, Sacramento, CA 95827.
- Folsom Public Library, Georgia Murray Building, 411 Stafford Street, Folsom, CA 95630.

Special Assistance for Public Meetings

If special assistance is required to participate in the public meetings, please contact Mr. Doug Kleinsmith at 916–978–5034, TDD 916–978–5608, or via e-mail at *dkleinsmith@usbr.gov.* Please notify Mr. Kleinsmith as far in advance as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

Public Disclosure

Before including your name, 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: August 2, 2011.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2011–22787 Filed 9–7–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–730]

In the Matter of Certain Inkjet Ink Supplies and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting Complainant's Motion for Summary Determination That There Has Been a Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 14) of the presiding administrative law judge (''ALJ'') granting complainant's motion for summary determination that there has been a violation of section 337 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, *Esq.,* Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3106. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 3, 2010, based on a complaint filed by Hewlett-Packard Company of Palo Alto, California and Hewlett-Packard Development Company, L.P. of Houston, Texas (collectively, ''HP'') alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain inkjet ink supplies and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,959,985 and 7,104,630. 75 FR 45663 (Aug. 3, 2010).

Complainant named Mipo International, Ltd. of Atlanta, Georgia (''Mipo''); Mextec Group Inc. of Miami, Florida (''Mextec''); Shanghai Angel Printer Supplies Co., Ltd. of Shanghai, China (''Shanghai Angel''); Shenzhen Print Media Co., Ltd. of Guangdong, China (''Shenzhen''); Zhuhai National Resources & Jingjie Imaging Products Co., Ltd. of Guangdong, China (''Zhuhai National''); Tatrix International of Guangdong, China (''Tatrix''); and Ourway Image Co. Ltd. of Guangdong, China (''Ourway'') as respondents. Subsequently, Mipo, Mextec, and Shenzhen were terminated from the investigation based on either a settlement agreement with HP or because HP withdrew its allegations against them. The remaining respondents, *i.e.,* Shanghai Angel; Zhuhai National; Tatrix; and Ourway (collectively, ''Defaulting Respondents''), failed to answer the Complaint and Notice of Investigation and default judgments were granted against all the Defaulting Respondents.

On March 7, 2011, complainant HP filed a paper ''Motion for Summary Determination That a Domestic Industry Exists and That There Have Been Violations of Section 337 of the Tariff Act of 1930 (Amended) By the Defaulting Respondents and Complainants' Request for a General Exclusion Order.'' Complainant sought a determination that a domestic industry exists and that there has been a violation of Section 337 and entry of a general exclusion order. Subsequently, HP filed a supplemental submission in support of its motion for summary determination. The IA supports HP's motion as supplemented.

On August 3, 2011, the ALJ issued an ID (Order No. 14) granting complainant's motion. No party petitioned for review of the ID. The ID contained, *inter alia,* the ALJ's recommended determination on remedy and bonding. The ALJ recommended issuance of a general exclusion order and cease and desist orders against the defaulting respondents. The ALJ also recommended that the Commission set a bond of 100 percent during the period of Presidential review.

Having examined the record in this investigation, including the subject ID, the Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may (1) Issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the respective expiration dates of the patents-in-suit and state the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on September 14, 2011. Reply submissions must be filed no later than the close of business on September 21, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for this action is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46, 210.50).

Issued: September 1, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–22894 Filed 9–7–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Extension of Public Comment Period

On August 4, 2011, a proposed consent decree in *United States, State of Missouri, and the Missouri Coalition for the Environment Foundation* v. *Metropolitan St. Louis Sewer District,* No. 4:07–CV–01120, was lodged with the United States District Court for the Eastern District of Missouri. The proposed consent decree will resolve claims of the United States seeking civil penalties and injunctive relief for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.,* in connection with the Metropolitan St. Louis Sewer District's operation of its sewer system in the City of St. Louis and St. Louis County, Missouri. On August 10, 2011, the Department of Justice published notice of the lodging of the proposed consent decree. 76 FR 49,505. That publication opened a 30-day period for the submission of comments relating to the proposed consent decree.

Notice is hereby given that the Department of Justice has extended that period for 30 days. Therefore, the Department of Justice will receive comments relating to the proposed consent decree through October 10, 2011. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. The comments should refer to *United States, et al.* v. *Metropolitan St. Louis Sewer District,* D.J. Ref. 90–5–1–1–08111.

During the public comment period, the proposed Consent Decree may be examined on the Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may be obtained by mailing a request to the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a copy by mail, please enclose a check payable to the U.S. Treasury in the amount of $29.25 (25 cents per page reproduction cost). A copy may also be obtained by e-mailing or faxing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* fax number (202) 514–0097, phone confirmation number (202) 514–1547, and mailing a check for the reproduction cost to the Consent Decree Library.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–22947 Filed 9–7–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0046]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection: Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. This notice requests comments from the public and affected agencies concerning the proposed information collection. Comments are encouraged and will be accepted for ''sixty days'' until November 7, 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 Barbara Terrell, *Barbara.Terrell@atf.gov,* Firearms Industry Programs Branch, 99 New York Avenue, NE., Washington, DC 20226.

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.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification on Agency Letterhead Authorizing Purchase of Firearm for Official Duties of Law Enforcement Officer.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Government. Other: None.

Need for Collection

The letter is used by a law enforcement officer to purchase handguns to be used in his/her official duties from a licensed firearm dealer anywhere in the country. The letter shall state that the officer will use the firearm in official duties and that a records check reveals that the purchasing officer has no convictions for misdemeanor crimes of domestic violence.

(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 50,000 respondents will take 5 seconds to file the letter.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 69 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 2E–502, 145 N Street, NE., Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2011–22902 Filed 9–7–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

158th Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Teleconference Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 158th open meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (also known as the ERISA Advisory Council) will be held via teleconference on September 28, 2011.

The meeting will take place at the U.S. Department of Labor, 122 C Street, NW., Suite 400, Washington, DC 20210. Public access is available only in this room (*i.e.* not by telephone). The meeting will run from 10 a.m. to approximately 4 p.m. The purpose of the open meeting is to discuss reports/recommendations for the Secretary of Labor on the issues of (1) Current Challenges and Best Practices for ERISA Compliance for 403(b) Plan Sponsors, (2) Hedge Funds and Private Equity Investments, and (3) Privacy and Security Issues Affecting Employee Benefit Plans (other than health care plans). Descriptions of these topics are available on the Advisory Council page of the EBSA Web site at *http://www.dol.gov/ebsa/aboutebsa/erisa_advisory_council.html.*

Organizations or members of the public wishing to submit a written statement may do so by submitting 30 copies on or before September 21, 2011 to Larry Good, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5623, 200 Constitution Avenue, NW., Washington, DC 20210. Statements also may be submitted as e-mail attachments in text or pdf format transmitted to *good.larry@dol.gov.* It is requested that statements not be included in the body of the e-mail. Statements deemed relevant by the Advisory Council and received on or before August 19, 2011 will be included in the record of the meeting and available in the EBSA Public Disclosure room, along with witness statements. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or

telephone (202) 693–8668. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact the Executive Secretary by September 21, 2011 at the address indicated.

Signed at Washington, DC this 2nd day of September, 2011.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2011–22994 Filed 9–7–11; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for YouthBuild (YB) Reporting System, OMB 1205–0464, Extension With Revisions

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data regarding the Youth Build Reporting System (expires April 30, 2014).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before November 7, 2011.

ADDRESSES: Submit written comments to Gregg Weltz Room N–4508, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. *Telephone number:* 202–693–3527 (this is not a toll-free number). *Fax:* 202–693–3113. *E-mail: weltz.greg@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This is a request for the Department of Labor, Employment and Training Administration's (ETA) to extend the reporting and recordkeeping requirements of the YouthBuild (YB) program and to add an additional section to an existing form to enable the collection of information on the number of affordable housing units built or renovated by YouthBuild participants. This reporting structure features standardized data collection for program participants and quarterly progress and Management Information System (MIS) report formats. All data collection and reporting is done by YouthBuild grantees.

The quarterly progress reports (ETA–9136) provide a detailed, narrative account of program activities, accomplishments, and progress toward performance outcomes during the quarter. The quarterly performance reports (ETA–9138) include aggregate and participant-level information on demographic characteristics, types of services received, placements, outcomes, and follow-up status. Specifically, these reports collect data on individuals who receive education, occupational skill training, leadership development services, and other services essential to preparing at-risk youth for high-wage, high-demand occupations through YouthBuild programs. There are no changes proposed for ETA–9136 or ETA–9138 in this information collection request package. ETA–9143, however, is being revised in response to the Office of the Inspector General (OIG) Audit Report No. 18–11–001–03–001, ''*Recovery Act: ETA Needs to Strengthen Management Controls to Meet YouthBuild Program Objectives,''* issued on March 31, 2011. One of the findings was that ''ETA has not designed and implemented a process to measure the increase in the supply of affordable homes for low income families.'' The OIG recommended that a process be developed to measure the increase in affordable permanent housing units resulting from the program.

ETA–9143 is being revised to add a section, part C, that requests information on the number of houses or apartments that were built or renovated each year and allows ETA to demonstrate on an annual basis the increase in affordable housing units supported by YouthBuild. In addition, Parts A and B of ETA–9143 are being streamlined to make it easier to complete and to eliminate duplicate information.

The accuracy, reliability, and comparability of program reports submitted by grantees using federal funds are fundamental elements of good public administration and are necessary tools for maintaining and demonstrating system integrity. The use of a standard set of data elements, definitions, and specifications at all levels of the workforce system helps improve the quality of performance information that is received by ETA.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: extension with revisions.

Title: YouthBuild (YB) Reporting System.

OMB Number: OMB 1205–0464.

Affected Public: Grantees—Not for profit institutions

Form(s): ETA–9136, ETA–9138 and ETA–9143, Work Site Description.

Form/activity	Total respondents	Frequency	Total annual responses	Average time per response (hours)	Total annual burden hours
Participant Data Collection	6,000 youth participants	Collected by grantees, continual.	6,000	1.8	10,800
Quarterly narrative progress report.	220 grantees	Quarterly	880	16	14,080
Quarterly performance report. ETA–9138.	220 grantees	Quarterly	880	16	14,080
ETA–9143—Work Site Description Parts A and B (Prospective Applicants).	425* prospective applicants	Annual competitions	425	.5	212.50
ETA–9143—Work Site Description Parts A and B (Existing Grantees).	220 grantees	Annually	220	.	110
Housing Census ETA–9143, Section 2.	220 grantees	annually	220	.5	110
Totals	220 grantees		8,625		39,392.50

5

* Based on the average number (425 per year) of applications received in ETA's last three YouthBuild competitions.

Total Annual Respondents: 645.

Annual Frequency: annually and quarterly.

Total Annual Responses: 8,625.

Average Time per Response: 4.6.

Estimated Total Annual Burden Hours: 39,392.5.

Total Annual Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 1, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–22907 Filed 9–7–11; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0189]

Servicing Multi-Piece and Single Piece Rim Wheels; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177). The paperwork provisions of the Standard includes a requirement that the manufacturer or a Registered Professional Engineer certify that repaired restraining devices and barriers meet the strength requirements specified in the Standard, and a requirement that defective wheels and wheel components be marked or tagged.

DATES: Comments must be submitted (postmarked, sent, or received) by November 7, 2011.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0189, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2011–0189). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing efforts to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time

and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Certification of repair (1910.177(d)(3)(iv)). This paragraph requires that when restraining devices and barriers are removed from service because they are defective, they shall not be returned to service until they are repaired and reinspected. If the repair is structural, the manufacturer or a Registered Professional Engineer must certify that the strength requirements specified in (d)(3)(i) of the Standard have been met.

The certification records are used to assure that equipment has been properly repaired. The certification records also provide the most efficient means for OSHA compliance officers to determine that an employer is complying with the Standard.

Marking or tagging of wheel components (1910.177(e)(2)). This paragraph requires that defective wheels and wheel components ''be marked or tagged unserviceable and removed from the service area.'' Under this requirement, OSHA is providing employers with sufficient information from which they can derive the wording to use in marking the object or constructing a tag. Therefore, this provision imposes no paperwork burden because it falls within the portion of 5 CFR 1320(c)(2) that states, ''The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within this definition [of 'collection of information']''.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177). OSHA is proposing to retain its current burden hour estimate of one (1) hour. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177).

OMB Number: 1218–0219.

Affected Public: Business or other for-profits.

Number of Respondents: 80.

Frequency of Response: On occasion.

Average Time per Response: Three (3) minutes (.05 hour) to maintain a certificate verifying proper repair of a restraining device or barrier and to disclose the repair certificate to an OSHA Compliance Officer.

Estimated Total Burden Hours: 1.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2011–0189). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, M.P.H., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on September 2, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–22938 Filed 9–7–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0029]

Wyle Laboratories, Inc.; Revocation of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Occupational Safety and Health Administration's decision to revoke the recognition of Wyle Laboratories, Inc. (Wyle) as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7.

DATES: The revocation became effective on August 24, 2011.

FOR FURTHER INFORMATION CONTACT: MaryAnn Garrahan, Acting Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110. For information about the Nationally Recognized Testing Laboratory Program, go to *http://www.osha.gov,* and select ''N'' in the site index.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) is giving notice of the revocation of recognition of Wyle Laboratories, Inc. (Wyle) as a Nationally Recognized Testing Laboratory (NRTL). OSHA took this action following the requirements under subsection II.E of Appendix A to 29 CFR 1910.7 (''subsection E'').

OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require product testing and certification.

Subsection E describes the process that OSHA must use in revoking the recognition of an NRTL. This subsection sets forth three potential causes of revocation. In the event any cause applies, OSHA provides the NRTL with the opportunity to correct or rebut the alleged deficiencies leading to the proposed revocation. If the NRTL does not correct or reconcile alleged deficiencies, OSHA will propose, in writing, revocation of recognition. Revocation becomes effective in 60 days, unless the NRTL corrects the deficiency or requests a hearing before an Administrative Law Judge on the revocation action. Wyle did not request such a hearing.

OSHA followed the process set forth in subsection E and is revoking Wyle's recognition as an NRTL. OSHA identified deficiencies in Wyle's testing and certification operations that Wyle did not correct. OSHA determined that, as a result of these deficiencies, Wyle failed to substantially satisfy the requirements of 29 CFR 1910.7 and Appendix A, which is a cause for revocation under OSHA's NRTL Program regulations. OSHA already notified Wyle of the revocation decision, which is final. The DATES section above provides the effective date of revocation. Consequently, the Agency no longer accepts product certifications made by Wyle on or after this effective date.

All public documents pertaining to the Wyle's recognition are available for review by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0029.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 4–2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC on September 2, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–22955 Filed 9–7–11; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of LSC Board of Directors Finance Committee

TIME AND DATE: The Legal Services Corporation (''LSC'' or ''Corporation'') Board of Directors (''Board'') Finance Committee will meet telephonically on September 13, 2011 at 11 a.m., Eastern Time.

LOCATION: Legal Services Corporation, F. William McCalpin Conference Center, 3333 K Street, NW., Washington, DC 20007.

STATUS OF MEETING: Open.

PUBLIC OBSERVATION: Members of the public who wish to listen to the proceedings may do so by following the telephone call-in directions given below but are asked to keep their telephones muted to eliminate background noises. From time to time the Chairman may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSION(S):

♦ Call toll-free number: 1–(866) 451–4981;

♦ When prompted, enter the following numeric pass code: 5907707348;

♦ When connected to the call, please ''mute'' your telephone immediately.

MATTERS TO BE CONSIDERED:

Finance Committee

Agenda

Open Session

1. Approval of agenda.
2. Consider and act on LSC Management's Draft Fiscal Year (''FY'') 2013 Budget Request to Congress:
   —Presentation by David Richardson, LSC's Treasurer & Comptroller;
   —Comments by John Constance, LSC's Director, Office of Government Relations & Public Affairs;
   —Comments by Jeffrey Schanz, LSC's Inspector General.
3. Consider and act on recommending to the Board *Resolution 2011–012: A Resolution Adopting LSC's FY 2013 Budget Request to Congress.*
4. Other Business.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Corporate Secretary, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals that need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: September 6, 2011.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2011–23135 Filed 9–6–11; 4:15 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8907; NRC–2011–0193]

Confirmatory Order Modifying License No. SNM–2001 for the Shallow Land Disposal Area, Parks Township, Armstrong County, PA; Notice of Opportunity for Hearing and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Confirmatory Order and opportunity to request a hearing and Commission Order.

SUMMARY: This notice is to advise the Public of the Issuance of a Confirmatory Order Modifying License No. SNM–2001, held by BWX Technologies, Inc. (hereinafter referred to as the BWXT or Licensee). The Order set forth below was issued to the Licensee on August 5, 2011, and includes an opportunity to request a hearing.

DATES: Requests for a hearing or leave to intervene must be filed by September 28, 2011. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4 who believes access to Sensitive Unclassified Non-Safeguards Information and/or Safeguards Information is necessary to respond to this notice must request document access by September 19, 2011.

FOR FURTHER INFORMATION CONTACT: Yolande Norman, Office of Federal and State Materials and Environmental Management Programs, Division of Waste Management and Environmental Protection, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7741, e-mail: *Yolande.Norman@nrc.gov*.

Confirmatory Order Modifying License (Effective Immediately)

I

BWX Technologies, Inc. (BWXT or the Licensee) is the holder of U.S. Nuclear Regulatory Commission (NRC or Commission) License No. SNM–2001 (License) issued by the NRC pursuant to 10 CFR part 70. The License authorizes BWXT to receive, acquire, possess, and transfer byproduct, source, and special nuclear material (SNM), pursuant to the terms and conditions of the aforementioned License, at the Shallow Land Disposal Area (SLDA) located in Parks Township, Pennsylvania. The License was issued on October 24, 1995, was most recently amended on June 20, 2011, and remains in effect.

II

In accordance with the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States, January 2002 (Pub. L. 107–117, Section 8143), the remediation of radiologically contaminated soil and waste material at the SLDA site will be performed by the U.S. Army Corps of Engineers (USACE), as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP), and pursuant to the Energy and Water Development Appropriations Acts for Fiscal Years 1998–2001 (Pub. L. 105–62, 105–245, 106–60, and 106–377, respectively). Section 611 of Public Law 106–60 requires USACE to remediate FUSRAP sites in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.,* and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300. The USACE, as provided for in Section 121(e) of CERCLA and 40 CFR 300.400(e), is not required to obtain an NRC license for its on-site remediation activities conducted under its CERCLA authority.

In accordance with Article III of the ''Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and The U.S. Army Corps of Engineers for Coordination of Cleanup & Decommissioning of the Formerly Utilized Sites Remedial Action Program (FUSRAP) Sites With NRC-Licensed Facilities,'' 66 FR 36606 (July 12, 2001), at the request of USACE, the NRC will initiate action for the suspension of BWXT's License, contingent upon USACE notifying the NRC in writing, at least 90 days prior to USACE's expected date of initiation of a site response action, that USACE is prepared to take possession of all the licensed site for purposes of control of radiation from FUSRAP materials subject to NRC jurisdiction. Upon taking possession, USACE will be responsible for the protection of the public health and safety from those materials consistent with 10 CFR part 20, ''Standards for Protection Against Radiation.''

Article III of the Memorandum of Understanding (MOU) further provides that USACE agrees to provide notification to the NRC that it is prepared to take possession of the SLDA site after USACE issues its final Record of Decision (ROD), and that USACE agrees to remediate the licensed site to meet at least the requirements of CERCLA and 10 CFR 20.1402. The USACE issued its ROD for the remediation of radiological soil and waste material at the FUSRAP SLDA Site in September 2007. The NRC reviewed the ROD and concludes that the planned remediation and disposal of the buried materials in an NRC-licensed disposal facility, as proposed in the ROD, are consistent with the applicable provisions of the MOU between the NRC and USACE.

Article III of the MOU further provides that NRC licensing action for suspension of the License will be effective subject to written notification by USACE to the NRC that USACE has taken physical possession of the licensed site for purposes of radiation control, and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR part 20. Article III further states that USACE has no objection to, and will facilitate, the NRC observing USACE in-process remediation activities. Finally, Article III of the MOU provides that following completion of its response action at the site, USACE shall provide the NRC with a copy of the CERCLA Administrative Record.

Article III of the MOU provides that the NRC will reinstate the License if USACE no longer controls the FUSRAP-related portion of the site for radiation protection purposes, is no longer proceeding with a response action under CERCLA, or has otherwise completed its response action. Article III of the MOU also provides that USACE will notify the NRC in writing, at least 90 calendar days prior to USACE terminating its physical possession for purposes of control of radiation so that the NRC can initiate the process for reinstating the License.

III

By letter dated March 16, 2011, as supplemented by letter dated June 7, 2011, the Licensee notified the NRC and agreed that:

A. The License shall be suspended in its entirety after USACE takes physical possession of the SLDA site.

B. Cabrera Services, Inc. (Cabrera), or another similarly qualified subcontractor possessing a license under which the work can be performed, will be contracted to manage excavated materials that are below the soil cleanup Derived Concentration Guideline Levels (DCGL) and cannot be reused at the site; Cabrera (or a similarly qualified subcontractor) will also manage the transportation and disposal of this material.

C. All activities executed by Cabrera (or a similarly qualified subcontractor) will be performed in accordance with an NRC license (Cabrera License No. 06–030556–01 or comparable) and with all State and local requirements for handling and shipping excavated material, as applicable.

D. The site access agreements between BWXT and the USACE, along with the contract between BWXT and Cabrera (or a similarly qualified subcontractor) will ensure that BWXT and Cabrera (or a similarly qualified subcontractor) have appropriate access to the site to execute the work activities.

E. Prior to engagement of another subcontractor to perform work at the site, BWXT will provide the NRC with at least 90 days notice and opportunity for review of the proposed subcontractor.

F. Notwithstanding the License suspension, BWXT may make a request for alternate disposal pursuant to 10 CFR 20.2002 for approval of proposed procedures, not otherwise authorized in NRC regulations, to dispose of soil below DCGL generated by on-site remediation activities.

In addition, the Licensee consented to issuance of this Order with the commitments, as described above. The Licensee further agreed that this Order shall be effective upon issuance, and that it waives its right to a hearing with respect to this Order.

Implementation of these commitments will provide enhanced assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that the Licensee's commitments, as set forth above, are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 81, 83, 84, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 20, 70, 73 and 74 *It Is Hereby Ordered,* Effective Immediately, That License No. SNM–2001 Is Modified As Follows:

A. The License shall be suspended in its entirety after USACE takes physical possession of the site. License suspension shall be effective upon the date of the written notification to the NRC by USACE that it has taken physical possession of the site for purposes of radiation control, and is now responsible for the protection of the public health and safety consistent with the requirements of 10 CFR part 20.

B. Furthermore, because certain amounts of special nuclear material may be encountered during remediation activities, USACE will be responsible for the criticality safety, physical protection, and material control and accounting of the special nuclear material as set forth in 10 CFR part 70 ''Domestic Licensing of Special Nuclear Material,'' part 73 ''Physical Protection of Plants and Materials'' and, part 74 ''Material Control and Accounting of Special Nuclear Material.'' The handling of special nuclear material during USACE's remediation is detailed in the Final Work Plans dated April and May, 2011 that were reviewed and accepted by the NRC as satisfying the regulatory requirements in 10 CFR parts 70, 73, and 74, as applicable.

C. The License shall be reinstated:

(1) After USACE notifies the NRC in writing that USACE intends to terminate its physical possession of the site for the purpose of radiation control and the handling of special nuclear material; and

(2) After USACE is no longer controlling the site for radiation protection purposes and the handling of special nuclear material, is no longer proceeding with a response action at the site under CERCLA, or has otherwise completed its response action for the site; and

(3) After the Licensee reestablishes physical possession of the site.

D. The Licensee shall establish physical possession of the site immediately after USACE vacates the site. Within 2 business days after the Licensee establishes physical possession of the site, the Licensee shall send written notification to the NRC that it has done so and indicate when it did so. The Licensee shall send such notices to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Chief, Special Projects Branch, Division of Waste Management and Environmental Protection at the same address.

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its publication in the **Federal Register.** Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's

''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than the Licensee) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.

Dated this 5th day of August 2011.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Acting Director, Office of Federal and State Materials and Environmental Management Programs.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information (including Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI)). Requirements for access to SGI are primarily set forth in 10 CFR parts 2 and 73. Nothing in this Order is intended to conflict with the SGI regulations.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI or SGI is necessary to respond to this notice may request access to SUNSI or SGI. A ''potential party'' is any person, other than the licensee, who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI or SGI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI,

SGI, or both to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the enforcement action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) If the request is for SUNSI, the identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

(4) If the request is for SGI, the identity of each individual who would have access to SGI if the request is granted, including the identity of any expert, consultant, or assistant who will aid the requestor in evaluating the SGI. In addition, the request must contain the following information:

(a) A statement that explains each individual's ''need to know'' the SGI, 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, the statement must explain:

(i) Specifically why the requestor believes that the information is necessary to enable the requestor to proffer and/or adjudicate a specific contention in this proceeding;[2] and

(ii) The technical competence (demonstrable knowledge, skill, training or education) of the requestor to effectively utilize the requested SGI to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant, or assistant who satisfies these criteria.

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions'' 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 requestor'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. To obtain online access to the form, the requestor should contact the NRC's Office of Administration at 301–492–3524.[3]

(c) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 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 301–415–7232 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 Atomic Energy Act of 1954, as amended, which mandates that all persons with access to SGI must be fingerprinted for an FBI identification and criminal history records check;

(d) A check or money order payable in the amount of $200.00[4] to the U.S. Nuclear Regulatory Commission for each individual for whom the request for access has been submitted, and

(e) If the requestor or any individual who will have access to SGI believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should also provide a statement identifying which exemption the requestor is invoking and explaining the requestor's basis for believing that the exemption applies. While processing the request, the Office of Administration, Personnel Security Branch, will make a final determination whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of their exemption status prior to submitting their request. Persons who are exempt from the background check are not required to complete the SF–85 or Form FD–258; however, all other requirements for access to SGI, including the need to know, are still applicable.

Note: Copies of documents and materials required by paragraphs C.(4)(b), (c), and (d) of this Order 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 20555–0001.

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.

D. To avoid delays in processing requests for access to SGI, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

E. Based on an evaluation of the information submitted under paragraphs C.(3) or C.(4) above, as applicable, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI or need to know the SGI requested.

F. For requests for access to SUNSI, if the NRC staff determines that the requestor satisfies both E.(1) and E.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E–Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

[2] Broad SGI requests under these procedures are unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requestor's need to know than ordinarily would be applied in connection with an already-admitted contention or non-adjudicatory access to SGI.

[3] The requestor 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 requestor usually should be able to obtain access to the online form within one business day.

[4] This fee is subject to change pursuant to the Office of Personnel Management's adjustable billing rates.

those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [5] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

G. For requests for access to SGI, if the NRC staff determines that the requestor has satisfied both E.(1) and E.(2) above, the 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 Office of Administration determines that the individual or individuals are trustworthy and reliable, the NRC will promptly notify the requestor 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 may include, but not be limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [6] by each individual who will be granted access to SGI.

H. Release and Storage of SGI. Prior to providing SGI to the requestor, the NRC staff 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 opt to view SGI at an approved SGI storage location rather than establish their own SGI protection program to meet SGI protection requirements.

I. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI or SGI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

J. Review of Denials of Access.

(1) If the request for access to SUNSI or SGI is denied by the NRC staff either after a determination on standing and requisite need, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) Before the Office of Administration makes an adverse determination regarding the proposed recipient(s) trustworthiness and reliability for access to SGI, the Office of Administration, in accordance with 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(s) have an opportunity to correct or explain the information.

(3) The requestor may challenge the NRC staff's adverse determination with respect to access to SUNSI by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(4) The requestor may challenge the NRC staff's or Office of Administration's adverse determination with respect to access to SGI by filing a request for review in accordance with 10 CFR 2.705(c)(3)(iv). Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

K. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI or SGI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[7]

L. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It Is So Ordered.

Dated at Rockville, Maryland, this 1st day of September, 2011.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and/or Safeguards Information (SGI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.,* showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.

[5] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[6] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SGI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 180 days of the deadline for the receipt of the written access request.

[7] Requestors should note that the filing requirements of the NRC's E–Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION AND SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
20	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 requestor/petitioner reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no ''need,'' no ''need to know,'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access to SGI, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff trustworthiness or reliability determination either before the presiding officer or another designated officer under 10 CFR 2.705(c)(3)(iv).
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2011–22958 Filed 9–7–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of The ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on September 22, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Thursday, September 22, 2011—8:30 a.m. until 12 p.m.

The Subcommittee will review the Agency's planned activities on technical and regulatory issues related to extended storage and transportation of spent fuel. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or E-mail: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Mr. Theron Brown (Telephone

240–888–9835) to be escorted to the meeting room.

Dated: August 21, 2011.

Yoira Diaz-Sanabria,

Technical Assistant, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–22950 Filed 9–7–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on September 20, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 20, 2011—8:30 a.m. until 5 p.m.

The Subcommittee will hear a briefing on the status of tabletop exercises in response to the Commission's Staff Requirements Memorandum on Modifying the Risk-Informed Regulatory Guidance for New Reactors. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or E-mail: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 29, 2011.

Yoira Diaz-Sanabria,

Technical Assistant, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–22957 Filed 9–7–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on September 23, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, September 23, 2011—8:30 a.m. until 12 p.m.

The Subcommittee will continue its review of the staff's development of the Fuel Cycle Oversight Process (FCOP). The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 31, 2011.

Yoira Diaz-Sanabria,

Technical Assistant, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–22953 Filed 9–7–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment

The ACRS Subcommittee on Reliability and PRA will hold a meeting

on September 21, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 21, 2011—1 p.m. until 5 p.m.

The Subcommittee will hear a briefing on the development of fire Human Reliability Analysis (HRA) guidelines in NUREG–1921. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 31, 2011.

Yoira Diaz-Sanabria,

Technical Assistant, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–22956 Filed 9–7–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on September 21, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 10, 2011—8:30 a.m. until 5 p.m.

The Subcommittee will review the Office of Nuclear Regulatory Research (RES) initiative on quantitatively ensuring ''extremely low (XLPR) probability of rupture'' for reactor coolant system (RCS) components, as mentioned in 10 CFR 50 Appendix A, GDC–4. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or E-mail: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010 (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: August 31, 2011.

Yoira Diaz-Sanabria,

Technical Assistant, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–22954 Filed 9–7–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of September 5, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of September 5, 2011

Friday, September 9, 2011

11:30 a.m. Affirmation Session (Public Meeting) (Tentative)

a. Petitions Requesting Relief Related to the March 11, 2011, Earthquake and Tsunami Events in Fukushima, Japan (Tentative)

b. *Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), Staff Petition for Review of LBP–11–7 (Tentative)

* * * * *

* 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: September 2, 2011.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2011–23074 Filed 9–6–11; 11:15 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: RUIA Claims Notification and Verification System; OMB 3220–0171.

Section 5(b) of the Railroad Unemployment Insurance Act (RUIA), requires that effective January 1, 1990, when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of the claim to the claimant's base year employer(s) to provide them an opportunity to submit information relevant to the claim before making an initial determination. If the RRB determines to pay benefits to the claimant under the RUIA, the RRB shall notify the base-year employer(s).

The purpose of the RUIA Claims Notification and Verification System is to provide two notices, pre-payment Form ID–4K, Prepayment Notice of Employees' Applications and Claims for Benefits Under the Railroad Unemployment Insurance Act, and post-payment Form ID–4E, Notice of RUIA Claim Determination.

Prepayment Form ID–4K provides notice to a claimant's base-year employer(s), of each unemployment application and unemployment and sickness claim filed for benefits under the RUIA and provides the employer an opportunity to convey information relevant to the proper adjudication of the claim. The railroad employer can elect to receive notices of applications and claims by one of three options: A computer-generated Form Letter ID–4K paper notice, an Electronic Data Interchange (EDI) version of the Form Letter ID–4K notice, or an Internet equivalent ID–4K, which is transmitted through the RRB's Internet-based Employer Reporting System (ERS).

The railroad employer can respond to the ID–4K notice by telephone, manually by mailing a completed ID–4K back to the RRB, or electronically via EDI or ERS. Completion is voluntary. No changes are being proposed to any of the ID–4K options.

Once the RRB determines to pay a claim post-payment Form Letter ID–4E, Notice of RUIA Claim Determination, is used to notify the base-year employer(s). This gives the employer a second opportunity to challenge the claim for benefits.

The mainframe-generated ID–4E paper notice and the EDI and Internet equivalent versions are transmitted on a daily basis, generally on the same day that the claims are approved for payment. Railroad employers who are mailed Form ID–4E are instructed to write if they want a reconsideration of the RRB's determination to pay. Employers who receive the ID–4E electronically, may file a reconsideration request by completing the ID–4E by either EDI or ERS. Completion is voluntary. No changes are being proposed to any of the ID–4E options.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
ID–4K (Manual)	1,250	2	42
ID–4K (EDI)	24,215	**	210
ID–4K (Internet)	52,300	2	1,743
ID–4E (Manual)	50	2	2
ID–4E (Internet)	120	2	4
Total	77,935		2,001

** The burden for the 5 participating employers who transmit EDI responses is calculated at 10 minutes each per day, 251 workdays a year or 210 total hours of burden.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Charles Mierzwa, the RRB Clearance Officer, at

(312) 751–3363 or *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or e-mailed to *Patricia.Henaghan@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011–22952 Filed 9–7–11; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 7, 2011.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia Pitts, Director, Disaster Administrative Service, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Disaster Administrative Service, 202–205–7570, *Cynthia/pitts@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Before disaster loan assistance can be provided, the Governor of the affected State must make a written request which identifies incident, time, place, and that the criteria has been met for a disaster declaration to be made by SBA.

Title: ''Governor's Request for Disaster Declaration.''

Description of Respondents: Presidential Declared Disaster.

Form Number: N/A.

Annual Responses: 60.

Annual Burden: 1,200.

SUPPLEMENTARY INFORMATION: Application for benefits (loan) used to determine eligibility and creditworthiness of individual victims who seek Federal assistance in a declared disaster. Respondents are disaster victims seeking disaster assistance.

Title: ''Disaster Home Loan Application.''

Description of Respondents: Applicants requesting Disaster Home Loan.

Form Number: 5C.

Annual Responses: 46,462.

Annual Burden: 69,693.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Felicia Smith, Supervisory Financial Analyst, Office of Credit Risk Management, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Felicia Smith, Supervisory Financial Analyst, 202–205–7522, *Felicia.smith@sba.gov*; Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov*

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is authorized under the Small Business Act to conduct off-site review and monitoring of SBA Lenders, Intermediaries and Non-Technical Assistance Providers (NTAPs). They will be required to prepare self-assessments and submit corrective action plans and other review/exam related information to facilitate SBA's performance of its oversight and monitoring functions. These plans will inform SBA how the lender intends to address deficiencies identified during the review and examination process and the time line for implementing the plan including the target deadline.

Title: ''SBA Lender Microloan Intermediary and NTAP Reporting Requirements.''

Description of Respondents: SBA Microloan Lenders.

Form Number: N/A.

Annual Responses: 170.

Annual Burden: 1,700.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–22905 Filed 9–7–11; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0311]

BB&T Capital Partners Mezzanine Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that BB&T Capital Partners Mezzanine Fund II, 101 N. Cherry Street, Suite 700, Winston-Salem, NC 27101, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought SBA's prior written approval under section 312 of the Act and Section 107.730 (a)(4), Provide Financing to a Small Business to discharge an obligation to your Associate or free other funds to pay such obligation., of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). BB&T Capital Partners Mezzanine Fund II proposes to provide debt security financings to The Country Vintner, 12305 Lakeridge Pkwy, Ashland, VA 23005, and Phoenix Children's Academy, Inc., 8767 E Via Due Ventura, Suite 240, Scottsdale, AZ 85258. These financings are contemplated for growth and general corporate purpose.

These financings are brought within the purview of Section 107.730(a)(4) of the Regulations because BB&T Capital Partners Mezzanine Fund II's financings will discharge the obligations of The Country Vintner and Phoenix Children's Academy, owed to BB&T Capital Partner/Windsor Mezzanine Fund, LLC, which is considered an Associate of BB&T Capital Partners Mezzanine Fund II, LP as defined in Sec. 107.50 of the regulations. Therefore, these transactions require SBA's prior approval.

Notice is hereby given that any interested person may submit written comments on the transactions, within 15 days of the date of this publication, to the Associate Administrator for Investment and Innovation, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: August 15, 2011.

Sean J. Greene,

Associate Administrator for Investment and Innovation.

[FR Doc. 2011–22893 Filed 9–7–11; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12778 and #12779]

New York Disaster #NY–00109

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 and continuing.

Effective Date: 08/31/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/31/2011, private non-profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Albany, Bronx, Clinton, Delaware, Dutchess, Essex, Greene, Montgomery, Nassau, New York, Queens, Rensselaer, Richmond, Rockland, Schoharie, Suffolk, Ulster, Warren, Westchester.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127788 and for economic injury is 127798.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–22908 Filed 9–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12776 and #12777]

New York Disaster #NY–00108

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New York (FEMA–4020–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 and continuing.

Effective Date: 08/31/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/31/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Albany, Delaware, Dutchess, Essex, Greene, Schenectady, Schoharie, Ulster.

Contiguous Counties (Economic Injury Loans Only):

New York: Broome, Chenango, Clinton, Columbia, Franklin, Hamilton, Montgomery, Orange, Otsego, Putnam, Rensselaer, Saratoga, Sullivan, Warren, Washington.

Connecticut: Fairfield, Litchfield.

Massachusetts: Berkshire.

Pennsylvania: Wayne.

Vermont: Addison, Chittenden.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127768 and for economic injury is 127770.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–22909 Filed 9–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12772 and #12773]

Iowa Disaster #IA–00038

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4018–DR), dated 08/30/2011.

Incident: Severe storms and flooding.

Incident Period: 07/27/2011 through 07/29/2011.

EFFECTIVE DATE: 08/30/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/30/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on 08/30/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Dubuque, Jackson.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12772B and for economic injury is 12773B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator, for Disaster Assistance.

[FR Doc. 2011–22906 Filed 9–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12774 and #12775]

North Carolina Disaster # NC–00036

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4019–DR), dated 08/31/2011.

Incident: Hurricane Irene.

Incident Period: 08/25/2011 and continuing.

Effective Date: 08/31/2011.

Physical Loan Application Deadline Date: 10/31/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/31/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/31/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Beaufort, Carteret, Craven, Dare, Hyde, Pamlico, Tyrrell

Contiguous Counties (Economic Injury Loans Only): North Carolina: Currituck, Jones, Lenoir, Martin, Onslow, Pitt, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 127748 and for economic injury is 127750

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–22910 Filed 9–7–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7326]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting from 10 a.m. to 11 a.m. on September 15, 2011, in the Loy Henderson conference room of the State Department's Harry S Truman building at 2201 C Street, NW.

The meeting will include the Bureau of Educational and Cultural Affairs. The Commission welcomes Principal Deputy Assistant Secretary of State for Educational and Cultural Affairs Adam Ereli to brief the Commission, and the public, on the activities and direction of ECA.

This meeting is open to the public, Members and staff of Congress, the State Department, Defense Department, the media, and other governmental and non-governmental organizations. To attend or request further information, contact the Commission at (202) 203–7463 or *pdcommission@state.gov* by 5p.m. on September 12, 2011. Please arrive for the meeting by 9:45a.m. to allow for a prompt meeting start.

As access to the Department of State facilities is controlled, members of the public wishing to attend the meeting must notify the Commission, not later than 5p.m., September 12, 2011, providing the information below. If notified after this date, the Department's Bureau of Diplomatic Security may not be able to complete the necessary processing required to attend the meeting. A person requesting reasonable accommodation should notify the Commission by the same date.

Each member of the public wishing to attend the meeting should provide: His/her name, company or organizational affiliation; phone number; date of birth; and identifying data such as driver's license number, U.S. Government ID, or U.S. Military ID, to the Commission. A RSVP list will be provided to Diplomatic Security. One of the following forms of valid photo identification will be required for admission to the Department of State building: U.S. driver's license, passport, U.S. Government ID or other valid photo ID. Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

The United States Advisory Commission on Public Diplomacy appraises U.S. Government activities intended to understand, inform, and influence foreign publics. The Advisory Commission may conduct studies, inquiries, and meetings, as it deems necessary. It may assemble and disseminate information and issue reports and other publications, subject to the approval of the Chairperson, in consultation with the Executive Director. The Advisory Commission

may undertake foreign travel in pursuit of its studies and coordinate, sponsor, or oversee projects, studies, events, or other activities that it deems desirable and necessary in fulfilling its functions.

The Commission consists of seven members appointed by the President, by and with the advice and consent of the Senate. The members of the Commission shall represent the public interest and shall be selected from a cross section of educational, communications, cultural, scientific, technical, public service, labor, business, and professional backgrounds. Not more than four members shall be from any one political party. The President designates a member to chair the Commission.

The current members of the Commission are: Mr. William Hybl of Colorado, Chairman; Ambassador Lyndon Olson of Texas, Vice Chairman; Ambassador Penne Korth-Peacock of Texas; Ms. Lezlee Westine of Virginia; and, Mr. Sim Farar of California. Two seats on the Commission are currently vacant.

The following individual has been nominated to the Commission but awaits Senate confirmation as of this writing: Anne Wedner of Illinois.

The Advisory Commission was originally established under Section 604 of the United States Information and Exchange Act of 1948, as amended (22 U.S.C. 1469) and Section 8 of Reorganization Plan Numbered 2 of 1977. It was reauthorized pursuant to Public Law 111–70 (2009), 22 U.S.C. 6553, and has been further authorized through September 30, 2011.

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance in that, given the pending expiration of this advisory committee's authorization and the availability of the speakers, the meeting must be held on the date scheduled.

Dated: August 29, 2011.

Matthew C. Armstrong,

Executive Director, Department of State.

[FR Doc. 2011–22978 Filed 9–7–11; 8:45 am]

BILLING CODE 4710–11–P

TENNESSEE VALLEY AUTHORITY

Final Supplemental Environmental Impact Statement, Sequoyah Nuclear Plant Units 1 and 2 License Renewal, Hamilton County, Tennessee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of Record of Decision.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR Parts 1500 to 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA). TVA prepared the *Final Supplemental Environmental Impact Statement, Sequoyah Nuclear Plant Units 1 and 2 License Renewal* (hereafter referred to as Sequoyah License Renewal Final SEIS) to update existing environmental information and analyses for the continued operation of the Sequoyah Nuclear Plant (SQN) in Soddy-Daisy, Tennessee. A notice of availability (NOA) of the Sequoyah License Renewal Final SEIS was published in the **Federal Register** on July 1, 2011. On August 18, 2011, the TVA Board of Directors (TVA Board) decided to proceed with an application to the U.S. Nuclear Regulatory Commission (NRC) to extend the operation of SQN Units 1 and 2, implementing the preferred alternative (Alternative 1—SQN Units 1 and 2 License Renewal—Action Alternative) identified in the Final SEIS.

FOR FURTHER INFORMATION CONTACT: Amy B. Henry, NEPA Specialist, Environmental Permits and Compliance, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11D, Knoxville, Tennessee 37902–1499; telephone (865) 632–4045 or e-mail *abhenry@tva.gov.*

Gary M. Adkins, Sequoyah License Renewal Project Manager, Nuclear Generation Development and Construction, Tennessee Valley Authority, 1101 Market Street, LP 5A, Chattanooga, Tennessee 37402; telephone (423) 751–4363 or e-mail *gmadkins@tva.gov.*

SUPPLEMENTARY INFORMATION: TVA's Integrated Resource Plan (IRP), issued in 2011, forecasts increasing peak load and net system electrical power requirements through 2029. TVA has an obligation to meet this need while maintaining low-cost, reliable power for consumers in its power service area. In the IRP, TVA assumed for analytical purposes that its existing nuclear plants, including SQN, would continue to operate throughout the IRP planning period. Furthermore, the IRP establishes targets for idling coal-fired generation capacity and increasing the proportion of energy TVA generates using nuclear and renewable sources. The Sequoyah License Renewal Final EIS incorporated information and analyses from the IRP process. Continued operation of SQN Units 1 and 2 will help meet the identified need for power, maximize use of existing assets, and support TVA's efforts to reduce the carbon emissions from its generating system.

SQN is located along the Chickamauga Reservoir, approximately 18 miles northeast of Chattanooga, in Hamilton County, Tennessee. SQN Units 1 and 2 are pressurized light water reactors, each with a capacity of approximately 1,200 megawatts of electricity. SQN Units 1 and 2 received commercial operating licenses in 1980 and June 1981, respectively. The current operating licenses for SQN Units 1 and 2 expire in 2020 and 2021 respectively. The Sequoyah License Renewal Final SEIS supplements and updates the original TVA *Final Environmental Statement, Sequoyah Nuclear Plant Units 1 and 2,* issued in February 1974.

TVA has decided to submit an application to the U.S. Nuclear Regulatory Commission (NRC) to renew the operating licenses for SQN Units 1 and 2. The NRC can grant renewals to extend nuclear plant operating licenses for an additional 20 years. To date, the NRC has granted license renewals for over 70 of the nation's 104 operating reactors in the United States, including the three units at TVA's Browns Ferry Nuclear Plant.

The license renewal process requires both a technical review of safety issues and an environmental review. The technical review must demonstrate that the structures, systems, and components will be adequately managed to ensure safety during the plant's extended operation and subsequent decommissioning. In addition to TVA's SEIS, the NRC will perform its own environmental review to examine the impacts of issuing renewed licenses for SQN Units 1 and 2. The Sequoyah License Renewal Final SEIS incorporated information from the NRC's *Generic Environmental Impact Statement for License Renewal of Nuclear Plants* (1996).

Renewal of the current operating licenses would allow SQN to continue supplying safe, clean, reliable, and cost-effective base load power between 2020 and 2041. The license renewal program would not require major new construction, alterations, or refurbishment to SQN, nor would it require changes to operational limits or permit requirements to comply with current regulations. Other than the continued normal operations, refueling, and maintenance for an additional 20 years, no significant changes would be needed to continue current operation of SQN Units 1 and 2. Upon expiration of operating licenses, SQN would be decommissioned in accordance with NRC regulations.

TVA stores some spent fuel from SQN in an onsite ISFSI that is licensed by the NRC. Spent fuel will be stored in the ISFSI until the U.S. Department of Energy (DOE) takes possession of the spent fuel and removes it from the site for permanent disposal or processing. If the DOE does not take possession of the spent fuel before 2026, expansion of the onsite ISFSI may be required to support SQN operations during the period of license renewal.

Public Involvement

TVA published a notice of intent to prepare an SEIS in the **Federal Register** on April 12, 2010. Comments received from agencies, the public, and tribes were considered during development of the Draft SEIS. The U.S. Environmental Protection Agency (USEPA) published the NOA for the Draft SEIS in the **Federal Register** on November 5, 2010. TVA accepted comments on the draft SEIS until December 22, 2010 and held a public open house in Soddy-Daisy, Tennessee, on December 2, 2010. Comments about SEIS content, the proposed action, and expressing support or concerns about nuclear power generation were received from nine agencies and individuals. After considering and responding to all substantive comments, TVA completed and issued the Final SEIS. The NOA of the Final SEIS was published in the **Federal Register** on July 1, 2011.

Alternatives Considered

In addition to renewing the SQN operating licenses for an additional 20 years to meet future power demand (Alternative 1), TVA reviewed options that would require new generating capacity and those that would not, as well as combinations of options. TVA considered the full range of supply-side and demand-side actions identified in TVA's IRP. In the Sequoyah License Renewal SEIS, TVA evaluated the impacts of the Action Alternative and the No Action Alternative. Relative to SQN, the Action Alternative (Alternative 1) is to pursue renewal of the operating licenses, with the goal of continuing SQN operation for an additional 20 years. Under the No Action Alternative (Alternative 2), TVA would not pursue license renewal and would shut down SQN Units 1 and 2 by 2020 and 2021, respectively. Subsequently, TVA would need to rely on alternate means to meet future power demands. A model designed to forecast an optimized capacity plan that minimizes the cost of power indicated that, initially, TVA would adjust the operation of existing generating units to meet demand. However, subsequent increasing demands for capacity and energy would require construction of new generating units. The model indicated two likely options, which were evaluated as part of the No Action Alternative:

- Alternative 2a—SQN Shutdown and New Nuclear Generation
- Alternative 2b—SQN Shutdown and New Natural Gas-Fired Generation

Alternative 1 was TVA's preferred alternative and was selected for implementation by the TVA Board on August 18, 2011.

Environmental Consequences

Analyses conducted for the SEIS indicate that no significant impacts would be expected as a result of implementing Alternative 1. SQN is an existing facility operating under NRC licenses and has minimal impacts on the environment. During the license renewal period, SQN would continue normal operations, refueling, and maintenance in accordance with appropriate operational limits and permit requirements, which would also result in minimal environmental impacts. There would be no change to the current level of minor impacts to surface water supply and quality, groundwater, aquatic biota, and air quality. There would be no new direct or indirect impacts to terrestrial habitat, wildlife, land use, floodplains, or aesthetics. The effects of SQN on local socioeconomics and public services would not change. All radioactive effluents would be released in accordance with applicable regulatory limits, and would continue to have no measureable impact to human health or the environment. An additional 20 years of operation would avoid the release of millions of tons of greenhouse gases that would be produced by alternative generation strategies that include increased fossil-fuel generation. While greater total quantities of solid, hazardous, and low-level radiological waste would be generated and disposed of in permitted landfills and storage facilities, no substantive impacts would occur. Continued operation of SQN would result in greater amounts of spent fuel and potential expansion of the site's ISFSI, both of which would result in minor environmental impacts.

Decommissioning SQN would be necessary whether the operating licenses are renewed or not. TVA would select a decommissioning method from approved options at the appropriate time. Decommissioning decisions and actions would be taken sooner under the No Action Alternative. Neither the Action Alternative nor the No Action Alternative would foreclose on decommissioning options, or result in environmentally unacceptable conditions.

Following the events at the Fukushima (Japan) Daiichi Nuclear Power Plant on March 11, 2011, TVA initiated an effort to examine those events with regard to insights they may provide relative to emergency response capabilities at TVA's nuclear power plants. That effort continues as detailed information becomes known, but it has already determined that a sequence of events like the Fukushima accident is unlikely to occur at any TVA plant. Nonetheless, the effort has resulted in some proposed enhancements to emergency response procedures and equipment, which are being further evaluated. As a result of that on-going effort, TVA expects to implement strategies to further improve the safety of all its operating nuclear power plants, including SQN. Additionally, TVA will comply with any new regulatory requirements, orders, and policies issued by the NRC, as applicable. Based upon data presented in the Final SEIS and subsequent analyses, TVA concludes that the environmental risk of a design-basis accident or severe accident is minor, and that the results of such accidents continue to be accurately reflected in the Sequoyah License Renewal Final SEIS.

In addition, the NRC's (90-day) report, *Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident,* concluded that continued operation and continued licensing activities associated with United States nuclear power plants do not pose an imminent risk to public health and safety.

Comments on the Final SEIS

The Greater Nashville Regional Council indicated the proposal to renew SQN operating licenses is not duplicative or in conflict with other projects the Council has considered. The Tennessee Department of Environment and Conservation (TDEC), Division of Water Supply, provided a point of contact and requested notification should any work be performed in the source water protection areas, or in the event of a release to the river. While the Final SEIS does not propose activities expected to affect source water protection areas, TVA routinely coordinates with TDEC concerning activities at SQN and would continue to do so should the NRC grant renewed operating licenses.

Comments received from the USEPA address the NRC's 90-day report on the

Fukushima Daiichi accident. The USEPA commented that continued operation and licensing activities for SQN Units 1 and 2 should not pose an imminent risk to public health and safety. The USEPA also concurred with the NRC's conclusion that improving the NRC's regulatory framework is an appropriate, realistic, and achievable goal. TVA agrees that these comments are consistent with conclusions of the NRC 90-day report and TVA's examination of SQN current operations and proposed operation under renewed licenses. The USEPA also noted that, should the NRC decide to recommend moving spent fuel from pool to dry cask storage sooner, TVA may need to expand the SQN ISFSI sooner than described in the FSEIS. TVA is examining the benefits and feasibility of more rapid transfer of spent fuel to dry cask storage. If expansion of the existing SQN ISFSI is needed sooner, the environmental impacts would not differ from those described in the FSEIS. Finally, USEPA recommended that TVA consider applying proposals of the NRC 90-day report to SQN Units 1 and 2. TVA will consider applying proposals of the NRC 90-day report to SQN Units 1 and 2. TVA will continue to evaluate future NRC recommendations and to meet all applicable regulatory requirements that result from response to the Fukushima events.

Decision

On August 18, 2011, the TVA Board decided to proceed with an application to extend the operating licenses for Sequoyah Units 1 and 2 for an additional 20 years and other such actions as necessary to accomplish NRC approval of the license renewal application. Continuing to operate SQN would provide the Tennessee Valley with an additional 20 years of safe, reliable, base load power while promoting TVA's efforts to reduce carbon emissions, make beneficial use of an existing asset, and deliver power at the lowest feasible cost.

Environmentally Preferred Alternative

The environmentally preferred alternative is Alternative 1—SQN Units 1 and 2 License Renewal—Action Alternative. The environmental impacts of continued operation are minor. As an existing plant, continued operation of SQN would not result in additional environmental impacts while contributing to meeting the future demands on the TVA system to supply reliable energy with low carbon emissions.

Dated: August 31, 2011.

Preston D. Swafford,

Chief Nuclear Officer and Executive Vice President, Nuclear Generation.

[FR Doc. 2011–22800 Filed 9–7–11; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2011–0099]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, FHWA has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: Please submit comments by October 11, 2011.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2011–0099.

FOR FURTHER INFORMATION CONTACT: Michael Howell, 202–366–5707, Office of Information and Management Service, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Background: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The FHWA received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542) [Page 17183].

Below we provide FHWA's projected average estimates for the next three years:

Respondents: State and local governments, highway industry organizations, and the general public.

Estimated Average Annual Burden: The burden hours per response will vary with each survey; however, we estimate an average burden of 15 minutes for each survey.

Estimated Total Annual Burden Hours: We estimate that FHWA will survey approximately 21,000 respondents annually during the next 3 years. Therefore, the estimated total annual burden is 5,200 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: September 2, 2011.

Michael Howell,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2011–22966 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2011–001–N–12]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than November 7, 2011.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0571.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via e-mail to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kimberly.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (*telephone:* (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (*telephone:* (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Occupational Noise Exposure for Railroad Operating Employees.

OMB Control Number: 2130–0571.

Abstract: The collection of information is used by FRA to ensure that railroads covered by this rule establish and implement—by specified dates—noise monitoring, hearing conservation, and audiometric testing programs, as well as hearing conservation training programs, to protect their employees against the damaging and potentially dangerous effects of excessive noise in the everyday rail environment.

Affected Public: Businesses.

Respondent Universe: 460 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
227.9—Waivers	460 Railroads	5 petitions	60 minutes	5 hours.
227.103—Noise Monitoring Program.	460 Railroads	460 programs	2 hours/8 hours 600 hours.	5,165 hours.
—Notification of Employee of Monitoring.	460 Railroads	905 lists	30 minutes	453 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
227.107—Hearing Conservation Program (HCP).	460 railroads	461 HCPs	150 hrs/2 hrs/31 hrs	2,875 hours.
—Revised Hearing Conservation Programs (HCPs).	460 railroads	92 HCPs	/7.5 hours 1.74 hours	160 hours.
227.109—Audiometric Testing Program—Existing Employees—Baseline Audiograms.	78,000 Employees	60,000 audiograms + 6,000 a-grams.	7 minutes + 25 minutes	7,000 hours + 2,500 hours.
—Periodic Audiograms	78,000 Employees	8,000 a-grams 2,330 eval. + 93 retests.	25 minutes 6 min./2.5 hrs	3,333 hours.
—Evaluation of Audiograms				466 hours.
—Problem Audiograms	78,000 Employees	45 documents 93 notices	10 minutes 15 minutes	8 hours 24 hours.
—Follow-up Procedures—Notifications.				
—Fitting/Training of Employees: Hearing Protectors.	8,000 Employees	240 tr. session	2 minutes	8 hours.
—Referrals For Clinical/Otological Examinations.	8,000 Employees	20 referrals	2 hours	40 hours.
—Notification to Employee of Need: Otological Examination.	240 Employees	20 notices	5 minutes	2 hours.
—New Audiometric Interpretation	240 Employees	20 notices	5 minutes	2 hours.
227.111—Audiometric Test Requirements.	1,000 Mobile Vans	1,000 tests	45 minutes	750 hours.
227.117—Hearing Protection Attenuation—Evaluation.	460 Railroads	50 evaluations	30 minutes	25 hours.
—Re-Evaluations	460 Railroads	10 reevaluations	30 minutes	5 hours.
227.119—Hearing Conservation Training Program—Development.	460 Railroads/AAR	441 programs	8 hours/2 hours/116 hours/1 hour 30 minutes.	706 hours.
—Employee Training	460 Railroads	26,000 tr. Empl		13,000 hours.
—Periodic Training	460 Railroads	7,000 tr. Empl.	30 minutes	3,500 hours.
227.121—Record Keeping—Authorization: Records.	460 Railroads	10 requests + 10 Responses.	10 min. + 15 min.	5 hours.
—Request for Copies of Reports	460 Railroads	150 requests + 150 resp.	21 min. + 45 min.	166 hours.
—Records Transfer When Carrier Becomes Defunct.	460 Railroads	10 records	24 minutes	4 hours.
—Railroad Audiometric Test Records.	460 Railroads	26,000 records	2 minutes	867 hours.
—Hearing Conservation Program (HCP) Records.	460 Railroads	54,000 records	45 seconds	675 hours.
—HCP Training Records of Employees.	460 Railroads	26,000 records	30 seconds	217 hours.
—Records: Standard Threshold Shifts of Employees.	460 Railroads	280 records	7 minutes	33 hours.
229.121—Locomotive Cab Noise—Tests/Certifications.	3 Equipment Manufacturers.	700 tests/rcds.	40 min. + 5 min.	111 hours.
—Equipment Maintenance: Excessive Noise Reports.	460 Railroads	3,000 reports + 3,000 records.	10 min. + 5 min.	750 hours.
—Maintenance Records	460 Railroads	3,750 records	8 minutes	500 hours.
—Internal Auditable Monitoring Systems.	570 Railroads	570 systems	36 min. + 8.25 hours	572 hours.
Appendix H—Static Test Protocols/Records.	700 Locomotives	2 retests + 2 records	35 min. + 5 min.	1 hour.

Total Responses: 230,919.

Estimated Total Annual Burden: 43,928 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on September 2, 2011.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–23007 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of the Extension of the Comment Period for the Draft Environmental Impact Report/ Environmental Impact Statement for the California High-Speed Train Project Fresno to Bakersfield Section

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

ACTION: Notice.

SUMMARY: FRA is issuing this notice to advise the public that the comment period for the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) that has been prepared for the California High-Speed Train (HST) Project Fresno to Bakersfield Section (Project) has been extended and shall now end on October 13, 2011. This decision was made by the Authority and FRA in response to requests for an extension of the comment period. FRA is the lead federal agency and the California High-Speed Rail Authority (Authority) is the lead state agency for the environmental review process.

The Authority plans to construct and operate a fully grade-separated, dedicated double-track, electric powered, passenger rail, high-speed railroad along a 114-mile corridor between Fresno and Bakersfield, CA. The Project includes stations in downtown Fresno and Bakersfield, and a possible Kings/Tulare Regional Station east of Hanford, CA. A heavy maintenance facility for assembly, testing, and commissioning of trains, train inspection and service, and train overhaul may be constructed in the Fresno to Bakersfield Section.

The Draft EIR/EIS presents the Project's purpose and need, identifies all reasonable alternatives including track alignments, stations, and heavy maintenance facilities as well as the no action alternative, describes the affected environment, analyzes the potential environmental impacts of all the reasonable alternatives and the no action alternative, and identifies appropriate mitigation measures to minimize the potential environmental impacts.

DATES: Written comments on the Draft EIR/EIS for the Fresno to Bakersfield Section should be provided to the Authority on or before October 13, 2011. Public hearings are scheduled on September 20, September 21, and September 22, 2011 in Fresno, CA, Hanford, CA, and Bakersfield, CA respectively at the times and dates listed in the **ADDRESSES** section below.

ADDRESSES: Written comments on the Draft EIR/EIS should be sent to the California High-Speed Rail Authority, Fresno to Bakersfield EIR/EIS Comments, 770 L Street, Suite 800, Sacramento, CA 95814, through the Authority's Web site at *http://www.cahighspeedrail.ca.gov,* or via e-mail with the subject line ''Draft EIR/EIS'' at *Fresno_Bakersfield@hsr.ca.gov.* Comments may also be provided orally or in writing at the public hearings scheduled at the following locations:

- Fresno, CA, Tuesday, September 20, 2011, 3 p.m. to 8 p.m., Fresno Convention Center, 848 M Street, Fresno, CA;
- Hanford, CA, Wednesday, September 21, 2011, 3 p.m. to 8 p.m., Civic Auditorium, 400 N. Douty Street, Hanford, CA; and
- Bakersfield, CA, Thursday, September 22, 2011, 3 p.m. to 8 p.m., Beale Memorial Library, 701 Truxton Avenue, Bakersfield, CA.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Chief, Environment and Systems Planning Division, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 (telephone: 202–493–6368), or Mr. Dan Leavitt, Deputy Director for Environmental Review and Planning, California High-Speed Rail Authority, 770 L Street, Ste. 800, Sacramento, CA 95814 (telephone: 916–324–1541).

SUPPLEMENTARY INFORMATION: Once completed, the California HST system will provide intercity, high-speed passenger rail service on more than 800 miles of tracks throughout California, connecting the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. It will use state-of-the-art, electrically powered, high-speed, steel-wheel-on-steel-rail technology, including contemporary safety, signaling, and automated train-control systems, with trains capable of operating up to 220 miles per hour (mph) over a fully grade-separated, dedicated double track alignment.

The FRA and Authority certified a Statewide Program EIR/EIS (Tier 1) for the California HST system in November 2005 as the first phase of a tiered environmental review process for the California HST system. In 2008, the FRA and Authority certified another program EIR/EIS for the Bay Area to Central Valley portion of the HST system. The Fresno to Bakersfield Section Draft EIR/EIS (Tier 2) analyzes the environmental impacts and benefits of implementing the high-speed train in the more geographically limited area between Fresno and Bakersfield, and is based on more detailed project planning and engineering. This Draft EIR/EIS analysis builds on the earlier decisions and program EIR/EISs, and provides more site-specific and detailed analysis.

The Authority plans to complete the California HST System in two phases. Phase 1 will connect San Francisco to Los Angeles/Anaheim via the Pacheco Pass and the Central Valley with a mandated express travel time of 2 hours and 40 minutes or less. Phase 2 will connect the Central Valley to the state's capital, Sacramento, and will extend the system from Los Angeles, CA to San Diego, CA. This Project is for one section in Phase 1 and is receiving funding from FRA for design and environmental review as well as for the construction of an initial Section in the Central Valley.

The American Recovery and Reinvestment Act of 2009 (Recovery Act), enacted February 17, 2009, contained $8 billion to fund high-speed intercity passenger rail (HSIPR) projects. In response to the Recovery Act funding, FRA developed and began implementation of the HSIPR Program to fund projects to improve existing intercity passenger rail service and to develop new high speed intercity passenger rail corridors. FRA's HSIPR Program also received an additional $2.1 billion from the Transportation, Housing, and Urban Development and Related Agencies Appropriations Act of 2010. The California High-Speed Rail Authority applied for and was selected to receive over $3.5 billion in HSIPR funds from FRA to complete preliminary engineering and NEPA reviews and associated documentation for all seven sections comprising Phase 1 of the California HST System and to construct an initial Central Valley Section from Madera County to Bakersfield (Kern County) California. Completion of the environmental review process marked by issuance of a Record of Decision (ROD) by FRA is a prerequisite for any construction related federal funding or approvals from FRA.

The approximately 114-mile-long Fresno to Bakersfield Section is a critical Phase 1 link connecting Merced to Fresno and Bay Area HST Sections to the north and the Bakersfield to Palmdale and Palmdale to Los Angeles HST Sections to the south. The Fresno to Bakersfield Section includes HST stations in the cities of Fresno and Bakersfield, with a third potential

station located in the vicinity of Hanford (Kings/Tulare Regional Station) that would serve the Hanford, Visalia, and Tulare area. The Fresno and Bakersfield stations are this Section's beginning and ending points, or project termini.

This Draft EIR/EIS has been prepared by the FRA and the Authority consistent with the provisions of Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 *et seq.*), FRA's Procedures for Considering Environmental Impacts (64 FR 28545 (May 26, 1999)), the California Environmental Quality Act (CEQA) (Public Resources Code § 21000–21178), and CEQA Guidelines (California Code of Regulations Title 14, Chapter 3 § 15000–15387).

The Draft EIR/EIS is available online at FRA's Web site: *http://www.fra.dot.gov;* the Authority's Web site: *http://www.cahighspeedrail.ca.gov.* The Draft EIR/EIS is also available for viewing at the following locations near the planned rail system:

- *Fresno County Public Library, Central Branch,* Central Reference Department, 2420 Mariposa Street, Fresno, CA;
- *Fresno County Public Library, Clovis Regional Library,* 1155 Fifth Street, Clovis, CA;
- *Fresno County Public Library, Laton Branch,* 6313 DeWoody Street, Laton, CA;
- *Kern County Library, Beale Memorial Library,* 701 Truxtun Avenue, Bakersfield, CA;
- *Kern County Library, Corcoran Branch,* 1001 Chittenden Avenue, Corcoran, CA;
- *Kern County Library, Delano Branch,* 925 10th Avenue, Delano, CA;
- *Kern County Library, Shafter Branch,* 236 James Street, Shafter, CA;
- *Kern County Library, Wasco Branch,* 1102 7th Street, Wasco, CA;
- *Kings County Library, Hanford Branch (Main Library),* 401 N. Douty Street, Hanford, CA;
- *Kings County Library, Lemoore Branch,* 457 C Street, Lemoore, CA;
- *Tulare County Library, Visalia Branch (Main Library),* 200 West Oak Avenue, Visalia, CA; and
- *Tulare Public Library,* 475 North M Street, Tulare, CA.

Issued in Washington, DC, on August 31, 2011.

Paul Nissenbaum,

Director, Office of Passenger and Freight Programs.

[FR Doc. 2011–23015 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of the Extension of the Comment Period for the Draft Environmental Impact Report/Environmental Impact Statement for the California High-Speed Rail Project Merced to Fresno Section

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

ACTION: Notice.

SUMMARY: FRA is issuing this notice to advise the public that the comment period for the Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) that has been prepared for the California High-Speed Train (HST) Project Merced to Fresno Section (Project) has been extended and shall now end on October 13, 2011. This decision was made by the Authority and FRA in response to requests for extension of the comment period. FRA is the lead federal agency and the California High-Speed Rail Authority (Authority) is the lead state agency for the environmental review process.

The Authority proposes to construct and operate a reliable high-speed electric-powered passenger train system along an approximately 65-mile corridor, from Merced, CA, to Fresno, CA that links those cities by delivering predictable and consistent travel times. The Project includes high-speed track alignments, stations in downtown Merced and Fresno. A heavy maintenance facility for assembly, testing, and commissioning of trains, train inspection and service, and train overhaul may be constructed in the Merced to Fresno Section.

The Draft EIR/EIS presents the Project's purpose and need, identifies all reasonable alternatives including track alignments, stations, and heavy maintenance facilities as well as the no action alternative, describes the affected environment, analyzes the potential environmental impacts of all the reasonable alternatives and the no action alternative, and identifies appropriate mitigation measures to minimize the potential environmental impacts.

DATES: Written comments on the Draft EIR/EIS for the Project should be provided to the Authority on or before October 13, 2011. Public hearings are scheduled on September 14, 2011, September 15, 2011, and September 20, 2011 in Merced, CA, Madera, CA, and Fresno, CA respectively at the times and dates listed in the Addresses Section below.

ADDRESSES: Written comments on the Draft EIR/EIS should be sent to the California High-Speed Rail Authority, Merced to Fresno EIR/EIS Comment, 770 L Street, Suite 800, Sacramento, CA 95814, through the Authority's Web site at *http://www.cahighspeedrail.ca.gov*, or via e-mail with the subject line ''Draft EIR/EIS'' to *merced_fresno@hsr.ca.gov.* Comments may also be provided orally or in writing at the public hearings scheduled at the following locations:

- Merced, CA, Wednesday, September 14, 2011, 3 to 8 p.m., Merced Community Senior Center, 755 West 15th Street, Merced, CA 95340;
- Madera, CA, Thursday, September 15, 2011, 3 to 8 p.m., Madera City Council Chambers, 205 W. 4th Street, Madera, CA 93637; and
- Fresno, CA, Tuesday, September 20, 2011, 3 to 8 p.m., Fresno Convention Center, 848 M Street, Fresno, CA.

FOR FURTHER INFORMATION CONTACT: Mr. David Valenstein, Chief, Environment and Systems Planning Division, Office of Railroad Policy and Development, Federal Railroad Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., MS–20, Washington, DC 20590 (telephone: 202–493–6368), or Mr. Dan Leavitt, Deputy Director for Environmental Review and Planning, California High-Speed Rail Authority, 770 L Street, Ste. 800, Sacramento, CA 95814 (telephone: 916–324–1541).

SUPPLEMENTARY INFORMATION: Once completed, the California HST system will provide intercity, high-speed passenger rail service on more than 800 miles of tracks throughout California, connecting the major population centers of Sacramento, the San Francisco Bay Area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. It will use state-of-the-art, electrically powered, high-speed, steel-wheel-on-steel-rail technology, including contemporary safety, signaling, and automated train-control systems, with trains capable of operating up to 220 miles per hour (mph) over a fully grade-separated, dedicated double track alignment.

The FRA and Authority certified a Statewide Program EIR/EIS (Tier 1) for the California HST system in November 2005 as the first phase of a tiered environmental review process for the California HST system. In 2008, the FRA and Authority certified another program EIR/EIS for the Bay Area to Central Valley portion of the HST system. The Merced to Fresno Section Draft EIR/EIS (Tier 2) analyzes the environmental

impacts and benefits of implementing the high-speed train in the more geographically limited area between Merced and Fresno, and is based on more detailed project planning and engineering. This Draft EIR/EIS analysis builds on the earlier decisions and program EIR/EISs, and provides more site-specific and detailed analysis.

The Authority plans to complete the California HST System in two phases. Phase 1 will connect San Francisco to Los Angeles/Anaheim via the Pacheco Pass and the Central Valley with a mandated express travel time of 2 hours and 40 minutes or less. Phase 2 will connect the Central Valley to the state's capital, Sacramento, and will extend the system from Los Angeles to San Diego. This Project is for one section in Phase 1 and is receiving funding from FRA for design and environmental review as well as for construction of an initial Section in the Central Valley.

The American Recovery and Reinvestment Act of 2009 (Recovery Act), enacted February 17, 2009, contained $8 billion to fund high-speed and intercity passenger rail (HSIPR) projects. In response to the Recovery Act funding, FRA developed and began implementation of the HSIPR Program to fund projects to improve existing intercity passenger rail service and to develop new high speed intercity passenger rail corridors. FRA's HSIPR Program also received an additional $2.1 billion from the Transportation, Housing, and Urban Development and Related Agencies Appropriations Act of 2010. The California High-Speed Rail Authority applied for and was selected to receive over $3.5 billion in HSIPR funds from FRA to complete preliminary engineering and NEPA reviews, and associated documentation for seven sections comprising the Phase 1 California HST System and to construct an initial Central Valley Section from Madera County to Bakersfield (Kern County), California. Completion of the environmental review process marked by issuance of a Record of Decision (ROD) by FRA is a prerequisite for any construction related federal funding or approvals from FRA.

The approximately 65-mile-long Merced to Fresno Section is an essential part of the statewide HST System. The Merced to Fresno Section is the location of the connection between the Bay Area and Sacramento branches of the HST System; it will provide Merced and Fresno access to a new transportation mode and will contribute to increased mobility throughout California. This Section will connect the central San Joaquin Valley region to the remainder of the HST System via Merced County, Madera County, and the northern part of the city of Fresno.

This Draft EIR/EIS has been prepared by the FRA and the Authority consistent with the provisions of Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Counsel of Environmental Quality (CEQ) regulations implementing NEPA (40 CFR parts 1500 *et seq.*), FRA's Procedures for Considering Environmental Impacts (64 FR 28545 (May 26, 1999)), and in conformity with the California Environmental Quality Act (CEQA) (California Public Resources Code Section 21000 *et seq.*), and the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*).

The Draft EIR/EIS is available online at FRA's Web site: *http://www.fra.dot.gov* and the Authority's Web site: *http://www.cahighspeedrail.ca.gov.* The Draft EIR/EIS is also available for viewing at the following locations near the planned rail system:

- Fresno County Public Library, Central Branch, 2420 Mariposa Street, Fresno, CA 93721;
- Madera County Library, 121 North G Street, Madera, CA 93637;
- Chowchilla Branch Library (Madera County Library), 300 Kings Avenue, Chowchilla, CA 93610;
- Merced Community Senior Center, 755 West 15th Street, Merced, CA 95340;
- Merced County Library, 2100 O Street, Merced, CA 95340;
- Galilee Missionary Baptist Church, 22941 Fairmead Boulevard, Chowchilla, CA 93610;
- Le Grand Branch Library, 12949 Le Grand Road, Le Grand, CA 95333;
- Lao Family Community, 855 W. 15th Street, Merced, CA 95333;
- Madera Ranchos Branch Library, 37167 Avenue 12, Suite 4C, Madera, CA 95636;
- Merced County Los Banos Branch Library, 1312 South Seventh Street, Los Banos, CA 93635; and
- Atwater Branch Library, 1600 Third Street, Atwater, CA 95301.

Issued in Washington, DC, on August 31, 2011.

Paul Nissenbaum,

Director, Office of Passenger and Freight Programs.

[FR Doc. 2011–23013 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 27, 2011, and comments were due by July 26, 2011. No comments were received.

DATES: Comments must be submitted on or before October 11, 2011.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Office of Financial Approvals and Marine Insurance, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–2279; or *e-mail: edmond.j.fitzgerald@dot.gov.* Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration.

Title: Application for Construction Reserve Fund and Annual Statements.

OMB Control Number: 2133–0032.

Type of Request: Extension of currently approved collection.

Affected Public: Owners or operators of vessels in the U.S. domestic or foreign commerce.

Forms: None.

Abstract: In accordance with Section 511 of the Merchant Marine Act of 1936, as amended, all citizens who own or operate vessels in the U.S. domestic or foreign commerce and desire ''tax'' benefits under the Construction Reserve Fund (CRF) program, are required to submit to MARAD an application for benefits. The annual statement provided to MARAD officials sets forth a detailed analysis of the CRF when each income tax return is filed. The application is required in order for MARAD to determine whether the applicant is qualified for the benefits, and the annual statements are required in order for MARAD to assure that the

requirements of the program are being satisfied.

Annual Estimated Burden Hours: 153 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* MARAD Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov*.

Comments Are Invited On: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: August 30, 2011.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–22886 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2011–0115]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before November 7, 2011.

FOR FURTHER INFORMATION CONTACT: Michael C. Pucci, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5167; or e-mail: *michael.pucci@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Requirements for Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length to Obtain a Fishery Endorsement.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0530.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: In accordance with the American Fisheries Act of 1998, owners of vessels of 100 feet or greater who wish to obtain a fishery endorsement to the vessels' documentation are required to file with the Maritime Administration (MARAD) an Affidavit of United States Citizenship.

Need and Use of the Information: The information collection is necessary for MARAD to determine that a particular vessel is owned and controlled by United Sates citizens and is eligible to receive a fishery endorsement to its documentation.

Description of Respondents: Vessel owners, charterers, mortgagees, mortgage trustees and managers of vessels of 100 feet or greater who seek a fishery endorsement for the vessel.

Annual Responses: 500.

Annual Burden: 2,950 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov.*

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

Dated: August 30, 2011.

By Order of the Maritime Administrator.

Julie Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–22888 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 15, 2010. No comments were received.

DATES: Comments must be submitted on or before October 11, 2011.

FOR FURTHER INFORMATION CONTACT: Sheila Brown, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–5178; or e-mail *Sheila.brown@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Elements of Request for Course Approval.

OMB Control Number: 2133–0535.

Type of Request: Extension of currently approved collection.

Affected Public: Respondents are public and private maritime security course training providers.

Form(s): None.

Abstract: Under this voluntary collection, public and private maritime security training course providers may choose to provide the Maritime

Administration (MARAD) with information concerning the content and operation of their courses. MARAD will use this information to evaluate whether the course meets the training standards and curriculum promulgated under Section 109 of the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295). Courses found to meet these standards will receive a course approval.

Annual Estimated Burden Hours: 990.

Addressee: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Dated: August 30, 2011.

By the Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–22964 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 7, 2011 and comments were due by August 8, 2011. No comments were received.

DATES: Comments must be submitted on or before October 11, 2011.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366–5979; or e-mail *joann.spittle@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels.

OMB Control Number: 2133–0529.

Type of Request: Extension of currently approved collection.

Affected Public: Small passenger vessel owners who desire to operate in the coastwise trade.

Forms: None.

Abstract: Owners of small passenger vessels desiring waiver of the coastwise trade laws affecting small passenger vessels will be required to file a written application and justification for waiver to the Maritime Administration (MARAD). The agency will review the application and make a determination whether to grant the requested waiver.

Annual Estimated Burden Hours: 75 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via e-mail to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.*

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: September 1, 2011.

By the Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–22962 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Public Listening Sessions Regarding the Maritime Administration's Panama Canal Expansion Study and the America's Marine Highway Program

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce a series of public listening sessions and workshops regarding the expansion of the Panama Canal and the America's Marine Highway Program. The meetings are being held to provide a forum for maritime industry stakeholders and the general public to present their views and concerns on critical issues that the U.S. Department of Transportation, Maritime Administration (MARAD) should consider in the development of its comprehensive study of the 2014 Panama Canal Expansion project and during its efforts to explore opportunities to incorporate America's Marine Highways into the National Transportation System. These meetings will be identical in terms of agenda and purpose; they are being held in different locations (San Francisco, CA and New York, NY) to maximize nationwide stakeholder participation.

MARAD's study of the Panama Canal Expansion will evaluate the potential impacts of the expansion on U.S. ports and infrastructure. The study is being conducted in four defined phases that are designed to present considerations for policy, investment, and funding options as well as recommendations for policy changes that will favorably impact the overall shift in the Nation's trade patterns. Phase I of the study will include an examination of the history and development of the Panama Canal Expansion process and will present current data and information on Panama Canal's role in the U.S. trade market with the rest of the world. Phase II of the study will involve a more comprehensive data gathering and outreach effort that will include the subject stakeholder listening sessions, dissemination of a shipper survey, and one-on-one interviews with targeted maritime stakeholder groups. The final Phases of the study (Phase III and Phase IV) will involve identification of

potential infrastructure expansion opportunities and development of a framework for which the U.S. Government may leverage the Panama Canal Expansion effort to optimize financial investments in U.S. ports and inland infrastructure.

Expansion of the Panama Canal will require new capital investments in transportation infrastructure by both the private and public sectors. The size, location and timing of these investments will depend on how various stakeholders believe that global trade patterns, vessel operations, import and export flows, logistics support systems and port and land-side capacity will be re-configured to accommodate the larger vessels and increased capacity of the Panama Canal in a post-2014 operating environment. A wide variety of stakeholders may be potentially affected by decisions and policies that will be implemented by the U.S. Department of Transportation and MARAD as a result of this study. Each stakeholder has a particular set of perspectives and a highly unique set of information upon which they will base their own investment and operational responses to the Panama Canal Expansion. Moreover, there is a wide diversity of opinion on which ports, trade lanes, landside infrastructure and commodities will be affected by the expansion.

Accordingly, stakeholder participation in the subject listening sessions and workshops is an essential part of the overall data collection and analysis effort for the study and will help support the agency's efforts to expand the use of America's Marine Highways. Discussion topics for the Panama Canal Expansion Study Listening Sessions will include: Impacts on the U.S. economy, trade patterns post-expansion, anticipated effects on East/West/Gulf Coasts and Inland ports, infrastructure development, and future bottlenecks as well as other related issues. Topics of discussions relating to the America's Marine Highways will include: corridors, connections and crossings, program projects and initiatives, intermodal connectivity, and public/private partnerships.

FOR FURTHER INFORMATION CONTACT: For information, contact Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 or by e-mail at *mailto:Yvette.Fields@dot.gov.*

DATES AND ADDRESSES: The first Panama Canal Expansion Study Listening Session will take place in San Francisco, CA on September 22, 2011, from 8:30 a.m. to 12:30 p.m., at the Westin Hotel at Market Street, 50 Third Street, San Francisco, CA 94103, and will be followed by the America's Marine Highway Corridor Workshop from 1:30 p.m. to 5 p.m. The second Panama Canal Expansion Study Listening Session will take place in New York, NY on September 27, 2011, from 8:30 to 12:30 p.m., at the U.S. Customs House, One Bowling Green, New York, NY 10004, and will be followed by the America's Marine Highway Corridor Workshop from 1:30 p.m. to 5 p.m.

Registration: To register, interested parties should send their name, group affiliation, and contact information, and indicate which of the meetings (either the Panama Canal, Marine Highway or both) they wish to attend to *mailto:http://www.PanamaCanalStudy.com/registration* by September 14, 2011. The meetings are open to the public and advance registration and confirmation is required. Space is limited to the first 150 registrants. After registering, an email confirmation will be forwarded with an agenda and other related information.

The sessions will be held at sites accessible to individuals with disabilities. Individuals who require other special accommodations such as a sign language interpreter may submit their request at the time of registration at *http://www.PanamaCanalStudy.com/registration* by September 14, 2011.

Dated: September 1, 2011.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–22967 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0113]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GIT'N IT ON.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0113 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 11, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0113. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel GIT'N IT ON is:

Intended Commercial Use of Vessel: ''sportfishing.''

Geographic Region: ''Texas, Louisiana, Mississippi, Alabama, Florida.''

Privacy Act

Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: August 30, 2011.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–22884 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0014]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MAHIYA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0014 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before October 11, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0114. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MAHIYA is:

Intended Commercial Use of Vessel: ''Sunset cruises, dolphin watching, day sails.''

Geographic Region: ''Florida.''

Privacy Act

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

Dated: September 1, 2011.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–22963 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2011–0012]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SPLIT ROCK.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2011–0112 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before October 11, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0112. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979, E-mail *Joann.Spittle@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SPLIT ROCK is:

Intended Commercial Use of Vessel: ''Carrying passengers for hire including fishing and diving charters, eco-tours, and passenger ferry service.''

Geographic Region: ''Primary: Georgia, Florida, South Carolina, North Carolina. Secondary: Texas, Louisiana, Mississippi, Alabama, Virginia, Maryland, Delaware.''

Privacy Act

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

Date: August 30, 2011.

By the Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–22885 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2011–0130]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before November 7, 2011.

ADDRESSES: You may submit comments, identified by the docket number in the heading of this document, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help'' or ''FAQ.''
- *Hand Delivery:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit comments, you should mention the docket number of this document.

You may call the Docket Management Facility at 202–366–9826.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*, or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Mike Joyce, Marketing Specialist, Office of Communications and Consumer Information (NPO–520), National Highway Traffic Safety Administration, 1200 New Jersey Ave, SE., W52–238, Washington, DC 20590. Mike Joyce's phone number is 202–366–5600 and his e-mail address is *Mike.Joyce@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from

OMB

Title: Monroney Label Consumer Research.

Requested Expiration Date of Approval: Three years from approval date.

Abstract: The National Highway Traffic Safety Administration (NHTSA) was established by the Highway Safety Act of 1970 (23 U.S.C. 101) to carry out a Congressional mandate to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. In support of this mission, NHTSA proposes to conduct a limited number of focus group sessions with members of the general public to help inform future revisions to the Monroney label and guide the development of a consumer education program.

Summary of the Collection of Information: In this collection of information, NHTSA is requesting to explore how consumers evaluate the Monroney label, and comprehension of the 5–Star Safety Ratings and understand the potential tradeoffs consumers make among the items included on the Monroney label. The research will also consider the location and size of the safety rating label and compare with other areas of the Monroney label and explore adding the advanced crash avoidance safety information to the safety rating label. Additional areas of exploration will be evaluated, including:

(i) Vehicle purchase decision-making criteria;

(ii) Sources of vehicle safety information;

(iii) Monroney label content, comprehension and potential tradeoffs; and,

(iv) New changes to the safety rating section of the Monroney label to help inform future revisions.

Description of the Need for the Information and the Proposed Use of the Information: NHTSA must explore how safety information impacts vehicle purchase decisions, where consumers look for safety information and how consumers use safety and other information located on the Monroney label in their purchase decisions, which will help inform future revisions to the Monroney label. Additionally, NHTSA will use this research to discuss potential communication channels in order to guide the development of a consumer education program.

Affected Public: NHTSA will conduct two research phases. For the first phase, which this notice addresses, NHTSA will conduct one type of qualitative research. This research project will consist of two (2) focus groups in five (5) cities for a maximum of ten (10) focus group sessions, lasting 120 minutes and will be held with eight (8) participants in each session. Participation by all respondents would be voluntary, and respondents will receive $75 for their participation. For recruiting of these participants, however, a total of 120 potential participants (12 per group) will be recruited via telephone screening calls, which are estimated to take 10 minutes per call. Based on experience, it is prudent to recruit up to 12 people per group in order to ensure at least 8 will actually appear at the focus group facility at the appointed time. Thus, the total burden per person actually participating in the group discussions is estimated to be 130 minutes (10 minutes for the screening/recruiting telephone call plus 120 minutes in the focus group discussion session). Additionally, the total burden per person recruited (but not participating in the discussions) is 10 minutes.

Estimated Total Annual Burden: 180 hours.

Number of Respondents: 80.

The results of this research phase will be used to finalize the content of a second research phase NHTSA will conduct, which this notice does not address.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: August 23, 2011.

Gregory A. Walter,

Senior Associate Administrator, Policy and Operations.

[FR Doc. 2011–22643 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0198, Notice No. 11–8]

Safety Advisory: Unauthorized Marking of Compressed Gas Cylinders

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Safety Advisory Notice.

SUMMARY: PHMSA issues this safety advisory to notify the public of the unauthorized marking of certain of high- and low-pressure compressed gas cylinders, primarily fire extinguishers, by Atlas Fire Protection located at 7425 Sewells Point Road, Norfolk, VA.

FOR FURTHER INFORMATION CONTACT: Chris Michalski, Senior Investigator, Eastern Region, Office of Hazardous Materials Safety Field Operations, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 820 Bear Tavern Road, Suite 306, W. Trenton, NJ 08034. Telephone: (609) 989–2256, Fax: (609) 989–2277, or e-mail: *chris.michalski@dot.gov*.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations (HMR) require compressed gas cylinders to be subjected to periodic requalification (visual inspection and hydrostatic testing in accordance with 49 CFR 180.205 and 180.209) to verify the structural integrity of a cylinder and its suitability for continued service. If the required inspections and tests are not performed, a cylinder with compromised structural integrity may be returned to service when it should be condemned. Extensive property damage, serious personal injury, or death could result from the rupture of a cylinder. Cylinders not requalified in accordance with the HMR may not be filled with compressed gas or other hazardous material and offered for transportation in commerce. Only DOT approved facilities are authorized to requalify cylinders.

Investigations conducted by PHMSA's field operations in 2009, 2010, and 2011, revealed that some high- and low-pressure cylinders serviced by Atlas Fire Protection were marked and represented as requalified (visually inspected and hydrostatically tested) in accordance with HMR when the appropriate inspections and tests were not performed. PHMSA determined during its investigations that: (1) Atlas Fire Protection is not approved or authorized to requalify DOT-specification cylinders or mark such cylinders as requalified; (2) Atlas Fire Protection applied requalification markings to cylinders that were not subjected to the required inspections and tests; and (3) Atlas Fire Protection marked cylinders with a Requalifier Identification Number (RIN) B243 that was not issued to them, but rather to another company, Fire-X Corporation, Norfolk, VA. The unauthorized markings (B243) applied by Atlas Fire Protection were stamped into the cylinder and include a month and the last two digits of the year. In the case of low pressure fire extinguishers, the markings may appear on an adhesive label with holes punched through the month, year, and hydrostatic test indicator. Only cylinders serviced by Atlas Fire Protection are suspect.

Anyone in possession of a cylinder that was serviced by Atlas Fire Protection and marked with test dates of 2007 through 2011 and has not had the cylinder requalfied by a DOT approved requalification facility since then, should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly requalified by a DOT approved requalification facility.

Cylinders subject to this advisory that are filled should be safely discharged. Prior to refilling, the cylinders should be taken to a DOT approved cylinder requalification facility to ensure their suitability for continued service. A list of authorized cylinder requalification facilities may be obtained at: *http://hazmat.dot.gov.*

Persons in possession of cylinders subject to this notice may contact their local fire department for assistance at one of the following telephone numbers:

Ashland	804–365–4850	Portsmouth	757–393–8689
Chesapeake	757–382–6566	Richmond	804–646–6640
Chesterfield	804–748–1426	Rockville	804–786–0000
Hampton	757–727–1210	Suffolk	757–539–8787
Midlothian	804–786–0000	Virginia Beach	757–385–4228
Newport News	757–247–8873	Williamsburg	757–220–6226
Norfolk	757–664–6604	Yorktown	757–890–3626
Virginia State Fire Marshal's Office	804–371–0220		

Issued in Washington, DC on August 30, 2011.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2011–22892 Filed 9–7–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Proposed Privacy Act Systems of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Proposed Privacy Act Systems of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury, Departmental Offices gives notice of a proposed system of records entitled, ''Treasury 013—Department of the Treasury Civil Rights Complaints and Compliance Review Files.''

DATES: Comments must be received no later than October 11, 2011. The proposed new system of records will be effective October 11, 2011 unless comments are received which would result in a contrary determination.

ADDRESSES: Written comments should be sent to the Associate Chief Human Capital Officer for Civil Rights and Diversity, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Daylight Time. You can make an appointment to inspect comments by telephoning (202) 622–0990. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Mariam G. Harvey, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–0316, (202) 622–0367 (fax), or via electronic mail at *ocrd.comments@do.treas.gov*.

SUPPLEMENTARY INFORMATION: The Department of the Treasury (Treasury) established the Office of Civil Rights and Diversity to ensure equal employment opportunity for its employees and applicants for employment, and to ensure that programs and activities conducted by or receiving financial assistance from Treasury meet the non-discrimination requirements set out by Title VI of the Civil Rights Act, Title IX of the Education Amendments, the Age Discrimination Act and Sections 504 and 508 of the Rehabilitation Act. In performing its mission, the Office of Civil Rights and Diversity will create records having to do with civil rights complaints, compliance reviews, and correspondence. Members of the public can file administrative complaints alleging discrimination and the Office of Civil Rights and Diversity is responsible for investigating those complaints over which it has jurisdiction. Treasury will maintain records of the complaints filed by the public and their disposition. Treasury administers programs offering financial assistance, such as the Low Income Taxpayer Clinics and the Community Development Financial Institutions Fund. Treasury has the responsibility to ensure that its financially assisted programs are administered in a nondiscriminatory manner. The guidance provided to the Federal agencies by the Department of Justice requires Federal agencies to conduct compliance reviews of its recipients of financial assistance as the best way to ensure nondiscrimination. Treasury will maintain records of its recipients' compliance with the applicable civil rights laws.

In a notice of proposed rulemaking, which is published separately in the **Federal Register**, the Office of Civil Rights and Diversity is proposing to exempt records maintained in several systems from certain of the Privacy Act's requirements pursuant to 5 U.S.C. 552a(k)(2).

The report of a new system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been provided to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

The proposed new system of records, entitled ''Treasury .013—Department of the Treasury Civil Rights Complaints and Compliance Review Files,'' is published in its entirety below.

Dated: August 17, 2011.

Veronica Marco,

Acting Deputy Assistant Secretary for Privacy, Transparency and Records.

Treasury .013

SYSTEM NAME:

Department of the Treasury Civil Rights Complaints and Compliance Review Files.

SYSTEM LOCATION:

These records are located in the Department of the Treasury's (Treasury) Office of Civil Rights and Diversity (OCRD), the Office of the General Counsel, and any other office within a Treasury bureau where a complaint is filed or where the action arose.

The locations at which the system is maintained are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW., Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L. Street, NW., Washington, DC 20036.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G. St., NW., Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 250 E Street, NW., Washington, DC 20219–0001.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets, SW. Washington, DC 20228.

(5) Financial Management Service (FMS): 401 14th Street, SW., Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue, NW., Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street, NW., Washington, DC 20220.

(8) Bureau of the Public Debt (BPD): 999 E Street, NW., Washington, DC 20239.

(9) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22183–0039.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Covered individuals include persons who file complaints alleging discrimination or violation of their rights under the statutes identified below (Authority for Maintenance) and covered entities (*e.g.,* recipients of financial assistance from Treasury such as grantees and sub-grantees), whether individuals, organizations or institutions, investigated by OCRD as a result of allegations of discrimination or through compliance reviews conducted by OCRD. Covered individuals also include persons who submit correspondence to OCRD related to other compliance activities (*e.g.,* outreach and public education), and other correspondence unrelated to a complaint or review and requiring response by OCRD.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system encompasses a variety of records having to do with complaints, compliance reviews, and correspondence. The complaint files and log include complaint allegations, information gathered during the complaint investigation, findings and results of the investigation, and correspondence relating to the investigation, as well as status information for all complaints.

Equivalent types of information are maintained for reviews and correspondence activities (namely information gathered, findings, results, correspondence and status).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI of the 1964 Civil Rights Act of 1964; sections 504 and 508 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; and Title IX of the Education Amendments Act of 1972.

PURPOSE(S):

The complaint files and other records will be used to enforce and ensure compliance with the legal authorities listed above. Treasury uses the information in this system to investigate complaints and to obtain compliance with civil rights laws.

The system is used for the investigation of complaints and in reviewing recipients of Treasury financial assistance to determine if these programs are in compliance with the Federal laws which prohibit discrimination on the basis of race, color, national origin, sex, age, and disability. In addition, the system contains case files developed in investigating complaints and in reviewing actions within Treasury to determine if its conducted programs and activities are in compliance with the Federal laws. The system also contains annual and bi-annual statistical data submitted to and used by the OCRD in monitoring the compliance status of recipients of Department of the Treasury financial assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose pertinent information to:

1. Appropriate Federal agencies responsible for a civil rights action or, prosecuting a violation of, or enforcing, or implementing, a statute, rule, regulation, or order, where Treasury becomes aware of an indication of a potential violation of civil or criminal law or regulation, rule or order.

2. Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

3. Another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a court of competent jurisdiction.

4. The National Archives and Records Administration (''NARA'') for use in its records management inspections and its role as an Archivist.

5. The United States Department of Justice for the purpose of representing or providing legal advice to Treasury in a proceeding before a court, adjudicative body, or other administrative body before which Treasury is authorized to appear, when such proceeding involves:

(A) Treasury or any component thereof;

(B) Any employee of Treasury in his or her official capacity;

(C) Any employee of Treasury in his or her individual capacity where the Department of Justice or Treasury has agreed to represent the employee;

(D) The United States, when Treasury determines that litigation is likely to affect Treasury or any of its components.

6. Contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for Treasury, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Treasury officers and employees.

7. Appropriate agencies, entities, and persons when: (a) Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) Treasury has determined that as a result of the suspected or confirmed compromise that there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by Treasury or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with Treasury's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, file folders and/or electronic media.

RETRIEVABILITY:

In the case of administrative complaints, records are indexed by the complainant's name. In the case of compliance reviews, records are indexed by the name of the recipient of financial assistance.

SAFEGUARDS:

The civil rights complaint and compliance file system will conform to applicable law and policy governing the privacy and security of Federal records. These include but are not limited to the Privacy Act of 1984, and the Paperwork Reduction Act of 1995. Only authorized users have access to the records in the system. Specific access is structured around need and is determined by the person's role in the organization.

Printed materials are filed in secure cabinets in secure Federal buildings with access based on need.

RETENTION AND DISPOSAL:

Documents related to complaints and reviews are retained at OCRD for three years from the date the complaint is closed and then are archived at the National Archives and Records Administration for 15 years. Correspondence is retained for one year following the end of the fiscal year in which processed.

SYSTEM MANAGER(S) AND ADDRESS:

Department of the Treasury: Official prescribing policies and practices: Associate Chief Human Capital Officer for Civil Rights and Diversity.

The system managers for the Treasury components are:

(1) Treasury: OCRD, External Civil Rights Program Manager, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(2) a. DO: Office of EEO, EEO Director, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

b. OIG: EEO and Diversity Manager, 740 15th Street, NW., Suite 500, Washington, DC 20220.

c. TIGTA: EEO Program Manager, 1125 15th Street, NW., Suite 700A, Washington, DC 20005.

(d) SIGTARP: EEO Program Manager, 1801 L Street, NW., 3rd Floor, Washington, DC 20220.

(3) TTB: EEO Officer, 1310 G Street, NW., Suite 300W, Washington, DC 20220.

(4) OCC: Director, Workplace Fairness and Equal Opportunity, 250 E Street, SW., Washington, DC 20219.

(5) BEP: Chief, Office of Equal Opportunity and Diversity Management, 14th and C Street, SW., Room 639–17, Washington, DC 20228.

(6) FMS: EEO Officer, PG Center, Building 2, Room 137, 3700 East-West Highway, Hyattsville, MD 20782.

(7) IRS: Director, Civil Rights Division, 1111 Constitution Avenue, NW., Suite 2219, Washington, DC 20224.

(8) U.S. Mint: Chief, EEO and Dispute Resolution Division, 801 9th Street, NW., 3rd Floor, Washington, DC 20220.

(9) BPD: EEO Officer, 200 3rd Street, Room 102, Parkersburg, WV 26106.

(10) FinCEN: Chief, Outreach and Workplace Solutions, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendices A–M. Requests for information and specific guidance on where to send requests for records may be addressed to: Privacy Act Request, DO, Director, Disclosure Services Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

Information is provided by Treasury employees, complainants and covered entities.

RECORDS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Certain records in this system are exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H),and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

[FR Doc. 2011–22977 Filed 9–7–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One Specially Designated National or Blocked Person Pursuant to Executive Order 13315, as Amended

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of an individual whose property and interests in property have been unblocked pursuant to Executive Order 13315 of August 28, 2003, ''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions,'' as amended by Executive Order 13350 of July 30, 2004.

DATES: The removal of this individual from the SDN List is effective as of September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On August 28, 2003, the President issued Executive Order 13315 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.,* the National Emergencies Act, 50 U.S.C. 1601 *et seq.,* section 5 of the United Nations Participation Act, as amended, 22 U.S.C. 287c, section 301 of title 3, United States Code, and in view of United Nations Security Council Resolution 1483 of May 22, 2003. In the Order, the President expanded the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. The Order blocks the property and interests in property of, *inter alia,* persons listed on the Annex to the Order.

On July 30, 2004, the President issued Executive Order 13350, which, *inter alia,* replaced the Annex to Executive Order 13315 with a new Annex that included the names of individuals and entities, including individuals and entities that had previously been designated under Executive Order 12722 and related authorities.

The Department of the Treasury's Office of Foreign Assets Control has determined that the individual identified below, whose property and interests in property were blocked pursuant to Executive Order 13315, as amended, should be removed from the SDN List.

The following designation is removed from the SDN List:

ALI, Ali Abdul Mutalib, Germany (individual) [IRAQ2]

The removal of this individual's name from the SDN List is effective as of September 1, 2011. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: September 1, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–22980 Filed 9–7–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice and request for comments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The IRS is soliciting comments concerning information collection requirements related to Notice 123934–11—The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States to provide emergency housing relief needed as a result of the devastation caused by severe storms, tornadoes and flooding in Missouri beginning on April 19, 2011.

DATES: Written comments should be received on or before November 7, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* NOT–123934–11. Relief from Certain Low-Income Housing Credit Requirements Due to Severe Storms, Tornadoes and Flooding in Missouri.

OMB Number: 1545–2210.

Notice Number: Notice 123934–11.

Abstract: This notice provides guidance with respect to the Internal Revenue Service suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States to provide emergency housing relief needed as a result of the devastation caused by severe storms, tornadoes and flooding in Missouri beginning on April 19, 2011.

Current Actions: There are no changes being made to the burden previously requested, at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Average Time per Respondent: 15 min.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–22921 Filed 9–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 99–43

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 99–43, Nonrecognition Exchanges under Section 897.

DATES: Written comments should be received on or before November 7, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Elaine Christophe, (202) 622–3179, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Nonrecognition Exchanges under Section 897.

OMB Number: 1545–1660.

Notice Number: Notice 99–43.

Abstract: Notice 99–43 announces modification of the current rules under Temporary Regulation section 1.897–6T(a)(1) regarding transfers, exchanges and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The notice provides that, contrary to section 1.897–6T(a)(1), a foreign taxpayer will not recognize a gain under Code 897(e) for an exchange described in Code section 368(a)(1)(E) or (F), provided the taxpayer receives substantially identical shares of the same domestic corporation with the same divided rights, voting power, liquidation preferences, and convertability as the shares exchanged without any additional rights or features.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–22922 Filed 9–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Qualified Separate Lines of Business.

DATES: Written comments should be received on or before November 7, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Qualified Separate Lines of Business.

OMB Number: 1545–1221.

Regulation Project Number: EE–147–87.

Abstract: Section 414(r) of the Internal Revenue Code requires that employers who wish to test their qualified retirement plans on a separate line of business basis, rather than on a controlled group basis, provide notice to the IRS that the employer treats itself as operating qualified separate lines of business. Additionally, an employer may request an IRS determination that such lines satisfy administrative scrutiny. This regulation elaborates on the notice requirement and the determination process.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 253.

Estimated Time per Respondent: 3 hours, 27 minutes.

Estimated Total Annual Burden Hours: 431.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–22923 Filed 9–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305–SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305–SEP, Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before November 7, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, Internal Revenue Service, room 6129, 1111 Constitution

Avenue, NW., Washington, DC 20224, or through the Internet at *Elaine.H. Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–0499.

Form Number: 5305–SEP.

Abstract: Form 5305–SEP is used by an employer to make an agreement provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP.

Current Actions: There are no changes being made to form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 4 hr. 57 min.

Estimated Total Annual Burden Hours: 495,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–22924 Filed 9–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Conforming Adjustments Subsequent to Section 482 Allocations.

DATES: Written comments should be received on or before November 7, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Elaine Christophe at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Conforming Adjustments Subsequent to Section 482 Allocations.

OMB Number: 1545–1657.

Revenue Procedure Number: Revenue Procedure 99–32.

Abstract: Revenue Procedure 99–32 provides guidance for conforming a taxpayer's accounts to reflect a primary adjustment under Internal Revenue Code section 482. The revenue procedure prescribes the applicable procedures for the repatriation of cash by a United States taxpayer via an interest-bearing account receivable or payable in an amount corresponding to the amount allocated under Code section 482 from, or to, a related person with respect to a controlled transaction.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 180.

Estimated Time per Respondent: 9 hours.

Estimated Total Annual Burden Hours: 1,620.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2011.

Yvette B. Laurence,

IRS Reports Clearance Officer.

[FR Doc. 2011–22925 Filed 9–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–44

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2005–44, Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes.

DATES: Written comments should be received on or before November 7, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes.

OMB Number: 1545–1942.

Notice Number: Notice 2005–44.

Abstract: This notice provides guidance regarding how to determine the amount of a charitable contribution for certain vehicles and the related substantiation and information reporting requirements.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved new collection.

Affected Public: Individual or households and not-for-profit institutions.

Estimated Number of Respondents: 182,500.

Estimated Average Time per Respondent: 1 min.

Estimated Total Annual Burden Hours: 3,650.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–22926 Filed 9–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 941–M

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 941–M, Employer's Monthly Federal Tax Return.

DATES: Written comments should be received on or before *November 7, 2011* to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employer's Monthly Federal Tax Return.

OMB Number: 1545–0718.

Form Number: 941–M.

Abstract: Form 941–M is used by certain employers to report monthly federal income tax withheld from wages, tips, distributions from nonqualified pension plans (including nongovernmental section 457(b) plans), supplemental unemployment compensation benefits, and third-party payments of sick pay; and (b) social security and Medicare taxes.

Current Actions: There are no changes being made to Form 941–M at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 15 hr. 57 min.

Estimated Total Annual Burden Hours: 191,520.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 15, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–22927 Filed 9–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Currently Approved Information Collection: Comment Request for Application for Intellectual Property Use Forms

AGENCY: United States Mint.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury invites the general public and other Federal agencies to take this opportunity to comment on currently approved information collection 1525–0013, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the United States Mint, a bureau of the Department of the Treasury, is soliciting comments on the United States Mint Application for Intellectual Property Use forms.

DATES: Written comments should be received on or before November 7, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Mary Scharbrough, Compliance Branch, United States Mint, 801 9th Street, NW., 8th Floor, Washington, DC 20220; (202) 354–8400 (this is not a toll-free number); *MScharbrough@usmint.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection package should be directed to Mary Scharbrough, Compliance Branch, United States Mint, 801 9th Street, NW., 8th Floor, Washington, DC 20220; (202) 354–8400 (this is not a toll-free number); *MScharbrough@usmint.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Applications for Intellectual Property Use.

OMB Number: 1525–0013.

Abstract: The application form allows individuals and entities to apply for permissions and licenses to use United States Mint owned or controlled intellectual property.

Current Actions: The United States Mint reviews and assesses permission requests and applications for United States Mint intellectual property licenses.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit; not-for-profit institutions; State, Local, or Tribal Government; and individuals or households.

Estimated Number of Respondents: The estimated number of annual respondents is 113.

Estimated Total Annual Burden Hours: The estimated number of annual burden hours is 84.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 1, 2011.

Chris Carpenter,

Chief, Information Security Division, United States Mint.

[FR Doc. 2011–22889 Filed 9–7–11; 8:45 am]

BILLING CODE 4810–37–P

FEDERAL REGISTER

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Implementation of Form 990; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9549]

RIN 1545–BH28

Implementation of Form 990

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations necessary to implement the redesigned Form 990, ''Return of Organization Exempt From Income Tax.'' These final regulations make revisions to the regulations to allow for new threshold amounts for reporting compensation, to require that compensation be reported on a calendar year basis, and to modify the scope of organizations subject to information reporting requirements upon a substantial contraction. The final regulations also eliminate the advance ruling process for new organizations, change the public support computation period for publicly supported organizations to five years, consistent with the revised Form 990, and clarify that support must be reported using the organization's overall method of accounting. All tax-exempt organizations required to file annual information returns are affected by these regulations.

DATES: *Effective Date:* These regulations are effective on September 8, 2011.

Applicability Date: For dates of applicability, see §§ 1.170A–9(k), 1.507–2(f), 1.509(a)–3(o), 1.6033–2(k), and 1.6043–3(e).

FOR FURTHER INFORMATION CONTACT: Terri Harris at (202) 622–6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2117. The estimated annual burden per recordkeeper will vary, depending on individual circumstances. The collection of information in this final regulation is in § 1.6033–2. The information collected under § 1.6033–2 relates to compensation reporting by tax-exempt organizations. The information that is required to be collected for purposes of § 1.6033–2 is required to be submitted on Form 990, ''Return of Organization Exempt From Income Tax.'' For further information concerning this collection of information and the burden associated with the Form 990, or where to submit comments on this collection of information and the accuracy of the estimated burden, please refer to the instructions of the Form 990. The total annual reporting burden associated with this document is one hour.

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 the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Form 990

Under section 6033 of the Internal Revenue Code (Code), organizations that are exempt from Federal income tax under section 501(a) are generally required to file an annual information return reporting gross income, receipts, disbursements, and such other information as the IRS requires. Certain exceptions to this filing requirement apply. For example, churches are not required to file annual information returns. The Treasury regulations direct that the annual information return shall be filed on Form 990, ''Return of Organization Exempt From Income Tax'' or Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation.'' The regulations further specify certain information to be reported on the return.

The IRS revises forms and instructions on an annual basis to reflect changes in the law and evolving tax administration needs. On December 20, 2007, the IRS released a redesigned Form 990. The Form 990 had not been significantly revised since 1979, and both the IRS and stakeholders regarded the form as needing major revision to keep pace with changes in the law and with the increasing size, diversity, and complexity of the exempt sector. With the exception of certain smaller organizations for which there is a graduated transition period, organizations began using the new form for the 2008 tax year (returns filed in 2009).

On September 9, 2008, the IRS and the Treasury Department issued final and temporary regulations under sections 170(b), 507, 509(a), 6033, and 6043 necessary to implement the redesigned Form 990, ''Return of Organization Exempt from Income Tax,'' (TD 9423) in the **Federal Register** (73 FR 52528). Also on September 9, 2008, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those Temporary Regulations and inviting public comment and requests for a public hearing (REG–142333–07) in the **Federal Register** (73 FR 52218).

The IRS did not receive any requests for a public hearing. The IRS received one written comment responding to this notice. After consideration of the comment, the proposed regulations are revised and published in final form substantially as proposed. The major areas of comment and revision are discussed in the following Explanation of Provisions.

Summary of Comments and Explanation of Provisions

Private Foundation Status and Advance Rulings

In its application for recognition of tax-exempt status (Form 1023, ''Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code''), a section 501(c)(3) organization also requests a determination of its private foundation status or public charity status, that is, whether it is a private foundation and, if not, the Code provision excepting it from private foundation classification. Under the current statute and prior regulations, an organization could request either an advance ruling or a definitive ruling addressing the organization's exemption under section 501(c)(3) and its private foundation status under section 509(a). The proposed regulations eliminated the advance ruling process and provided instead that an organization would be a publicly supported organization (thus qualifying for public charity status) in its first five years if it could show, in its application for exemption, that it could reasonably be expected to receive the requisite public support during such period.

The comment suggested that the final regulations clarify the process for requesting an updated ruling or determination letter as to public charity status under §§ 1.170A–9(f)(5) and 1.509(a)–3(e). This process is now explained in Rev. Proc. 2011–10, 2011–

2 IRB 294 and its successors. Thus, the final regulations do not incorporate this suggestion.

Computation Period for Public Support

The proposed regulations changed the computation period for public support from a four-year period comprised of the four years prior to the taxable year being tested to a five-year period ending with the taxable year being tested. An organization that meets a public support test for a taxable year is treated as publicly supported for that taxable year and the immediately succeeding taxable year. An organization that does not meet a public support test for a taxable year may be at risk of being classified as a private foundation as of the first day of the succeeding taxable year if the organization also fails to meet a public support test for that succeeding taxable year. Because the IRS and the Treasury Department recognized that an organization will not be able to compute its public support for a taxable year under the changed computation period until the subsequent taxable year, the notice of proposed rulemaking requested comments on specific situations that might warrant relief from the imposition of Chapter 42 excise taxes. In addition, organizations that believed that it would be unfair or inequitable to impose the private foundation excise taxes or penalties against them for all or part of the first year in which they were reclassified as private foundations were invited to contact the IRS, Exempt Organizations, Rulings and Agreements, Washington, DC. No organizations contacted the IRS.

The comment suggested that the final regulations should treat organizations that fail a public support test for two consecutive years as private foundations as of the beginning of the second test year only for purposes of section 507 (termination of private foundation status) and section 4940 (excise tax on investment income), and that such an organization should not be treated as a private foundation for all other purposes until the beginning of the third consecutive taxable year. The commenter suggested that such a rule was necessary because organizations cannot always predict the amount of support they receive from year-to-year. The comment analogized this suggestion to the rule that previously applied when a new organization reached the end of its five-year advance ruling period. Under the prior regulations, an organization generally was treated as publicly supported until 90 days after the end of the advance ruling period, or, if Form 8734, ''Support Schedule for Advance Ruling Period,'' was timely submitted, until the IRS made a final determination of its status. If an organization failed to qualify as a publicly supported organization, only the section 4940 investment income tax and section 507 termination tax applied for the five-year advance ruling period that had already ended. The reclassified organization and its disqualified persons would be subject to all the Chapter 42 excise taxes applicable to private foundations and disqualified persons only after the end of the 90-day period or when the IRS made a final determination.

In response to the comment, the final regulations provide that an organization that fails a public support test for two consecutive taxable years will be treated as a private foundation as of the beginning of the second year of failure only for purposes of sections 507, 4940, and 6033. An organization will be treated as a private foundation for all purposes beginning the first day of the third consecutive taxable year.

The comment also suggested adding examples applying the ''facts and circumstances test'' under § 1.170(A)–9T(f)(3) or issuing other guidance providing examples of the application of this test. The proposed regulations contained numerous examples reflecting the five-year computation period in §§ 1.170A–9T(f)(9), 1.509(a)–3T(c)(6), and 1.509(a)–3T(e)(3), including several examples illustrating the application of the facts and circumstances test in § 1.170A–9(f)(9). The final regulations retain the examples in the proposed regulations but do not include additional examples, as it was not clear what additional clarification was needed.

Method of Accounting

Previously, when a section 501(c)(3) organization computed its public support, it was required to use the cash method of accounting to report the amount of public support it received on Schedule A, ''Public Charity Status and Public Support,'' even if the organization used the accrual method of accounting to keep its books under section 446, and otherwise report on Form 990. Under the proposed regulations, when a section 501(c)(3) organization computed its public support and reported the information on Schedule A, it was required to use the same accounting method that it uses to keep its books under section 446 and that it otherwise uses to report on its Form 990.

The comment observed that an organization using the accrual method of accounting to keep its books and to calculate its public support will need to include the present value of a multi-year grant as support in the year in which the grant commitment is received. The commenter suggested that this could deter private foundations from making substantial multi-year grants to an organization due to a concern that the grant could cause the organization to fail the public support test and be reclassified as a private foundation. The comment suggested that the unusual grant rules in the final regulations be expanded to add a new factor giving favorable consideration to certain types of multi-year private foundation grants. Alternatively, the comment suggested that the regulations should permit organizations to elect, for purposes of the public support test, to accrue multi-year grants ratably over the period to which they relate.

The final regulations do not incorporate these suggestions. While the requirement to compute public support in accordance with an organization's normal method of accounting generally is advantageous and less cumbersome for most organizations, the IRS and the Treasury Department recognize that some accrual-method organizations receiving substantial multi-year grants from private foundations and individuals may be concerned that the requirement to account for those multi-year grants on an accrual-method may adversely affect their public charity status. However, the longer, five-year testing period in the proposed and final regulations should mitigate the impact of recognizing a larger amount of support from one source in a single year.

In addition, one of the goals of the redesign of the Form 990 was to implement consistent reporting throughout each organization's Form 990 and financial records in order to reduce an organization's recordkeeping burden and to increase transparency of an organization's activities to the general public. In general, use of an organization's normal method of accounting for calculation of its public support reduces the recordkeeping and reporting burden on accrual-method taxpayers, as they no longer must maintain separate cash method records solely for reporting public support on Schedule A. The revised Form 990, Schedule A, sets forth easier-to-follow rules for calculating public support and captures the information necessary for the organization and the general public to monitor an organization's compliance with the public support tests. Consistent financial reporting on the basis of an organization's normal accounting method throughout the organization's Form 990, including the support test in

Schedule A, facilitates reconciliation of the Form 990 reporting with an organization's audited financial statements, increasing the ability of the general public to rely on an organization's Form 990 as an accurate reflection of the organization's financial circumstances. Consistent reporting thus assists in the oversight of the charitable community by the general public, as well as by the IRS. Given these considerations, the IRS and the Treasury Department have determined not to adopt the suggested elective change to the accounting method for multi-year grants.

The IRS and the Treasury Department also decline to adopt the suggestion that the unusual grant rules be expanded to include multi-year grants. The public support test is designed to ensure that an organization is not funded by a small number of large donors, and IRS and the Treasury Department do not believe it should exclude a large contribution from a single donor simply because it is paid out over a number of years. The fact that a grant is a multi-year grant has historically been taken into consideration in determining whether a particular grant constitutes an unusual grant, at times to the benefit and at times to the detriment of the recipient organization. The unusual grant exclusion generally applies to substantial contributions or bequests that (1) Are attracted by the publicly supported nature of the organization, (2) are unusual or unexpected in their amount, and (3) would adversely affect the organization's public charity status because of their amount. The final regulations in §§ 1.170A–9(f)(6)(ii)(B) and 1.509(a)–3(c)(3)(iii) provide that all pertinent facts and circumstances continue to be taken into consideration when determining whether a particular contribution will be excluded from the support calculation under the unusual grant exclusion, with no single factor being determinative.

If an accrual basis organization receives a substantial multi-year grant from a private foundation or individual that, taken along with all other facts and circumstances, would satisfy the standards in §§ 1.170A–9(f)(6) and 1.509(a)–3(c)(3) for treatment as an unusual grant, such a grant generally would be excluded from the computation of public support. An organization may request a private letter ruling pursuant to §§ 1.170A–9(f)(6)(iv) and 1.509(a)–3(c)(5) that a multi-year grant constitutes an unusual grant under §§ 1.170A–9(f)(6)(ii) and 1.509(a)–3(c)(3), based on all the facts and circumstances. See also Rev. Proc 2011–4 (2011–1 IRB 123) and its successors. Additionally, Rev. Proc. 81–7 (1981–1 CB 621), provides guidelines regarding grants and contributions, including multi-year grants to finance capital items, that will be considered unusual grants under §§ 1.170A–9(f)(6)(ii) and 1.509(a)–3(c)(3) and related provisions without a private letter ruling from the IRS.

Reliance

The proposed regulations provided that donors may rely on an organization's ruling that the organization is described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2) until notice of a change in status is provided to the public (such as by publication in the Internal Revenue Bulletin), unless the donor was responsible for, or aware of, the act or failure to act that results in the organization's loss of public charity status. The proposed regulations further provided that donors may rely on advance rulings that expire on or after June 9, 2008, until notice of a change in status is provided to the public (such as by publication in the Internal Revenue Bulletin).

The comment suggested that the final regulations should incorporate a safe harbor under which a grantor or contributor will not be considered responsible for, or aware of, an act or failure to act that will result in loss of public charity status, such as those set forth in Rev. Proc. 89–23 (1989–1 CB 844) and Rev. Proc. 81–6 (1981–1 CB 620). The IRS and the Treasury Department agree that grantor reliance safe harbors, such as those noted, are still appropriate, but believe that this guidance is more appropriately provided in non-regulatory form, such as revenue procedures. Therefore, the final regulations do not incorporate this suggestion.

However, the final regulations do restore, in §§ 1.170A–9(f)(5)(iii) and 1.509–3(e)(2)(ii), language that was inadvertently deleted from the proposed regulations giving limited grantor and donor reliance based on a written statement from the grantee organization.

Section 4966 imposes an excise tax on a sponsoring organization of a donor advised fund (DAF) for each taxable distribution it makes from a DAF. Under section 4966(c), a taxable distribution generally is any distribution from a DAF to any natural person, or to any other person if (i) The distribution is for any purpose other than one specified in section 170(c)(2)(B), or (ii) the sponsoring organization maintaining the DAF does not exercise expenditure responsibility with respect to such distribution in accordance with section 4945(h). Among other things, a taxable distribution does not include a distribution from a DAF to any organization described in section 170(b)(1)(A) (other than a disqualified supporting organization).

Notice 2006–109 (2006–2 C.B. 1121) requested comments on the application of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780 (2006)) (PPA) to DAFs and supporting organizations. Several comments were received requesting that sponsoring organizations of DAFs be allowed to rely on an IRS ruling or determination of an organization's public charity status for various purposes, including for purposes of determining whether a distribution to an organization would be a taxable distribution under section 4966. The IRS and the Treasury Department agree that reliance relief for sponsoring organizations of DAFs is appropriate. Accordingly, the final regulations provide that, for purposes of section 4966, sponsoring organizations of DAFs may rely on an IRS determination letter or ruling that the organization is described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2) to the same extent as other grantors and contributors. The final regulations also allow sponsoring organizations of DAFs to rely on a favorable determination issued to a grantee that a grant is an unusual grant.

Private Foundation Termination

Section 1.507–2 addresses private foundation terminations under section 507(b). The proposed regulations revised § 1.507–2 to delete references to the four-year computation period and the transition rules related to 12-month terminations that are obsolete. Section 507(b)(1)(B) allows an organization to terminate its private foundation status by meeting the requirements of section 509(a)(1), (a)(2), or (a)(3) (and thus operating as a public charity) for a continuous period of 60 months, provided the organization (1) Prior to commencement of the 60-month period, notifies the Secretary in the manner prescribed by regulations that it is terminating private foundation status, and (2) later establishes to the satisfaction of the Secretary in a manner prescribed by regulations that it operated as a public charity during the 60-month period. The proposed regulations continued to provide that a terminating private foundation could request an advance ruling regarding its public charity status under § 1.507–2T(d). The proposed regulations also retained the provision requiring terminating private foundations to provide sufficient information to the IRS

within 90 days of the end of the 60-month period to allow the IRS to make a determination on public charity status.

The comment suggested that the final regulations should simplify the process of terminating private foundation status under § 1.507–2 by eliminating the requirement that an organization file certain information with the IRS within 90 days after completing the 60-month termination period. The comment observed that the IRS eliminated the Form 8734 filing requirement for newly-formed organizations with advance rulings, choosing instead to rely on the information reported on Schedule A to monitor public support.

The final regulations do not incorporate this suggestion. In eliminating the advance ruling period and liberalizing the procedures for new organizations, the IRS took into consideration the experiential data indicating the high incidence of qualification for public charity status at the end of the advance ruling period. As stated in the notice of proposed rulemaking, approximately 95 percent of the organizations that received advance rulings later received definitive rulings that they were public charities. The IRS does not have analogous experiential data relating to organizations attempting to terminate private foundation status under section 507(b)(1)(B) to support a similar change in these procedures.

In addition, if the organization fails to qualify as a public charity for the entire 60-month period, it will continue to be treated as a private foundation for the entire 60-month period. Thus, unlike a new organization that had an advance ruling as a public charity, an organization terminating its private foundation status continues to be classified as a terminating private foundation during the 60-month period and continues as such until the IRS receives and makes a determination on the organization's 90-day submission of information following the end of its advance ruling period.

Substantial Contributor

The term ''substantial contributor,'' for purposes of Chapter 42, is defined under section 507(d)(2) and § 1.507–6. The comment suggested that, given that a new organization that fails to qualify as publicly supported after its first five years of existence will not be treated as a private foundation for any purpose during its first five years, the final regulations should clarify whether, for purposes of Chapter 42, the identity of substantial contributors to the organization will be determined by taking into account contributions received while the organization was a public charity, or only contributions received after the date the organization is reclassified as a private foundation.

Because section 1.507–6 is not within the scope of these final regulations, the final regulations do not incorporate this suggestion.

Miscellaneous

In § 1.170A–9(f), changes were made in the proposed regulation to clarify that the facts and circumstances test described in paragraph (f)(3) takes into account all pertinent facts and circumstances, and not just those listed in paragraph (f)(3)(iii); additional conforming changes were made in the final regulations. In § 1.507–2, language inadvertently added to the proposed regulation when clarifying the factors for determining whether a grantee organization has an independent governing body was deleted. In addition, the final regulations include language conforming § 1.6033–2(g) to the changes made to section 6033(a)(3)(B) of the Code under the PPA. Since the date of enactment of the PPA, August 17, 2006, the Commissioner's discretionary authority to relieve organizations from the annual filing requirement under section 6033(a) has not applied to supporting organizations described in section 509(a)(3) of the Code. Section 1.6033–2(g)(6), which provides the general statement of the Commissioner's discretionary authority to relieve organizations from the annual filing requirement under section 6033(a), has been corrected to include the modifying language provided by the PPA in section 6033(a)(3)(B). Sections 1.6033–2(g)(1)(iii) and 1.6033–2(g)(1)(iv) have been amended to include conforming changes. Several other incidental changes were made throughout the final regulations in order to increase clarity and consistency, none of which modify the substance of the proposed regulations.

Additionally, the final regulations include a correction in § 1.6033–2(i) to the place to which an organization's change of operation notifications is sent.

Effective/Applicability Date and Transition Rules

These final regulations generally are effective on September 8, 2011, and generally apply to taxable years beginning on or after January 1, 2008. All organizations, including organizations that received a definitive ruling prior to the effective date of these regulations, must use the new five-year computation period to calculate public support for their first taxable year beginning on or after January 1, 2008, and for all subsequent taxable years.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13565. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply. It is hereby certified that the collection of information in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that burden on tax-exempt entities will be reduced by (1) Eliminating the separate advance ruling process and the additional process for subsequently seeking a definitive ruling, (2) clarifying rules regarding the method of accounting and period for reporting certain items, and (3) providing discretion for the IRS to narrow or clarify circumstances under which reporting is required. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Statement of Availability for Documents Published in the Internal Revenue Bulletin

For copies of recently issued revenue procedures, revenue rulings, notices and other guidance published in the Internal Revenue Bulletin or Cumulative Bulletin please visit the IRS Web site at *http://www.irs.gov.*

Drafting Information

The principal author of this regulation is Terri Harris, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section1.170A–9 is amended by revising paragraphs (f) and (k) to read as follows:

§ 1.170A–9 Definition of section 170(b)(1)(A) organization.

* * * * *

(f) *Definition of section 170(b)(1)(A)(vi) organization*—(1) *In general.* An organization is described in section 170(b)(1)(A)(vi) if it—

(i) Is referred to in section 170(c)(2) (other than an organization specifically described in paragraphs (b) through (e) of this section); and

(ii) Normally receives a substantial part of its support from a governmental unit referred to in section 170(c)(1) or from direct or indirect contributions from the general public (''publicly supported''). For purposes of this paragraph (f), an organization is publicly supported if it meets the requirements of either paragraph (f)(2) of this section (33⅓ percent support test) or paragraph (f)(3) of this section (facts and circumstances test). Paragraph (f)(4) of this section defines ''normally'' for purposes of the 33⅓ percent support test and the facts and circumstances test, and for new organizations in the first five years of the organization's existence as a section 501(c)(3) organization. Paragraph (f)(5) of this section provides for determinations of foundation classification and rules for reliance by donors and contributors. Paragraphs (f)(6), (f)(7), and (f)(8) of this section list the items that are included and excluded from the term support. Paragraph (f)(9) of this section provides examples of the application of this paragraph. Types of organizations that, subject to the provisions of this paragraph (f), generally qualify under section 170(b)(1)(A)(vi) as ''publicly supported'' are publicly or governmentally supported museums of history, art, or science, libraries, community centers to promote the arts, organizations providing facilities for the support of an opera, symphony orchestra, ballet, or repertory drama or for some other direct service to the general public.

(2) *Determination whether an organization is ''publicly supported''; 33⅓ percent support test.* An organization is publicly supported if the total amount of support (see paragraphs (f)(6), (f)(7), and (f)(8) of this section) that the organization normally (see paragraph (f)(4)(i) of this section) receives from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources, equals at least 33⅓ percent of the total support normally received by the organization. See paragraph (f)(9), *Example 1* of this section.

(3) *Determination whether an organization is ''publicly supported''; facts and circumstances test.* Even if an organization fails to meet the 33⅓ percent support test described in paragraph (f)(2) of this section, it is publicly supported if it normally (see paragraph (f)(4)(i) of this section) receives a substantial part of its support from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, and meets the other requirements of this paragraph (f)(3). In order to satisfy the facts and circumstances test, an organization must meet the requirements of paragraphs (f)(3)(i) and (f)(3)(ii) of this section. In addition, the organization must be in the nature of an organization that is publicly supported, taking into account all pertinent facts and circumstances, including the factors listed in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section.

(i) *Ten-percent support limitation.* The percentage of support (see paragraphs (f)(6), (f)(7) and (f)(8) of this section) normally received by an organization from governmental units, from contributions made directly or indirectly by the general public, or from a combination of these sources, must be substantial. For purposes of this paragraph (f)(3), an organization will not be treated as normally receiving a substantial amount of governmental or public support unless the total amount of governmental and public support normally received equals at least 10 percent of the total support normally received by such organization.

(ii) *Attraction of public support.* An organization must be so organized and operated as to attract new and additional public or governmental support on a continuous basis. An organization will be considered to meet this requirement if it maintains a continuous and bona fide program for solicitation of funds from the general public, community, or membership group involved, or if it carries on activities designed to attract support from governmental units or other organizations described in section 170(b)(1)(A)(i) through (b)(1)(A)(vi). In determining whether an organization maintains a continuous and bona fide program for solicitation of funds from the general public or community, consideration will be given to whether the scope of its fundraising activities is reasonable in light of its charitable activities. Consideration will also be given to the fact that an organization, in its early years of existence, may limit the scope of its solicitation to persons deemed most likely to provide seed money in an amount sufficient to enable it to commence its charitable activities and expand its solicitation program.

(iii) In addition to the requirements set forth in paragraphs (f)(3)(i) and (f)(3)(ii) of this section that must be satisfied, all pertinent facts and circumstances, including the following factors, will be taken into consideration in determining whether an organization is ''publicly supported'' within the meaning of paragraph (f)(1) of this section. However, an organization is not generally required to satisfy all of the factors in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section. The factors relevant to each case and the weight accorded to any one of them may differ depending upon the nature and purpose of the organization and the length of time it has been in existence.

(A) *Percentage of financial support.* The percentage of support received by an organization from public or governmental sources will be taken into consideration in determining whether an organization is ''publicly supported.'' The higher the percentage of support above the 10 percent requirement of paragraph (f)(3)(i) of this section from public or governmental sources, the lesser will be the burden of establishing the publicly supported nature of the organization through other factors, including those described in this paragraph (f)(3), while the lower the percentage, the greater will be the burden. If the percentage of the organization's support from public or governmental sources is low because it receives a high percentage of its total support from investment income on its endowment funds, such fact will be treated as evidence of an organization being ''publicly supported'' if such endowment funds were originally contributed by a governmental unit or by the general public. However, if such endowment funds were originally contributed by a few individuals or members of their families, such fact will increase the burden on the organization of establishing that it is ''publicly supported'' taking into account all pertinent facts and circumstances,

including the other factors described in paragraph (f)(3)(iii) of this section.

(B) *Sources of support.* The fact that an organization meets the requirement of paragraph (f)(3)(i) of this section through support from governmental units or directly or indirectly from a representative number of persons, rather than receiving almost all of its support from the members of a single family, will be considered evidence of an organization being ''publicly supported.'' In determining what is a ''representative number of persons,'' consideration will be given to the type of organization involved, the length of time it has been in existence, and whether it limits its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons.

(C) *Representative governing body.* The fact that an organization has a governing body which represents the broad interests of the public, rather than the personal or private interests of a limited number of donors (or persons standing in a relationship to such donors which is described in section 4946(a)(1)(C) through (a)(1)(G)), will be considered evidence of an organization being ''publicly supported.'' An organization will be treated as having a representative governing body if it has a governing body (whether designated in the organization's governing instrument or bylaws as a Board of Directors, Board of Trustees, or similar governing body) which is comprised of public officials acting in their capacities as such; of individuals selected by public officials acting in their capacities as such; of persons having special knowledge or expertise in the particular field or discipline in which the organization is operating; of community leaders, such as elected or appointed officials, clergymen, educators, civic leaders, or other such persons representing a broad cross-section of the views and interests of the community; or, in the case of a membership organization, of individuals elected pursuant to the organization's governing instrument or bylaws by a broadly based membership.

(D) *Availability of public facilities or services; public participation in programs or policies.* (*1*) The fact that an organization generally provides facilities or services directly for the benefit of the general public on a continuing basis (such as a museum or library which holds open its building or facilities to the public, a symphony orchestra which gives public performances, a conservation organization which provides educational services to the public through the distribution of educational materials, or an old age home which provides domiciliary or nursing services for members of the general public) will be considered evidence that such organization is ''publicly supported.''

(*2*) The fact that an organization is an educational or research institution which regularly publishes scholarly studies that are widely used by colleges and universities or by members of the general public will also be considered evidence that such organization is ''publicly supported.''

(*3*) The following factors will also be considered evidence that an organization is ''publicly supported'':

(*i*) The participation in, or sponsorship of, the programs of the organization by members of the public having special knowledge or expertise, public officials, or civic or community leaders.

(*ii*) The maintenance of a definitive program by an organization to accomplish its charitable work in the community, such as combating community deterioration in an economically depressed area that has suffered a major loss of population and jobs.

(*iii*) The receipt of a significant part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant, contract, or contribution.

(E) *Additional factors pertinent to membership organizations.* The following are additional factors to be considered in determining whether a membership organization is ''publicly supported'':

(*1*) Whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community or area, or in a particular profession or field of special interest (taking into account the size of the area and the nature of the organization's activities).

(*2*) Whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross section of the interested public, rather than to restrict membership to a limited number of persons.

(*3*) Whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations. See *Example 2* through *Example 5* contained in paragraph (f)(9) of this section for illustrations of this paragraph (f)(3).

(4) *Definition of normally; general rule*—(i) *Normally; 33⅓ percent support test.* An organization ''normally'' receives the requisite amount of public support and meets the 33⅓ percent support test for a taxable year and the taxable year immediately succeeding that year, if, for the taxable year being tested and the four taxable years immediately preceding that taxable year, the organization meets the 33⅓ percent support test on an aggregate basis.

(ii) *Normally; facts and circumstances test.* An organization ''normally'' receives the requisite amount of public support and meets the facts and circumstances test of paragraph (f)(3) for a taxable year and the taxable year immediately succeeding that year, if, for the taxable year being tested and the four taxable years immediately preceding that taxable year, the organization meets the facts and circumstances test on an aggregate basis. In the case of paragraphs (f)(3)(iii)(A) and (f)(3)(iii)(B) of this section, facts pertinent to years preceding the five-year period may also be taken into consideration. The combination of factors set forth in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section that an organization normally must meet does not have to be the same for each five-year period so long as there exists a sufficient combination of factors to show compliance with the facts and circumstances test.

(iii) *Special rule.* The fact that an organization has normally met the requirements of the 33⅓ percent support test for a current taxable year, but is unable normally to meet such requirements for a succeeding taxable year, will not in itself prevent such organization from meeting the facts and circumstances test for such succeeding taxable year.

(iv) *Example.* The application of paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section may be illustrated by the following example:

Example. (i) X is recognized as an organization described in section 501(c)(3). On the basis of support received during taxable years 2008, 2009, 2010, 2011, and 2012, in the aggregate, X receives at least 33⅓ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. Consequently, X meets the 33⅓ percent support test for taxable year 2012 (the current taxable year). X also meets the 33⅓ support test for 2013, as the immediately succeeding taxable year.

(ii) In taxable years 2009, 2010, 2011, 2012, and 2013, in the aggregate, X does not receive at least 33⅓ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. However, X still meets the 33⅓ percent support test for taxable year 2013 based on the aggregate support received for taxable years 2008 through 2012.

(iii) In taxable years 2010, 2011, 2012, 2013, and 2014, in the aggregate, X does not receive at least 33⅓ percent of its support from governmental units referred to in section 170(c)(1), from contributions made directly or indirectly by the general public, or from a combination of these sources. X does not meet the 33⅓ percent support test for taxable year 2014.

(iv) X meets the facts and circumstances test for taxable year 2013 and for taxable year 2014 (the immediately succeeding taxable year) based on the aggregate support X receives, X's fundraising program, and consideration of other factors, including those listed in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section, during taxable years 2009, 2010, 2011, 2012, and 2013. Therefore, even though X does not meet the 33⅓ percent support test for taxable year 2014, X is still an organization described in section 170(b)(1)(A)(vi) for that year.

(v) *Normally; first five years of an organization's existence.* (A) An organization ''normally'' receives the requisite amount of public support and meets the 33⅓ percent public support test or the facts and circumstances test during its first five taxable years as a section 501(c)(3) organization if the organization can reasonably be expected to meet the requirements of the 33⅓ percent support test or the facts and circumstances test during that period. With respect to such organization's sixth taxable year, the general definition of normally set forth in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section apply. Alternatively, the organization shall be treated as ''normally'' meeting the 33⅓ percent support test or the facts and circumstances test for its sixth taxable year (but not its seventh taxable year) if it meets the 33⅓ percent support test or the facts and circumstances test under the definition of normally set forth in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section for its fifth taxable year (based on support received in its first through fifth taxable years).

(B) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (f)(4)(v)(A) of this section) to meet the requirements of the 33⅓ percent support test or the facts and circumstances test during its first five taxable years, the basic consideration is whether its organizational structure, current or proposed programs or activities, and actual or intended method of operation are such as can reasonably be expected to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet such tests. The factors that are relevant to this determination, and the weight accorded to each of them, may differ from case to case, depending on the nature and functions of the organization. The information to be considered for this purpose shall consist of all pertinent facts and circumstances, including the factors set forth in paragraph (f)(3) of this section.

(vi) *Example.* The application of paragraph (f)(4)(v) of this section may be illustrated by the following example:

Example. (i) Organization Y was formed in January 2008, and uses a taxable year ending December 31. After September 9, 2008, and before December 31, 2008, Organization Y filed Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3) and in sections 170(b)(1)(A)(vi) and 509(a)(1). In its application, Organization Y established that it can reasonably be expected to operate as a publicly supported organization under paragraph (f)(2) or (f)(3) and paragraph (f)(4)(v) of this section. Subsequently, Organization Y received a ruling or determination letter that it is an organization described in section 501(c)(3) and sections 170(b)(1)(A)(vi) and 509(a)(1) effective as of the date of its formation.

(ii) Organization Y is described in sections 170(b)(1)(A)(vi) and 509(a)(1) for its first five taxable years (the taxable years ending December 31, 2008, through December 31, 2012).

(iii) Organization Y can qualify as a publicly supported organization for the taxable year ending December 31, 2013, if Organization Y can meet the requirements of either paragraph (f)(2) or paragraph (f)(3) of this section or § 1.509(a)–3(a) and § 1.509(a)–(3)(b) for the taxable years ending December 31, 2009, through December 31, 2013, or for the taxable years ending December 31, 2008, through December 31, 2012.

(vii) *Organizations reclassified as private foundations.* (A) *New publicly supported organizations.* If a new publicly supported organization described under section 170(b)(1)(A)(vi) cannot meet the requirements of the 33⅓ percent test of paragraph (f)(2) or the facts and circumstances test of paragraph (f)(3) for its sixth taxable year under the general definition of normally set forth in paragraphs (f)(4)(i), (f)(4)(ii), and (f)(4)(iii) of this section or under the alternate rule set forth in paragraph (f)(4)(v) of this section (effectively failing to meet a public support test for both its fifth and sixth taxable years), it will be treated as a private foundation as of the first day of its sixth taxable year only for purposes of sections 507, 4940, and 6033. Such an organization must file a Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation,'' and will be liable for the net investment tax imposed by section 4940 and, if applicable, the private foundation termination tax imposed by section 507(c), for its sixth taxable year. For succeeding taxable years, the organization will be treated as a private foundation for all purposes.

(B) *Other publicly supported organizations.* A publicly supported organization described in section 170(b)(1)(A)(vi) (other than a new publicly supported organization described in paragraph (f)(4)(vii)(A) of this section) that has failed to meet both the 33⅓ percent support test and the facts and circumstances test for any two consecutive taxable years will be treated as a private foundation as of the first day of the second consecutive taxable year only for purposes of sections 507, 4940, and 6033. Such an organization must file a Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation,'' and will be liable for the net investment tax imposed by section 4940 and, if applicable, the private foundation termination tax imposed by section 507(c), for the second consecutive failed taxable year. For succeeding taxable years, the organization will be treated as a private foundation for all purposes.

(5) *Determinations of foundation classification and reliance.* (i) A ruling or determination letter that an organization is described in section 170(b)(1)(A)(vi) may be issued to an organization. Such determination may be made in conjunction with the recognition of the organization's tax-exempt status or at such other time as the organization believes it is described in section 170(b)(1)(A)(vi). The ruling or determination letter that the organization is described in section 170(b)(1)(A)(vi) may be revoked if, upon examination, the organization has not met the requirements of paragraph (f) of this section. The ruling or determination letter that the organization is described in section 170(b)(1)(A)(vi) also may be revoked if the organization's application for a ruling or determination contained one or more material misstatements or omissions of fact or if such application was part of a scheme or plan to avoid or evade any provision of the Internal Revenue Code. The revocation of the determination that an organization is described in section 170(b)(1)(A)(vi) does not preclude revocation of the

determination that the organization is described in section 501(c)(3).

(ii) *Status of grantors or contributors.* For purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522, grantors or contributors may rely upon a determination letter or ruling that an organization is described in section 170(b)(1)(A)(vi) until the IRS publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78, ''Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986,'' which can be searched at *http://www.irs.gov.*) For this purpose, grantors or contributors also may rely on an advance ruling that expires on or after June 9, 2008. However, a grantor or contributor may not rely on such an advance ruling or any determination letter or ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 170(b)(1)(A)(vi) or acquired knowledge that the IRS had given notice to such organization that it would be deleted from such classification.

(iii) *Reliance by grantors or contributors.* A grantor or contributor, other than one of the organization's founders, creators, or foundation managers (within the meaning of section 4946(b)), will not be considered to be responsible for, or aware of, the act or failure to act that resulted in the loss of the organization's ''publicly supported'' classification under section 170(b)(1)(A)(vi), if such grantor or contributor has made such grant or contribution in reliance upon a written statement by the grantee organization that such grant or contribution will not result in the loss of such organization's classification as a publicly supported organization as described in section 170(b)(1)(A)(vi). Such statement must be signed by a responsible officer of the grantee organization and must set forth sufficient information, including a summary of the pertinent financial data for the five taxable years immediately preceding the current taxable year, to assure a reasonably prudent person that his grant or contribution will not result in the loss of the grantee organization's classification as a publicly supported organization as described in section 170(b)(1)(A)(vi). If a reasonable doubt exists as to the effect of such grant or contribution, or if the grantor or contributor is one of the organization's founders, creators, or foundation managers, the procedure set forth in paragraph (f)(6)(iv) of this section for requesting a determination from the IRS may be followed by the grantee organization for the protection of the grantor or contributor.

(6) *Definition of support; meaning of general public*—(i) *In general.* In determining whether the 33½ percent support test or the 10 percent support limitation described in paragraph (f)(3)(i) of this section is met, contributions by an individual, trust, or corporation shall be taken into account as support from direct or indirect contributions from the general public only to the extent that the total amount of the contributions by any such individual, trust, or corporation during the period described in paragraph (f)(4)(i) or paragraph (f)(4)(ii) of this section does not exceed two percent of the organization's total support for such period, except as provided in paragraph (f)(6)(ii) of this section. Therefore, for example, any contribution by one individual will be included in full in the denominator of the fraction determining the 33½ percent support or the 10 percent support limitation, but will be includible in the numerator of such fraction only to the extent that such amount does not exceed two percent of the denominator. In applying the two percent limitation, all contributions made by a donor and by any person or persons standing in a relationship to the donor that is described in section 4946(a)(1)(C) through (a)(1)(G) and the related regulations shall be treated as made by one person. The two percent limitation shall not apply to support received from governmental units referred to in section 170(c)(1) or to contributions from organizations described in section 170(b)(1)(A)(vi), except as provided in paragraph (f)(6)(v) of this section. For purposes of paragraphs (f)(2), (f)(3)(i), and (f)(7)(iii)(A)(*2*) of this section, the term *indirect contributions from the general public* includes contributions received by the organization from organizations (such as section 170(b)(1)(A)(vi) organizations) that normally receive a substantial part of their support from direct contributions from the general public, except as provided in paragraph (f)(6)(v) of this section. See the examples in paragraph (f)(9) of this section for the application of this paragraph (f)(6)(i). For purposes of this paragraph (f), the term *contributions* includes qualified sponsorship payments (as defined in § 1.513–4) in the form of money or property (but not services).

(ii) *Exclusion of unusual grants.* (A) For purposes of applying the two percent limitation described in paragraph (f)(6)(i) of this section to determine whether the 33⅓ percent support test or the 10 percent support limitation in paragraph (f)(3)(i) of this section is satisfied, one or more contributions may be excluded from both the numerator and the denominator of the applicable support fraction if such contributions meet the requirements of paragraph (f)(6)(iii) of this section. The exclusion provided by this paragraph (f)(6)(ii) is generally intended to apply to substantial contributions or bequests from disinterested parties, which contributions or bequests—

(*1*) Are attracted by reason of the publicly supported nature of the organization;

(*2*) Are unusual or unexpected with respect to the amount thereof; and

(*3*) Would, by reason of their size, adversely affect the status of the organization as normally being publicly supported for the applicable period described in paragraph (f)(4) of this section.

(B) In the case of a grant (as defined in § 1.509(a)–3(g)) that meets the requirements of this paragraph (f)(6)(ii), if the terms of the granting instrument require that the funds be paid to the recipient organization over a period of years, the grant amounts received by the organization may be excluded for such year or years in which they would otherwise be includible in computing support under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. However, no item of gross investment income may be excluded under this paragraph (f)(6). The provisions of this paragraph (f)(6) shall apply to exclude unusual grants made during any of the applicable periods described in paragraph (f)(4) or paragraph (f)(6) of this section. See paragraph (f)(6)(iv) of this section as to reliance by a grantee organization upon an unusual grant ruling under this paragraph (f)(6).

(iii) *Determining factors.* In determining whether a particular contribution may be excluded under paragraph (f)(6)(ii) of this section, all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. For some of the factors similar to the factors to be considered, see § 1.509(a)–3(c)(4).

(iv) *Grantors and contributors.* Prior to the making of any grant or contribution that will allegedly meet the requirements for exclusion under paragraph (f)(6)(ii) of this section, a potential grantee organization may request a determination whether such grant or contribution may be so excluded. Requests for such

determination may be filed by the grantee organization in the time and manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The issuance of such determination will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination on the factors referred to in paragraph (f)(6)(iii) of this section. If a favorable determination is issued, such determination may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522 and by the grantee organization for purposes of paragraph (f)(6)(ii) of this section.

(v) *Grants from public charities.* Pursuant to paragraph (f)(6)(i) of this section, contributions received from a governmental unit or from a section 170(b)(1)(A)(vi) organization are not subject to the two percent limitation described in paragraph (f)(6)(i) of this section unless such contributions represent amounts which have been expressly or impliedly earmarked by a donor to such governmental unit or section 170(b)(1)(A)(vi) organization as being for, or for the benefit of, the particular organization claiming section 170(b)(1)(A)(vi) status. See § 1.509(a)–3(j)(3) for examples illustrating the rules of this paragraph (f)(6)(v).

(7) *Definition of support; special rules and meaning of terms*—(i) *Definition of support.* For purposes of this paragraph (f), the term ''support'' shall be as defined in section 509(d) (without regard to section 509(d)(2)). The term ''support'' does not include—

(A) Any amounts received from the exercise or performance by an organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a). In general, such amounts include amounts received from any activity the conduct of which is substantially related to the furtherance of such purpose or function (other than through the production of income); or

(B) Contributions of services for which a deduction is not allowable.

(ii) For purposes of the 33⅓ percent support test and the 10 percent support limitation in paragraph (f)(3)(i) of this section, all amounts received that are described in paragraph (f)(7)(i)(A) or paragraph (f)(7)(i)(B) of this section are to be excluded from both the numerator and the denominator of the fractions determining compliance with such tests, except as provided in paragraph (f)(7)(iii) of this section.

(iii) *Organizations dependent primarily on gross receipts from related activities.* (A) Notwithstanding the provisions of paragraph (f)(7)(i) of this section, an organization will not be treated as satisfying the 33⅓ percent support test or the 10 percent support limitation in paragraph (f)(3)(i) of this section if it receives—

(*1*) Almost all of its support (as defined in section 509(d)) from gross receipts from related activities; and

(*2*) An insignificant amount of its support from governmental units (without regard to amounts referred to in paragraph (f)(7)(i)(A) of this section) and contributions made directly or indirectly by the general public.

(B) *Example.* The application of this paragraph (f)(7)(iii) may be illustrated by the following example:

Example. Z, an organization described in section 501(c)(3), is controlled by A, its president. Z received $500,000 during the period consisting of the current taxable year and the four immediately preceding taxable years under a contract with the Department of Transportation, pursuant to which Z has engaged in research to improve a particular vehicle used primarily by the Federal government. During this same period, the only other support received by Z consisted of $5,000 in small contributions primarily from Z's employees and business associates. The $500,000 amount constitutes support under sections 509(d)(2) and 509(a)(2)(A). Under these circumstances, Z meets the conditions of paragraphs (f)(7)(iii)(A)(*1*) and (f)(7)(iii)(A)(*2*) of this section and will not be treated as meeting the requirements of either the 33⅓ percent support test or the facts and circumstances test. As to the rules applicable to organizations that fail to qualify under section 170(b)(1)(A)(vi) because of the provisions of this paragraph (f)(7)(iii), see section 509(a)(2) and the related regulations. For the distinction between gross receipts (as referred to in section 509(d)(2)) and gross investment income (as referred to in section 509(d)(4)), see § 1.509(a)–3(m).

(iv) *Membership fees.* For purposes of this paragraph (f)(7), the term *support* shall include ''membership fees'' within the meaning of § 1.509(a)–3(h) (that is, if the basic purpose for making a payment is to provide support for the organization rather than to purchase admissions, merchandise, services, or the use of facilities).

(8) *Support from a governmental unit.* (i) For purposes of the 33⅓ percent support test and the 10 percent support limitation described in paragraph (f)(3)(i) of this section, the term *support from a governmental unit* includes any amounts received from a governmental unit, including donations or contributions and amounts received in connection with a contract entered into with a governmental unit for the performance of services or in connection with a government research grant. However, such amounts will not constitute support from a governmental unit for such purposes if they constitute amounts received from the exercise or performance of the organization's exempt functions as provided in paragraph (f)(7)(i)(A) of this section.

(ii) For purposes of paragraph (f)(8)(i) of this section, any amount paid by a governmental unit to an organization is not to be treated as received from the exercise or performance of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a) (within the meaning of paragraph (f)(7)(i)(A) of this section) if the purpose of the payment is primarily to enable the organization to provide a service to, or maintain a facility for, the direct benefit of the public (regardless of whether part of the expense of providing such service or facility is paid for by the public), rather than to serve the direct and immediate needs of the payor. For example—

(A) Amounts paid for the maintenance of library facilities which are open to the public;

(B) Amounts paid under government programs to nursing homes or homes for the aged in order to provide health care or domiciliary services to residents of such facilities; and

(C) Amounts paid to child placement or child guidance organizations under government programs for services rendered to children in the community, are considered payments the purpose of which is primarily to enable the recipient organization to provide a service or maintain a facility for the direct benefit of the public, rather than to serve the direct and immediate needs of the payor. Furthermore, any amount received from a governmental unit under circumstances such that the amount would be treated as a ''grant'' within the meaning of § 1.509(a)–3(g) will generally constitute ''support from a governmental unit'' described in this paragraph (f)(8), rather than an amount described in paragraph (f)(7)(i)(A) of this section.

(9) *Examples.* The application of paragraphs (f)(1) through (f)(8) of this section may be illustrated by the following examples:

Example 1. (i) M is recognized as an organization described in section 501(c)(3). For the years 2008 through 2012 (the applicable period with respect to the taxable year 2012 under paragraph (f)(4) of this section), M received support (as defined in paragraphs (f)(6) through (8) of this section) of $600,000 from the following sources:

Investment income	$300,000
City R (a governmental unit described in section 170(c)(1))	40,000
United Fund (an organization described in section 170(b)(1)(A)(vi))	40,000
Contributions (including six contributions in excess of the two-percent limit, totaling $170,000)	220,000
Total support	600,000

(ii) With respect to the taxable year 2012, M's public support is computed as follows:

Support from a governmental unit described in section 170(c)(1)	$40,000
Indirect contributions from the general public (United Fund)	40,000
Contributions by various donors that were not in excess of $12,000, or two percent of total support	50,000
Six contributions that were each in excess of $12,000, or two percent of total support, up to the two-percent limitation, 6 × $12,000	72,000
Total support	202,000

(iii) M's support from governmental units referred to in section 170(c)(1) and from direct and indirect contributions from the general public (as defined in paragraph (f)(6) of this section) with respect to the taxable year 2012 normally exceeds 33⅓ percent of M's total support ($202,000/$600,000 = 33.67 percent) for the applicable period (2008 through 2012). M meets the 33⅓ percent support test with respect to 2012 and is therefore publicly supported for the taxable years 2012 and 2013.

Example 2. (i) N is recognized as an organization described in section 501(c)(3). It was created to maintain public gardens containing botanical specimens and displaying statuary and other art objects. The facilities, works of art, and a large endowment were all contributed by a single contributor. The members of the governing body of the organization are unrelated to its creator. The gardens are open to the public without charge and attract a substantial number of visitors each year. For the current taxable year and the four taxable years immediately preceding the current taxable year, 95 percent of the organization's total support was received from investment income from its original endowment. N also maintains a membership society that is supported by members of the general public who wish to contribute to the upkeep of the gardens by paying a small annual membership fee. Over the five-year period in question, these fees from the general public constituted the remaining five percent of the organization's total support for such period.

(ii) Under these circumstances, N does not meet the 33⅓ percent support test for its current taxable year. Furthermore, because only five percent of its total support is, with respect to the current taxable year, normally received from the general public, N does not satisfy the 10 percent support limitation described in paragraph (f)(3)(i) of this section and therefore does not qualify as publicly supported under the facts and circumstances test. Because N has failed to satisfy the 10 percent support limitation under paragraph (f)(3)(i) of this section, none of the other requirements or factors set forth in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(E) of this section can be considered in determining whether N qualifies as a publicly supported organization. For its current taxable year, therefore, N is not an organization described in section 170(b)(1)(A)(vi).

Example 3. (i) O, an art museum, is recognized as an organization described in section 501(c)(3). In 1930, O was founded in S City by the members of a single family to collect, preserve, interpret, and display to the public important works of art. O is governed by a Board of Trustees that originally consisted almost entirely of members of the founding family. However, since 1945, members of the founding family or persons standing in a relationship to the members of such family described in section 4946(a)(1)(C) through (G) have annually constituted less than one-fifth of the Board of Trustees. The remaining board members are citizens of S City from a variety of professions and occupations who represent the interests and views of the people of S City in the activities carried on by the organization rather than the personal or private interests of the founding family. O solicits contributions from the general public and, for the current taxable year and each of the four taxable years immediately preceding the current taxable year, O has received total contributions (in small sums of less than $100, none of which exceeds two percent of O's total support for such period) in excess of $10,000. These contributions from the general public (as defined in paragraph (f)(6) of this section) represent 25 percent of the organization's total support for such five-year period. For this same period, investment income from several large endowment funds has constituted 75 percent of O's total support. O expends substantially all of its annual income for its exempt purposes and thus depends upon the funds it annually solicits from the public as well as its investment income in order to carry out its activities on a normal and continuing basis and to acquire new works of art. O has, for the entire period of its existence, been open to the public and more than 300,000 people (from S City and elsewhere) have visited the museum in each of the current taxable year and the four immediately preceding taxable years.

(ii) Under these circumstances, O does not meet the 33⅓ percent support test for its current year because it has received only 25 percent of its total support for the applicable five-year period from the general public. However, under the facts set forth above, O meets the 10 percent support limitation under paragraph (f)(3)(i) of this section, as well as the requirements of paragraph (f)(3)(ii) of this section. Under all of the facts set forth in this example, O is considered as meeting the requirements of the facts and circumstances test on the basis of satisfying paragraphs (f)(3)(i) and (f)(3)(ii) of this section and the factors set forth in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(D) of this section. O is therefore publicly supported for its current taxable year and the immediately succeeding taxable year.

Example 4. (i) In 1960, the P Philharmonic Orchestra was organized in T City through the combined efforts of a local music society and a local women's club to present to the public a wide variety of musical programs intended to foster music appreciation in the community. P is recognized as an organization described in section 501(c)(3). The orchestra is composed of professional musicians who are paid by the association. Twelve performances open to the public are scheduled each year. A small admission fee is charged for each of these performances. In addition, several performances are staged annually without charge. During the current taxable year and the four taxable years immediately preceding the current taxable year, P has received separate contributions of $200,000 each from A and B (not members of a single family) and support of $120,000 from the T Community Chest, a public federated fundraising organization operating in T City. P depends on these funds in order to carry out its activities and will continue to depend on contributions of this type to be made in the future. P has also begun a fundraising campaign in an attempt to expand its activities for the coming years. P is governed by a Board of Directors comprised of five individuals. A faculty member of a local college, the president of a local music society, the head of a local banking institution, a prominent doctor, and a member of the governing body of the local chamber of commerce currently serve on P's Board and represent the interests and views

of the community in the activities carried on by P.

(ii) With respect to P's current taxable year, P's sources of support are computed on the basis of the current taxable year and the four taxable years immediately preceding the current taxable year, as follows:

Contributions	$520,000
Receipts from performances	100,000
Total support	620,000
Less:	
Receipts from performances (excluded under paragraph (f)(7)(i)(A) of this section)	100,000
Total support for purposes of paragraphs (f)(2) and (f)(3)(i) of this section	520,000

(iii) For purposes of paragraphs (f)(2) and (f)(3)(i) of this section, P's public support is computed as follows:

T Community Chest (indirect support from the general public)	120,000
Two contributions from A & B (each in excess of $10,400—2 percent of total support) 2 × $10,400	20,800
Total	140,800

(iv) Under these circumstances, P does not meet the 33⅓ percent support test for its current year because it has received only 27 percent of its total support ($140,800/$520,000) for the applicable five-year period from the general public. However, under the facts set forth above, P meets the 10 percent support limitation under paragraph (f)(3)(i) of this section, as well as the requirements of paragraph (f)(3)(ii) of this section. Under all of the facts set forth in this example, P is considered as meeting the requirements of the facts and circumstances test on the basis of satisfying paragraphs (f)(3)(i) and (f)(3)(ii) of this section and the factors set forth in paragraphs (f)(3)(iii)(A) through (f)(3)(iii)(D) of this section. P is therefore publicly supported for its current taxable year and the immediately succeeding taxable year.

Example 5. (i) Q is recognized as an organization described in section 501(c)(3). It is a philanthropic organization founded in 1965 by C for the purpose of making annual contributions to worthy charities. C created Q as a charitable trust by the transfer of appreciated securities worth $500,000 to Q. Pursuant to the trust agreement, C and two other members of his family are the sole trustees of Q and are vested with the right to appoint successor trustees. In each of the current taxable year and the four taxable years immediately preceding the current taxable year, Q received $12,000 in investment income from its original endowment. Each year Q makes a solicitation for funds by operating a charity ball at C's residence. Guests are invited and requested to make contributions of $100 per couple. During the five-year period at issue, $15,000 was received from the proceeds of these events. C and his family have also made contributions to Q of $25,000 over the five-year period at issue. Q makes disbursements each year of substantially all of its net income to the public charities chosen by the trustees.

(ii) Q's sources of support for the current taxable year and the four taxable years immediately preceding the current taxable year as follows:

Investment income	$60,000
Contributions	40,000
Total support	100,000

(iii) For purposes of paragraphs (f)(2) and (f)(3)(i) of this section, Q's public support is computed as follows:

Contributions from the general public	$ 15,000
C's contribution (in excess of $ 2,000—2 percent of total support) 1 × $2,000	2,000
Total	17,000

(iv) Under these circumstances, Q does not meet the 33⅓ percent support test for its current year because it has received only 17 percent of its total support ($17,000/$100,000) for the applicable five-year period from the general public. Thus, Q's classification as a ''publicly supported'' organization depends on whether it meets the requirements of the facts and circumstances test. Even though it satisfies the 10 percent support limitation under paragraph (f)(3)(i) of this section, its method of solicitation makes it questionable whether Q satisfies the requirements of paragraph (f)(3)(ii) of this section. Because of its method of operating, Q also has a greater burden of establishing its publicly supported nature under paragraph (f)(3)(iii)(A) of this section. Based upon the foregoing facts and circumstances, including Q's failure to receive favorable consideration under the factors set forth in paragraphs (f)(3)(iii)(B), (f)(3)(iii)(C), and (f)(3)(iii)(D) of this section, Q does not satisfy the facts and circumstances test.

(10) *Community trust; introduction.* Community trusts have often been established to attract large contributions of a capital or endowment nature for the benefit of a particular community or area, and often such contributions have come initially from a small number of donors. While the community trust generally has a governing body comprised of representatives of the particular community or area, its contributions are often received and maintained in the form of separate trusts or funds, which are subject to varying

degrees of control by the governing body. To qualify as a ''publicly supported'' organization, a community trust must meet the 33⅓ percent support test, or, if it cannot meet that test, be organized and operated so as to attract new and additional public or governmental support on a continuous basis sufficient to meet the facts and circumstances test. Such facts and circumstances test includes a requirement of attraction of public support in paragraph (f)(3)(ii) of this section which, as applied to community trusts, generally will be satisfied if they seek gifts and bequests from a wide range of potential donors in the community or area served, through banks or trust companies, through attorneys or other professional persons, or in other appropriate ways that call attention to the community trust as a potential recipient of gifts and bequests made for the benefit of the community or area served. A community trust is not required to engage in periodic, community-wide, fundraising campaigns directed toward attracting a large number of small contributions in a manner similar to campaigns conducted by a community chest or united fund. Paragraph (f)(11) of this section provides rules for determining the extent to which separate trusts or funds may be treated as component parts of a community trust, fund, or foundation (herein collectively referred to as a ''community trust,'' and sometimes referred to as an ''organization'') for purposes of meeting the requirements of this paragraph for classification as a publicly supported organization. Paragraph (f)(12) of this section contains rules for trusts or funds that are prevented from qualifying as component parts of a community trust by paragraph (f)(11) of this section.

(11) *Community trusts; requirements for treatment as a single entity*—(i) *General rule.* For purposes of sections 170, 501, 507, 508, 509, and Chapter 42, any organization that meets the requirements contained in paragraphs (f)(11)(iii) through (f)(11)(vi) of this section will be treated as a single entity, rather than as an aggregation of separate funds, and except as otherwise provided, all funds associated with such organization (whether a trust, not-for-profit corporation, unincorporated association, or a combination thereof) which meet the requirements of paragraph (f)(11)(ii) of this section will be treated as component parts of such organization.

(ii) *Component part of a community trust.* In order to be treated as a component part of a community trust referred to in this paragraph (f)(11) (rather than as a separate trust or not-for-profit corporation or association), a trust or fund:

(A) Must be created by a gift, bequest, legacy, devise, or other transfer to a community trust which is treated as a single entity under this paragraph (f)(11); and

(B) May not be directly or indirectly subjected by the transferor to any material restriction or condition (within the meaning of § 1.507–2(a)(7)) with respect to the transferred assets. For purposes of this paragraph (f)(11)(ii)(B), if the transferor is not a private foundation, the provisions of § 1.507–2(a)(7) shall be applied to the trust or fund as if the transferor were a private foundation established and funded by the person establishing the trust or fund and such foundation transferred all its assets to the trust or fund. Any transfer made to a fund or trust which is treated as a component part of a community trust under this paragraph (f)(11)(ii) will be treated as a transfer made ''to'' a ''publicly supported'' community trust for purposes of sections 170(b)(1)(A) and 507(b)(1)(A) if such community trust meets the requirements of section 170(b)(1)(A)(vi) as a ''publicly supported'' organization at the time of the transfer, except as provided in paragraph (f)(5)(ii) of this section or §§ 1.508–1(b)(4) and 1.508–1(b)(6) (relating, generally, to reliance by grantors and contributors). See also paragraphs (f)(12)(ii) and (f)(12)(iii) of this section for special provisions relating to split-interest trusts and certain private foundations described in section 170(b)(1)(F)(iii).

(iii) *Name.* The organization must be commonly known as a community trust, fund, foundation, or other similar name conveying the concept of a capital or endowment fund to support charitable activities (within the meaning of section 170(c)(1) or section 170(c)(2)(B)) in the community or area it serves.

(iv) *Common instrument.* All funds of the organization must be subject to a common governing instrument or a master trust or agency agreement (herein referred to as the ''governing instrument''), which may be embodied in a single document or several documents containing common language. Language in an instrument of transfer to the community trust making a fund subject to the community trust's governing instrument or master trust or agency agreement will satisfy the requirements of this paragraph (f)(11)(iv). In addition, if a community trust adopts a new governing instrument (or creates a corporation) to put into effect new provisions (applying to future transfers to the community trust), the adoption of such new governing instrument (or creation of a corporation with a governing instrument) which contains common language with the existing governing instrument shall not preclude the community trust from meeting the requirements of this paragraph (f)(11)(iv).

(v) *Common governing body.* (A) The organization must have a common governing body or distribution committee (herein referred to as the ''governing body'') which either directs or, in the case of a fund designated for specified beneficiaries, monitors the distribution of all of the funds exclusively for charitable purposes (within the meaning of section 170(c)(1) or section 170(c)(2)(B)). For purposes of this paragraph (f)(11)(v), a fund is designated for specified beneficiaries only if no person is left with the discretion to direct the distribution of the fund.

(B) *Powers of modification and removal.* The fact that the exercise of any power described in this paragraph (f)(11)(v)(B) is reviewable by an appropriate State authority will not preclude the community trust from meeting the requirements of this paragraph (f)(11)(v)(B). Except as provided in paragraph (f)(11)(v)(C) of this section, the governing body must have the power in the governing instrument, the instrument of transfer, the resolutions or by-laws of the governing body, a written agreement, or otherwise—

(*1*) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the sole judgment of the governing body (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served;

(*2*) To replace any participating trustee, custodian, or agent for breach of fiduciary duty under State law; and

(*3*) To replace any participating trustee, custodian, or agent for failure to produce a reasonable (as determined by the governing body) return of net income (within the meaning of paragraph (f)(11)(v)(F) of this section) over a reasonable period of time (as determined by the governing body).

(C) *Transitional rule*—(*1*) Notwithstanding paragraph (f)(11)(v)(B) of this section, if a community trust meets the requirements of paragraph (f)(11)(v)(C)(*3*) of this section, then in the case of any instrument of transfer which is executed before July 19, 1977,

and is not revoked or amended thereafter (with respect to any dispositive provision affecting the transfer to the community trust), and in the case of any instrument of transfer which is irrevocable on January 19, 1982, the governing body must have the power to cause proceedings to be instituted (by request to the appropriate State authority)—

(*i*) To modify any restriction or condition on the distribution of funds for any specified charitable purposes or to specified organizations if in the judgment of the governing body such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the community or area served; and

(*ii*) To remove any participating trustee, custodian, or agent for breach of fiduciary duty under State law.

(*2*) The necessity for the governing body to obtain the approval of a participating trustee to exercise the powers described in paragraph (f)(11)(v)(C)(*1*) of this section shall be treated as not preventing the governing body from having such power, unless (and until) such approval has been (or is) requested by the governing body and has been (or is) denied.

(*3*) Paragraph (f)(11)(v)(C)(*1*) of this section shall not apply unless the community trust meets the requirements of paragraph (f)(11)(v)(B) of this section, with respect to funds other than those under instruments of transfer described in the first sentence of such paragraph (f)(11)(v)(C)(*1*) of this section, by January 19, 1978, or such later date as the Commissioner may provide for such community trust, and unless the community trust does not, once it so complies, thereafter solicit for funds that will not qualify under the requirements of paragraph (f)(11)(v)(B) of this section.

(D) *Inconsistent State law*—(*1*) For purposes of paragraphs (f)(11)(v)(B)(*1*), (f)(11)(v)(B)(*2*), (f)(11)(v)(B)(*3*), (f)(11)(v)(C)(*1*)(i), (f)(11)(v)(C)(*1*)(ii), and (f)(11)(v)(E) of this section, if a power described in such a provision is inconsistent with State law even if such power were expressly granted to the governing body by the governing instrument and were accepted without limitation under an instrument of transfer, then the community trust will be treated as meeting the requirements of such a provision if it meets such requirements to the fullest extent possible consistent with State law (if such power is or had been so expressly granted).

(*2*) For example, if, under the conditions of paragraph (f)(11)(v)(D)(*1*) of this section, the power to modify is inconsistent with State law, but the power to institute proceedings to modify, if so expressly granted, would be consistent with State law, the community trust will be treated as meeting such requirements to the fullest extent possible if the governing body has the power (in the governing instrument or otherwise) to institute proceedings to modify a condition or restriction. On the other hand, if in such a case the community trust has only the power to cause proceedings to be instituted to modify a condition or restriction, it will not be treated as meeting such requirements to the fullest extent possible.

(*3*) In addition, if, for example, under the conditions of paragraph (f)(11)(v)(D)(*1*) of this section, the power to modify and the power to institute proceedings to modify a condition or restriction is inconsistent with State law, but the power to cause such proceedings to be instituted would be consistent with State law, if it were expressly granted in the governing instrument and if the approval of the State Attorney General were obtained, then the community trust will be treated as meeting such requirements to the fullest extent possible if it has the power (in the governing instrument or otherwise) to cause such proceedings to be instituted, even if such proceedings can be instituted only with the approval of the State Attorney General.

(E) *Exercise of powers.* The governing body shall (by resolution or otherwise) commit itself to exercise the powers described in paragraphs (f)(11)(v)(B), (f)(11)(v)(C), and (f)(11)(v)(D) of this section in the best interests of the community trust. The governing body will be considered not to be so committed where it has grounds to exercise such a power and fails to exercise it by taking appropriate action. Such appropriate action may include, for example, consulting with the appropriate State authority prior to taking action to replace a participating trustee.

(F) *Reasonable return.* In addition to the requirements of paragraphs (f)(11)(v)(B), (f)(11)(v)(C), (f)(11)(v)(D), or (f)(11)(v)(E) of this section, the governing body shall (by resolution or otherwise) commit itself to obtain information and take other appropriate steps with the view to seeing that each participating trustee, custodian, or agent, with respect to each restricted trust or fund that is, and with respect to the aggregate of the unrestricted trusts or funds that are, a component part of the community trust, administers such trust or fund in accordance with the terms of its governing instrument and accepted standards of fiduciary conduct to produce a reasonable return of net income (or appreciation where not inconsistent with the community trust's need for current income), with due regard to safety of principal, in furtherance of the exempt purposes of the community trust (except for assets held for the active conduct of the community trust's exempt activities). In the case of a low return of net income (and, where appropriate, appreciation), the IRS will examine carefully whether the governing body has, in fact, committed itself to take the appropriate steps. For purposes of this paragraph (f)(11)(v)(F), any income that has been designated by the donor of the gift or bequest to which such income is attributable as being available only for the use or benefit of a broad charitable purpose, such as the encouragement of higher education or the promotion of better health care in the community, will be treated as unrestricted. However, any income that has been designated for the use or benefit of a named charitable organization or agency or for the use or benefit of a particular class of charitable organizations or agencies, the members of which are readily ascertainable and are less than five in number, will be treated as restricted.

(vi) *Common reports.* The organization must prepare periodic financial reports treating all of the funds which are held by the community trust, either directly or in component parts, as funds of the organization.

(12) *Community trusts; treatment of trusts and not-for-profit corporations and associations not included as components.* (i) For purposes of sections 170, 501, 507, 508, 509, and Chapter 42, any trust or not-for-profit corporation or association that is alleged to be a component part of a community trust, but that fails to meet the requirements of paragraph (f)(11)(ii) of this section, shall not be treated as a component part of a community trust and, if a trust, shall be treated as a separate trust and be subject to the provisions of section 501, section 4947(a)(1), or section 4947(a)(2), as the case may be. If such organization is a not-for-profit corporation or association, it will be treated as a separate entity, and, if it is described in section 501(c)(3), it will be treated as a private foundation unless it is described in section 509(a)(1), section 509(a)(2), section 509(a)(3), or section 509(a)(4). In the case of a fund that is ultimately treated as not being a component part of a community trust pursuant to this paragraph (f)(12), if the Forms 990 filed annually by the community trust included financial

information with respect to such fund and treated such fund in the same manner as other component parts thereof, such returns filed by the community trust prior to the taxable year in which the Commissioner notifies such fund that it will not be treated as a component part will be treated as its separate return for purpose of Subchapter A of Chapter 61 of Subtitle F, and the first such return filed by the community trust will be treated as the notification required of the separate entity for purposes of section 508(a).

(ii) If a transfer is made in trust to a community trust to make income or other payments for a period of a life or lives in being or a term of years to any individual or for any noncharitable purpose, followed by payments to or for the use of the community trust (such as in the case of a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 or a pooled income fund described in section 642(c)(5)), such trust will be treated as a component part of the community trust upon the termination of all intervening noncharitable interests and rights to the actual possession or enjoyment of the property if such trust satisfies the requirements of paragraph (f)(11) of this section at such time. Until such time, the trust will be treated as a separate trust. If a transfer is made in trust to a community trust to make income or other payments to or for the use of the community trust, followed by payments to any individual or for any noncharitable purpose, such trust will be treated as a separate trust rather than as a component part of the community trust. See section 4947(a)(2) and the related regulations for the treatment of such split-interest trusts. The provisions of this paragraph (f)(12)(ii) provide rules only for determining when a charitable remainder trust or pooled income fund may be treated as a component part of a community trust and are not intended to preclude a community trust from maintaining a charitable remainder trust or pooled income fund. For purposes of grantors and contributors, a pooled income fund of a publicly supported community trust shall be treated no differently than a pooled income fund of any other publicly supported organization.

(iii) An organization described in section 170(b)(1)(F)(iii) will not ordinarily satisfy the requirements of paragraph (f)(11)(ii) of this section because of the unqualified right of the donor to designate the recipients of the income and principal of the trust. Such organization will therefore ordinarily be treated as other than a component part of a community trust under paragraph (f)(12)(i) of this section. However, see section 170(b)(1)(F)(iii) and the related regulations with respect to the treatment of contributions to such organizations.

(13) *Method of accounting.* For purposes of section 170(b)(1)(A)(vi), an organization's support will be determined under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. For example, if a grantor makes a grant to an organization payable over a term of years, such grant will be includible in the support fraction of the grantee organization under the method of accounting on the basis of which the grantee organization regularly computes its income in keeping its books under section 446.

(14) *Transition rules.* (i) An organization that received an advance ruling, that expires on or after June 9, 2008, that it will be treated as an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) will be treated as meeting the requirements of paragraph (f)(2) or paragraph (f)(3) of this section for the first five taxable years of its existence as a section 501(c)(3) organization unless the IRS issued to the organization a proposed determination prior to September 9, 2008, that the organization is not described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(ii) Paragraph (f)(4)(v) of this section shall not apply with respect to an organization that received an advance ruling that expired prior to June 9, 2008, and that did not timely file with the Internal Revenue Service the required information to establish that it is an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(iii) An organization that fails to meet a public support test for its first taxable year beginning on or after January 1, 2008, under the regulations in this section may use the prior tests set forth in § 1.170A–9(e)(2) or § 1.170A–9(e)(3), or in §§ 1.509(a)–3(a)(2) and 1.509(a)–3(a)(3), as in effect before September 9, 2008 (as contained in 26 CFR part 1 revised April 1, 2008), to determine whether the organization was publicly supported for its 2008 taxable year based on its satisfaction of a public support test for taxable year 2007, computed over the period 2003 through 2006.

(iv) *Examples.* The application of this paragraph (f)(14) may be illustrated by the following examples:

Example 1. (i) Organization X was formed in January 2004 and uses a taxable year ending June 30. Organization X received an advance ruling letter that it is recognized as an organization described in section 501(c)(3) effective as of the date of its formation and that it is treated as a publicly supported organization under sections 170(b)(1)(A)(vi) and 509(a)(1) during the five-year advance ruling period that will end on June 30, 2008. This date is on or after June 9, 2008.

(ii) Under the transition rule, Organization X is a publicly supported organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) for the taxable years ending June 30, 2004, through June 30, 2008. Organization X does not need to establish within 90 days after June 30, 2008, that it met a public support test under § 1.170A–9(e) or § 1.509(a)–3, as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008), for its advance ruling period.

(iii) Organization X can qualify as a publicly supported organization for the taxable year ending June 30, 2009, if Organization X can meet the requirements of paragraph (f)(2) or (f)(3) of this section or §§ 1.509(a)–3(a)(2) and 1.509(a)–3(a)(3) for the taxable years ending June 30, 2005, through June 30, 2009, or for the taxable years ending June 30, 2004, through June 30, 2008. In addition, for its taxable year ending June 30, 2009, Organization X may qualify as a publicly supported organization by availing itself of the transition rule contained in paragraph (f)(14)(iii) of this section, which looks to support received by X in the taxable years ending June 30, 2004, through June 30, 2007.

Example 2. (i) Organization Y was formed in January 2000, and uses a taxable year ending December 31. Organization Y received a final determination that it was recognized as tax-exempt under section 501(c)(3) and as a publicly supported organization prior to September 9, 2008.

(ii) For taxable year 2008, Organization Y will qualify as publicly supported if it meets the requirements under either paragraph (f)(2) or (f)(3) of this section or §§ 1.509(a)–3(a)(2) or 1.509(a)–3(a)(3) for the five-year period January 1, 2004, through December 31, 2008. Organization Y will also qualify as publicly supported for taxable year 2008 if it meets the requirements under § 1.170A–9(e)(2) or § 1.170A–9(e)(3), or under §§ 1.509(a)–3(a)(2) and 1.509(a)–3(a)(3), as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for taxable year 2007, using the four-year period from January 1, 2003, through December 31, 2006.

* * * * *

(k) *Effective/applicability date*—(1) *In general.* These regulations shall apply to taxable years beginning after December 31, 1969.

(2) *Applicability date.* The regulations in paragraph (f) of this section shall apply to taxable years beginning on or after January 1, 2008. For tax years beginning after December 31, 1969, and beginning before January 1, 2008, see § 1.170A–9(e) (as contained in 26 CFR part 1 revised April 1, 2008).

§ 1.170A–9T [Removed]

■ **Par. 3.** Section 1.170A–9T is removed.

■ **Par. 4.** Section 1.507–2 is revised to read as follows:

§ 1.507–2 Special rules; transfer to, or operation as, public charity.

(a) *Transfer to public charities*—(1) *General rule.* Under section 507(b)(1)(A) a private foundation, with respect to which there have not been either willful repeated acts (or failures to act) or a willful and flagrant act (or failure to act) giving rise to liability for tax under Chapter 42, may terminate its private foundation status by distributing all of its net assets to one or more organizations described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution. Because section 507(a) does not apply to such a termination, a private foundation which makes such a termination is not required to give the notification described in section 507(a)(1). A private foundation that terminates its private foundation status under section 507(b)(1)(A) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(2) *Effect of current ruling.* A private foundation seeking to terminate its private foundation status pursuant to section 507(b)(1)(A) may rely on a ruling or determination letter issued to a potential distributee organization that such distributee organization is an organization described in section 170(b)(1)(A)(i), 170(b)(1)(A)(ii), 170(b)(1)(A)(iii), 170(b)(1)(A)(iv), 170(b)(1)(A)(v), or 170(b)(1)(A)(vi) in accordance with the provisions of § 1.509(a)–7.

(3) *Organizations described in more than one clause of section 170(b)(1)(A).* For purposes of this paragraph and section 507(b)(1)(A), the parenthetical term ''other than in clauses (vii) and (viii)'' shall refer only to an organization that is described only in section 170(b)(1)(A)(vii) or section 170(b)(1)(A)(viii). Thus, an organization described in section 170(b)(1)(A)(i), 170(b)(1)(A)(ii), 170(b)(1)(A)(iii), 170(b)(1)(A)(iv), 170(b)(1)(A)(v), or 170(b)(1)(A)(vi) will not be precluded from being a distributee described in section 507(b)(1)(A) merely because it also appears to meet the description of an organization described in section 170(b)(1)(A)(vii) or section 170(b)(1)(A)(viii).

(4) *Applicability of Chapter 42 to foundations terminating under section 507(b)(1)(A).* An organization that terminates its private foundation status pursuant to section 507(b)(1)(A) will remain subject to the provisions of Chapter 42 until the distribution of all of its net assets to distributee organizations described in section 507(b)(1)(A) has been completed.

(5) *Return required from organizations terminating private foundation status under section 507(b)(1)(A)*—(i) An organization that terminates its private foundation status under section 507(b)(1)(A) is required to file a return under the provisions of section 6043(b).

(ii) An organization that terminates its private foundation status under section 507(b)(1)(A) is not required to comply with section 6104(d) for the taxable year in which such termination occurs.

(6) *Distribution of net assets.* A private foundation will meet the requirement to ''distribute all of its net assets'' within the meaning of section 507(b)(1)(A) only if it transfers all of its right, title, and interest in and to all of its net assets to one or more organizations referred to in section 507(b)(1)(A).

(7) *Effect of restrictions and conditions upon distributions of net assets*—(i) *In general.* In order to effectuate a transfer of ''all of its right, title, and interest in and to all of its net assets'' within the meaning of paragraph (a)(6) of this section, a transferor private foundation may not impose any material restriction or condition that prevents the transferee organization referred to in section 507(b)(1)(A) (herein sometimes referred to as the ''public charity'') from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes. Whether or not a particular condition or restriction imposed upon a transfer of assets is material (within the meaning of this paragraph (a)(7)) must be determined from all of the facts and circumstances of the transfer. Some of the more significant facts and circumstances to be considered in making such a determination are—

(A) Whether the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the owner in fee of the assets it receives from the private foundation;

(B) Whether such assets are to be held and administered by the public charity in a manner consistent with one or more of its exempt purposes;

(C) Whether the governing body of the public charity has the ultimate authority and control over such assets, and the income derived therefrom; and

(D) Whether, and to what extent, the governing body of the public charity is organized and operated so as to be independent from the transferor.

(ii) *Independent governing body.* As provided in paragraph (a)(7)(i)(D) of this section, one of the more significant facts and circumstances to be considered in making the determination whether a particular condition or restriction imposed upon a transfer of assets is material within the meaning of this paragraph (a)(7) is whether, and the extent to which, the governing body is organized and operated so as to be independent from the transferor. In turn, the determination as to such factor must be determined from all of the facts and circumstances. Some of the more significant facts and circumstances to be considered in making such a determination are—

(A) Whether, and to what extent, members of the governing body are comprised of persons selected by the transferor private foundation or disqualified persons with respect thereto or are themselves such disqualified persons;

(B) Whether, and to what extent, members of the governing body are selected by public officials acting in their capacities as such; and

(C) How long a period of time each member of the governing body may serve in such capacity. In the case of a transfer that is to a community trust, the community trust shall meet this paragraph (a)(7)(ii)(C) if—

(*1*) Its governing body is comprised of members who may serve a period of not more than ten consecutive years; and

(*2*) Upon completion of a period of service (beginning before or after the date of transfer), no member may serve again within a period consisting of the lesser of five years or the number of consecutive years the member has immediately completed serving.

(iii) *Factors not adversely affecting determination.* The presence of some or all of the following factors will not be considered as preventing the transferee ''from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes'' (within the meaning of paragraph (a)(7)(i) of this section):

(A) *Name.* The fund is given a name or other designation which is the same as or similar to that of the transferor private foundation or otherwise memorializes the creator of the foundation or his family.

(B) *Purpose.* The income and assets of the fund are to be used for a designated purpose or for one or more particular section 509(a)(1), section 509(a)(2), or section 509(a)(3) organization, and such use is consistent with the charitable, educational, or other basis for the

exempt status of the public charity under section 501(c)(3).

(C) *Administration.* The transferred assets are administered in an identifiable or separate fund, some or all of the principal of which is not to be distributed for a specified period, if the public charity (including a participating trustee, custodian, or agent in the case of a community trust) is the legal and equitable owner of the fund and the governing body exercises ultimate and direct authority and control over such fund, as, for example, a fund to endow a chair at a university or a medical research fund at a hospital. In the case of a community trust, the transferred assets must be administered in or as a component part of the community trust within the meaning of § 1.170A–9(f)(11).

(D) *Restrictions on disposition.* The transferor private foundation transfers property the continued retention of which by the transferee is required by the transferor if such retention is important to the achievement of charitable or other similar purposes in the community because of the peculiar features of such property, as, for example, where a private foundation transfers a woodland preserve which is to be maintained by the public charity as an arboretum for the benefit of the community. Such a restriction does not include a restriction on the disposition of an investment asset or the distribution of income.

(iv) *Adverse factors.* The presence of any of the following factors will be considered as preventing the transferee ''from freely and effectively employing the transferred assets, or the income derived therefrom, in furtherance of its exempt purposes'' (within the meaning of paragraph (a)(7)(i) of this section):

(A) *Distributions.* (*1*) With respect to distributions made after April 19, 1977, the transferor private foundation, a disqualified person with respect thereto, or any person or committee designated by, or pursuant to the terms of an agreement with, such a person (hereinafter referred to as donor), reserves the right, directly or indirectly, to name (other than by designation in the instrument of transfer of particular section 509(a)(1), section 509(a)(2), or section 509(a)(3) organizations) the persons to which the transferee public charity must distribute, or to direct the timing of such distributions (other than by direction in the instrument of transfer that some or all of the principal, as opposed to specific assets, not be distributed for a specified period) as, for example, by a power of appointment. The IRS will examine carefully whether the seeking of advice by the transferee from, or the giving of advice by, any donor after the assets have been transferred to the transferee constitutes an indirect reservation of a right to direct such distributions. In any such case, the reservation of such a right will be considered to exist where the only criterion considered by the public charity in making a distribution of income or principal from a donor's fund is advice offered by the donor. Whether there is a reservation of such a right will be determined from all of the facts and circumstances, including, but not limited to, the factors contained in paragraphs (a)(7)(iv)(A)(*2*) and (a)(7)(iv)(A)(*3*) of this section.

(*2*) The presence of some or all of the following factors will indicate that the reservation of a right to direct distributions does not exist:

(*i*) There has been an independent investigation by the staff of the public charity evaluating whether the donor's advice is consistent with specific charitable needs most deserving of support by the public charity (as determined by the public charity).

(*ii*) The public charity has promulgated guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity and the donor's advice is consistent with such guidelines.

(*iii*) The public charity has instituted an educational program publicizing to donors and other persons the guidelines enumerating specific charitable needs consistent with the charitable purposes of the public charity.

(*iv*) The public charity distributes funds in excess of amounts distributed from the donor's fund to the same or similar types of organizations or charitable needs as those recommended by the donor.

(*v*) The public charity's solicitations (written or oral) for funds specifically state that such public charity will not be bound by advice offered by the donor.

(*3*) The presence of some or all of the following factors will indicate the reservation of a right to direct distributions does exist:

(*i*) The solicitations (written or oral) of funds by the public charity state or imply, or a pattern of conduct on the part of the public charity creates an expectation, that the donor's advice will be followed.

(*ii*) The advice of a donor (whether or not restricted to a distribution of income or principal from the donor's trust or fund) is limited to distributions of amounts from the donor's fund, and the factors described in paragraph (a)(7)(iv)(A)(*2*)(*i*) or paragraph (a)(7)(iv)(A)(*2*)(*ii*) of this section are not present.

(*iii*) Only the advice of the donor as to distributions of such donor's fund is solicited by the public charity and no procedure is provided for considering advice from persons other than the donor with respect to such fund.

(*iv*) For the taxable year and all prior taxable years the public charity follows the advice of all donors with respect to their funds substantially all of the time.

(B) *Other action or withholding of action.* The terms of the transfer agreement, or any expressed or implied understanding, required the public charity to take or withhold action with respect to the transferred assets which is not designed to further one or more of the exempt purposes of the public charity, and such action or withholding of action would, if performed by the transferor private foundation with respect to such assets, have subjected the transferor to tax under Chapter 42 (other than with respect to the minimum investment return requirement of section 4942(e)).

(C) *Assumption of leases, contractual obligations, or liabilities.* The public charity assumes leases, contractual obligations, or liabilities of the transferor private foundation, or takes the assets thereof subject to such liabilities (including obligations under commitments or pledges to donees of the transferor private foundation), for purposes inconsistent with the purposes or best interests of the public charity, other than the payment of the transferor's Chapter 42 taxes incurred prior to the transfer to the public charity to the extent of the value of the assets transferred.

(D) *Retention of investment assets.* The transferee public charity is required by any restriction or agreement (other than a restriction or agreement imposed or required by law or regulatory authority), express or implied, to retain any securities or other investment assets transferred to it by the private foundation. In a case where such transferred assets consistently produce a low annual return of income, the IRS will examine carefully whether the transferee is required by any such restriction or agreement to retain such assets.

(E) *Right of first refusal.* An agreement is entered into in connection with the transfer of securities or other property which grants directly or indirectly to the transferor private foundation or any disqualified person with respect thereto a right of first refusal with respect to the transferred securities or other property when and if disposed of by the public charity, unless such securities or other property was acquired by the transferor

private foundation subject to such right of first refusal prior to October 9, 1969.

(F) *Relationships.* An agreement is entered into between the transferor private foundation and the transferee public charity which establishes irrevocable relationships with respect to the maintenance or management of assets transferred to the public charity, such as continuing relationships with banks, brokerage firms, investment counselors, or other advisors with regard to the investments or other property transferred to the public charity (other than a relationship with a trustee, custodian, or agent for a community trust acting as such). The transfer of property to a public charity subject to contractual obligations which were established prior to November 11, 1976, between the transferor private foundation and persons other than disqualified persons with respect to such foundation will not be treated as prohibited under the preceding sentence, but only if such contractual obligations were not entered into pursuant to a plan to terminate the private foundation status of the transferor under section 507(b)(1)(A) and if the continuation of such contractual obligations is in the best interests of the public charity.

(G) *Other conditions.* Any other condition is imposed on action by the public charity which prevents it from exercising ultimate control over the assets received from the transferor private foundation for purposes consistent with its exempt purposes.

(v) *Examples.* The provisions of this paragraph (a)(7) may be illustrated by the following examples:

Example 1. The M Private Foundation transferred all of its net assets to the V Cancer Institute, a public charity described in section 170(b)(1)(A)(iii). Prior to the transfer, M's activities consisted of making grants to hospitals and universities to further research into the causes of cancer. Under the terms of the transfer, V is required to keep M's assets in a separate fund and use the income and principal to further cancer research. Although the assets may be used only for a limited purpose, this purpose is consistent with and in furtherance of V's exempt purposes, and does not prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 2. The N Private Foundation transferred all of its net assets to W University, a public charity described in section 170(b)(1)(A)(ii). Under the terms of the transfer, W is required to use the income and principal to endow a chair at the university to be known as the ''John J. Doe Memorial Professorship,'' named after N's creator. Although the transferred assets are to be used for a specified purpose by W, this purpose is in furtherance of W's exempt educational purposes, and there are no conditions on investment or reinvestment of the principal or income. The use of the name of the foundation's creator for the chair is not a restriction which would prevent the transfer from being a distribution for purposes of section 507(b)(1)(A).

Example 3. The O Private Foundation transferred all of its net assets to X Bank as trustee for the Q Community Trust, a community trust that is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, X is to hold the assets in trust for Q and is directed to distribute the income annually to the Y Church, a public charity described in section 170(b)(1)(A)(i). The distribution of income to Y Church is consistent with Q's exempt purposes. If the trust created by this transfer otherwise meets the requirements of § 1.170A–9(f)(11) as a component part of the Q Community Trust, the assets transferred by O to X will be treated as distributed to one or more public charities within the meaning of section 507(b)(1)(A). The direction to distribute the income to Y Church meets the conditions of paragraph (a)(7)(iii)(B) of this section and will therefore not disqualify the transfer under section 507(b)(1)(A).

Example 4. (i) The P Private Foundation transferred all of its net assets to Z Bank as trustee for the R Community Trust, a community trust that is a public charity described in section 170(b)(1)(A)(vi). Under the terms of the transfer, Z is to hold the assets in trust for R and distribute the income to those public charities described in section 170(b)(1)(A)(i) through (b)(1)(A)(vi) that are designated by B, the creator of P. R's governing body has no authority during B's lifetime to vary B's direction. Under the terms of the transfer, it is intended that Z retain the transferred assets in their present form for a period of 20 years, or until the date of B's death if it occurs before the expiration of such period. Upon the death of B, R will have the power to distribute the income to such public charities as it selects and may dispose of the corpus as it sees fit.

(ii) Under paragraph (a)(7)(iv)(A) or paragraph (a)(7)(iv)(D) of this section, as a result of the restrictions imposed with respect to the transferred assets, there has been no distribution of all P's net assets within the meaning of section 507(b)(1)(A) at the time of the transfer. In addition, P has not transferred its net assets to a component part of R Community Trust, but rather to a separate trust described in § 1.170A–9(f)(12).

(b) *Operation as a public charity*—(1) *In general.* Under section 507(b)(1)(B), an organization can terminate its private foundation status if the organization—

(i) Meets the requirements of section 509(a)(1), section 509(a)(2) or section 509(a)(3) for a continuous period of 60 calendar months beginning with the first day of any taxable year that begins after December 31, 1969;

(ii) In compliance with section 507(b)(1)(B)(ii) and paragraph (b)(3) of this section, properly notifies the IRS, in such manner as may be provided by published guidance, publication, form or instructions, before the commencement of such 60-month period, that it is terminating its private foundation status; and

(iii) Properly establishes immediately after the expiration of such 60-month period that such organization has complied with the requirements of section 509(a)(1), section 509(a)(2) or section 509(a)(3) during the 60-month period, in the manner described in paragraph (b)(4) of this section.

(2) *Relationship of section 507(b)(1)(B) to sections 507(a), 507(c), and 507(g).* Because section 507(a) does not apply to a termination described in section 507(b)(1)(B), a private foundation's notification that it is commencing a termination pursuant to section 507(b)(1)(B) will not be treated as a notification described in section 507(a) even if the private foundation does not successfully terminate its private foundation status pursuant to section 507(b)(1)(B). A private foundation that terminates its private foundation status under section 507(b)(1)(B) does not incur tax under section 507(c) and, therefore, no abatement of such tax under section 507(g) is required.

(3) *Notification of termination.* In order to comply with the requirements under section 507(b)(1)(B)(ii), an organization shall before the commencement of the 60-month period under section 507(b)(1)(B)(i) notify the IRS, in such manner as may be provided by published guidance, publication, form or instructions, of its intention to terminate its private foundation status. Such notification shall contain the following information—

(i) The name and address of the private foundation;

(ii) Its intention to terminate its private foundation status;

(iii) The Code section under which it seeks classification (section 509(a)(1), section 509(a)(2) or section 509(a)(3));

(iv) If section 509(a)(1) is applicable, the clause of section 170(b)(1)(A) involved;

(v) The date its regular taxable year begins; and

(vi) The date of commencement of the 60-month period.

(4) *Establishment of termination.* In order to comply with the requirements under section 507(b)(1)(B)(iii), an organization shall within 90 days after the expiration of the 60-month period file such information with the IRS, in such manner as may be provided by published guidance, publication, form or instructions, as is necessary to make a determination as to the organization's status as an organization described under section 509(a)(1), section 509(a)(2) or section 509(a)(3) and the

related regulations. See paragraph (c) of this section as to the information required to be submitted under this paragraph (b)(4).

(5) *Incomplete information.* The failure to supply, within the required time, all of the information required by paragraph (b)(3) or paragraph (b)(4) of this section is not alone sufficient to constitute a failure to satisfy the requirements of section 507(b)(1)(B). If the information that is submitted within the required time is incomplete and the organization supplies the necessary additional information at the request of the Commissioner within the additional time period allowed by him, the original submission will be considered timely.

(6) *Application of special rules and filing requirements.* An organization that has terminated its private foundation status under section 507(b)(1)(B) is not required to comply with the special rules set forth in sections 508(a) and 508(b). Such organization is also not required to file a return under the provisions of section 6043(b) by reason of termination of its private foundation status under the provisions of section 507(b)(1)(B).

(7) *Extension of time to assess deficiencies.* If a private foundation files a notification (described in paragraph (b)(3) of this section) that it intends to begin a 60-month termination pursuant to section 507(b)(1)(B) and does not file a request for an advance ruling pursuant to paragraph (d) of this section, such private foundation may file with the notification described in paragraph (b)(3) of this section a consent under section 6501(c)(4) to the effect that the period of limitation upon assessment under section 4940 for any taxable year within the 60-month termination period shall not expire prior to one year after the date of expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period. Such consents, if filed, will ordinarily be accepted by the Commissioner. See paragraph (e)(3) of this section for an illustration of the procedure required to obtain a refund of the tax imposed by section 4940 in a case where such a consent is not in effect.

(c) *Sixty-month terminations*—(1) *Method of determining normal sources of support.* (i) In order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as a section 509(a)(1) or section 509(a)(2) organization, an organization must meet the requirements of section 509(a)(1) or section 509(a)(2), as the case may be, for a continuous period of at least 60 calendar months. In determining whether an organization seeking status under section 509(a)(1) as an organization described in section 170(b)(1)(A)(iv) or section 170(b)(1)(A)(vi) or under section 509(a)(2) normally meets the requirements set forth under such sections, support received in taxable years prior to the commencement of the 60-month period shall not be taken into consideration, except as otherwise provided in this section.

(ii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(1) organization described in section 170(b)(1)(A)(vi) for a continuous period of 60 calendar months only if the organization satisfies the provisions of § 1.170A–9(f), other than § 1.170A–9(f)(4)(v), based upon aggregate data for such entire period. The calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the 60-month period.

(iii) For purposes of section 507(b)(1)(B), an organization will be considered to be a section 509(a)(2) organization only if such organization meets the support requirements set forth in sections 509(a)(2)(A) and 509(a)(2)(B) and the related regulations, other than § 1.509(a)–3(d), for the continuous period of 60 calendar months prescribed under section 507(b)(1)(B). The calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the 60-month period.

(2) *Organizational and operational tests.* In order to meet the requirements of section 507(b)(1)(B) for the 60-month termination period as an organization described in section 170(b)(1)(A)(i), 170(b)(1)(A)(ii), 170(b)(1)(A)(iii), 170(b)(1)(A)(iv), or 170(b)(1)(A)(v) or section 509(a)(3), as the case may be, an organization must meet the requirements of the applicable provisions for a continuous period of at least 60 calendar months. For purposes of section 507(b)(1)(B), an organization will be considered to be such an organization only if it satisfies the requirements of the applicable provision (including with respect to section 509(a)(3), the organizational and operational test set forth in section 509(a)(3)(A)) at the commencement of such 60-month period and continuously thereafter during such period.

(d) *Advance rulings for 60-month terminations*—(1) *In general.* An organization that files the notification required by section 507(b)(1)(B)(ii) that it is commencing a 60-month termination may obtain an advance ruling from the Commissioner that it can be expected to satisfy the requirements of section 507(b)(1)(B)(i) during the 60-month period. Such an advance ruling may be issued if the organization can reasonably be expected to meet the requirements of section 507(b)(1)(B)(i) during the 60-month period. The issuance of a ruling will be discretionary with the Commissioner.

(2) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (d)(1) of this section) to meet the requirements of section 507(b)(1)(B)(i) for the 60-month period, the basic consideration is whether its organizational structure (taking into account any revisions made prior to the beginning of the 60-month period), current or proposed programs or activities, actual or intended method of operation, and current or projected sources of support are such as to indicate that the organization is likely to satisfy the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3) and paragraph (c) of this section during the 60-month period. In making such a determination, all pertinent facts and circumstances shall be considered.

(3) *Reliance by grantors and contributors.* For purposes of sections 170, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522, grants or contributions to an organization which has obtained a ruling referred to in this paragraph will be treated as made to an organization described in section 509(a)(1), section 509(a)(2), or section 509(a)(3), as the case may be, until the IRS publishes notice that such advance ruling is being revoked (such as by publication in the Internal Revenue Bulletin). However, a grantor or contributor may not rely on such an advance ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's failure to meet the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3), or acquired knowledge that the IRS had given notice to such organization that its advance ruling would be revoked. Prior to the making of any grant or contribution which allegedly will not result in the grantee's failure to meet the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3), a potential grantee organization may request a ruling whether such grant or contribution may be made without such failure. A request for such ruling may be filed by the grantee organization with the IRS. The issuance of such ruling will be at the sole discretion of the Commissioner.

The organization must submit all information necessary to make a determination on the factors referred to in paragraph (d)(2) of this section. If a favorable ruling is issued, such ruling may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522.

(4) *Reliance by organization.* An organization obtaining an advance ruling pursuant to this paragraph cannot rely on such a ruling. Consequently, if the organization does not pay the tax imposed by section 4940 for any taxable year or years during the 60-month period, and it is subsequently determined that such tax is due for such year or years (because the organization did not in fact complete a successful termination pursuant to section 507(b)(1)(B) and was not treated as an organization described in section 509(a)(1), section 509(a)(2), or section 509(a)(3) for such year or years), the organization is liable for interest in accordance with section 6601 if any amount of tax under section 4940 has not been paid on or before the last date prescribed for payment. However, because any failure to pay such tax during the 60-month period (or prior to the revocation of such ruling) is due to reasonable cause, the penalty under section 6651 with respect to the tax imposed by section 4940 shall not apply.

(5) *Extension of time to assess deficiencies.* The advance ruling described in paragraph (d)(1) of this section shall be issued only if such organization's request for an advance ruling is filed with a consent under section 6501(c)(4) to the effect that the period of limitations upon assessment under section 4940 for any taxable year within the advance ruling period shall not expire prior to one year after the date of the expiration of the time prescribed by law for the assessment of a deficiency for the last taxable year within the 60-month period.

(e) *Effect on grantors or contributors and on the organization itself*—(1) *Effect of satisfaction of requirements for termination; treatment during the termination period.* In the event that an organization satisfies the requirements of section 507(b)(1)(B) for termination of its private foundation status during the continuous 60-month period, such organization shall be treated for such entire 60-month period in the same manner as an organization described in section 509(a)(1), section 509(a)(2), or section 509(a)(3), as the case may be.

(2) *Failure to meet termination requirements*—(i) *In general.* Except as otherwise provided in paragraphs (d) and (e)(2)(ii) of this section, any organization that fails to satisfy the requirements of section 507(b)(1)(B) for termination of its private foundation status during the continuous 60-month period shall be treated as a private foundation for the entire 60-month period, for purposes of sections 507 through 509 and Chapter 42, and grants or contributions to such an organization shall be treated as made to a private foundation for purposes of sections 170, 507(b)(1)(A), 4942, and 4945.

(ii) *Certain 60-month terminations.* Notwithstanding paragraph (e)(2)(i) of this section, if an organization fails to satisfy the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3) for the continuous 60-month period but does satisfy the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3), as the case may be, for any taxable year or years during such 60-month period, the organization shall be treated as a section 509(a)(1), section 509(a)(2), or section 509(a)(3) organization for such taxable year or years, and grants or contributions made during such taxable year or years shall be treated as made to an organization described in section 509(a)(1), section 509(a)(2), or section 509(a)(3). In addition, sections 507 through 509 and Chapter 42 shall not apply to such organization for any taxable year within such 60-month period for which it does meet such requirements. For purposes of determining whether an organization satisfies the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3) for any taxable year in the 60-month period, the calculation of public support shall be made over the period beginning with the date of the commencement of the 60-month period, and ending with the last day of the taxable year being tested. The organization shall not be treated as a section 509(a)(1) or section 509(a)(2) organization for any taxable year during the 60-month period solely by reason of having met a public support test for the preceding year. In addition, the transition rules in §§ 1.170–9(f)(14)(iii) and 1.509(a)–3(n)(iii) shall not apply.

(iii) *Aggregate tax benefit.* For purposes of section 507(d), the organization's aggregate tax benefit resulting from the organization's section 501(c)(3) status shall continue to be computed from the date from which such computation would have been made, but for the notice filed under section 507(b)(1)(B)(ii), except that any taxable year within such 60-month period for which such organization meets the requirements of section 509(a)(1), section 509(a)(2), or section 509(a)(3) shall be excluded from such computations.

(iv) *Excess business holdings.* See section 4943 and the related regulations for rules relating to decreases in a private foundation's holdings in a business enterprise which are caused by the foundation's failure to terminate its private foundation status after giving the notification for termination under section 507(b)(1)(B)(ii).

(3) *Example.* The provisions of this paragraph (e) may be illustrated by the following example:

Example 1. Y, a calendar year private foundation, notifies the IRS that it intends to terminate its private foundation status by converting into a publicly supported organization described in section 170(b)(1)(A)(vi) and that its 60-month termination period will commence on January 1, 2010. Y does not obtain a ruling described in paragraph (d) of this section. Based upon its support for 2010, Y does not qualify as a publicly supported organization within the meaning of § 1.170A–9(f) and this paragraph for 2010. Consequently, in order to avoid the risks of penalties and interest if Y fails to terminate within the 60-month period, Y files its 2010 return as a private foundation and pays the tax imposed by section 4940. Because a consent (described in paragraph (b)(7) of this section), which would prevent the period of limitations for all years in the 60-month period from expiring, is not in effect, in order to be able to file a claim for refund, Y and the IRS must agree to extend the period of limitation for all taxes imposed under Chapter 42 for 2010. Based on the aggregate data for the entire 60-month period (2010 through 2014), Y does qualify as a publicly-supported organization for the entire 60-month period. Consequently, Y is treated as a publicly-supported organization for the entire 60-month period. Y files a claim for refund for the taxes paid under section 4940 for 2010, and such taxes are refunded.

(f) *Effective/applicability date*—(1) *Effective date.* These regulations are effective on September 8, 2011.

(2) *Applicability date.* The regulations in this section shall apply to tax years beginning on or after January 1, 2008. For taxable years beginning after December 31, 1969, and beginning before January 1, 2008, see § 1.507–2 (as contained in 26 CFR part 1 revised April 1, 2008).

§ 1.507–2T [Removed]

■ **Par. 5.** Section 1.507–2T is removed.

■ **Par. 6.** Section 1.509(a)–3 is amended as follows:

1. Revising paragraphs (a)(2), (a)(3)(i), (c), (d), (e), (k) and (n).

2. Adding new paragraph (o).

The revisions and addition read as follows:

§ 1.509(a)–3 Broadly, publicly supported organizations.

(a) * * *

(2) *One-third support test.* An organization will meet the one-third support test if it normally (within the meaning of paragraph (c) or paragraph (d) of this section) receives from permitted sources more than one-third of its support in each taxable year from any combination of—

(i) Gifts, grants, contributions, or membership fees; and

(ii) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in an activity that is not an unrelated trade or business (within the meaning of section 513), subject to certain limitations described in paragraph (b) of this section. For purposes of this section, governmental units, organizations described in section 509(a)(1), and persons other than disqualified persons with respect to the organization shall be referred to as permitted sources. For purposes of this section, the amount of support received from the sources described in paragraph (a)(2)(i) of this section and this paragraph (a)(2)(ii) (subject to the limitations referred to in this paragraph (a)(2)) will be referred to as the numerator of the one-third support fraction, and the total amount of support received (as defined in section 509(d)) will be referred to as the denominator of the one-third support fraction. Section 1.509(a)–3(f) distinguishes gifts and contributions from gross receipts; § 1.509(a)–3(g) distinguishes grants from gross receipts; § 1.509(a)–3(h) defines membership fees; § 1.509(a)–3(i) defines ''any bureau or similar agency of a governmental unit''; § 1.509(a)–3(j) describes the treatment of certain indirect forms of support; paragraph (k) of this section describes the method of accounting for support; § 1.509(a)–3(l) describes the treatment of gross receipts from section 513(a)(1), section 513(a)(2), or section 513(a)(3) activities; § 1.509(a)–3(m) distinguishes gross receipts from gross investment income; and § 1.509(a)–3(n) describes transition rules for organizations that received advance rulings that expire on or after June 9, 2008.

(3) * * *

(i) *In general.* An organization will meet the not-more-than-one-third support test under section 509(a)(2)(B) if it normally (within the meaning of paragraph (c) or (d) of this section) receives not more than one-third of its support in each taxable year from the sum of its gross investment income (as defined in section 509(e)) and the excess (if any) of the amount of its unrelated business taxable income (as defined in section 512) derived from trades or businesses that were acquired by the organization after June 30, 1975, over the amount of tax imposed on such income by section 511. For purposes of this section the amount of support received from items described in section 509(a)(2)(B) will be referred to as the numerator of the not-more-than-one-third support fraction, and the total amount of support (as defined in section 509(d)) will be referred to as the denominator of the not-more-than-one-third support fraction. For purposes of section 509(a)(2), paragraph (m) of this section distinguishes gross receipts from gross investment income. For purposes of section 509(e), gross investment income includes the items of investment income described in § 1.512(b)–1(a).

* * * * *

(c) *Normally*—(1) *In general*—(i) *Definition.* The support tests set forth in section 509(a)(2) are to be computed on the basis of the nature of the organization's normal sources of support. An organization will be considered as ''normally'' receiving one third of its support from any combination of gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in § 1.509(a)–3(b)) and not more than one third of its support from items described in section 509(a)(2)(B) for a taxable year and the taxable year immediately succeeding such year, if, for such taxable year and the four taxable years immediately preceding such taxable year, the aggregate amount of the support received during the applicable period from gifts, grants, contributions, membership fees, and gross receipts from permitted sources (subject to the limitations described in § 1.509(a)–3(b)) is more than one third, and the aggregate amount of the support received from items described in section 509(a)(2)(B) is not more than one third, of the total support of the organization for such five-year period. A publicly supported organization described under section 509(a)(2) that has failed to meet either the one-third support test of paragraph (a)(2) of this section or the not-more-than-one-third support test of paragraph (a)(3) of this section for two consecutive years will be treated as a private foundation as of the first day of the second consecutive taxable year only for purposes of sections 507, 4940, and 6033. Such an organization must file a Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation,'' and will be liable for the net investment tax imposed by section 4940 and, if applicable, the private foundation termination tax imposed by section 507(c), for that second consecutive failed year. For the succeeding years, the organization will be treated as a private foundation for all purposes.

(ii) *First five years of an organization's existence.* See paragraph (d)(1) of this section for the definition of ''normally'' for organizations in the first five years of their existence.

(2) *Terminations under section 507(b)(1)(B).* For the special rules applicable to the term normally as applied to private foundations that elect to terminate their private foundation status pursuant to the 60-month procedure provided in section 507(b)(1)(B), see the regulations under such section.

(3) *Exclusion of unusual grants.* For purposes of applying the tests for support set forth in paragraphs (a)(2) and (a)(3) of this section, one or more contributions may be excluded from the numerator of the one-third support fraction and from the denominator of both the one-third support and not-more-than-one-third support fractions only if such a contribution meets the requirements of this paragraph (c)(3). The exclusion provided by this paragraph (c)(3) is generally intended to apply to substantial contributions and bequests from disinterested parties, which contributions or bequests—

(i) Are attracted by reason of the publicly supported nature of the organization;

(ii) Are unusual or unexpected with respect to the amount thereof; and

(iii) Would by reason of their size, adversely affect the status of the organization as normally meeting the one-third support test for any of the applicable periods described in this paragraph (c) or paragraph (d) of this section. In the case of a grant (as defined in § 1.509(a)–3(g)) that meets the requirements of this paragraph (c)(3), if the terms of the granting instrument require that the funds be paid to the recipient organization over a period of years, the grant amounts may be excluded for such year or years in which they would otherwise be includible in computing support under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. However, no item described in section 509(a)(2)(B) may be excluded under this paragraph (c)(3). The provisions of this paragraph (c)(3) shall apply to exclude unusual grants made during any of the applicable periods described in this

paragraph (c) or paragraph (d) of this section. See paragraph (c)(5) of this section as to reliance by a grantee organization upon an unusual grant ruling under this paragraph (c)(3).

(4) *Determining factors.* In determining whether a particular contribution may be excluded under paragraph (c)(3) of this section, all pertinent facts and circumstances will be taken into consideration. No single factor will necessarily be determinative. Among the factors to be considered are—

(i) Whether the contribution was made by any person (or persons standing in a relationship to such person which is described in section 4946(a)(1)(C) through 4946(a)(1)(G)) who created the organization, previously contributed a substantial part of its support or endowment, or stood in a position of authority, such as a foundation manager (within the meaning of section 4946(b)), with respect to the organization. A contribution made by a person other than those persons described in this paragraph (c)(4)(i) will ordinarily be given more favorable consideration than a contribution made by a person described in this paragraph (c)(4)(i);

(ii) Whether the contribution was a bequest or an inter vivos transfer. A bequest will ordinarily be given more favorable consideration than an inter vivos transfer;

(iii) Whether the contribution was in the form of cash, readily marketable securities, or assets which further the exempt purposes of the organization, such as a gift of a painting to a museum;

(iv) Except in the case of a new organization, whether, prior to the receipt of the particular contribution, the organization has carried on an actual program of public solicitation and exempt activities and has been able to attract a significant amount of public support;

(v) Whether the organization may reasonably be expected to attract a significant amount of public support subsequent to the particular contribution. In this connection, continued reliance on unusual grants to fund an organization's current operating expenses (as opposed to providing new endowment funds) may be evidence that the organization cannot reasonably be expected to attract future support from the general public;

(vi) Whether, prior to the year in which the particular contribution was received, the organization met the one-third support test described in paragraph (a)(2) of this section without the benefit of any exclusions of unusual grants pursuant to paragraph (c)(3) of this section;

(vii) Whether neither the contributor nor any person standing in a relationship to such contributor which is described in section 4946(a)(1)(C) through 4946(a)(1)(G) continues directly or indirectly to exercise control over the organization;

(viii) Whether the organization has a representative governing body as described in § 1.509(a)–3(d)(3)(i); and

(ix) Whether material restrictions or conditions (within the meaning of § 1.507–2(a)(7)) have been imposed by the transferor upon the transferee in connection with such transfer.

(5) *Grantors and contributors.* Prior to the making of any grant or contribution expected to meet the requirements for exclusion under paragraph (c)(3) of this section, a potential grantee organization may request a determination whether such grant or contribution may be so excluded. Requests for such determination may be filed by the grantee organization in the time and manner specified by revenue procedure or other guidance published in the Internal Revenue Bulletin. The issuance of such determination will be at the sole discretion of the Commissioner. The organization must submit all information necessary to make a determination of the applicability of paragraph (c)(3) of this section, including all information relating to the factors described in paragraph (c)(4) of this section. If a favorable determination is issued, such determination may be relied upon by the grantor or contributor of the particular contribution in question for purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522 and by the grantee organization for purposes of paragraph (c)(3) of this section.

(6) *Examples.* The application of the principles set forth in this paragraph is illustrated by the examples as follows. For purposes of these examples, the term *general public* is defined as persons other than disqualified persons and other than persons from whom the foundation received gross receipts in excess of the greater of $5,000 or 1 percent of its support in any taxable year, the term *gross investment income* is as defined in section 509(e), and the term *gross receipts* is limited to receipts from activities which are not unrelated trades or businesses (within the meaning of section 513).

Example 1. (i) For the years 2008 through 2012, X, an organization exempt under section 501(c)(3) that makes scholarship grants to needy students of a particular city, received support from the following sources:

2008:	
Gross receipts (general public)	$35,000
Contributions (substantial contributors)	36,000
Gross investment income	29,000
Total support	100,000
2009:	
Gross receipts (general public)	34,000
Contributions (substantial contributors)	35,000
Gross investment income	31,000
Total support	100,000
2010:	
Gross receipts (general public)	35,000
Contributions (substantial contributors)	30,000
Gross investment income	35,000
Total support	100,000
2011:	
Gross receipts (general public)	33,000
Contributions (substantial contributors)	32,000
Gross investment income	35,000
Total support	100,000

2012:	
Gross receipts (general public)	31,000
Contributions (substantial contributors)	39,000
Gross investment income	30,000
Total support	100,000

(ii) In applying section 509(a)(2) to the taxable year 2012, on the basis of paragraph (c)(1)(i) of this section, the total amount of support from gross receipts from the general public ($168,000) for the period 2008 through 2012, was more than one third, and the total amount of support from gross investment income ($160,000) was less than one third, of X's total support for the same period ($500,000). For the taxable years 2012 and 2013, X is therefore considered normally to receive more than one third of its support from the public sources described in section 509(a)(2)(A) and less than one third of its support from items described in section 509(a)(2)(B). The fact that X received less than one third of its support from section 509(a)(2)(A) sources in 2012 and more than one third of its support from items described in section 509(a)(2)(B) in 2011 does not affect its status because it normally met the applicable tests over a five-year period.

Example 2. Assume the same facts as in *Example 1* except that in 2012, X also received an unexpected bequest of $50,000 from A, an elderly widow who was interested in encouraging the work of X, but had no other relationship to it. Solely by reason of the bequest, A became a disqualified person. X used the bequest to create five new scholarships. Its operations otherwise remained the same. Under these circumstances, if A's bequest is included in X's support calculation, X could not meet the five-year support test because the total amount received from gross receipts from the general public ($168,000) would not be more than one-third of its total support for the five-year period ($550,000). Because A is a disqualified person, her bequest cannot be included in the numerator of the one-third support test under section 509(a)(2)(A). However, based on the factors set forth in paragraph (c)(4) of this section, A's bequest may be excluded as an unusual grant under paragraph (c)(3) of this section. Therefore, X will be considered to have met the support test for the taxable years 2012 and 2013.

Example 3. Y, an organization described in section 501(c)(3), was created by A, the holder of all the common stock in M corporation; B, A's wife; and C, A's business associate. The purpose of Y was to sponsor and equip athletic teams for underprivileged children in the community. Each of the three creators makes small cash contributions to Y. A, B, and C have been active participants in the affairs of Y since its creation. Y regularly raises small amounts of contributions through fundraising drives and selling admission to some of the sponsored sporting events. The operations of Y are carried out on a small scale, usually being restricted to the sponsorship of two to four baseball teams of underprivileged children. In 2009, M recapitalizes and creates a first and second class of 6 percent nonvoting preferred stock, most of which is held by A and B. In 2010, A contributes 49 percent of his common stock in M to Y. A's contribution of M's common stock was substantial and constitutes 90 percent of Y's total support for 2010. A combination of the facts and circumstances described in paragraph (c)(4) of this section preclude A's contribution of M's common stock in 2010 from being excluded as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether Y meets the one-third support test under section 509(a)(2).

Example 4. (i) M is organized in 2009 to promote the appreciation of ballet in a particular region of the United States. Its principal activities consist of erecting a theater for the performance of ballet and the organization and operation of a ballet company. M receives a determination letter that it is an organization described in section 501(c)(3) and that it is a public charity described in section 509(a)(2). The governing body of M consists of nine prominent unrelated citizens residing in the region who have either an expertise in ballet or a strong interest in encouraging appreciation of the art form.

(ii) In 2010, Z, a private foundation, proposes to makes a grant of $500,000 in cash to M to provide sufficient capital for M to commence its activities. Although A, the creator of Z, is one of the nine members of M's governing body, was one of M's original founders, and continues to lend his prestige to M's activities and fund raising efforts, A does not, directly or indirectly, exercise any control over M. M also receives a significant amount of support from a number of smaller contributions and pledges from other members of the general public. M charges admission to the ballet performances to the general public.

(iii) Although the support received in 2010 will not impact M's status as a public charity for its first five taxable years, it will be relevant to the determination of whether M meets the one-third support test under section 509(a)(2) for the 2014 taxable year, using the computation period 2010 through 2014. Within the appropriate timeframe, M may submit a request for a private letter ruling that the $500,000 contribution from Z qualifies as an unusual grant.

(iv) Under the above circumstances, even though A was a founder and member of the governing body of M, M may exclude Z's contribution of $500,000 in 2010 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether M meets the one-third support test under section 509(a)(2) for 2014.

Example 5. (i) Assume the same facts as *Example 4(i)* except that, in addition, in 2013, B, a widow, passes away and bequeaths $4 million to M. During 2009 through 2013, B made small contributions to M, none exceeding $10,000 in any year. During 2009 through 2013, M received approximately $450,000 from receipts for admissions and contributions from the general public. At the time of B's death, no person standing in a relationship to B described in section 4946(a)(1)(C) through 4946(a)(1)(G) was a member of M's governing body. B's bequest was in the form of cash and readily marketable securities. The only condition placed upon the bequest was that it be used by M to advance the art of ballet.

(ii) Although the support received in 2013 will not impact M's status as a public charity for its first five taxable years, it will be relevant to the determination of whether M meets the one-third support test under section 509(a)(2) for future years. Within the appropriate timeframe, M may submit a request for a private letter ruling that the $4 million bequest from B qualifies as an unusual grant.

(iii) Under the above circumstances, M may exclude B's bequest of $4 million in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether M meets the one-third support test under section 509(a)(2) for 2014 and subsequent years.

Example 6. (i) N is a research organization that was created by A in 2009 for the purpose of carrying on economic studies primarily through persons receiving grants from N and engaging in the sale of economic publications. N received a determination letter that it is described in section 501(c)(3) and that it is a public charity described in 509(a)(2). N's five-member governing body consists of A; A's sons, B and C; and two unrelated economists. In 2009, A made a contribution to N of $100,000 to help establish the organization. During 2009 through 2013, A made annual contributions to N averaging $20,000 a year. During the same period, N received annual contributions from members of the general public averaging $15,000 per year and receipts from the sale of its publications averaging $50,000 per year. In 2013, B made an inter vivos contribution to N of $600,000 in cash and readily marketable securities.

(ii) Although the support received in 2013 will not impact N's status as a public charity for its first five taxable years, it will be relevant to the determination of whether N meets the one-third support test under section 509(a)(2) for future years. In determining whether B's contribution of $600,000 in 2013 may be excluded as an unusual grant, the support N received in 2009 through 2013 is relevant in considering the factor described in paragraph (c)(4)(vi) of this section, notwithstanding that N received a determination letter that it is described in section 509(a)(2).

(iii) Under the above circumstances, in particular the facts that B is a disqualified person described in section 4946(a)(1)(D) and N does not have a representative governing body as described in paragraphs (c)(4)(viii)

and (d)(3)(i) of this section, N cannot exclude B's contribution of $600,000 in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether N meets the one-third support test under section 509(a)(2) for 2014 and future years.

Example 7. (i) O is an educational organization created in 2009. O received a determination letter that it is described in section 501(c)(3) and that it is a public charity described in section 509(a)(2). The governing body of O has 9 members, consisting of A, a prominent civic leader, and 8 other unrelated civic leaders and educators in the community, all of whom participated in the creation of O. During 2009 through 2013, the principal source of income for O has been receipts from the sale of its educational periodicals. These sales have amounted to $200,000 for this period. Small contributions amounting to $50,000 have also been received during the same period from members of the governing body, including A, as well as other members of the general public.

(ii) In 2013, A contributed $750,000 of the nonvoting stock of S, a closely held corporation, to O. A retained a substantial portion of the voting stock of S. By a majority vote, the governing body of O decided to retain the S stock for a period of at least five years.

(iii) Although the support received in 2013 will not impact O's status as a public charity for its first five taxable years, it will be relevant to the determination of whether O meets the one-third support test under section 509(a)(2) for future years. In determining whether A's contribution of the S stock in 2013 may be excluded as an unusual grant, the support O received in 2009 through 2013 is relevant in considering the factor described in paragraph (c)(4)(vi) of this section, notwithstanding that O received a determination letter that it is described in section 509(a)(2).

(iv) Under the above circumstances, in particular the facts that A is a foundation manager within the meaning of section 4946(b) and A's contribution is in the form of closely held stock, O cannot exclude A's contribution of the S stock in 2013 as an unusual grant under paragraph (c)(3) of this section for purposes of determining whether O meets the one-third support test under section 509(a)(2) for 2014 and future years.

(d) *Definition of normally; first five years of an organization's existence*—(1) *In general.* An organization will ''normally'' meet the one-third support test and the not-more-than-one-third support test during its first five taxable years as a section 501(c)(3) organization if the organization can reasonably be expected to meet the requirements of the one-third support test and the not-more-than-one-third support test during that period. With respect to an organization's sixth taxable year, the general definition of normally in paragraph (c)(1) of this section applies. Alternatively, the organization shall be treated as normally meeting the one-third support test and the not-more-than-one-third support test for its sixth taxable year (but not its seventh taxable year) if it meets the one-third support test and the not-more-than-one-third support test under the definition of normally set forth in paragraph (c)(1)(i) of this section for its fifth taxable year (based on support received in its first through fifth taxable years). If a new publicly supported organization described under section 509(a)(2) cannot meet the requirements of the one-third support test or the not-more-than-one-third support test for its sixth taxable year using either the general definition of normally in paragraph (c)(1) of this section or the alternate rule above (effectively failing to meet a public support test for both its fifth and sixth years), it will be reclassified as a private foundation as of the first day of its sixth taxable year only for purposes of sections 507, 4940, and 6033. Such an organization must file a Form 990–PF, ''Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation,'' and is liable for the net investment tax imposed by section 4940 and, if applicable, the private foundation termination tax imposed by section 507(c), for its sixth taxable year. Beginning the first day of its seventh taxable year, the organization will be treated as a private foundation for all purposes.

(2) *Basic consideration.* In determining whether an organization can reasonably be expected (within the meaning of paragraph (c)(1)(i) of this section) to meet the one-third support test under section 509(a)(2)(A) and the not-more-than-one-third support test under section 509(a)(2)(B) described in paragraph (a) of this section during its first five taxable years, the basic consideration is whether its organizational structure, current or proposed programs or activities, and actual or intended method of operation are such as to attract the type of broadly based support from the general public, public charities, and governmental units that is necessary to meet such tests. The factors that are relevant to this determination, and the weight accorded to each of them, may differ from case to case, depending on the nature and functions of the organization. An organization cannot reasonably be expected to meet the one-third support test and the not-more-than-one-third support test where the facts indicate that an organization is likely during its first five taxable years to receive less than one-third of its support from permitted sources (subject to the limitations of paragraph (b) of this section) or to receive more than one-third of its support from items described in section 509(a)(2)(B).

(3) *Factors taken into account.* All pertinent facts and circumstances shall be taken into account under paragraph (d)(2) of this section in determining whether the organizational structure, programs or activities, and method of operation of an organization are such as to enable it to meet the tests under section 509(a)(2) during its first five taxable years. Some of the pertinent factors are:

(i) Whether the organization has or will have a representative governing body which is comprised of public officials, or individuals chosen by public officials acting in their capacity as such; of persons having special knowledge in the particular field or discipline in which the organization is operating; of community leaders, such as elected officials, clergymen, and educators; or, in the case of a membership organization, of individuals elected pursuant to the organization's governing instrument or bylaws by a broadly based membership. This characteristic does not exist if the membership of the organization's governing body is such as to indicate that it represents the personal or private interests of disqualified persons, rather than the interests of the community or the general public.

(ii) Whether a substantial portion of the organization's initial funding is to be provided by the general public, by public charities, or by government grants, rather than by a limited number of grantors or contributors who are disqualified persons with respect to the organization. The fact that the organization plans to limit its activities to a particular community or region or to a special field which can be expected to appeal to a limited number of persons will be taken into consideration in determining whether those persons providing the initial support for the organization are representative of the general public. On the other hand, the subsequent sources of funding which the organization can reasonably expect to receive after it has become established and fully operational will also be taken into account.

(iii) Whether a substantial proportion of the organization's initial funds are placed, or will remain, in an endowment, and whether the investment of such funds is unlikely to result in more than one third of its total support being received from items described in section 509(a)(2)(B).

(iv) In the case of an organization that carries on fundraising activities, whether the organization has developed

a concrete plan for solicitation of funds from the general public on a community or area-wide basis; whether any steps have been taken to implement such plan; whether any firm commitments of financial or other support have been made to the organization by civic, religious, charitable, or similar groups within the community; and whether the organization has made any commitments to, or established any working relationships with, those organizations or classes of persons intended as the future recipients of its funds.

(v) In the case of an organization that carries on community services, such as combating community deterioration in an economically depressed area that has suffered a major loss of population and jobs, whether the organization has a concrete program to carry out its work in the community; whether any steps have been taken to implement that program; whether it will receive any part of its funds from a public charity or governmental agency to which it is in some way held accountable as a condition of the grant or contribution; and whether it has enlisted the sponsorship or support of other civic or community leaders involved in community service programs similar to those of the organization.

(vi) In the case of an organization that carries on educational or other exempt activities for, or on behalf of, members, whether the solicitation for dues-paying members is designed to enroll a substantial number of persons in the community, area, profession, or field of special interest (depending on the size of the area and the nature of the organization's activities); whether membership dues for individual (rather than institutional) members have been fixed at rates designed to make membership available to a broad cross-section of the public rather than to restrict membership to a limited number of persons; and whether the activities of the organization will be likely to appeal to persons having some broad common interest or purpose, such as educational activities in the case of alumni associations, musical activities in the case of symphony societies, or civic affairs in the case of parent-teacher associations.

(vii) In the case of an organization that provides goods, services, or facilities, whether the organization is or will be required to make its services, facilities, performances, or products available (regardless of whether a fee is charged) to the general public, public charities, or governmental units, rather than to a limited number of persons or organizations; whether the organization will avoid executing contracts to perform services for a limited number of firms or governmental agencies or bureaus; and whether the service to be provided is one which can be expected to meet a special or general need among a substantial portion of the general public.

(4) *Example.* The application of this paragraph (d) may be illustrated by the following example:

Example. (i) Organization X was formed in January 2008 and uses a taxable year ending December 31. After September 9, 2008, and before December 31, 2008, Organization X filed Form 1023 requesting recognition of exemption as an organization described in section 501(c)(3) and in section 509(a)(2). In its application, Organization X established that it can reasonably be expected to operate as a publicly supported organization under paragraph (d) of this section. Subsequently, Organization X received a ruling or determination letter that it is an organization described in sections 501(c)(3) and 509(a)(2) effective as of the date of its formation.

(ii) Organization X is described in section 509(a)(2) for its first five taxable years (for the taxable years ending December 31, 2008, through December 31, 2012).

(iii) Organization X can qualify as a publicly supported organization beginning with the taxable year ending December 31, 2013, if Organization X can meet the requirements of either § 1.170A–9(f)(2) or § 1.170A–9(f)(3) or paragraphs (a) and (b) of this section for the taxable years ending December 31, 2009, through December 31, 2013, or for the taxable years ending December 31, 2008, through December 31, 2012.

(e) *Determinations on foundation classification and reliance*—(1) A ruling or determination letter that an organization is described in section 509(a)(2) may be issued to an organization. Such determination may be made in conjunction with the recognition of the organization's tax-exempt status or at such other time as the organization believes it is described in section 509(a)(2). The ruling or determination letter that the organization is described in section 509(a)(2) may be revoked if, upon examination, the organization has not met the requirements of this section. The ruling or determination letter that the organization is described in section 509(a)(2) also may be revoked if the organization's application for a ruling or determination contained one or more material misstatements or omissions of fact or such application was part of a scheme or plan to avoid or evade any provision of the Code. The revocation of the determination that an organization is described in section 509(a)(2) does not preclude revocation of the determination that the organization is described in section 501(c)(3).

(2) *Status of grantors or contributors.* (i) For purposes of sections 170, 507, 545(b)(2), 642(c), 4942, 4945, 4966, 2055, 2106(a)(2), and 2522, grantors and contributors may rely upon a determination letter or ruling that an organization is described in section 509(a)(2) until the IRS publishes notice of a change of status (for example, in the Internal Revenue Bulletin or Publication 78, ''Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986,'' which can be searched at *http://www.irs.gov*). For this purpose, grantors or contributors may also rely on an advance ruling that expires on or after June 9, 2008. However, a grantor or contributor may not rely on such an advance ruling or any determination letter or ruling if the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of classification under section 509(a)(2) or acquired knowledge that the IRS had given notice to such organization that it would be deleted from such classification.

(ii) A grantor or contributor (other than one of the organization's founders, creators, or foundation managers (within the meaning of section 4946(b))) will not be considered to be responsible for, or aware of, the act or failure to act that resulted in the loss of the organization's publicly supported classification under section 509(a)(2) if such grantor or contributor has made such grant or contribution in reliance upon a written statement by the grantee organization that such grant or contribution will not result in the loss of such organization's classification as not a private foundation under section 509(a). Such statement must be signed by a responsible officer of the grantee organization and must set forth sufficient information, including a summary of the pertinent financial data for the five taxable years immediately preceding the current taxable year, to assure a reasonably prudent person that his grant or contribution will not result in the loss of the grantee organization's classification as a publicly supported organization under section 509(a). If a reasonable doubt exists as to the effect of such grant or contribution, or if the grantor or contributor is one of the organization's founders, creators, or foundation managers, the procedure for requesting a determination letter set forth in paragraph (c)(5) of this section may be followed by the grantee organization for the protection of the grantor or contributor.

(3) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example 1. Y, a calendar year organization described in section 501(c)(3), is created in February 2008 for the purpose of displaying African art. On its exemption application Y shows, under penalties of perjury, that it can reasonably, in accordance with the requirements of paragraph (d) of this section, expect to receive support from the public in 2008 through 2012 that will satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2) for its first five taxable years, 2008 through 2012. Y may therefore receive a determination that it meets the requirements of paragraph (a) of this section for its first five taxable years (2008, 2009, 2010, 2011, and 2012), regardless of the public support Y in fact receives during this period.

Example 2. Z, a calendar year organization described in section 501(c)(3), is created in July 2008. On its exemption application Z shows, under penalties of perjury, that it can reasonably, in accordance with the requirements of paragraph (d) of this section, expect to receive support from the public in 2008 through 2012 that will satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2) for its first five taxable years, 2008 through 2012. Z receives a determination that it is described in section 509(a)(2). However, the support actually received from the public over Z's first five taxable years (2008 through 2012) does not satisfy the one-third support and not-more-than-one-third support tests described in section 509(a)(2). Moreover, the support Z receives from 2009 through 2013, also does not meet the one-third support and not-more-than-one-third support tests described in section 509(a)(2). Z is described in section 509(a)(2) during its first five years for all purposes. However, because Z has not met the requirements of paragraph (a) of this section for either 2008 through 2012 or 2009 through 2013, Z is not described in section 509(a)(2) for its taxable year 2013. If Z is not described in section 509(a)(1), section 509(a)(3), or section 509(a)(4), then Z will be reclassified as a private foundation as of the first day of 2013. However, for 2013, Z will be treated as a private foundation only for purposes of sections 507, 4940 and 6033. Z must file Form 990–PF and will be liable for the net investment tax imposed by section 4940 and, if applicable, the private foundation termination tax imposed by section 507(c) for 2013. For 2014 and succeeding years, Z will be treated as a private foundation for all purposes (except as provided in paragraph (e)(2) of this section with respect to grantors and contributors).

* * * * *

(k) *Method of accounting.* For purposes of section 509(a)(2), an organization's support will be determined under the method of accounting on the basis of which the organization regularly computes its income in keeping its books under section 446. For example, if a grantor makes a grant to an organization payable over a term of years, such grant will be includible in the support fraction of the grantee organization under the method of accounting on the basis of which it regularly computes its income in keeping its books under section 446.

* * * * *

(n) *Transition rules.* (1) An organization that received an advance ruling, that expires on or after June 9, 2008, that it will be treated as an organization described in section 509(a)(2) will be treated as meeting the requirements of paragraph (d)(1) of this section for the first five taxable years of its existence as a section 501(c)(3) organization unless the IRS issued to the organization a proposed determination prior to September 9, 2008, that the organization is not described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(2) Paragraph (d)(1) of this section shall not apply to an organization that received an advance ruling that expired prior to June 9, 2008, and that did not timely file with the IRS the required information to establish that it is an organization described in sections 170(b)(1)(A)(vi) and 509(a)(1) or in section 509(a)(2).

(3) An organization that fails to meet a public support test for its first taxable year beginning on or after January 1, 2008, under the regulations in this section may use the prior test set forth in §§ 1.509(a)–3(a)(2) and 1.509(a)–3(a)(3) or § 1.170A–9(e)(2i) or § 1.170A–9(e)(3) as in effect before September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) to determine whether the organization may be publicly supported for its 2008 taxable year based on its satisfaction of a public support test for taxable year 2007, computed over the period 2003 through 2006.

(4) *Examples.* The application of this paragraph (n) may be illustrated by the following examples:

Example 1. (i) Organization M was formed in January 2004, and uses a taxable year ending June 30. Organization M received an advance ruling letter that it is recognized as an organization described in section 501(c)(3) effective as of the date of its formation and that it is treated as a publicly supported organization under section 509(a)(2) during the five-year advance ruling period that will end on June 30, 2008. This date is on or after June 9, 2008.

(ii) Under the transition rule, Organization M is a publicly supported organization described in section 509(a)(2) for the taxable years ending June 30, 2004, through June 30, 2008. Organization M does not need to establish within 90 days after June 30, 2008, that it met a public support test under § 1.170A–9(e) or § 1.509(a)–3, as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for its advance ruling period.

(iii) Organization M can qualify as a public charity beginning with the taxable year ending June 30, 2009, if Organization M can meet the requirements of § 1.170A–9(f)(2) or § 1.170A–9(f)(3) or paragraphs (a)(2) and (a)(3) of this section for the taxable years ending June 30, 2005, through June 30, 2009, or for the taxable years ending June 30, 2004, through June 30, 2008. In addition, for its taxable year ending June 30, 2009, Organization M may qualify as a publicly supported organization by availing itself of the transition rule contained in paragraph (n)(iii) of this section, which looks to support received by M in the taxable years ending June 30, 2004, through June 30, 2007.

Example 2. (i) Organization N was formed in January 2000 and uses a December 31 taxable year. Organization N received a final determination that it was recognized as tax-exempt under section 501(c)(3) and as a public charity prior to September 9, 2008.

(ii) For taxable year 2008, Organization N will qualify as publicly supported if it meets the requirements under either § 1.170A–9(f)(2) or § 1.170A–9(f)(3) or paragraphs (a)(2) and (a)(3) of this section for the five-year period January 1, 2004, through December 31, 2008. Organization N will also qualify as publicly supported for taxable year 2008 if it meets the requirements under either § 1.170A–9(e)(2) or § 1.170A–9(e)(3) or §§ 1.509(a)–3(a)(2) and 1.509(a)–3(a)(3) as in effect prior to September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) for taxable year 2007, using the four-year period from January 1, 2003, through December 31, 2006.

(o) *Effective/applicability date.* This section shall generally apply to taxable years beginning after December 31, 1969 except paragraphs (a)(2), (a)(3)(i), (c), (d), (e), (k) and (n) of this section shall apply to tax years beginning on or after January 1, 2008. For tax years beginning after December 31, 1969 and beginning before January 1, 2008, §§ 1.509(a)–3(a)(2), 1.509(a)–3(a)(3)(i), 1.509(a)–3(c), 1.509(a)–3(d), 1.509(a)–3(e), and 1.509(a)–3(k) as in effect on December 31, 2007 (as contained in 26 CFR part 1 revised April 1, 2008) shall apply.

§ 1.509(a)–3T [Removed]

■ **Par. 7.** Section 1.509(a)–3T is removed.

■ **Par. 8.** Section 1.6033–2 is amended by revising paragraphs (a)(1), (a)(2)(ii)(*g*), (a)(2)(ii)(*h*), (g)(1)(iii), (g)(1)(iv), (g)(6), (i)(1) and (k) to read as follows:

§ 1.6033–2 Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980).

(a) * * *

(1) Except as provided in section 6033(a)(3) and paragraph (g) of this

section, every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be prescribed in the instructions, issued with respect to the return. Except as provided in paragraph (d) of this section, such return shall be filed annually regardless of whether such organization is chartered by, or affiliated or associated with, any central, parent, or other organization.

(2) * * *

(ii) * * *

(*g*) The names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors or trustees) of the organization, and, in the case of a private foundation, all persons who are foundation managers, within the meaning of section 4946(b)(1). Organizations must also attach a schedule showing the names and addresses and/or total numbers of key employees, highly compensated employees, and independent contractors as prescribed by publication, form, or instructions.

(*h*) A schedule showing the compensation and other payments made to each person whose name is required to be listed pursuant to paragraph (a)(2)(ii)(*g*) of this section during the calendar year ending within the organization's annual accounting period, or during such other period as prescribed by publication, form, or instructions.

* * * * *

(g) * * *

(1) * * *

(iii) An organization (other than a private foundation) described in section 6033(a)(3)(C), the gross receipts of which in each taxable year are normally not more than $5,000 (as described in paragraph (g)(3) of this section);

(iv) A mission society (other than an organization described in section 509(a)(3)) sponsored by or affiliated with one or more churches or church denominations, more than one-half of the activities of which society are conducted in, or directed at persons in foreign countries;

* * * * *

(6) The Commissioner may relieve any organization or class of organizations (other than an organization described in section 509(a)(3)) from filing, in whole or in part the annual return required by this section where he determines that such returns are not necessary for the efficient administration of the internal revenue laws.

* * * * *

(i) * * *

(1) An organization that is exempt from taxation under section 501(a) and is not required to file annually an information return required by this section shall immediately notify in writing Exempt Organizations Determinations, at an address prescribed by publication (including publication on the Internal Revenue Service Web site), of any changes in its character, operations, or purpose for which it was originally created.

* * * * *

(k) *Effective/applicability date*—(1) *Generally.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1969.

(2) The applicability of paragraphs (g)(1)(iii), (g)(1)(iv), and (g)(6) of this section shall be limited to returns filed for taxable years ending after August 17, 2006. For returns filed for taxable years ending on or before August 17, 2006, §§ 1.6033–(2)(g)(1)(iii), 1.6033–(2)(g)(1)(iv), and 1.6033–(2)(g)(6) (as contained in 26 CFR part 1 revised April 1, 2006) shall apply.

(3) The applicability of paragraphs (a)(2)(ii)(*g*) and (a)(2)(ii)(*h*) of this section shall be limited to returns filed on or after January 1, 2008. For returns filed before January 1, 2008, §§ 1.6033–(a)(2)(ii)(*g*) and 1.6033–(2)(a)(2)(ii)(*h*) (as contained in 26 CFR part 1 revised April 1, 2008) shall apply.

§ 1.6033–2T [Removed]

■ **Par. 9.** Section 1.6033–2T is removed.

■ **Par. 10.** Section 1.6043–3 is amended by revising paragraphs (b)(8), (d) and (e) to read as follows:

§ 1.6043–3 Returns regarding liquidation, dissolution, termination, or substantial contraction of organizations exempt from taxation under section 501(a).

* * * * *

(b) * * *

(8) Any organization no longer exempt from taxation under section 501(a) and that during the period of its exemption under such section was not an organization described in section 501(c)(3), a corporation described in section 501(c)(2) that held title to property for an organization described in section 501(c)(3), or an organization described in such other section as prescribed by publication, form, or instructions.

* * * * *

(d) *Definitions.* (1) For the definition of the term ''normally'' as used in paragraph (b)(2) of this section, see § 1.6033–2(g)(3).

(2) For the definition of the term ''integrated auxiliaries'' as used in paragraph (b)(1) of this section, see § 1.6033–2(h).

(3) For returns filed for taxable years beginning before January 1, 2008, for purposes of this section the definition of the term ''substantial contraction'' set forth in § 1.6043–3(d)(1) (as contained in 26 CFR part 1 revised April 1, 2008) may be used.

(e) *Effective/applicability date*—(1) *Generally.* The provisions of this section shall apply with respect to returns filed for taxable years beginning after December 31, 1969.

(2) Paragraphs (b)(8) and (d) of this section shall apply for taxable years beginning on or after January 1, 2008. For taxable years beginning before January 1, 2008, §§ 1.6043–3(b)(8) and 1.6043–3(d) (as contained in 26 CFR part 1 revised April 1, 2008) shall apply.

§ 1.6043–3T [Removed]

■ **Par. 11.** Section 1.6043–3T is removed.

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 12.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 13.** In § 602.101, paragraph (b) is amended as follows:

■ 1. The following entry to the table is removed:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified	Current OMB Control No.
* * * * *	
1.6033–2T	1545–2117
* * * * *	

■ 2. The following entry is added in numerical order to the table:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB Control No.

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.6033–2	1545–2117
* * * * *	

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: August 19, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–22614 Filed 9–7–11; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Alabama, Tennessee, and Georgia: Chattanooga and Macon; Determination of Attainment by Applicable Attainment Date for the 1997 Annual Fine Particulate Standards; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0408–201146; FRL–9459–2]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Alabama, Tennessee, and Georgia: Chattanooga and Macon; Determination of Attainment by Applicable Attainment Date for the 1997 Annual Fine Particulate Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Chattanooga, Alabama-Tennessee-Georgia, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the Chattanooga Area'') and the Macon, Georgia $PM_{2.5}$ nonattainment area (hereafter referred to as ''the Macon Area'') have attained the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) by the applicable attainment date of April 5, 2010. The determinations of attainment were previously finalized by EPA on May 31, 2011, for the Chattanooga Area and June 2, 2011, for the Macon Area, and were based on quality-assured and certified monitoring data for the 2007–2009 monitoring period. The Chattanooga Area is comprised of Hamilton County in Tennessee, Catoosa and Walker Counties in Georgia, and a portion of Jackson County in Alabama. The Macon Area is comprised of Bibb County in its entirety and a portion of Monroe County in Georgia. EPA is determining to find that both of the above-identified areas attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date. EPA is finalizing these actions because they are consistent with the Clean Air Act (CAA) and its implementing regulations.

DATES: *Effective Date:* This final rule is effective on October 11, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2011–0408. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey's telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov*. Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking?
II. What is the effect of these actions?
III. What are EPA's final actions?
IV. Statutory and Executive Order Reviews

I. What actions is EPA taking?

Based on EPA's review of the quality-assured and certified monitoring data for 2007–2009, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA is determining that the Chattanooga and Macon Areas attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

On May 31, 2011, for the Chattanooga Area and June 2, 2011, for the Macon Area, EPA published two final rulemakings to make determinations of attainment to suspend the requirements for the Chattanooga and Macon Areas to submit attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS so long as the Areas continue to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 76 FR 31239 for the final rulemaking related to the Chattanooga Area; see 76 FR 31858 for the final rulemaking related to the Macon Area. Those final rulemakings also include useful background information on the $PM_{2.5}$ NAAQS relevant to the Chattanooga and Macon Areas. Today's actions make determinations that the Chattanooga and Macon Areas attained the1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Today's actions are simply focused on the date by which the areas had attaining data.

Other specific requirements of the determinations and the rationale for EPA's actions are explained in the notice of proposed rulemaking (NPR) published on June 2, 2011 (76 FR 31900). The comment period closed on July 5, 2011. No comments were received in response to the NPR.

II. What is the effect of these actions?

Today's actions are determinations that the Chattanooga and Macon Areas attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010, consistent with CAA section 179(c)(1). Finalizing these actions does not constitute a redesignation of either the Chattanooga or Macon Areas to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing these actions does not involve approving maintenance plans for either the Chattanooga or Macon Areas as required under section 175A of the CAA, nor would it find that the Chattanooga or Macon Areas have met all other requirements for redesignation. The designation status of the Chattanooga and Macon Areas remains nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the individual area meets the CAA requirements for redesignation to attainment and takes action to redesignate the individual area.

III. What are EPA's final actions?

EPA is determining, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Chattanooga and the Macon Areas attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. These actions are being taken pursuant to section 179(c)(1) of the CAA and are consistent with the CAA and its implementing regulations.

IV. Statutory and Executive Order Reviews

These actions make determinations of attainment based on air quality, and would not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Are 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.*);

• Do 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);

• Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Do 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, these 1997 $PM_{2.5}$ determinations of attainment by applicable attainment date for the Chattanooga and Macon Areas do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 2011. Filing a petition for reconsideration by the Administrator of these final rules do not affect the finality of these actions 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. These actions may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

For purposes of judicial review, the two determinations approved by today's action are severable from one another.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 18, 2011.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. Section 52.64 is added to read as follows:

§ 52.64 Determination of attainment.

Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Chattanooga, Alabama-Georgia-Tennessee $PM_{2.5}$ nonattainment area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Chattanooga, Alabama-Georgia-Tennessee $PM_{2.5}$ nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

Subpart L—Georgia

■ 3. Section 52.577 is added to read as follows:

§ 52.577 Determination of attainment.

(a) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Chattanooga, Alabama-Georgia-Tennessee $PM_{2.5}$ nonattainment area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Chattanooga, Alabama-Georgia-Tennessee $PM_{2.5}$ nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

(b) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Macon, Georgia $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Macon, Georgia $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

Subpart RR—Tennessee

■ 4. Section 52.2232 is added to read as follows:

§ 52.2232 Determination of attainment.

Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Chattanooga, Alabama-Georgia-Tennessee $PM_{2.5}$ nonattainment Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Chattanooga, Alabama-Georgia-Tennessee $PM_{2.5}$ nonattainment Area is not subject to the consequences of failing to attain pursuant to section 179(d).

[FR Doc. 2011–22831 Filed 9–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0798–201147; FRL–9459–3]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Georgia: Rome; Determination of Attainment by Applicable Attainment Date for the 1997 Annual Fine Particulate Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Rome, Georgia, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the Rome Area'') has attained the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) by the applicable attainment date of April 5, 2010. The determination of attainment was previously finalized by EPA on April 5, 2011, and was based on quality-assured and certified monitoring data for the 2007–2009 monitoring period. The Rome Area is comprised of Floyd County, Georgia, in its entirety. EPA is determining that the Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date. EPA is finalizing this action because it is consistent with the Clean Air Act (CAA) and its implementing regulations.

DATES: Effective Date: This final rule is effective on October 11, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2010–0798. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

FOR FURTHER INFORMATION CONTACT: Joel Huey or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Huey's telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov.* Ms. Waterson may be reached by phone at (404) 562–9061 or via electronic mail at *waterson.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?
II. EPA's Response to Comment
III. What is the effect of this action?
IV. What is EPA's final action?
V. Statutory and Executive Order Reviews

I. What action is EPA taking?

Based on EPA's review of the quality-assured and certified monitoring data for 2007–2009, and in accordance with section 179(c)(1) of the CAA and EPA's regulations, EPA is determining that the Rome Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010.

On April 5, 2011, EPA published a final rulemaking to make a determination of attainment and to suspend the requirements for the Rome Area to submit an attainment demonstration and associated reasonably available control measures (RACM), reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS so long as the Area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. *See* 76 FR 18650. That final rulemaking also includes useful background information on the $PM_{2.5}$ NAAQS relevant to the Rome Area. Today's action makes a determination that the Rome Area attained the1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Today's action is simply focused on the date by which the Area had attaining data.

Other specific requirements of the determination and the rationale for EPA's action are explained in the notice of proposed rulemaking (NPR) published on June 2, 2011 (76 FR 31898). The comment period closed on July 5, 2011. One comment was received in response to the NPR.

II. EPA's Response to Comment

EPA received one comment on the June 2, 2011, proposed rulemaking to determine the Rome Area attained the 1997 $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. The comment, from the Labor-Management Standards Office, is provided in the docket for this final action and can be accessed at *http://www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–0798. The Commenter stated, ''[n]o more rules.'' The comment provides insufficient information upon which to base a response. As a point of clarification, today's action is required by section 179(c)(1) of the CAA. For that reason, this rulemaking is both necessary and appropriate.

III. What is the effect of this action?

Today's action is a determination that the Rome Area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010, consistent with CAA section 179(c)(1). Finalizing this action does not constitute a redesignation of the Rome Area to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA. Further, finalizing this action does not involve approving maintenance plans for the Rome Area as required under section 175A of the CAA, nor does it involve a determination that the Rome Area has met all requirements for a redesignation. The designation status of the Rome Area remains nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the Area meets the CAA requirements for redesignation to attainment and takes formal action to redesignate the Area.

IV. What is EPA's final action?

EPA is determining, based on quality-assured and certified monitoring data for the 2007–2009 monitoring period, that the Rome Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. This action is being taken pursuant to section 179(c)(1) of the CAA and is consistent with the CAA and its implementing regulations.

V. Statutory and Executive Order Reviews

This action makes a determination of attainment based on air quality and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this determination that the Rome Area attained the 1997 annual average $PM_{2.5}$ NAAQS by the applicable attainment date does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 2011. Filing a petition for reconsideration by the Administrator of these final rules does not affect the finality of these actions 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 18, 2011.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.577 is amended by adding paragraph (c) to read as follows:

§ 52.577 Determination of attainment.

* * * * *

(c) Based upon EPA's review of the air quality data for the 3-year period 2007–2009, EPA determined that the Rome, Georgia $PM_{2.5}$ nonattainment area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the Area's air quality as of the attainment date, whether the Area attained the standard. EPA also determined that the Rome, Georgia $PM_{2.5}$ nonattainment area is not subject to the consequences of failing to attain pursuant to section 179(d).

[FR Doc. 2011–22833 Filed 9–7–11; 8:45 am]

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