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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 309 and 310

RIN 3064–AD83

Disclosure of Information; Privacy Act Regulations; Notice and Amendments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), abolished the Office of Thrift Supervision (OTS) and, as of July 21, 2011, the statutorily prescribed transfer date (Transfer Date), the functions and regulations of the OTS relating to savings and loan holding companies, Federal savings associations, and State savings associations to the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the FDIC, respectively. The Board of Directors is finalizing an interim rule that confirmed that, effective on the Transfer Date, the OTS Freedom of Information Act (FOIA) and Privacy Act (PA) regulations will not be enforced by the FDIC and that, instead, all FOIA and PA issues will be addressed under the FDIC's regulations involving disclosure of information and the PA, as amended.

DATES: *Effective Date:* The effective date of the final rule is November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Ann Johnson Taylor, Counsel, Legal Division, (202) 898–3573 or *ajohnsontaylor@fdic.gov;* Rodney D. Ray, Counsel, Legal Division, (202) 898–3556 or *rray@fdic.gov;* or Martin P. Thompson, Senior Review Examiner, Division of Risk Management Supervision, (202) 898–6767 or *marthompson@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Act, signed into law on July 21, 2010, substantially reorganized the regulation of savings associations and their holding companies. Beginning July 21, 2011, the Transfer Date established in Dodd-Frank, functions formerly performed by the OTS were divided among the FRB, OCC, and FDIC. Section 316(b) of the Act provides that all orders, resolutions, determinations, and regulations issued, made, prescribed, or allowed to become effective by the OTS that were in effect on the day before the Transfer Date continue in effect and are enforceable by the appropriate successor Federal banking agency until modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law. Section 323(b) of the Act also provides for the transfer on the Transfer Date of OTS property, including books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence relating to such reports, to the respective agencies, that were used by the OTS on the day before the Transfer Date to support OTS functions.

Section 316(c) of the Act further provides for the identification of OTS regulations relating to the supervision of State savings associations to be transferred to the FDIC. On July 6, 2011, the OCC and FDIC published a Joint Notice (Notice) in the **Federal Register** identifying OTS regulations that will be continued and enforced by each agency. In the Notice, the FDIC indicated that it did not intend to continue or enforce existing OTS regulations regarding the Freedom of Information Act or Privacy Act.

II. The Final Rule

On June 21, 2011, the FDIC published for comment an interim rule providing the public with notice that the FDIC would apply the FDIC's existing FOIA and PA regulations, as of the Transfer Date, to all records or other matters transferred from the OTS to the FDIC. The interim rule also included certain technical amendments to the FDIC's existing regulations and substituted the Bureau of Consumer Financial Protection for the OTS as a Federal financial institution supervisory agency, for purposes of § 309.6, to which exempt records could be disclosed.[1]

Although the interim rule became effective for all existing and future FOIA and PA issues involving state savings associations as of the Transfer Date, the interim rule prescribed a 30-day comment period. The comment period ended on August 22, 2011 and no comments were received.

The final rule corrects an erroneous facsimile number contained in § 309.5(b)(1)(ii) of the interim rule.

III. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed in the interim rule, since the FDIC determined that good cause existed to waive the general notice and comment requirements of the APA, the requirement to prepare a final regulatory flexibility analysis, as described at 5 U.S.C. 604 of the RFA does not apply to this final rule.

B. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget (OMB) has determined that the final rule is not a ''major rule'' within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA) (5 U.S.C. 801, *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner and received no comments on the interim rule.

[1] 76 FR 35963 (June 21, 2011).

E. Riegle Community Development and Regulatory Improvement Act

The final rule does not impose any new reporting or disclosure requirements on insured depository institutions under the Riegle Community Development and Regulatory Improvement Act.

List of Subjects in 12 CFR Parts 309 and 310

Banks, banking, Freedom of information, Privacy, Savings associations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation adopts the interim final rule published June 21, 2011, at 76 FR 35963, as final with the following change:

PART 309—DISCLOSURE OF INFORMATION

■ 1. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819 ''Seventh'' and ''Tenth.''

§ 309.5 [Amended]

■ 2. In § 309.5, in paragraph (b)(1)(ii), remove the fax number ''(703) 562–7977: and add in its place the fax number ''(703) 562–2797''

By order of the Board of Directors.

Dated at Washington, DC this 11th day of October 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–26635 Filed 10–13–11; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2011–1106; Special Conditions No. 25–448–SC]

Special Conditions: Boeing Model 767–400ER Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 767–400ER series airplane. These airplanes, as modified by Continental Airlines, will have a novel or unusual design feature associated with seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 6, 2011. We must receive your comments by November 28, 2011.

ADDRESSES: Send comments identified by docket number FAA–2011–1106 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Shelden, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2785; facsimile 425–227–1149.

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

Comments Invited

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

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 3, 2011, Continental Airlines applied for a supplemental type certificate to install inflatable lapbelts for head injury protection on passenger seats on Boeing Model 767–400ER series airplanes (hereafter referred to as ''767–400ER''), similar to Special Condition Numbers 25–431–SC for Boeing Model 787 series airplanes, 25–386–SC for Boeing Model 737 series airplanes, 25–187A–SC for Boeing Model 777 series airplanes, and 25–148–SC for Boeing Model 767–300 series airplanes. These special conditions are to allow installation of inflatable lapbelts for head injury protection on certain seats in Boeing Model 767–400ER series airplanes.

The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive inflatable airbag, but in this case the airbag is integrated into the lapbelt and inflates away from the seated occupant. While inflatable airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14, Code of Federal Regulations (14 CFR) 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head,

or by padding. Traditionally, this has required a setback of 35 inches from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to part 25, specifically § 25.562, a new standard that quantifies required head injury protection was created.

Section 25.562 specifies that each seat type design approved for crew or passenger occupancy during takeoff and landing must successfully complete dynamic tests or be shown to be compliant by rational analysis based on dynamic tests of a similar type seat. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that protection must be provided or the seat be designed so that the head impact does not exceed an HIC of 1000 units. While the test conditions described for HIC are detailed and specific, it is the intent of the requirement that an adequate level of head injury protection be provided for passengers in a severe crash.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lapbelts, the Federal Aviation Administration (FAA) recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the federal aviation regulations. Conversely, inflatable lapbelts in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive, and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages in order to develop standards for this design feature.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

The inflatable lapbelt will rely on electronic sensors for signaling and a stored gas canister for inflation. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of inadvertent deployment, as well as failure to deploy, must be considered in establishing the reliability of the system. Continental Airlines must substantiate that the effects of an inadvertent deployment in flight either would not cause injuries to occupants, or that such deployment(s) meet the requirement of § 25.1309(b). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the inflatable lapbelt should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity radiated fields (HIRF). Existing regulations regarding lightning, § 25.1316, and existing HIRF special conditions for the Boeing Model 767–400ER series aircraft, Special Conditions No. 25–152–SC, are applicable. Finally, the inflatable lapbelt installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the inflatable lapbelt must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the inflatable lapbelt differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the inflatable lapbelt is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the inflatable lapbelt. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable lapbelt useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide continuous protection regardless of severity or number of impacts in a crash event. Therefore, the inflatable lapbelt installation should provide protection, when it is required, by not expending its protection during a less severe impact. Also, it is possible to have several large impact events during the course of a crash, but there is no requirement for the inflatable lapbelt to provide protection for multiple impacts.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are active.

The inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in the case of deploying into the seated, braced occupant.

Another area of concern is the use of seats, so equipped, by children whether lap-held, in approved child safety seats, or occupying the seat directly. Similarly, if the seat is occupied by a pregnant woman, the installation should address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure to deploy due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time, since this corresponds to the maximum time allowed for an exit to be openable (§ 25.809). In actuality, it is unlikely that an exit would be prepared by a flight attendant this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt is expected to deflate much quicker than ten seconds.

The current special conditions for the Boeing Model 777 series airplanes, Special Conditions No. 25–187A–SC, were amended to address flammability of the airbag material. During the development of the inflatable lapbelt, the manufacturer was unable to develop a fabric that would meet the inflation requirements for the bag and the flammability requirements of part I(a)(1)(ii) of Appendix F to part 25. The fabrics that were developed that met the flammability requirement, did not produce acceptable deployment characteristics. However, the manufacturer was able to develop a fabric that meets the less stringent flammability requirements of part I(a)(1)(iv) of Appendix F to part 25 and has acceptable deployment characteristics.

Part I of Appendix F to part 25 specifies the flammability requirements for interior materials and components. There is no reference to inflatable restraint systems in Appendix F, because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on both material types, as well as use, and have been specified in light of the state-of-the-art of materials available to perform a given function. In the absence of a specific reference, the default requirement would be for the type of material used to construct the inflatable restraint, which is a fabric in this case. However, in writing a special condition, the FAA must also consider the use of the material, and whether the default requirement is appropriate. In this case, the specialized function of the inflatable restraint means that highly specialized materials are needed. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable restraints. Since the safety benefit of the inflatable restraint is significant, the flammability standard appropriate for these devices should not screen out suitable materials, thereby effectively eliminating use of inflatable restraints. The FAA will need to establish a balance between the safety benefit of the inflatable restraint, and its flammability performance. At this time, the 2.5-inch per minute horizontal test is considered to provide that balance. As the technology in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

Finally, it should be noted that the special conditions are applicable to the inflatable lapbelt system as installed. These special conditions are not an installation approval. Therefore, while these special conditions relate to each such system installed, the overall installation approval is a separate finding and must consider the combined effects of all such systems installed.

Type Certification Basis

Under the provisions of Title 14 Code of Federal Regulations (14 CFR) 21.101, Continental Airlines must show that the 767–400ER, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A1NM are as follows: Amendments 25–1 through 25–89 with exceptions. The U.S. type certification basis for the Model 767–400ER is established in accordance with 14 CFR 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certification Data Sheet No. A1NM.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the 767–400ER series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the 767–400ER must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The 767–400ER will incorporate the following novel or unusual design feature: Continental Airlines is proposing to install an inflatable lapbelt on certain seats of the 767–400ER series airplanes in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similar to an automotive airbag, except that the airbag is integrated with the lapbelt of the restraint system.

The CFR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for the 767–400ER series airplanes equipped with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the inflatable lapbelt is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the inflatable lapbelt as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and

unanticipated abuse conditions (due to galley loading, passenger baggage, etc.). Airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following special conditions can be characterized as addressing either the safety performance of the system or the system's integrity against inadvertent activation. Because a crash requiring use of the inflatable lapbelts is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Applicability

As discussed above, these special conditions are applicable to the Continental Airlines 767–400ER series airplane. Should Continental Airlines apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A1NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Continental Airlines 767–400ER series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 767–400ER series airplanes modified by Continental Airlines.

1. Seats with Inflatable Lapbelts. It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range of occupants. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active lapbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the inflatable lapbelt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), or other operating and environmental conditions (vibrations, moisture, etc.) likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys and an occupant whose belt is loosely fastened.

6. It must be shown that inadvertent deployment of the inflatable lapbelt, during the most critical part of the flight, will either not cause a hazard to the airplane or its occupants, or it meets the requirement of § 25.1309(b).

7. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

8. The system must be protected from lightning and HIRF. The threats specified in existing regulations regarding lightning, § 25.1316 and existing HIRF special conditions for the Boeing Model 767–400ER series aircraft, Special Condition No. 25–152–SC, are incorporated by reference for the purpose of measuring lightning and HIRF protection.

9. Inflatable lapbelts, once deployed, must not adversely effect the emergency lighting system (*i.e.,* block proximity lights to the extent that the lights no longer meet their intended function).

10. The inflatable lapbelt must function properly after loss of normal airplane electrical power and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight, or it must be demonstrated to reliably operate between inspection intervals. The FAA considers the loss of the airbag system deployment function alone (*i.e.,* independent of the conditional event that requires the airbag system deployment) to be a major failure condition.

14. The inflatable material may not have an average burn rate of greater than 2.5 inches/minute when tested using the horizontal flammability test as defined in 14 CFR part 25, appendix F, part I, paragraph (b)(5).

Issued in Renton, Washington, on October 6, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 2011–26554 Filed 10–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2011–1107; Special Conditions No. 25–447–SC]

Special Conditions: Gulfstream Aerospace LP (GALP) Model G280 Airplane, Limit Engine Torque Loads for Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace LP (GALP) model G280 airplane. This airplane will have a novel or unusual design feature associated with engine torque loads imposed by sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 6, 2011. We must receive your comments by November 28, 2011.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. FAA–2011–1107, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. FAA–2011–1107. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Carl Niedermeyer, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2279; facsimile (425) 227–1149.

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

Comments Invited

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

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

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

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

Background

On March 30, 2006, GALP applied for a type certificate for their new Model G280 airplane. The G280 is an 8- to 10-passenger (19 maximum), twin-engine airplane with a 41,000-foot cruise altitude, maximum operating altitude of 45,000 feet, and a range of approximately 3,400 nautical miles.

Type Certification Basis

Under the provisions of 14 CFR 21.17, GALP must show that the Model G280 airplane meets the applicable provisions of part 25 as amended by Amendments 25–1 through 25–117.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model G280 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model G280 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The GALP Model G280 airplane incorporates a novel or unusual design feature involving engine size and related torque load that affect sudden engine-stoppage conditions.

Discussion

The size, configuration, and failure modes of jet engines have changed considerably from those envisioned by 14 CFR 25.361(b), when the engine-seizure requirement was first adopted. Engines have become larger and are now designed with large bypass fans capable of producing much larger and more complex dynamic loads. Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines is sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards for the GALP Model G280 airplane type design.

Consideration of the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport-category airplanes since 1957. In the past, the design torque loads associated with typical failure scenarios have been estimated by the engine manufacturer and were provided to the airframe manufacturer as limit loads. These limit loads were considered simple and pure torque static loads.

It is evident from service history that the engine-failure events that tend to cause the most severe loads are fan-blade failures, which occur much less frequently than the typical ''limit'' load condition.

The regulatory authorities and industry have developed a standardized requirement in the Aviation Rulemaking Advisory Committee (ARAC) forum.

The technical aspects of this requirement have been agreed upon and have been accepted by the ARAC Loads and Dynamics Harmonization Working Group, and incorporated in EASA CS–25. The proposed special conditions outlined below reflect the ARAC recommendation and CS–25. In addition, the ARAC recommendation includes corresponding advisory material that is considered an acceptable means of compliance to the proposed special conditions outlined below.

To maintain the level of safety envisioned by § 25.361(b), more comprehensive criteria are needed for the new generation of high-bypass engines. These proposed special conditions would distinguish between the more-common engine-failure events and those rare events resulting from structural failures. The more-common events would continue to be treated as static torque limit load conditions. The more-severe events resulting from extreme engine-failure conditions (such as loss of a full fan blade at redline speed), would be treated as full dynamic-load conditions. These would be considered ultimate loads, and include all transient loads associated with the event. An additional safety factor would be applied to the more-critical airframe supporting structure.

Applicability

As discussed above, these special conditions are applicable to the GALP Model G280 airplane. Should GALP apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the GALP Model G280 airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for GALP Model G280 airplane.

In lieu of 14 CFR 25.361(b), the following special conditions are proposed:

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

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

(b) the maximum acceleration of the engine.

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

(a) Sudden APU deceleration due to malfunction or structural failure; and

(b) The maximum acceleration of the APU.

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

(a) The loss of any fan, compressor, or turbine blade; and separately

(b) Where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. The ultimate loads developed from the conditions specified in paragraphs 3(a) and 3(b) of these special conditions are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons, and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

5. Any permanent deformation that results from the conditions specified in paragraph 3 of these special conditions must not prevent continued safe flight and landing.

Issued in Renton, Washington, on October 6, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26557 Filed 10–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM457; Notice No. 25–449–SC]

Special Conditions: Gulfstream Aerospace LP (GALP) Model G280 Airplane Pilot-Compartment View—Hydrophobic Coatings in Lieu of Windshield Wipers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace LP (GALP) Model G280 airplane. This airplane will have a novel or unusual design feature associated with the pilot-compartment view through a hydrophobic windshield coating, in lieu of windshield wipers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Loran Haworth, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1133; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2006, GALP applied for a type certificate for their new Model G280 airplane. The G280 is an 8–10 passenger (19 maximum), twin-engine airplane with a 41,000-foot cruise altitude, a maximum operating altitude of 45,000 feet, and a range of approximately 3,400 nautical miles.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, GALP must show that the Model G280 airplane meets the applicable provisions of part 25 as amended by Amendments 25–1 through 25–117.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model G280 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model G280 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34 and the noise-certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Model G280 will incorporate the following novel or unusual design features:

The GALP Model G280 airplane flight-deck design incorporates a hydrophobic coating to provide adequate pilot-compartment view in the presence of precipitation. Sole reliance on such a coating, without windshield wipers, constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, special conditions are required that provide the level of safety equivalent to that established by the regulations.

Discussion

Section 25.773(b)(1) of 14 CFR requires a means to maintain a clear portion of the windshield for both pilots to have a sufficiently extensive view along the flight path during precipitation conditions. The regulations require this means to maintain such an area during precipitation in heavy rain at speeds up to 1.5 V_{SR1}. Hydrophobic windshield coatings may depend to some degree on airflow to maintain a clear-vision area. The heavy rain and high speed conditions specified in the current rule do not necessarily represent the limiting condition for this new technology. For example, airflow over the windshield, which may be necessary to remove moisture from the windshield, may not be adequate to maintain a sufficiently clear area of the windshield in low-speed flight or during surface operations. Alternatively, airflow over the windshield may be disturbed during such critical times as the approach to land, where the airplane is at a higher-than-normal pitch attitude. In these cases, areas of airflow disturbance or separation on the windshield could cause failure to maintain a clear-vision area on the windshield.

Discussion of Comments

Notice of Proposed Special Conditions no. 25–11–14–SC for the GALP Model G280 airplane was published in the **Federal Register** on May 25, 2011 (76 FR 30294). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the GALP Model G280 airplane. Should GALP apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the GALP Model G280 airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for the GALP Model G280 airplane.

The airplane must have a means to maintain a clear portion of the windshield, during precipitation conditions, enough for both pilots to have a sufficiently extensive view along the ground or flight path in normal taxi and flight attitudes of the airplane. This means must be designed to function, without continuous attention on the part of the crew, in conditions from light misting precipitation to heavy rain, at speeds from fully stopped in still air to 1.5 V_{SR1} with lift and drag devices retracted.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26556 Filed 10–13–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 070726412–1300–02]

RIN 0648–AV88

Research Area Within Gray's Reef National Marine Sanctuary

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is creating a research area within Gray's Reef National Marine Sanctuary (GRNMS, or sanctuary). A research area is a region specifically designed for conducting controlled scientific studies in the absence of certain human activities that could affect the results. NOAA is prohibiting fishing, diving, and stopping a vessel in the research area.

DATES: *Effective Date:* Pursuant to section 304(b) of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1434(b)), the revised designation and regulations shall take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on October 14, 2011. Announcement of the effective date of the final regulations will be published in the **Federal Register.**

ADDRESSES: Copies of the final environmental impact statement (FEIS) described in this rule and the record of decision (ROD) are available upon request to Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411, Attn: Dr. George Sedberry, Superintendent. The FEIS can also be viewed on the Web and downloaded at *http://graysreef.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Resource Protection Coordinator Becky Shortland at (912) 598–2381.

SUPPLEMENTARY INFORMATION: On September 14, 2010, NOAA published a proposed rule to establish a research area within Gray's Reef National Marine Sanctuary and announced the availability of a draft environmental impact statement (DEIS) (75 FR 55692). This final rule establishes the research area; prohibits fishing, diving, and stopping a vessel in the research area; publishes the revised designation

document for the sanctuary; responds to comments that were received regarding the proposed rule and DEIS; and announces the availability of the final environmental impact statement and record of decision.

I. Background

A. Gray's Reef National Marine Sanctuary

NOAA designated GRNMS as the nation's fourth national marine sanctuary in 1981 for the purposes of: Protecting the quality of this unique and fragile ecological community; promoting scientific understanding of this live bottom ecosystem; and enhancing public awareness and wise use of this significant regional resource. GRNMS is located 17.5 miles offshore of Sapelo Island, Georgia, on an area of continental shelf stretching from Cape Hatteras, North Carolina, to Cape Canaveral, Florida (referred to as the South Atlantic Bight). GRNMS protects 22 square miles of open ocean and submerged lands of particularly dense nearshore patches of productive ''live bottom habitat''. ''Live bottom'' is a term used to refer to hard or rocky seafloor that typically supports high numbers of large invertebrates such as sponges, corals and sea squirts. These spineless creatures thrive in rocky areas, as many are able to attach themselves more firmly to the hard substrate, as compared to sandy or muddy ''soft'' bottom habitats. Within the Gray's Reef National Marine Sanctuary there are rocky ledges with sponge and coral live bottom communities, as well as sandy bottom areas that are more typical of the seafloor off the southeastern U.S. coast. The sanctuary is influenced by complex ocean currents and serves as a mixing zone for temperate (colder water) and sub-tropical species. An estimated 200 species of fish, encompassing a wide variety of sizes, forms, and ecological roles, have been recorded at GRNMS. Loggerhead sea turtles, a threatened species, use GRNMS year-round for foraging and resting, and the highly endangered North Atlantic right whale is occasionally seen in Gray's Reef.

The sanctuary contains one of the largest nearshore live-bottom reefs in the southeastern United States. Within the sanctuary, rock outcroppings stand above the shifting sands. The series of rock ledges and sand expanses has produced a complex habitat of burrows, troughs, and overhangs that provide a solid base for the abundant sessile invertebrates to attach and grow. This topography supports an unusual assemblage of temperate and tropical marine flora and fauna. This flourishing ecosystem attracts numerous species of benthic and pelagic fish including mackerel, grouper, red snapper, black sea bass, angelfish, and a host of other fishes. Since GRNMS lies in a transition area between temperate and tropical waters, the composition of reef fish populations changes seasonally.

B. Purpose and Need for Research Area

In 2008, NOAA released the GRNMS Condition Report, a report on the condition of GRNMS providing a summary of the status of resources, pressures on those resources, current conditions and trends, and management responses to the pressures that threaten the integrity of the marine environment. Specifically, the document includes information on water quality, habitat, living resources, and maritime archaeological resources and the human activities that affect them. Overall, the resources protected by GRNMS appear to be in fair condition, as defined in the 2008 GRNMS condition report. Emerging threats to the sanctuary include invasive species, contamination of organisms by waterborne chemicals from human coastal activities, climate change and ever-increasing coastal populations and recreational use of the sanctuary. For a copy of the 2008 GRNMS condition report, please visit *http://sanctuaries.noaa.gov/science/condition/grnms/welcome.html.*

NOAA's regulations for the sanctuary limit fishing gear in the sanctuary to rod and reel (which are used by the vast majority of users in the sanctuary), and handline. Despite these gear restrictions, fishing continues to impact the living marine resources and habitat of the sanctuary. Recreational fishing is the primary fishing activity and occurs throughout the sanctuary but tends to be concentrated in certain areas.

Because fishing is allowed throughout the sanctuary, NOAA has limited options for gaining better management information on the effects it has on fish and invertebrate populations and their habitats. A research area will allow investigations to evaluate possible impacts from fishing—particularly bottom fishing—on the sanctuary's natural resources by providing a zone free of human activities and impacts to habitats or populations that result from those activities. The research area will also allow researchers to more accurately determine the effects of natural events (*e.g.,* hurricanes) and cycles (*e.g.,* droughts) on the sanctuary. The research area could also serve as an important sentinel site to monitor and study impacts of climate change, such as ocean acidification, which can be better determined in the absence of additional human factors such as fishing. Sentinel sites are areas well-suited to ensure sustained observations of environmental change, to track indicators of ecosystem integrity, and to provide early warning services. Currently, the effects of subtle natural variability may be masked by the sometimes overwhelming effect of fishing. The ability to conduct these investigations in a marine environment relatively free of direct human influences is critical to meet the resource protection and scientific research mandates of GRNMS.

The National Marine Sanctuaries Act (NMSA) provides NOAA the authority for comprehensive and coordinated conservation and management of natural resources of a sanctuary. To achieve this, GRNMS requires a research (control) area where human impacts are limited. There are currently no natural live bottom areas in the South Atlantic Bight that have been set aside for scientific use. Because GRNMS is relatively shallow, it affords the opportunity to conduct experiments and make observations using SCUBA in a productive reef habitat that is relatively close to shore. The proximity of the sanctuary to coastal universities and marine research laboratories makes GRNMS a logical natural area that can be used to further the understanding and management of these complex ecosystems. There is scientific agreement that without having an area of naturally occurring live bottom devoted to research, it becomes very difficult to understand: (a) How these reefs function in the life history of many economically valuable species, and (b) the effects of extractive uses on ecosystem productivity. NOAA believes the action provides a balance between user concerns and the research opportunities that are emphasized in the sanctuary's goals and objectives.

C. Research Area Background

The concept of a research (control) area within the sanctuary has been under discussion for many years. The idea was first raised by members of the public in 1999 during the early stages of the GRNMS management plan review process at public scoping meetings. The GRNMS Sanctuary Advisory Council (SAC) set a target to increase the opportunity to distinguish, scientifically, between natural and human-induced change to species populations in the sanctuary (NMSP 2006). As a means to reach this target, the SAC formed a broad-based Research Area Working Group (RAWG) to consider the concept of a research area within the sanctuary.

The RAWG consisted of representatives from research, academia, conservation groups, sport fishing and diving interests, education, commercial fishing, law enforcement and state and federal agency representatives. The RAWG employed a consensus-driven, constituent-based process. A Geographic Information System (GIS) tool was also developed by NOAA to analyze options RAWG members brought forward; this tool is described in more detail in the environmental impact statement supporting this action.

The principal conclusion of the RAWG, which was ultimately adopted by the SAC, was that significant research questions exist at GRNMS that can only be addressed by establishing a research (control) area. The final SAC recommendations to NOAA, presented in 2008, also included the unanimous recommendation that all fishing be prohibited in the research area.

In the decision to recommend prohibition of all fishing in the research area, the RAWG took into consideration new information on the growing knowledge of the linkages between benthic and pelagic natural communities. The RAWG also considered methods used by sport fishermen to fish both coastal pelagic and bottom fish (reef) species at the same time. In addition, downriggers and planers, types of fishing gear that are currently permitted in the sanctuary, allow anglers to fish the entire water column, including near the bottom. These gear types can impact benthic communities and allow catch of bottom fish, a primary marine resource to be studied in the research area. Therefore, allowing any fishing including trolling for pelagic fish species could significantly compromise the integrity and effectiveness of a research area.

Law enforcement officials expressed concern that the enforcement of prohibitions on fishing will be more difficult if diving or stationary vessels were allowed to continue in the research area, due to the difficulty of determining the activities of a boat's occupants from a distance or as officers approach a boat. The SAC also observed that any recreational diving activity in the research area would make law enforcement difficult and could undermine the validity of the research area.

From 2004–2008, the RAWG and SAC also continued to evaluate criteria and boundaries utilizing the GIS tool and incorporating new information as it became available. Ultimately, four boundary scenarios were recommended as viable locations for a research area in GRNMS. These boundary scenarios and several activity restrictions became the focus of public scoping during March and April 2008. After consideration of public comments and deliberations by the RAWG, the sanctuary superintendent received final recommendations from the SAC in January 2009. The action presented in this final rule is the direct result of the RAWG's recommendations that were adopted by the SAC and provided to the GRNMS superintendent, comments received during the spring 2008 public scoping, and public review of the proposal in a proposed rulemaking and draft EIS. Several alternatives to the action are analyzed in the accompanying final environmental impact statement (FEIS).

D. South Atlantic Fishery Management Council

Pursuant to section 304(a)(5) of the National Marine Sanctuaries Act (16 U.S.C. 1434(a)(5); NMSA), NOAA provided the South Atlantic Fishery Management Council (SAFMC or Council) with the opportunity to develop fishing regulations to implement the goals of the research area.

On March 4, 2009, the SAFMC passed a motion to: ''Defer to Gray's Reef NMS for rule-making in terms of the establishment of the Research Area.'' On April 22, 2009, the Council's decision was formally communicated to the GRNMS Superintendent.

II. Revisions to GRNMS Terms of Designation

Section 304(a)(4) of the NMSA requires that the terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities subject to regulation by the Secretary to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified by the same procedures by which the original designation was made. To implement this action, NOAA is modifying the GRNMS terms of designation, which were most recently published in the **Federal Register** on October 12, 2006 (74 FR 60055), to read as follows (new text in bold and deleted text in brackets and italics):

1. No change to Article 1, Designation and Effect.

2. No change to Article 2, Description of the Area.

3. No change to Article 3, Characteristics of the Area.

4. Article 4, Scope of Regulation, Section 1, Activities Subject to Regulation, is amended by:

a. Modifying the 4th bullet of Section 1 to read as follows: ''Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities; [, *by any means except by use of rod and reel, and handline gear;*]''

b. Modifying the 6th bullet of Section 1 as follows: ''Using explosives, or devices that produce electric charges underwater; [and]''

c. Modifying the 7th bullet of Section 1 as follows: ''Moving, removing, injuring, or possessing a historical resource, or attempting to move, remove, injure, or possess a historical resource[.]; **and''**

d. Adding the following at the end of Section 1: **''8. Diving.''**

5. No Change to Article 5, Relation to Other Regulatory Programs

6. No change to Article 6, Alteration of This Designation

The revised terms of designation will read as follows upon effectiveness of this rule:

Revised Designation Document for the Gray's Reef National Marine Sanctuary

Preamble

Under the Authority of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, (the Act), the waters and the submerged lands thereunder at Gray's Reef in the South Atlantic Bight off the coast of Georgia are hereby designated a National Marine Sanctuary for the purposes of: (1) Protecting the quality of this unique and fragile ecological community; (2) promoting scientific understanding of this live bottom ecosystem; and (3) enhancing public awareness and wise use of this significant regional resource.

Article 1. Designation and Effect

The Gray's Reef National Marine Sanctuary was designated on January 16, 1981 (46 FR 7942). The Act authorizes the Secretary of Commerce to issue such regulations as are necessary to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, cultural, archaeological, scientific, educational or aesthetic resources and qualities of a national marine sanctuary. Section 1 of Article 4 of this Designation Document lists activities of the type that are presently being regulated or may need to be regulated in the future, in order to protect sanctuary resources and qualities. Listing in Section 1 does not

mean a type of activity is currently regulated or would be regulated in the future. If a type of activity is not listed, however, it may not be regulated except on an emergency basis, unless section 1 is amended to include the type of activity following the same procedures by which the original designation was made. Nothing in this Designation Document is intended to restrict activities that do not cause an adverse effect on the resources or qualities of the sanctuary or on sanctuary property or that do not pose a threat of harm to users of the sanctuary.

Article 2. Description of the Area

The sanctuary consists of an area of ocean waters and the submerged lands thereunder located 17.5 miles due east of Sapelo Island, Georgia. The exact coordinates are defined by regulation (15 CFR 922.90).

Article 3. Characteristics of the Area

The sanctuary consists of submerged calcareous sandstone rock reefs with contiguous shallow-buried hard layer and soft sedimentary regime which supports rich and diverse marine plants, invertebrates, finfish, turtles, and occasional marine mammals in an otherwise sparsely populated expanse of ocean seabed. The area attracts multiple human uses, including recreational fishing and diving, scientific research, and educational activities.

Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation*

The following activities are subject to regulation under the NMSA. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological or aesthetic resources and qualities of the area. Because an activity is listed here does not mean that such activity is being or would be regulated. If an activity is listed, however, the activity can be regulated, after compliance with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA (16 U.S.C. 1434(a) and (b)).

1. Dredging, drilling into, or otherwise altering the submerged lands of the sanctuary;

2. Within the boundary of the sanctuary, discharging or depositing any material or other matter or constructing, placing, or abandoning any structure, material or other matter; or discharging or depositing any material or other matter outside the boundary of the sanctuary that subsequently enters the sanctuary and injures a sanctuary resource or quality;

3. Vessel operations, including anchoring;

4. Injuring, catching, harvesting, or collecting any marine organism or any part thereof, living or dead, or attempting any of these activities;

5. Possessing fishing gear that is not allowed to be used in the sanctuary;

6. Using explosives, or devices that produce electric charges underwater;

7. Moving, removing, injuring, or possessing a historical resource, or attempting to move, remove, injure, or possess a historical resource; and

8. Diving.

Section 2. *Emergency Regulation*

Where necessary to prevent or minimize the destruction of, loss of, or injury to a sanctuary resource or quality; or to minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in Section 1 of this Article, is subject to immediate temporary regulation, including prohibition.

Article 5. Relation to Other Regulatory Programs

Section 1. *Defense Activities*

The regulation of activities listed in Article 4 shall not prohibit any Department of Defense activity that is essential for national defense or because of emergency. Such activities shall be consistent with the regulations to the maximum extent practical.

Section 2. *Other Programs*

All applicable regulatory programs will remain in effect, and all permits, licenses and other authorizations issued pursuant thereto shall be valid within the sanctuary unless authorizing any activity prohibited by a regulation implementing Article 4.

Article 6. Alteration of This Designation

The terms of designation, as defined under section 304(a) of the Act, may be modified only by the procedures outlined in paragraphs (a) and (b) of section 304 of the Act including public hearings, consultation with interested Federal, State, and local government agencies, and the South Atlantic Fishery Management Council, review by the appropriate congressional committees, and approval by the Secretary of Commerce or designee.

[End of designation document]

III. Summary of Revisions to the Sanctuary Regulations

A. Establishment of a Research Area

This rule establishes a research area within the GRNMS that prohibits fishing, diving, and stopping a vessel within the area. Please refer to the GRNMS Web site and the final environmental impact statement supporting this rulemaking for more information and a map depicting the location of the research area within the GRNMS. This area is referred to as the Southern Option Boundary in the FEIS. The research area, which occupies the southern portion of the GRNMS, is wholly within the boundary of the sanctuary and does not change its overall size. The total area designated as a research area inside GRNMS is 8.27 square miles (see the Appendix for coordinates).

According to boat sighting data from 1999–2007, only 9.2 percent of boats sighted in the sanctuary visited or transited the area of the research area, leading to the conclusion that this area is not as popular with sport fishermen and sport divers as the north-central portion of the sanctuary. NOAA believes the action provides a balance between user concerns and the research opportunities that are emphasized in the sanctuary's goals and objectives. The amendments to the regulations for GRNMS are described at the end of this notice.

B. Activities Prohibited Within the Research Area

The following prohibitions are in addition to the existing prohibitions set out in 922.92, which apply throughout the Sanctuary. In the research area, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted: Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead (there will be a rebuttable presumption that any marine organism or part thereof, living or dead, found in the possession of a person within the research area has been collected from the research area); possessing, carrying, or using any fishing gear or means for fishing unless such gear or means is stowed and not available for immediate use while on board a vessel transiting through the research area without interruption or for valid law enforcement purposes; diving; or stopping a vessel in the research area.

C. Enforcement

The regulations are enforced by NOAA and other authorized agencies (*i.e.,* United States Coast Guard, and Georgia Department of Natural Resources) in a coordinated and comprehensive way. Enforcement actions for a violation will be prosecuted under the appropriate

statutes or regulations governing that violation. The prohibition against catching or harvesting marine organisms includes a rebuttable presumption that any marine organism or part thereof found in the possession of a person within the research area has been collected from the research area.

D. Permitting

A research area in the southern portion of the sanctuary provides researchers a valuable opportunity to discern between human-induced and natural changes in the Gray's Reef area. Researchers are required to obtain permits to conduct activities related to research that are otherwise prohibited by the regulations. The ONMS regulations, including the regulations for the GRNMS, allow NOAA to issue permits to conduct activities that are otherwise prohibited by the regulations (15 CFR part 922 and 922.93). Most permits are issued by the Superintendent of the GRNMS. Requirements for filing permit applications are specified in ONMS regulations and the Office of Management and Budget-approved application guidelines (OMB control number 0648–0141). Criteria for reviewing permit applications are also contained in the ONMS regulations at 15 CFR 922.93. In general, permits may be issued for activities related to scientific research, education, and management.

IV. Responses to Public Comments

During the public comment period, eight (8) written comments were received through the electronic rulemaking portal *http://www.regulations.gov.* Three (3) public hearings were also held to receive comment, but no members of the public attended. The written comments were compiled and grouped by general topics. Substantive comments are summarized below, followed by NOAA's response. Similar comments have been treated as one comment for purposes of response resulting in 15 different comments with responses.

Comment 1: Several commenters expressed support for the establishment of a research area in GRNMS.

Response: Comment noted.

Comment 2: The Southern Option Boundary represents minimal impact to members of the general public who wish to visit and use the sanctuary.

Response: NOAA agrees that the preferred alternative Southern Option Boundary would result in minimal impact to visitors. In addition, all bottom types are included in the Southern Option Boundary and there would be more than adequate ledge and other habitat types outside the boundary for necessary comparisons and to provide areas for activities such as recreational fishing and diving. In fact, the areas outside of the Southern Option Boundary appear to be the preferred fishing and diving locations for users.

Comment 3: The Optimal Scientific Option Boundary would be a better boundary choice for the research area because it includes the existing long-term monitoring site and data buoy. If the existing monitoring equipment were included within the boundaries, valuable scientific analysis could occur immediately without costly delays. If the long-term monitoring site and data buoy cannot be included, discussion of an alternate form of monitoring and data collection should be provided in the FEIS.

Response: NOAA agrees that the Optimal Scientific Option Boundary would offer multiple benefits toward realizing the purpose of a research area as this boundary was designed based solely on scientific research considerations. Although inclusion of the long-term monitoring site and the data buoy was initially preferred inside the boundary of a research area due to the available data sets for both, further consideration by the RAWG and Advisory Council resulted in a different conclusion. Maintaining the status quo of the long-term monitoring site (outside the research area) allows continuation of the baseline of conditions, avoiding the need to establish a new monitoring station outside of the research area. Further, because the data buoy collects oceanographic variables that are basically uniform at the scale of the whole sanctuary, the buoy does not need to be inside the research area. NOAA agrees with that conclusion. In addition, the Optimal Scientific Option Boundary does not satisfy NOAA's selection criteria to minimize user displacement; it would have the highest level of displacement (67 percent). The Optimal Scientific Option Boundary also creates open areas of the sanctuary on all sides resulting in compliance and enforcement complications. Pending proper funding of planned activities in the research area, it might be possible to replicate a portion of the oceanographic data which is being collected presently with the data buoy in the northern portion of the sanctuary. The research area management plan, found in the FEIS associated with this action, describes protocols for monitoring and research.

Comment 4: In choosing the Southern Option Boundary, NOAA has overestimated the socioeconomic costs and underestimated the numerous benefits of the Optimal Scientific Option Boundary that includes the long-term monitoring site and data buoy. Socioeconomic impacts to the sanctuary should be analyzed within the broader scope of fishing expenditures in Georgia as a whole. For instance, 2006 saltwater fishing expenditures in Georgia totaled $119,250,000; therefore, the Optimal Scientific Option Boundary would impact only 0.86% of Georgia fishing expenditures compared to 0.13% for the Southern Option Boundary.

Response: NOAA agrees that from the perspective of total fishing expenditures in Georgia, the potential economic loss from fishing displacement is quite small. NOAA, however, considered the population of users most affected by this action, and thus, analyzed the environmental (economic) consequences using GRNMS fishing expenditures instead of Georgia-wide fishing expenditures. See response to comment #3 above.

Comment 5: I support the Optimal Scientific Option Boundary. Studies have shown that restoration of fish populations in ''no take'' areas actually leads to increased fish catches outside of the protected area due to ''spillover'' effects. This effect could generate positive economic impacts in Georgia that would mitigate losses due to user displacement from establishment of a research area using the Optimal Scientific Option Boundary.

Response: Although the primary goal of the research area is not to increase fish populations for harvest, NOAA agrees that ''spillover'' effects may be a result of no fishing in the proposed research area. NOAA also agrees that this may mitigate some of the economic impacts of the research area, regardless of which boundary option is selected. However, NOAA believes that the benefits of lower displacement and expected compliance and enforcement benefits if the research area is located at a distance from heavily fished areas outweigh the benefits of the Optimal Scientific Option Boundary. Also see responses to comments #3 and #4 above.

Comment 6: A third of the sanctuary is an excessive area to set aside for academic studies.

Response: The primary site selection criterion for a research area was an area that included bottom features representative of the sanctuary as a whole, with a minimum of 20 percent densely-colonized ledge habitat including small, medium and tall ledges. The RAWG also determined that while ledge habitat is the highest priority in terms of research interest, sufficient amounts of the other three

habitat types (flat sand, rippled sand, and sparsely-colonized ledge habitat) are necessary to replicate the diversity of sanctuary habitats in a research area. The size of the Southern Option Boundary is based on the minimum of this criterion. A smaller boundary size for this option would result in insufficient habitat diversity.

Comment 7: The most important use of the sanctuary is recreation, not research. Therefore, recreation opportunities at Gray's Reef should not be restricted in order to further research objectives.

Response: The protection of the natural and cultural resources of sanctuaries is NOAA's primary objective under the NMSA. GRNMS was designated in 1981 as a national marine sanctuary in part for its unique marine ecosystem, which was determined to be of national significance due to its natural resource and ecological qualities, maintenance of ecosystem structure, and biological productivity as well as its recreational and commercial value. NOAA has determined that fully meeting its resource protection mandate requires being able to answer significant questions about the impacts of human use on sanctuary resources, which cannot be done without a control (research) area for scientific studies.

Comment 8: Preserving the reef, which is one of the largest of the unique live bottom reefs in the southeastern U.S., presents greater benefits than protecting fishing operations.

Response: See response to comments #6 and #7 above and #9 below.

Comment 9: NOAA should adopt the proposed rule to establish a research area within the GRNMS and prohibit fishing, diving, and stopping while transiting the area. NOAA should also encourage research to assess the localized effects of removing fishing and other human activities on the size, distribution, abundance, and reproduction of economically important fish and shellfish within and outside the research area.

Response: The purpose of a research area would be to increase the opportunity to discriminate scientifically between natural and human-induced change to species populations in the sanctuary. The research area would also allow researchers to more accurately determine the effects of natural events (*e.g.,* hurricanes) and to study impacts of climate change, including ocean acidification, which can be better determined in the absence of additional factors like fishing and diving.

Comment 10: The sanctuary provides habitat for Atlantic spotted and bottlenose dolphins, the latter of which are designated as depleted under the Marine Mammal Protection Act. The proposed research area also may provide opportunities to advance scientific understanding and management of those dolphins. NOAA should encourage researchers in the GRNMS to record information on bottlenose dolphins that occur in this area and thereby provide a stronger basis for their management and conservation. Such information might include where and when dolphins are sighted, group size, behavior, and collection of tissue samples from dead animals for genetic analysis. Such activities should be coordinated with the National Marine Fisheries Service to ensure that they are permitted appropriately.

Response: NOAA agrees that the proposed research area might be used to collect data on bottlenose dolphin presence/absence, group size and behavior. Very few bottlenose dolphins are seen in GRNMS and the occurrence of a dead animal has never been recorded in the sanctuary. NOAA will work with the Marine Mammal Commission to better understand data collection needs to benefit marine mammal research. Furthermore, activities related to marine mammals would be coordinated with and, as necessary, permitted by the National Marine Fisheries Service.

Comment 11: Support curtailment of human activities that are necessary to carry out studies in the GRNMS proposed research area. Ban all fishing gear of any type in this area.

Response: NOAA agrees that without having an area of the naturally-occurring live bottom devoted to research and devoid of direct human impacts, it is very difficult to scientifically understand how live bottom reefs, including GRNMS, function.

Comment 12: I support keeping all fishing and research out of this area and keep it closed to all boats.

Response: While fishing will be restricted in the research area, the purpose of a research area is to allow research to be conducted within that area. This will result in vessels operating in the research area to support scientific and working divers, and vessels may transit the area without stopping.

Comment 13: NOAA should designate a research site within GRNMS. Habitat needs should be emphasized as the primary criteria and displacement of users as secondary in selecting the site.

Response: NOAA agrees that habitat needs should be the primary site selection criteria for a research area. In fact, the RAWG determined, and recommended to the advisory council early in deliberations, that the primary site selection criterion for a research area was an area that included bottom features representative of the sanctuary as a whole, with a minimum of 20 percent densely-colonized ledge habitat including small, medium and tall ledges. The RAWG also determined, and recommended to the advisory council, that while ledge habitat is the highest priority in terms of research interest, sufficient amounts of the other three habitat types (flat sand, rippled sand, and sparsely-colonized ledge habitat) are necessary to replicate the diversity of sanctuary habitats in a research area.

Comment 14: In order to eliminate or minimize confounding parameters, the research area should prohibit all fishing and diving and consider prohibiting boat traffic (except for emergencies and study access). Eliminating boat traffic other than research vessels would also minimize potential water quality impacts. Attempts should also be made to locate and configure the site so that boaters can reasonably circumvent it.

Response: NOAA's preferred alternatives for human activities include the prohibition of fishing and diving. Throughout the process to develop the concept of a research area and specific boundaries in GRNMS, NOAA sought ways to minimize impacts on users of the sanctuary. Thousands of locations and configurations were considered and refined by consensus criterion down to the four boundary options analyzed in the draft and final environmental impact statement. NOAA considered a ''no entry'' alternative whereby boaters would be prohibited from entering the research area. While this alternative would simplify law enforcement, it could increase fuel and other costs to boaters, and would not offer environmental benefits that outweigh the costs. Therefore, NOAA did not choose this alternative.

Comment 15: The site boundaries should conform to some of the sanctuary boundaries by having some common sides with the sanctuary (to simplify enforcement and minimize the need for boundary marker buoys, which may attract fish and bias the studies).

Response: NOAA agrees that compliance and enforcement would be enhanced if the research area boundaries were common with sanctuary boundaries. In fact, one of the reasons the Southern Option Boundary is preferred is because three sides of the research area will be contiguous with existing boundaries of the sanctuary. GRNMS boundaries have been in place

for 30 years and most boaters in the area would be familiar with the sanctuary and its location, facilitating compliance.

V. Changes From the Proposed Rule

Regulation changes between the proposed and final rules include the following:

- In the regulatory text, NOAA changed the location of the exception to the prohibitions listed under § 922.94 for certain activities related to national defense or for responding to an emergency threatening life, property or the environment. In the proposed rule, the reference for this exception was located under § 922.94. However, NOAA found that the repetition of the same exception for activities related to national defense or for responding to an emergency threatening life, property or the environment in two separate locations in the regulations was redundant and potentially confusing. For this reason, NOAA has decided to combine this exception with a similar exception in § 922.92 for clarity. This change made between the proposed and final rules does not change the intent of the exception to § 922.92, which existed prior to the proposed action, and of the exception to § 922.94, which was presented for public review in the proposed rule.
- NOAA has deleted the term ''or means for fishing'' in the prohibited or regulated activities in the research area in § 922.94(2). The term was initially proposed to ensure that all forms of fishing would be prohibited in the research area; however, after consideration NOAA believes that the term ''fishing gear'' is comprehensive and meets the purpose of the research area. Deleting the term ''or means for fishing'' simplifies the regulation.
- NOAA has updated the coordinates for the boundary of the research area to ensure consistency with the boundaries of the sanctuary, after finding a minute discrepancy between the points describing the corners of the sanctuary and the research area.

VI. Classification

A. National Marine Sanctuaries Act

Section 301(b) of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1434) provides authority for comprehensive and coordinated conservation and management of national marine sanctuaries in coordination with other resource management authorities. Section 304(a)(4) of the NMSA specifies that ''the terms of designation may be modified only by the same procedures by which the original designation is made.'' Because this action revises the GRNMS terms of designation by modifying the list of activities that may be regulated, NOAA is required to comply with section 304 of the NMSA. In addition, section 304(a)(5) of the NMSA requires that NOAA consult with the appropriate fishery management council on any action proposing to regulate fishing. As stated in the preamble above, NOAA has worked with the South Atlantic Fishery Management Council, and State of Georgia on this issue and all necessary requirements have been fulfilled. In accordance with section 304, the appropriate documents are also being submitted to certain Congressional committees.

B. National Environmental Policy Act

In accordance with Section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)), and the provisions of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321–4370(a)), a FEIS has been prepared for this action. The FEIS contains a statement of the purpose and need for the project, description of alternatives including the no action alternative, description of the affected environment, and evaluation and comparison of environmental consequences including cumulative impacts. The preferred alternative, chosen by NOAA as the final action, incorporates the creation of a research area in the Southern Option Boundary, and prohibition of fishing, diving, and stopping a vessel in the research area. Copies of the FEIS are available upon request at the address and Web site listed in the **ADDRESSES** section of this rule.

C. Coastal Management Act

In October 2010, NOAA sent a consistency determination to the State of Georgia as required by regulations implementing the Coastal Zone Management Act (16 U.S.C. 1451–1464; 15 CFR part 930). Under the CZMA, actions undertaken by federal agencies must be consistent, to the maximum extent practicable, with the enforceable policies of a state's federally-approved coastal management program. The consistency determination described the proposed rule and stated that the proposed action was consistent to the maximum extent practicable with the enforceable policies of the Georgia Coastal Management Program. In March 2011, the State of Georgia concurred, subject to the adoption of four minor changes to the proposed action. In summary, the State of Georgia requested the installation of boundary markers around the research area, the assurance of sufficient funding for enforcement and for conducting research in the research area, and a commitment to make research publicly available. After further consultation with the State, NOAA notified the State that the final rule establishing the research area is fully consistent with the enforceable policies of Georgia's Coastal Management Program, and that while the Agency is willing to continue discussing ways to address State concerns, NOAA will proceed with the final rule as originally proposed.

D. Executive Order 12866: Regulatory Impact

Under Executive Order (E.O.) 12866, if the regulations are ''significant'' as defined in section 3(f)(1), (2), (3), or (4) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This final rule has been determined to be not significant within the meaning of E.O. 12866.

E. Executive Order 13132: Federalism Assessment

This action will occur in the Exclusive Economic Zone beyond state jurisdiction. There are no federalism implications as that term is used in E.O. 13132. The changes will not preempt State law, but will simply complement existing State authorities. In keeping with the intent of the Order, NOAA consulted with a number of entities within the region, the State of Georgia, and the South Atlantic Fishery Management Council which participated in development of the research area.

F. Regulatory Flexibility Act

In accordance with the requirements of section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604), NOAA has prepared a final regulatory flexibility analysis (FRFA) that describes the impact that the proposed action, along with other non-preferred alternatives, will have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, a statement of any changes made in the proposed rule as a result of such comments, and a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting

the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. The FRFA is provided below.

Final Regulatory Flexibility Act Analysis

The Small Business Administration has established thresholds on the designation of businesses as ''small entities''. The entities that may be impacted by this rule are fish-harvesting business, sports and recreation businesses, scenic and sightseeing transportation businesses. A fish-harvesting business is considered a ''small'' business if it has annual receipts not in excess of $3.5 million (13 CFR 121.201). Sports and recreation businesses and scenic and sightseeing transportation businesses are considered ''small'' businesses if they have annual receipts not in excess of $6 million (13 CFR 121.201). According to these limits, all the vessels impacted by this rule are considered small entities. All analyses are based on the most recently updated and best available information.

In 2002, a survey of charter fishing boat owners/operators was completed. This survey identified 15 charter fishing boats that utilize GRNMS as one of their fishing locations. It was estimated that their 2001 total gross revenue was $1,029,000 and their total operating expenses were $582,000 with total profit of $447,000. Converting these values to 2008 dollars using the consumer price index results in gross revenue of $1,251,264 total operating expenses of $707,712, and total profit of $543,552. The survey found that approximately 40 percent of their fishing activity took place in GRNMS.

The economic impact of the five alternatives considered for this action, and further described in the FEIS, can be estimated by combining results from the 2002 survey with boat location analysis completed in 2009. The results of this analysis are summarized in Table 1. The five alternatives contain a no action alternative (*i.e.,* no designation of a research area) and four alternatives distinguished by different locations within the sanctuary and by varying sizes. The Southern Option Boundary (preferred) impacts 9 percent of recreational fishing resulting in impacts of $46K to total gross revenue and $20K to total profit. The Optimal Scientific Option Boundary impacts 67 percent of recreational fishing resulting in impacts of $335K to total gross revenue and $146K to total profit. The Minimal User Impact Option Boundary impacts 15 percent of recreational fishing resulting in impacts of $75K to total gross revenue and $32K to total profit. The Compromise Option Boundary impacts 35 percent of recreational fishing resulting in impacts of $175K to total gross revenue and $76K to total profit. The last three alternatives were rejected because they all had more impact on sanctuary activities (mainly recreational fishing) than the preferred alternative, while the preferred alternative had a minimal impact on sanctuary users and still fulfilled the purpose and need for the action.

This analysis assumes that all economic value associated with the areas closed is lost. Any factor that could mitigate or off-set the level of impact is not addressed. The estimated impacts are thought of as ''maximum potential losses'' because impacted businesses may take action to at least mitigate or off-set most losses (*i.e.,* by conducting charter operations somewhere nearby).

Table 1. Estimated Economic Impacts to Recreational Charter Fishing Businesses by Alternative, in 2008 $

Alternative	Percent Impact	Total Impact to Gross Revenue	Total Impact to Profit
No Action	0%	-	-
Southern Boundary Options (preferred)	9%	46,047	20,003
Optimal Scientific Boundary Option	67%	335,339	145,672
Minimal User Impact Boundary Option	15%	75,076	32,613
Compromise Boundary Option	35%	175,177	76,097

No economic impact is expected to result to recreational charter diving businesses because there appear to be none currently operating within the sanctuary. In September 2007, in-person interviews were conducted with all businesses and organizations offering scuba diving trips along the Georgia coast. Four charter scuba operations and one scuba diving club were identified and interviewed. The interviews gathered information that included operating profiles, preferred diving locations and methods, detailed business data (revenue and costs), and general opinions of the current state of scuba diving and spearfishing off the Georgia coast. None of the businesses offer scuba diving trips to GRNMS.

G. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) which has been approved by OMB under control number 0648–0141. The public reporting burden for national marine sanctuary permits is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, three permits are active for research activities within the GRNMS. Even though this final rule may result in a few additional permits applications for scientific research at GRNMS, this rule will not appreciably change the average annual number of respondents or the reporting burden for this information requirement. Therefore, NOAA has determined that the regulations do not necessitate a modification to its information collection approval by the Office of Management and Budget under the Paperwork Reduction Act. Comments on this determination were solicited in the proposed rule. No comments were received.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: September 29, 2011.

David M. Kennedy,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Revise § 922.92 to read as follows:

§ 922.92 Prohibited or otherwise regulated activities—Sanctuary-wide.

(a) Except as specified in paragraphs (b) through (d) of this section and in § 922.94 regarding additional prohibitions in the research area, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

(1) Dredging, drilling into, or otherwise altering in any way the submerged lands of the Sanctuary (including bottom formations).

(2) Constructing any structure other than a navigation aid, or constructing, placing, or abandoning any structure, material, or other matter on the submerged lands of the Sanctuary.

(3) Discharging or depositing any material or other matter except:

(i) Fish or fish parts, bait, or chumming materials;

(ii) Effluent from marine sanitation devices; and

(iii) Vessel cooling water.

(4) Operating a watercraft other than in accordance with the Federal rules and regulations that would apply if there were no Sanctuary.

(5)(i) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead, within the Sanctuary by any means except by use of rod and reel, and handline gear;

(ii) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the Sanctuary has been collected from the Sanctuary.

(6) Using any fishing gear within the Sanctuary except rod and reel, and handline gear, or for law enforcement purposes.

(7) Using underwater any explosives, or devices that produce electric charges underwater.

(8) Breaking, cutting, damaging, taking, or removing any bottom formation.

(9) Moving, removing, damaging, or possessing, or attempting to move, remove, damage, or possess, any Sanctuary historical resource.

(10) Anchoring any vessel in the Sanctuary, except as provided in § 922.92 when responding to an emergency threatening life, property, or the environment.

(11) Possessing or carrying any fishing gear within the Sanctuary except:

(i) Rod and reel, and handline gear;

(ii) Fishing gear other than rod and reel, handline gear, and spearfishing gear, provided that it is stowed on a vessel and not available for immediate use;

(iii) Spearfishing gear provided that it is stowed on a vessel, not available for immediate use, and the vessel is passing through the Sanctuary without interruption; and

(iv) For law enforcement purposes.

(b) All activities currently carried out by the Department of Defense within the Sanctuary are essential for the national defense and, therefore, not subject to the prohibitions in this section and § 922.94. The exemption of additional activities having significant impacts shall be determined in consultation between the Director and the Department of Defense.

(c) The prohibitions in this section and in § 922.94 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to 15 CFR 922.48 and 922.93.

(d) The prohibitions in this section and in § 922.94 do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment.

■ 3. Revise § 922.93(a) to read as follows:

§ 922.93 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.92(a)(1) through (10) and § 922.94 if conducted in accordance within the scope, purpose, manner, terms and conditions of a permit issued under this section and § 922.48.

* * * * *

■ 4. Add § 922.94 to subpart I to read as follows:

§ 922.94 Prohibited or otherwise regulated activities—Research area.

In addition to the prohibitions set out in § 922.92, which apply throughout the Sanctuary, the following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted within the research area described in Appendix A to this subpart.

(a)(1) Injuring, catching, harvesting, or collecting, or attempting to injure, catch, harvest, or collect, any marine organism, or any part thereof, living or dead.

(2) There shall be a rebuttable presumption that any marine organism or part thereof referenced in this paragraph found in the possession of a person within the research area has been collected from the research area.

(b) Using any fishing gear, or possessing, or carrying any fishing gear unless such gear is stowed and not available for immediate use while on board a vessel transiting through the research area without interruption or for valid law enforcement purposes.

(c) Diving.

(d) Stopping a vessel in the research area.

■ 5. Add Appendix A to Subpart I to read as follows:

Appendix A to Subpart I of Part 922—Boundary Coordinates for the Gray's Reef National Marine Sanctuary Research Area

[Coordinates listed in this Appendix are unprojected (Geographic) and based on the North American Datum of 1983.]

The research area boundary is defined by the coordinates provided in Table 1 and the following textual description. The research area boundary extends from Point 1, the southwest corner of the sanctuary, to Point 2 along a straight line following the western boundary of the Sanctuary. It then extends along a straight line from Point 2 to Point 3, which is on the eastern boundary of GRNMS. The boundary then follows the eastern boundary line of the sanctuary southward until it intersects the line of the southern boundary of GRNMS at Point 4, the southeastern corner of the sanctuary. The last straight line is defined by connecting Point 4 and Point 5, along the southern boundary of the GRNMS.

TABLE 1—COORDINATES FOR THE RESEARCH AREA

Point ID	Latitude (north, in degrees)	Longitude (west, in degrees)
1	N 31.362732	W 80.921200
2	N 31.384444	W 80.921200
3	N 31.384444	W 80.828145
4	N 31.362732	W 80.828145
5	N 31.362732	W 80.921200

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BILLING CODE 3510–NK–P

FEDERAL TRADE COMMISSION

16 CFR Part 2

Commission Approval of Divestiture Agreements

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: This final rule clarifies the process whereby the FTC will consider for approval a modification to a divestiture agreement, which agreement the Commission has either previously approved or incorporated by reference into a final order. As described fully below, the final rule delegates to certain senior staff at the Commission the authority, following notice to the Commissioners, to waive formal application to the Commission for approval of certain modifications, and to waive the otherwise required period for public comment; the delegation will streamline the process for approval of ministerial and other minor contract modifications that will not diminish the Commission's order.

DATES: *Effective Date:* This rule shall be effective on November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Daniel P. Ducore, Bureau of Competition, Compliance Division, 600 Pennsylvania Avenue NW., Washington, DC, 20580, (202) 326–2526, *dducore@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Trade Commission has amended § 2.41 of its Rules of Practice, 16 CFR 2.41, which deals with requests for the Commission's approval of divestitures and acquisitions, pursuant to final orders. The Commission has amended the section to add a new paragraph (f)(5) and to modify existing paragraphs (f)(1) and (f)(2). New paragraph (f)(5) codifies and improves the Commission's existing process for reviewing and approving modifications to certain agreements that have been approved by the Commission or incorporated by reference into the Commission's final orders. The modifications to paragraphs (1) and (2) add to the public comment requirements in Rule 2.41(f) applications for approval of agreement modifications under new paragraph (5). The Commission has also amended the title to reflect better the subjects addressed by the rule. These changes are effective November 14, 2011.

The Federal Trade Commission, *inter alia,* enforces Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and, with the Department of Justice, Section 7 of the Clayton Act, 15 U.S.C. 18, to challenge mergers and acquisitions that the Commission has reason to believe would unlawfully lead to a substantial lessening of competition. In some circumstances, the Commission seeks to prevent such mergers through litigation to enjoin the merger. In other circumstances, however, the Commission seeks to prevent the harm either by unwinding the merger entirely (if the merger has already occurred) or, as is much more common, by negotiating a settlement with the parties that requires them to sell off a business or set of assets, with the goal of recreating, to the greatest extent possible, the competition that is, or would be, eliminated through the merger.[1]

Rule 2.41(f) applies specifically to final administrative orders issued by the Commission. With the exception of Federal court actions seeking to enjoin a pending merger, the Commission typically achieves its merger remedies in one of two ways. If the acquirer has been identified during negotiation of the settlement, the order will require divestiture to that acquirer pursuant to the agreement(s) that are attached to and incorporated into the order (known as a divestiture with an ''up-front buyer''). If the order requires the respondent to divest within some deadline after the order is final, it will require the respondent to obtain subsequent approval under Rule 2.41(f) (known as a ''post-order'' divestiture). The criteria used by the Commission to determine whether a divestiture is more appropriately ''up-front'' or ''post-order'' are detailed in *Frequently Asked Questions about Merger Consent Order Provisions,* available on the FTC's Web site at: *http://www.ftc.gov/bc/mergerfaq.shtm;* and *Statement of the Federal Trade Commission's Bureau of Competition on Negotiating Merger Remedies,* available at: *http://www.ftc.gov/bc/mergerfaq.shtm.*

Rule 2.41(f) sets forth the procedure by which respondents must seek the Commission's approval of a divestiture if such approval has not been explicitly incorporated into a Commission order. Briefly, pursuant to the Rule, a respondent must file an application for prior approval of a proposed divestiture.[2] The application, along with relevant supporting material, is placed on the public record for thirty days for the receipt of public comments. Confidential portions of the application and supporting materials are not made public.[3] Only after the Commission has approved an application for prior approval may the respondent consummate the proposed transaction. The burden of proof for any request for approval lies with the respondent.[4]

The Commission's divestiture orders mandate that the required divestiture be made ''only to an acquirer approved by the Commission and only in a manner approved by the Commission.'' That is, the Commission must approve both the acquirer of the divested assets and all agreements relating to the divestiture. Further, once the Commission has approved a divestiture agreement, a respondent who does not perform as required in that agreement fails to divest in the approved manner, and thereby,

[1] Most settlements are reached during the Commission's review of the merger, pursuant to the premerger notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a.

[2] Rule 2.41(f) continues to apply as well to applications for approval of *acquisitions* by a respondent, if the particular order includes a prohibition on acquisitions without the Commission's prior approval.

[3] See Rules 4.9 and 4.10, 16 CFR 4.9, 4.10 for a description of the Commission's public records and what items are exempt from public disclosure.

[4] *See Dr Pepper/Seven-Up Companies, Inc.* v. *F.T.C.,* 991 F.2d 859, 863 (DC Cir. 1993).

fails to comply with the underlying divestiture order.[5]

The Commission has consistently taken the position that it must approve any changes to a divestiture agreement previously approved through an order or in response to an application filed under Rule 2.41. The Commission must review and approve changes to a previously-approved divestiture agreement to ensure that the agreement remains consistent with the order and will continue to achieve its purposes. The Commission's main concern is that post-approval changes to the agreements, although acceptable to both the respondent and the acquirer, may nevertheless diminish the competitive and remedial effectiveness of the order.

Historically, the Commission's divestiture orders required a respondent to divest a specified business or set of assets, which the respondent accomplished soon after the order became final. Because the respondent's obligations under the divestiture agreement were fully performed in a short time frame, there was no need for parties to modify their agreements. In recent years, however, the Commission's orders have frequently included ongoing obligations to supply products or services to the acquirer for some interim period, and at times the parties have agreed to modify the agreements implementing these obligations. Therefore, the need to review changes in divestiture agreements has become more common.

The Commission recognizes, however, that there may be instances in which the parties change their agreements in ways that are purely ministerial, or that are unlikely under any plausible facts to affect achieving the order's remedial purposes. There is currently no procedure for distinguishing such changes from those that more appropriately require the Commission's approval.[6] As detailed further below, the Commission has therefore modified Rule 2.41 to authorize certain staff in the Commission's Bureau of Competition to waive the prior approval requirement—or to shorten, eliminate, extend, or reopen the public comment period—in appropriate circumstances.

II. The Amendment to the Rules

New paragraph (5) of § 2.41(f) confirms the Commission's long-standing position that modifications to divestiture agreements must be approved by the Commission. The new paragraph, accordingly, expressly provides that, before modifying an agreement subject to paragraph § 2.41(f), a respondent must obtain either the Commission's approval of the proposed modification or a waiver of the approval requirement.[7] Item (i) Identifies the types of agreements that are subject to the proposed modification review and approval process and states the approval requirement. Item (ii) allows a waiver of the approval requirement and the public comment period, and item (iii) confirms that a modified agreement remains subject to the Commission's order to the same extent as the original unmodified agreement, and that all modifications shall be considered part of the original agreement when determining compliance with and enforcement of a Commission order.

As described in item (i) of § 2.41(f)(5), agreements subject to the new paragraph are those that accomplish divestitures and related remedial measures required by orders issued by the Commission in connection with an investigation of a proposed or consummated merger, acquisition or similar transaction. These agreements are either incorporated into a final Commission order or approved by the Commission through the process provided in Rule 2.41(f)(i).

Item (i) of the new paragraph states that the respondent shall use the process set forth in Rule 2.41(f)(1)–(4) to submit an application requesting approval of a proposed modification. The process requires a respondent to submit an application to the Commission explaining the proposed modification and describing its necessity and purpose. The respondent should also indicate that all signatories to the agreement have agreed to the proposed modification. The level of detail required in an application for approval of a proposed modification will vary depending on the complexity and significance of the proposed modification, but it should be sufficient to establish that the proposed modification will not interfere with the requirements or purpose of the Commission-ordered remedial measures implemented through the underlying agreement. If an initial application lacks sufficient detail, the Commission may deny approval, or may request further information to enable it to effectively evaluate the proposed modification. Pursuant to the provisions of existing Rule 2.41(f), an application for approval of a proposed modification, except for confidential portions, will be placed on the public record for comment.

Item (ii) of new paragraph (5) delegates to certain Commission officials, including the Bureau of Competition's Assistant Director for Compliance, the authority, for good cause shown, to shorten, eliminate, extend or reopen the public comment period for an application for modification.[8] As with the underlying remedial agreements, modifications subject to proposed paragraph (5) often contain sensitive non-public information, which is accorded confidential treatment by the Commission. *See* Rule 4.10, 16 CFR 4.10. In such cases, there may be little information regarding the proposed modification that can be disclosed publicly, and therefore little benefit in providing a public comment period. Further, there may be cases where prompt action on a modification is necessary to prevent economic harm to the parties or competition. Such circumstances will often provide good cause to shorten or eliminate the public comment period. However, the Commission will be unlikely to take that step in cases where the comment period may provide transparency or where the proposed modification involves an issue of general interest and applicability that can be discussed without disclosing confidential information.

Item (ii) of new paragraph (5) also provides that, in order to expedite the modification process, the designated officials can, for good cause shown, waive the modification approval requirement when a proposed modification is purely ministerial, or is unlikely under any plausible facts to affect achieving the remedial purposes of the order at issue. The information a respondent must provide to show good cause for a waiver of the approval

[5] The Commission thoroughly evaluates the proposed agreement (as well as the proposed acquirer) to determine whether it will achieve the order's purpose and is consistent with both the competition laws and any other provisions in the order. This evaluation includes review of the purchase and sale agreement, all exhibits and appendices to that agreement, and all related and ancillary documents.

[6] The Commission's orders do not exclude particular types of future modifications from the requirement to obtain approval. When a divestiture agreement is approved, it is difficult to predict what types of future modifications the parties may seek or to define a meaningful category of modifications that under no circumstances would implicate the purposes an order. For example, ''immaterial'' may have a specific meaning under contract law that is not fully consistent with the remedial goals of the order. Accordingly, the Commission will assess those proposed changes at the time they are made, and not hypothetically beforehand.

[7] In addition, applications for modifications have been explicitly added to the public comment requirements of § 2.41(f)(1) and (2).

[8] The Commission anticipates that most requests for waivers will be made to the Assistant Director of the Compliance Division, as the Compliance Division is responsible for reviewing and monitoring remedial agreements approved by the Commission and will be primarily responsible for reviewing proposed modifications under this paragraph.

requirement will depend on the nature of the proposed modification. In all cases, a respondent should provide the exact language of the proposed modification and verify that the modification is agreed to by the signatories to the underlying agreement. It is anticipated that respondents will often be able to establish good cause for waiving approval for modifications that are purely ministerial in nature, such as a change in the method of service of required notices, on the basis of this information alone.

A modification that is more substantial—for example, alteration of the payment structure of an agreement—may also qualify for a waiver if the respondent can establish that the proposed change does not affect achievement of the order's remedial purposes. Respondents, however, will generally be required to submit facts beyond the language of the waiver itself to substantiate that there is good cause to grant a waiver for this type of modification. If a respondent believes there is good cause to waive the approval requirement for a particular proposed modification, the respondent should discuss the matter with the Commission's staff and obtain guidance on the type and level of information that should be provided.

The waiver of the modification approval requirement under the foregoing delegation shall not be effective, however, until the file has been transmitted to the Secretary and the Secretary shall have advised the Commission of the decision to waive and given the Commissioners three business days thereafter to object. If, upon the expiration of the three-day period, no Commissioner shall have objected, the Secretary shall enter upon the records of the Commission the waiver in the matter and take such other action as the matter requires.

A respondent may effect a proposed modification covered by proposed paragraph (5) after the respondent has obtained approval for the modification or a waiver of the approval requirement. In either case, staff will request that respondent submit a copy of the amendment to the agreement that contains the modification. Further, as item (iii) of the new paragraph confirms, a Commission order that incorporates the underlying agreement also incorporates all approved modifications to the agreement or modifications for which a waiver of the approval requirement was obtained.

Finally, the Commission has changed the title of Rule 2.41 to better reflect the subject matter included in the Rule. The previous title did not fully describe the main provisions of the rule.

III. Procedural Requirements

A. Administrative Procedure Act

The FTC has determined that implementation of this rule without prior notice and the opportunity for public comment is warranted because this rule is one of agency procedure and practice and therefore is exempt from notice and comment rulemaking requirements of the Administrative Procedure Act at 5 U.S.C. 553(b)(A) and (B).

B. Regulatory Flexibility Act

Because the Commission has determined that it may issue this rule without public comment, the Commission is also not required to publish any initial or final regulatory flexibility analysis under the Regulatory Flexibility Act as part of such action. *See* 5 U.S.C. 601(2).

C. Paperwork Reduction Act of 1995

The rule revisions to part 2 are also not subject to the requirements of the Paperwork Reduction Act, which contains an exemption for information collected during the conduct of administrative proceedings or investigations against specific individuals or entities. 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4(a)(2).

List of Subjects in 16 CFR Part 2

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

Authority and Issuance

For the reasons set forth in the preamble, the FTC is amending Title 16, Chapter I, part 2, as follows.

PART 2—RULES OF PRACTICE FOR NONADJUDICATIVE INVESTIGATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Amend § 2.41 by revising the section heading and paragraphs (f)(1) and (2), and adding paragraph (f)(5), to read as follows:

§ 2.41 General compliance obligations and specific obligations regarding acquisitions and divestitures.

* * * * *

(f)(1) All applications for approval of proposed divestitures, acquisitions, or similar transactions subject to Commission review under outstanding orders (including modifications to previously approved transactions) shall fully describe the terms of the transaction or modification and shall set forth why the transaction or modification merits Commission approval. Such applications will be placed on the public record, together with any additional applicant submissions that the Commission directs be placed on the public record. The Director of the Bureau of Competition is delegated authority to direct such placement.

(2) The Commission will receive public comment on a prior approval application submitted pursuant to paragraphs (f)(1) or (5) of this section for thirty (30) days. During the comment period, any person may file formal written objections or comments with the Secretary of the Commission, and such objections or comments shall be placed on the public record. In appropriate cases, the Commission may shorten, eliminate, extend, or reopen a comment period.

* * * * *

(5)(i) Any application to modify either:

(A) An agreement that has been approved by the Commission pursuant to paragraph (f) of this section, or

(B) An agreement incorporated by reference into a final order of the Commission issued in connection with a merger, acquisition, or similar transaction shall be subject to review and approval in the manner described in paragraphs (f)(1) through (4) of this section, except as provided in paragraph (f)(5)(ii) of this section.

(ii) If the application establishes that the proposed modification is purely ministerial, or unlikely under any plausible facts to affect achieving the remedial purposes of the order at issue, the Commission has delegated to the Director, Deputy Directors, and Assistant Director for Compliance of the Bureau of Competition, without power of redelegation, for good cause shown, the authority.

(A) To waive the approval requirement of paragraph (f)(5)(i) of this section; and

(B) To shorten, eliminate, extend or reopen the comment period pursuant to paragraph (f)(2) of this section.

(iii) Any agreement containing a modification approved, or for which the approval requirement is waived, pursuant to this paragraph (f)(5), shall be subject to any outstanding Commission order to the same extent as was the original agreement.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–26463 Filed 10–13–11; 8:45 am]

BILLING CODE 6750–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in November 2011. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective November 1, 2011.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for November 2011.[1]

The November 2011 interest assumptions under the benefit payments regulation will be 1.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for October 2011, these interest assumptions represent a decrease of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during November 2011, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 217, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*		*	*		*
217	11–1–11	12–1–11	1.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 217, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*		*	*		*
217	11–1–11	12–1–11	1.50	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 11th day of October 2011.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–26657 Filed 10–13–11; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0934]

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 October 30, 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–2011–0934 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0934 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 published a temporary final rule in the **Federal Register** on September 8, 2011, for the original date of this event, which was September 18, 2011. Inclement weather forced the cancellation of the event, the sponsor did not include a make-up date in the original application for approval of marine event, and the Coast Guard did not receive the new application for the make-up date in sufficient time to allow for publication of an NPRM. Any delay encountered in this regulation's effective date by publishing an 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 October 30, 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 regulated area.

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 published a temporary final rule in the **Federal Register** on September 8, 2011, for the original date of this event, which was September 18, 2011. Inclement weather forced the cancellation of the event, the sponsor did not include a make-up date in the original application for approval of marine event, and the Coast Guard did not receive the new application for the make-up date in sufficient time to allow for publication more than 30 days prior to the date scheduled for the event, and delaying the effective date would be contrary to the public interest since immediate action is needed to ensure the safety of the event participants, patrol vessels, and other vessels transiting the event area.

Background and Purpose

On October 30, 2011 the Chesapeake Bay Watermen 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. October 30, 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 October 30, 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 of 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 October 30, 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, 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.

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 October 30, 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 § 100.35T05–0934 to read as follows:

§ 100.35T05–0934 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′0″ N, bounded to the south by a line drawn along latitude 37°06′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 October 30, 2011.

Dated: September 29, 2011.

Mark S. Ogle,

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

[FR Doc. 2011–26644 Filed 10–13–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0901]

Drawbridge Operation Regulations; Neuse River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Neuse River Railroad Bridge, at mile 33.7, over the Neuse River, at New Bern, NC. The deviation restricts the operation of the draw span to facilitate repairs to the main mechanism of the bridge.

DATES: This deviation is effective from 9 a.m. on October 4, 2011, until 6 p.m. October 13, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2011–0901 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–0901 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying 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 Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, telephone (757) 398–6422, e-mail *Bill.H.Brazier@uscg.mil*. If you have questions on reviewing the docket, call Renee V. Wright, Program Manager, Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: Norfolk and Southern Railroad Corporation, who owns and operates this swing bascule bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.824, to facilitate repairs to the main mechanism of the drawbridge.

In the closed position to vessels, the Neuse River Railroad Bridge, at mile 33.7, at New Bern, NC has no available vertical clearance.

Under this temporary deviation, the drawbridge will be closed to vessels requiring an opening of the draw span from 9 a.m. on October 4, 2011 until and including 6 p.m. October 6, 2011 and from 9 a.m. on October 11, 2011 until and including 6 p.m. on October 13, 2011. The drawbridge can open in an emergency. There are no alternate routes for vessels transiting this section of the Neuse River.

The majority of the vessels that transit through this bridge during this time of year are generally recreational with intermittent tug and barge traffic. The Coast Guard has carefully coordinated

the restrictions with commercial and recreational waterway users. The Coast Guard will inform all users of the waterway through our Local and Broadcast Notice to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the draw must return to its original 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: September 26, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, By direction of the Commander, Fifth Coast Guard District.

[FR Doc. 2011–26548 Filed 10–13–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0880]

Drawbridge Operation Regulation; Duwamish West Waterway, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Thirteenth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Spokane Street Swing Bridge across the Duwamish West Waterway, mile 0.3, at Seattle, WA. This deviation mitigates the displacement of approximately 110,000 vehicles that may be affected by the Alaska Way Viaduct Tunnel construction, a major infrastructure improvement project. This temporary deviation benefits public health and safety by permitting more vehicle access across the bridge during peak hours. This deviation allows the bridge to remain closed to waterway traffic during weekday afternoon peak traffic times for a five day period.

DATES: This deviation is effective from 3 p.m. October 24, 2011 through 6 p.m. on October 28, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0880 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0880 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 the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282; e-mail *randall.d.overton@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 Seattle Department of Transportation has requested that the Spokane Street Swing Bridge not open for waterway traffic, with the exception of deep draft vessels, during afternoon peak traffic hours for a five day period. The Spokane Street Swing Bridge crosses the Duwamish West Waterway at mile 0.3. Extremely heavy roadway traffic is anticipated on the low-level Spokane Street Swing Bridge during scheduled major transportation infrastructure improvements. During this construction activity traffic will be diverted to the low-level Spokane Street Swing Bridge from adjoining roadways. In the closed position, the Spokane Street Swing Bridge provides approximately 44 feet of vertical clearance. Waterborne traffic on this stretch of the Duwamish waterway consists of vessels ranging from small pleasure craft to commercial tug and tow. During the entire month of October last year between 3 p.m. and 6 p.m. the Spokane Street Swing Bridge opened a total of ten times; four of the openings for sailboats and six of the openings for commercial waterway traffic. Under normal operation the bridge opens on signal as required by 33 CFR 117.5. The deviation period is from 3 p.m. October 24 through 6 p.m. October 28, 2011. From October 24, 2011 through and including October 28, 2011, the Spokane Street Swing Bridge across the Duwamish West Waterway, mile 0.3, need not open for waterway traffic from 3 p.m. through 6 p.m. daily. Vessels that do not require a bridge opening will be allowed to pass under the bridge during the closure period. During this authorized closure period the bridge will be required to open for deep draft vessels provided 72 hours advance notification is given. Also during this deviation the bridge will be required to open for federal, state, and local government vessels used for public safety and for vessels in distress where a delay would endanger life or property.

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: September 30, 2011.

K.A. Taylor,

Rear Admiral, U. S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 2011–26536 Filed 10–13–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0893]

Drawbridge Operation Regulation; Corson Inlet, Strathmere, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Corson Inlet Bridge (County Route 619), at mile 0.9, across Corson Inlet, in Strathmere, NJ. The deviation is necessary to facilitate the replacement of the steel railing. This deviation restricts operation of the draw span by not allowing openings during the project while the railings on the moveable span portion of the bridge are replaced.

DATES: This deviation is effective from 5 a.m. on October 17, 2011 until 5 p.m. on November 17, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0893 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0893 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 Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone 757–398–6587, e-mail *Terrance.A.Knowles@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 Cape May County Bridge Commission, who owns and operates this bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.714 to facilitate the replacement of the bridge railings.

The Corson Inlet Bridge (CR–619) at mile 0.9, across Corson Inlet in Strathmere, NJ has a vertical clearance in the closed position to vessels of 15 feet above mean high water. Though the span will be closed for the project, the 15 feet of vertical navigation clearance will remain available throughout the project. Furthermore, the 50 feet of horizontal clearance will be reduced to 25 feet temporarily only if/when barges are used beneath the span.

Under this temporary deviation, the Corson Inlet Bridge will be closed to vessels requiring an opening from 5 a.m. on October 17, 2011 until 5 p.m. on November 17, 2011. The drawbridge will not be able to open in the event of an emergency. Vessels that can pass under the bridge without a bridge opening may do so at all times. Vessels have an alternate ocean route to the south through Townsends Inlet.

There were no bridge openings provided in 2010. The Coast Guard has coordinated the restrictions with the Cape May County Bridge Commission/contractor and will inform the other users of the waterways through our Local and Broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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: September 30, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, By direction of the Commander, Fifth Coast Guard District.

[FR Doc. 2011–26524 Filed 10–13–11; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–USCG–0063]

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Alderbrook Spa & Resort annual firework display in the Captain of the Port, Puget Sound area of responsibility during the dates and times noted below. This action is necessary to prevent injury and to protect life and property of the maritime public from the hazards associated with the firework displays. During the enforcement period, entry into, transit through, mooring, or anchoring within this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representative.

DATES: The regulations in 33 CFR 165.1332 for the Alderbrook Spa & Resort Fireworks display will be enforced in Hood Canal, WA from 5 p.m. on November 25, 2011, through 1 a.m. on November 26, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail ENS Anthony P. LaBoy, Sector Puget Sound Waterways Management, Coast Guard; telephone 206–217–6323, *SectorPugetSoundWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone ''Annual Fireworks Displays within the Captain of the Port, Puget Sound Area of Responsibility'' in 33 CFR 165.1332 during the dates and times noted below.

The following safety zone will be enforced from 5 p.m. on November 25, 2011 through 1 a.m. on November 26, 2011:

Event name	Location	Latitude	Longitude	Radius
Alderbrook Resort & Spa	Hood Canal	47°21.033′ N	123°04.1′ W	150 yds.

All vessel operators who desire to enter the safety zone must obtain permission from the Captain of the Port or Designated Representative by contacting the Coast Guard Sector Puget Sound Joint Harbor Operations Center (JHOC) via telephone at (206) 217–6002.

The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1332 and 5 U.S.C. 552(a). In addition to this notice, the Coast Guard will provide the maritime community with extensive advanced notification of the safety zones via the Local Notice to Mariners and marine information broadcasts on the day of the events.

Dated: September 15, 2011.

S.J. Ferguson,

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

[FR Doc. 2011–26601 Filed 10–13–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0929]

RIN 1625–AA87

Security Zone; Potomac River, Georgetown Channel, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone encompassing certain waters of the Potomac River, Georgetown Channel, in Washington, DC, in order to safeguard high-ranking public officials from terrorist acts and incidents. This action is necessary to ensure the safety of persons and property, and prevent terrorist acts or incidents. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective from 6 a.m. until 6 p.m. on October 16, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–

0929 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0929 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 Mr. Ronald L. Houck, at Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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 it is contrary to public interest to delay the effective date of this rule. The Coast Guard is establishing the security zone to protect high-ranking government officials, mitigate potential terrorist acts, and enhance public and maritime safety and security. The Coast Guard was unable to publish a NPRM due to the short time period between event planners notifying the Coast Guard of the event and publication of the security zone. Furthermore, delaying the effective date would be contrary to the security zone's intended objectives of protecting high-ranking government officials, mitigating potential terrorist acts and enhancing public and maritime safety security.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment, therefore, a 30-day notice period is impracticable. Delaying the effective date would be contrary to the security zone's intended objectives of protecting high-ranking government officials, mitigating potential terrorist acts and enhancing public and maritime safety and security.

Background and Purpose

The President is expected to attend the Martin Luther King, Jr. National Memorial dedication ceremony in Washington, DC on October 16, 2011. The ceremony is located along the waterfront in Washington, DC, in close proximity to navigable waterways within the Captain of the Port's Area of Responsibility.

The Coast Guard has given each Coast Guard Captain of the Port the ability to implement comprehensive port security regimes designed to safeguard human life, vessels, and waterfront facilities while still sustaining the flow of commerce. The Captain of the Port Baltimore is establishing this security zone to protect high-ranking government officials, mitigate potential terrorist acts, and enhance public and maritime safety and security in order to safeguard life, property, and the environment on or near the navigable waters.

Discussion of Rule

Through this regulation, the Coast Guard will establish a security zone. The security zone will be in effect from 6 a.m. until 6 p.m. on October 16, 2011. The security zone will include all navigable waters of the Potomac River, Georgetown Channel, within 75 yards from eastern shore measured perpendicularly to the shore between the Theodore Roosevelt Memorial Bridge and the Arlington Memorial Bridge, and within 150 yards from eastern shore measured perpendicularly to the shore from the Arlington Memorial Bridge to the George Mason Memorial Bridge (the most western bridge of the 5-span, Fourteenth Street Bridge Complex), including all waters of the Georgetown Channel Tidal Basin, located in Washington, DC. This location is entirely within the Area of Responsibility of the Captain of the Port Baltimore, as set forth at 33 CFR 3.25–15.

This rule requires that entry into, attempted entry into, or remaining in this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Except for persons or vessels authorized by the Captain of the Port Baltimore, no person or vessel may enter or remain in the regulated area during the enforcement period. All vessels underway within the security zone at the time it is in effect are to depart the zone immediately. To seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the security zone can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard will issue Broadcast Notices to Mariners to further publicize the security zone.

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 security zone restricts vessel traffic from transiting through the affected area, vessels may transit safely around the zone. Furthermore, the effect of this regulation will not be significant due to the limited size and duration that the regulated area will be in effect. In addition, notifications will be made to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or transit through or within the security zone during the enforcement period. The security zone will not have a significant economic impact on a substantial

number of small entities for the following reasons. The security zone is of limited size and duration. Vessel traffic may safely transit around the zone. Before the effective period, maritime advisories will be widely available to the maritime community.

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 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)(g), of the Instruction. This rule involves establishing a temporary security zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0929 to read as follows:

§ 165.T05–0929 Security Zone; Potomac River, Georgetown Channel, Washington, DC.

(a) *Location.* The following area is a security zone: All waters of the Potomac River, Georgetown Channel, within 75 yards from eastern shore measured perpendicularly to the shore between the Theodore Roosevelt Memorial Bridge and the Arlington Memorial Bridge, and within 150 yards from eastern shore measured perpendicularly

to the shore from the Arlington Memorial Bridge to the George Mason Memorial Bridge (the most western bridge of the 5-span, Fourteenth Street Bridge Complex), including all waters of the Georgetown Channel Tidal Basin, located in Washington, DC.

(b) *Definitions.* As used in this section:

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

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the security zone described in paragraph (a) of this section.

(c) *Regulations.* The general security zone regulations found in 33 CFR 165.33 apply to the security zone created by this temporary section, § 165.T05–0929.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this security zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 6 a.m. until 6 p.m. on October 16, 2011.

Dated: September 30, 2011.

Mark P. O'Malley,

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

[FR Doc. 2011–26544 Filed 10–13–11; 8:45 am]

BILLING CODE 9110–04–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–11

[FTR Amendment 2011–05; FTR Case 2011–309; Docket Number 2011–0024, Sequence 1]

RIN 3090–AJ22

Federal Travel Regulation (FTR); Lodging Reimbursement

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR) regarding reimbursement of lodging per diem expenses while on temporary duty travel (TDY). This final rule specifically states GSA's policy in regards to reimbursement for personally-owned residence and personally-owned recreational vehicle expenses while on TDY.

DATES: *Effective Date:* This final rule is effective October 14, 2011.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cheryl D. McClain, Office of Governmentwide Policy, at (202) 208–4334 or e-mail at *cheryl.mcclain@gsa.gov.* Please cite FTR Amendment 2011–05; FTR case 2011–309.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707, the Administrator of General Services is authorized to prescribe necessary regulations to implement laws regarding reimbursement for Federal employees who travel in the performance of official business away from their official stations. The overall implementing authority is the Federal Travel Regulation (FTR), codified in Title 41 of the Code of Federal Regulations (CFR), Chapters 300–304 (41 CFR chapters 300–304).

GSA is amending the FTR by revising section 301–11.12. This section contains language regarding reimbursement to travelers based upon the type of lodging they select while on temporary duty travel (TDY). Specifically, this final rule expressly states GSA's policy that agencies are not authorized to reimburse the lodging portion of per diem to travelers who purchase property, including recreational vehicles and campers, for lodging purposes in conjunction with TDY. In addition, this final rule amends GSA's policy that agencies are not authorized to reimburse the lodging portion of per diem to those who lodge at their personal residences while on TDY.

B. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management or personnel.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates to agency management and personnel.

List of Subjects in 41 CFR Part 301–11

Government employees, travel and transportation expenses.

Dated: September 30, 2011.

Martha Johnson,

Administrator of General Services.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR part 301–11, as set forth below:

PART 301–11—PER DIEM EXPENSES

■ 1. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 2. Revise § 301–11.12 to read as follows:

§ 301–11.12 How does the type of lodging I select affect my reimbursement?

(a) Your agency will reimburse you for different types of lodging as follows:

(1) *Conventional lodgings (hotel/motel, boarding house, etc.).* You will be reimbursed the single occupancy rate.

(2) *Government quarters.* You will be reimbursed, as a lodging expense, the fee or service charge you pay for use of the quarters.

(3) *Lodging with friend(s) or relative(s) (with or without charge).* You may be reimbursed for additional costs your host incurs in accommodating you only if you are able to substantiate the costs and your agency determines them to be reasonable. You will not be reimbursed the cost of comparable conventional lodging in the area or a flat ''token'' amount.

(4) *Nonconventional lodging.* You may be reimbursed the cost of other types of lodging when there are no conventional lodging facilities in the area (*e.g.,* in remote areas) or when conventional facilities are in short supply because of an influx of attendees at a special event (*e.g.,* World's Fair or international sporting event). Such lodging includes college dormitories or similar facilities or rooms not offered commercially but made available to the public by area residents in their homes.

(5) *Recreational vehicle (trailer/camper).* You may be reimbursed for expenses (parking fees, fees for connection, use, and disconnection of utilities, electricity, gas, water and sewage, bath or shower fees, and dumping fees) which may be considered as a lodging cost.

(b) Your agency will not reimburse you for:

(1) *Personally-owned residence.* You will not be reimbursed for any lodging expenses for staying at your personally-owned residence or for any real estate expenses associated with the purchase or sale of a personal residence at the TDY location, except in conjunction with an authorized relocation pursuant to Chapter 302 of this Title.

(2) *Personally-owned Recreational vehicle (trailer/camper).* You will not be reimbursed any expenses associated with the purchase, sale or payment of a recreational vehicle or camper at the TDY location.

[FR Doc. 2011–26576 Filed 10–13–11; 8:45 am]

BILLING CODE 6820–14–P

Proposed Rules

Federal Register
Vol. 76, No. 199
Friday, October 14, 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

Rural Utilities Service

7 CFR Part 1700

RIN 0572–AC23

Substantially Underserved Trust Areas (SUTA)

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to issue regulations in order to provide loans and grants to facilitate the construction, acquisition, or improvement of infrastructure projects in Substantially Underserved Trust Areas (SUTA). The intent is to implement Section 906F of the Rural Electrification Act (7 U.S.C. 960f) by providing the process by which eligible applicants may apply for funding by the agency.

DATES: Comments must be submitted on or before December 13, 2011.

ADDRESSES: Submit comments by either of the following methods:

- *Federal eRulemaking Portal* at *http://www.regulations.gov.* Follow instructions for submitting comments.
- *Postal Mail/Commercial Delivery:* Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250–1522.

Additional information about the Agency and its programs is available on the Internet at *http://www.rurdev.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1510, Room 5135–S, Washington, DC 20250–1590. *Telephone number:* (202) 720–9542, *Facsimile:* (202) 720–1725.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

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

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). RUS provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

Comments on this notice must be received by December 13, 2011.

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.

Comments may be sent to Michele Brooks., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 5159 South Building, Washington, DC 20250–1522.

Title: Substantially Underserved Trust Areas.

Type of Request: Approval of a new collection.

Abstract: The RUS provides loan, loan guarantee and grant programs for rural electric, water and waste, and telecommunications and broadband infrastructure. The SUTA initiative gives the Secretary of Agriculture certain discretionary authorities relating to financial assistance terms and conditions that can enhance the financing possibilities in areas that are underserved by certain RUS electric, water and waste, and telecommunications and broadband programs. The data covered by this collection of information are those materials necessary to allow the agency to determine applicant and community eligibility and an explanation and documentation of the high need for the benefits of the SUTA provisions. Program specific application materials are covered by the information collection package for the specific RUS program being applied for.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Tribes, tribal leaders, tribal members and other stakeholders interested in developing utility infrastructure on trust areas.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20 hours.

Copies of this information collection can be obtained from Michele Brooks,

Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

E-Government Act Compliance

Rural Development is committed to the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible

Catalog of Federal Domestic Assistance

The programs described by this rule are listed in the Catalog of Federal Domestic Assistance Programs under number 10.759, Special Evaluation Assistance for Rural Communities and Households Program (SEARCH); 10.760, Water and Waste Disposal Systems for Rural Communities; 10.761, Technical Assistance and Training Grants; 10.762, Solid Waste Management Grants; 10.763, Emergency Community Water Assistance Grants; 10.770, Water and Waste Disposal Loans and Grants (Section 306C); 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees, 10.855, Distance Learning and Telemedicine Loans and Grants; 10.857, State Bulk Fuel Revolving Fund Grants; 10.859, Assistance to High Energy Cost Rural Communities; 10.861, Public Television Station Digital Transition Grant Program; 10.862, Household Water Well System Grant Program; 10.863, Community Connect Grant Program; 10.864, Grant Program to Establish a Fund for Financing Water and Wastewater Projects; 10.886, Rural Broadband Access Loans and Loan Guarantees.

The Catalog is available on the Internet at *http://www.cfda.gov.*

Executive Order 12372

Most programs covered by this rulemaking are excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372,'' (50 FR 47034). However, the Water and Waste Disposal Loan Program, CFDA number 10.770, is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

National Environmental Policy Act Certification

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

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal, Alaska native, or native Hawaiian governments and sovereign institutions or have tribal implications that preempt tribal law. Prior to development of this rulemaking, the agency held Tribal Consultations at seven (7) USDA regional consultations, conducted sixteen (16) SUTA specific consultations and hosted three (3) internet and toll free teleconference based webinars in order to determine the impact of this rule on Tribal governments, communities, and individuals. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration, the annual SUTA Report to Congress and were used extensively throughout the drafting of this proposed rule.

Background

USDA Rural Development (Rural Development) is a mission area within the U.S. Department of Agriculture comprising the Rural Housing Service, Rural Business/Cooperative Service and Rural Utilities Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants and technical assistance through more than forty programs aimed at creating and improving housing, businesses and infrastructure throughout rural America.

Rural Utilities Service (RUS) loan, loan guarantee and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecom and broadband infrastructure, RUS also plays a big role in improving other measures of quality of life in rural America, including public health and safety, environmental protection, conservation, and cultural and historic preservation.

The 2008 Farm Bill (Pub. L. 110–246, codified at 7 U.S.C. 906f) authorized the Substantially Underserved Trust Area (SUTA) initiative. The SUTA initiative gives the Secretary of Agriculture certain discretionary authorities relating to financial assistance terms and conditions that can enhance the financing possibilities in areas that are underserved by certain RUS electric, water and waste, and telecom and broadband programs. Given the challenges, dynamics, and opportunities in implementing the SUTA initiative, RUS has aimed to foster a process that includes the voices of tribal leaders, tribal community members, Alaska Native Regional and Village Corporations, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands, and other stakeholders.

Preliminary research by RUS identified various reports that provided several insights. In 2007, the United States Census Bureau Facts for Features article (dated 10/29/07) reported that the poverty rate of people who reported being sole race American Indian and Alaska Native (AI/AN) was 27 percent. Additionally, in 2006, the United States Government Accountability Office reported that based on the 2000 decennial census, the telephone subscribership rate for Native American households on tribal lands was substantially below the national level of about 98 percent. Specifically, about 69 percent of Native American households on tribal lands in the lower 48 states and about 87 percent in Alaska Native villages had telephone service. Finally, in 2000, the United States Census Bureau reported that on Native American lands, 11.7 percent of residents lack complete plumbing facilities, compared to 1.2 percent of the general U.S. population.

There are special considerations and challenges in implementing an initiative

on trust lands. Many American Indians, Alaska Natives, Native Hawaiians, and Pacific Islanders have a deep spiritual, cultural, and historical relationship with the land. In certain circumstances, the objectives of economic and infrastructure development can be at odds with spiritual, cultural, historical, and environmental values. Additionally, there are special legal considerations inherent in financing projects in areas where the land itself cannot be used as security.

The SUTA initiative identifies the need and improves the availability of RUS programs to reach trust areas when they are determined by the Secretary of Agriculture (such authority has been delegated to the Administrator of RUS) to be substantially underserved. The RUS programs that are affected by this provision include: Rural Electrification Loans and Guaranteed Loans, and High Cost Energy Grants; Water and Waste Disposal Loans, Guaranteed Loans and Grants; Telecommunications Infrastructure Loans and Guaranteed Loans; Distance Learning and Telemedicine Loans and Grants; and Broadband Loans and Guaranteed Loans.

In addition to its discretionary authority to implement the SUTA provisions, RUS is under a continuing obligation to make annual reports to Congress on (a) The progress of the SUTA initiative, and (b) recommendations for any regulatory or legislative changes that would be appropriate to improve services to substantially underserved trust areas. RUS has submitted three reports to Congress, dated June 18, 2009, and June 21, 2010, and August 23, 2011.

The USDA Office of Native American Programs (since renamed the Office of Tribal Relations, hereinafter OTR) and RUS began exploring a potential SUTA initiative in 2008 after passage of the Farm Bill. RUS in conjunction with OTR interpreted this to include formal USDA Tribal Consultation in working with stakeholders that are federally recognized tribes. Pursuant to this determination and in accordance with President Obama's November 5, 2009, Memorandum on Tribal Consultation, RUS conducted sixteen (16) direct tribal consultations, seven (7) regional consultations, one listening session and three (3) internet and toll free teleconference based webinars on implementation of the SUTA provision with Indian tribes from across the country. Additionally, the agency heard from six Federal agencies at three separate consultations on how best to implement the SUTA provision.

Federal agencies that were consulted include: the Department of the Interior, as the primary Federal agency with direct responsibilities to serve Native American and Pacific Islander stakeholders; the Department of Veterans Affairs, for its clarification of the definition of ''trust land''; the Environmental Protection Agency, because it has information regarding underserved trust areas with environmental challenges; the Department of Energy, because it has an interest in promoting energy development in trust areas; the Department of Commerce and the Federal Communications Commission, because each agency has an interest in telecommunications development in trust areas; the Department of Health and Human Services; and the Office of Management and Budget.

As a result of categorizing and analyzing the comments received at both sets of consultations, RUS was able to identify certain issues that impact both the underserved areas who seek better access to RUS programs, and the federal agencies who have similar yet sometimes competing interests in these areas. This regulation is informed by the insight gained through the consultations, and is designed to complement existing loan, grant, and combination loan and grant programs with the SUTA provisions that authorize the Administrator to apply certain discretionary authorities (2 percent interest and extended repayment terms; waivers of nonduplication restrictions, matching fund requirements, or credit support requirements; and highest funding priority) for the benefit of eligible communities, and the entities that serve them, in underserved Trust areas.

List of Subjects in 7 CFR Part 1700

Authority delegations (Government agencies), Electric power, Freedom of information, Loan programs—communications, Loan programs—energy, Organization and functions (Government agencies), Rural areas, Telecommunications, Broadband loan and grant programs, Water and waste loan and grant program, and the Distance Learning and Telemedicine program.

For reasons set out in the preamble, the agency proposes to amend chapter XVII of title 7 of the Code of Federal Regulations by proposing to amend part 1700 to read as follows:

PART 1700—GENERAL INFORMATION

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.;* 7 CFR 2.7, 2.17 and 2.47.

§§ 1700.59 through 1700.99 [Reserved]

2. Add and reserve §§ 1700.59 through 1700.99 to Subpart C of part 1700.

3. Add subpart D, consisting of §§ 1700.100 to 1700.150, to read as follows:

Subpart D—Substantially Underserved Trust Areas

Sec.

1700.100 Purpose.
1700.101 Definitions.
1700.102 Eligible programs.
1700.103 Eligible communities.
1700.104 Financial feasibility.
1700.105 Determining whether land meets the statutory definition of ''trust land.''
1700.106 Discretionary provisions.
1700.107 Considerations relevant to the exercise of SUTA discretionary provisions.
1700.108 Application requirements.
1700.109 RUS review.
1700.110–1700.150 [Reserved]

Subpart D—Substantially Underserved Trust Areas

§ 1700.100 Purpose.

This subpart establishes policies and procedures for the Rural Utilities Service (RUS) implementation of the Substantially Underserved Trust Areas (SUTA) initiative under section 306F of the Rural Electrification Act of 1936, as amended (7 U.S.C. 906f). The purpose of this rule is to identify and improve the availability of eligible programs in communities in substantially underserved trust areas.

§ 1700.101 Definitions.

Administrator means the Administrator of the Rural Utilities Service, or designee or successor.

Applicant means an entity that is eligible for an eligible program under that program's eligibility criteria.

Borrower means any organization that has an outstanding loan or loan guarantee made by RUS for a program purpose.

Completed application means an application that includes the elements specified by the rules for the applicable eligible program in form and substance satisfactory to RUS.

ConAct means the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 *et seq.*).

Credit support means equity, cash requirements, letters of credit, and other financial commitments provided in support of a loan or loan guarantee.

Eligible community means a community as defined by 7 CFR 1700.103.

Eligible program means a program as defined by 7 CFR 1700.102.

Financial assistance means a grant, combination loan and grant, loan guarantee or loan.

Financial feasibility means the ability of a project or enterprise to meet operating expenses, financial performance metrics, such as debt service coverage requirements and return on investment, and the general ability to repay debt and sustain continued operations at least through the life of the RUS loan or loan guarantee.

Matching fund requirements means the applicant's financial or other required contribution to the project for approved purposes.

Nonduplication generally means a restriction on financing projects for services in a geographic area where reasonably adequate service already exists as defined by the applicable program.

Project means the activity for which financial assistance has been provided.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture, successor to the Rural Electrification Administration.

Substantially underserved trust area means a community in trust land with respect to which the Administrator determines has a high need for the benefits of an eligible program.

Trust land means ''trust land'' as defined in section 3765 of title 38, United States Code as determined by the Administrator under 7 CFR 1700.104.

Underserved means an area or community lacking an adequate level or quality of service in an eligible program, including areas of duplication of service provided by an existing provider where such provider has not provided or will not provide adequate level or quality of service.

§ 1700.102 Eligible programs.

SUTA does not apply to all RUS programs. SUTA only applies to eligible programs. An eligible program means a program administered by RUS and authorized in (a) the RE Act, or (b) paragraphs (1), (2), (14), (22), or (24) of section 306(a) (7 U.S.C. 1926(a)(1), (2), (14), (22), (24)), or sections 306A, 306C, 306D, or 306E of the Con Act (7 U.S.C. 1926a, 1926c, 1926d, 1926e).

§ 1700.103 Eligible communities.

(a) An eligible community is a community that:

(1) Is located on trust land;

(2) May be served by an RUS administered program; and

(3) Is determined by the Administrator as having a high need for benefits of an eligible program.

§ 1700.104 Financial feasibility.

(a) *Financial Feasibility.* The Administrator will only make grants, loans and loan guarantees that RUS finds to be financially feasible and that provide eligible program benefits to substantially underserved trust areas. The financial feasibility of an application will be determined pursuant to normal underwriting practices for a particular eligible program, as supplemented by available SUTA provisions. All income and assets available to and under the control of the Applicant will be considered as part of the Applicant's financial profile.

§ 1700.105 Determining whether land meets the statutory definition of ''trust land.''

The Administrator will use one or more of the following resources in determining whether a particular community is located in trust land:

(a) Official maps of Federal Indian Reservations based on information compiled by the U.S. Department of the Interior, Bureau of Indian Affairs and made available to the public;

(b) Title Status Reports issued by the U.S. Department of the Interior, Bureau of Indian Affairs showing that title to such land is held in trust or is subject to restrictions imposed by the United States;

(c) Trust Asset and Accounting Management System data, maintained by the Department of the Interior, Bureau of Indian Affairs;

(d) Official maps of the Department of Hawaiian Homelands of the State of Hawaii identifying land that has been given the status of Hawaiian home lands under the provisions of section 204 of the Hawaiian Homes Commission Act, 1920;

(e) Official records of the U.S. Department of the Interior, the State of Alaska, or such other documentation of ownership as the Administrator may determine to be satisfactory, showing that title is owned by a Regional Corporation or a Village Corporation as such terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq*);

(f) Evidence that the land is located on Guam, American Samoa or the Commonwealth of the Northern Mariana Islands, and is eligible for use in the Veteran's Administration direct loan program for veterans purchasing or constructing homes on communally-owned land; and

(g) Any other evidence satisfactory to the Administrator to establish that the land is ''trust land'' within the meaning of 38 U.S.C. 3765(1).

§ 1700.106 Discretionary provisions.

(a) To improve the availability of eligible programs in eligible communities determined to have a high need for the benefits of an eligible program, the Administrator retains the discretion, on a case-by-case basis, to:

(1) Make available to qualified applicants financing with an interest rate as low as 2 percent, or extend repayment terms;

(2) Waive non-duplication restrictions, matching fund requirements, and/or credit support requirements from any loan or grant program administered by RUS;

(3) Give the highest funding priority to designated projects in substantially underserved trust areas.

(b) Requests for waivers of nonduplication restrictions, matching fund requirements, or credit support requirements, and requests for highest funding priority will be reviewed on a on a case-by-case basis upon written request of the applicant filed pursuant to 7 CFR 1700.108.

(c) Notwithstanding the requirements in paragraph (b) of this section, the Administrator reserves the right to evaluate any application for an eligible program for use of the discretionary provisions of this subpart without a formal, written request from the applicant.

§ 1700.107 Considerations relevant to the exercise of SUTA discretionary provisions.

(a) In considering a request to make available financing with an interest rate as low as 2 percent, and/or with extended repayment terms, the Administrator will evaluate the effect of and need for such terms on the finding of financial feasibility.

(b) In considering a request for a non-duplication waiver, the Administrator will consider the offerings of all existing service providers to determine whether or not granting the non-duplication waiver is warranted. A waiver of non-duplication restrictions will not be given if the Administrator determines as a matter of financial feasibility that, taking into account all existing service providers, an applicant or RUS borrower would not be able to repay a loan or successfully implement a grant agreement. Requests for waivers of non-

duplication restrictions will be reviewed by taking the following factors into consideration:

(1) The size, extent and demographics of the duplicative area;

(2) The cost of service from existing service providers;

(3) The quality of available service; and

(4) The ability of the existing service provider to serve the eligible service area.

(c) Requests for waivers of matching fund requirements will be evaluated by taking the following factors into consideration:

(1) Whether waivers or reductions in matching or equity requirements would make an otherwise financially infeasible project financially feasible;

(2) Whether permitting a matching requirement to be met with sources not otherwise permitted in an affected program due to regulatory prohibition may be allowed under a separate statutory authority; and

(3) Whether the application could be ranked and scored as if the matching requirements were fully met.

(d) Requests for waivers of credit support requirements will be evaluated taking the following factors into consideration:

(1) The cost and availability of credit support relative to the loan security derived from such support;

(2) The extent to which the requirement is shown to be a barrier to the applicant's participation in the program; and

(3) The alternatives to waiving the requirements.

(e) The Administrator may adapt the manner of assigning highest funding priority to align with the selection methods used for particular programs or funding opportunities.

(1) Eligible programs which use priority point scoring may, in a notice of funds availability or similar notice, assign extra points for SUTA eligible applicants as a means to exercise a discretionary authority under this subpart.

(2) The Administrator may announce a competitive grant opportunity focused exclusively or primarily on trust lands which incorporates one or more discretionary authorities under this subpart into the rules or scoring for the competition.

§ 1700.108 Application requirements.

(a) To receive consideration under this subpart, the applicant must submit to RUS a completed application that includes all of the information required for an application in accordance with the regulations relating to the program for which financial assistance is being sought. In addition, the applicant must notify the RUS contact for the applicable program in writing that it seeks consideration under this subpart and identify the discretionary authorities of this subpart it seeks to have applied to its application. The required written request memorandum or letter must include the following items:

(1) A description of the applicant, documenting eligibility.

(2) A description of the community to be served, documenting eligibility in accordance with 7 CFR 1700.103.

(3) An explanation and documentation of the high need for the benefits of the eligible program, which may include:

(i) Data documenting a lack of service (*i.e.* no service or unserved areas) or inadequate service in the affected community;

(ii) Data documenting significant health risks due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable service.

(iii) Data documenting economic need in the community, which may include:

(A) Per capita income of the residents in the community, as documented by the U.S. Department of Commerce, Bureau of Economic Analysis;

(B) Local area unemployment and not-employed statistics in the community, as documented by the U.S. Department of Labor, Bureau of Labor Statistics and/or the U.S. Department of the Interior, Bureau of Indian Affairs;

(C) Supplemental Nutrition Assistance Program participation and benefit levels in the community, as documented by the U.S. Department of Agriculture, Economic Research Service;

(D) National School Lunch Program participation and benefit levels in the community, as documented by the U.S. Department of Agriculture, Food and Nutrition Service;

(E) Temporary Assistance for Needy Families Program participation and benefit levels in the community, as documented by the U.S. Department of Health and Human Services, Administration for Children and Families;

(F) Lifeline Assistance and Link-Up America Program participation and benefit levels in the community, as documented by the Federal Communications Commission and the Universal Service Administrative Company;

(G) Examples of economic opportunities which have been or may be lost without improved service.

(H) Data maintained and supplied by Indian tribes or other tribal or jurisdictional entities on ''trust land'' to the Department of Interior, the Department of Health and Human Services and the Department of Housing and Urban Development that illustrates a high need for the benefits of an eligible program.

(4) The impact of the specific authorities sought under this subpart.

(b) The applicant must provide any additional information RUS may consider relevant to the application which is necessary to adequately evaluate the application under this subpart.

(c) RUS may also request modifications or changes, including changes in the amount of funds requested, in any proposal described in an application submitted under this subpart.

(d) The applicant must submit a completed application within the application window and guidelines for an eligible program.

§ 1700.109 RUS review.

(a) RUS will review the application to determine whether the applicant is eligible to receive consideration under this subpart and whether the application is timely, complete, and responsive to the requirements set forth in 7 CFR 1700.107.

(b) If the Administrator determines that the application is eligible to receive consideration under this subpart and one or more SUTA requests are granted, the applicant will be so notified.

(c) If RUS determines that the application is not eligible to receive further consideration under this subpart, RUS will so notify the applicant. The applicant may withdraw its application or request that RUS treat its application as an ordinary application for review, feasibility analysis and service area verification by RUS consistent with the regulations and guidelines normally applicable to the relevant program.

§§ 1700.110–1700.150 [Reserved]

Dated: September 8, 2011.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2011–26133 Filed 10–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2011–1108; Notice No. 25–11–16–SC]

Special Conditions: Learjet Inc., Model LJ–200–1A10 Airplane, Pilot-Compartment View Through Hydrophobic Windshield Coatings In Lieu of Windshield Wipers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Learjet Model LJ–200–1A10 airplane. This airplane will have a novel or unusual design feature associated with hydrophobic windshield coatings in lieu of windshield wipers. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before November 28, 2011.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, *Attn:* Rules Docket (ANM–113), Docket No. FAA–2011–1108, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. FAA–2011–1108. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Paul Bernado, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356; telephone (425) 227–1209; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On January 11, 2008, Learjet Inc. applied for a type certificate for a new Model LJ–200–1A10 airplane. This airplane is 68 feet long with a 65-foot wing span and accommodates up to 10 passengers. The LJ–200–1A10 airplane uses a hydrophobic windshield coating, in lieu of windshield wipers, for an unobstructed outside view from the pilot compartment.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Learjet Inc. must show that the Model LJ–200–1A10 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–123.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model LJ–200–1A10 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model LJ–200–1A10 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Learjet Model LJ–200–1A10 airplane will incorporate the following novel or unusual design features:

The Model LJ–200–1A10 airplane flight deck design incorporates a hydrophobic windshield coating to provide, during precipitation, an adequate outside view from the pilot compartment. Sole reliance on such a coating, without windshield wipers, constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, a special condition is required to provide a level of safety equivalent to that established by the regulations.

Discussion

14 CFR 25.773(b)(1) requires a means to maintain a clear portion of the windshield for both pilots to have a sufficiently extensive view along the flight path during precipitation conditions. The regulations require this means to maintain such an area during heavy-rain precipitation at airplane speeds up to 1.5 V_{SR1}. Hydrophobic windshield coatings may depend to some degree on airflow to maintain a clear-vision area. The heavy rain and high speed conditions specified in the current rule do not necessarily represent the limiting condition for this new technology. For example, airflow over the windshield, which may be necessary to remove moisture from the windshield, may not be adequate to maintain a sufficiently clear area of the windshield in low-speed flight or during surface operations. Alternatively, airflow over the windshield may be disturbed during such critical times as the approach to land, where the airplane is at a higher-than-normal pitch attitude. In these cases, areas of airflow disturbance or separation on the windshield could cause failure to maintain a clear-vision area on the windshield.

Applicability

As discussed above, these special conditions are applicable to the Model LJ–200–1A10 airplane. Should Learjet Inc. apply at a later date for a change to the type certificate to include other type designs incorporating the same novel or unusual design feature, the special

conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Model LJ–200–1A10 airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type-certification basis for Learjet Inc. Model LJ–200–1A10 airplanes.

The airplane must have a means to maintain a clear portion of the windshield, during precipitation conditions, enough for both pilots to have a sufficiently extensive view along the ground or flight path in normal taxi and flight attitudes of the airplane. This means must be designed to function, without continuous attention on the part of the crew, in conditions from light misting precipitation to heavy rain, at speeds from fully stopped in still air, to 1.5 V_{SR1} with lift and drag devices retracted.

Issued in Renton, Washington, on October 6, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26555 Filed 10–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2011–0007; Notice No. 121]

RIN 1513–AB82

Proposed Establishment of the Wisconsin Ledge Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the approximately 3,800 square-mile ''Wisconsin Ledge'' viticultural area in northeast Wisconsin. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: TTB must receive your comments on or before December 13, 2011.

ADDRESSES: Please send your comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2011–0007 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments TTB receives about this proposal at *http://www.regulations.gov* within Docket No. TTB–2011–0007. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 121. You also may view copies of this notice, all related petitions, maps, or other supporting materials, and any comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Elisabeth C. Kann, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20220; phone 202–453–1039, ext. 002.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed

viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;

- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Wisconsin Ledge Petition

TTB received a petition from Steven J. DeBaker of Trout Springs Winery in Green Leaf, Wisconsin, to establish the ''Wisconsin Ledge'' American viticultural area. The proposed viticultural area contains approximately 3,800 square miles, with approximately 320 acres of vineyards in at least 14 commercially-producing vineyards and wineries, and an additional 70 acres projected to be planted within the next two years. A map that was submitted with the petition shows that the commercial vineyards and wineries are geographically disbursed throughout the proposed viticultural area. The proposed Wisconsin Ledge viticultural area lies in Door, Kewaunee, Manitowoc, Sheboygan, Ozaukee, Washington, Dodge, Fond du Lac, Calumet, Outagamie, and Brown Counties of northeast Wisconsin and does not overlap, or otherwise involve, any existing or proposed viticultural area.

The proposed Wisconsin Ledge viticultural area is largely surrounded by water, including Lake Winnebago, the Fox River, Green Bay, and Lake Michigan. The distinguishing features of the proposed area are its geology, geography, climate, hydrology, and soils. According to the petition, the region is heavily affected by the lasting effects of ancient glacial activity and the moderating marine influence of the surrounding bodies of water.

Name Evidence

As stated in the petition, the ''Wisconsin Ledge'' name combines the state name of ''Wisconsin'' with ''Ledge,'' the geographical name commonly used by Wisconsin residents to refer to the region.

The petition explains that the proposed Wisconsin Ledge viticultural area is located in the northern portion of the Niagara Cuesta landform, which is the easterly sloping plateau-like surface of the western edge of the bowl formed by the Niagara Escarpment. As described in the preamble to T.D. TTB–33, which established the ''Niagara Escarpment'' viticultural area in Niagara County, New York (published in the **Federal Register** at 70 FR 53300 on September 8, 2005), the Niagara Escarpment is ''a limestone ridge that runs for more than 650 miles through the Great Lakes region [and] forms a horseshoe that begins near Rochester, New York, and continues west through southern Ontario, Canada, Lake Huron, the upper peninsula of Michigan, and terminates in eastern Wisconsin.'' The petition states that ''the Ledge'' is the name generally used to refer to the specific region in which the proposed Wisconsin Ledge viticultural area is located, which is in the northeastern part of Wisconsin bordering Lake Michigan and Green Bay.

The Ledge region is widely referenced in local newspaper reports, some of which are exhibits to the petition. For example, one report entitled ''The Ledge'' details the discoveries of skeletons, pottery, and cooking utensils ''on the ledge'' during local explorations (''The Ledge,'' Fond du Lac Daily Reporter, Feb. 23, 1907). Another report describes horticultural rare blooms and ancient calendars found along ''the ledge'' landscape (''Ledge discoveries cloud 151 Bypass options,'' Fond du Lac Reporter, April 26, 2009). A third report discusses the ''limestone backbone of the Niagara Escarpment we fondly call the Ledge'' (''We are citizens of the Earth,'' Fond du Lac Reporter, April 19, 2009). As described in that report, local residents planned to band together and ''tramp the ancient Ledge'' to view the effigy mounds and petroform markers left behind long ago by Native Americans.

The petition further notes that ''the Ledge'' is part of the name of many local businesses within the proposed viticultural area, including LedgeStone Vineyards, Top of the Ledge Campground, and Pheasants on the Ledge. In addition, among other name evidence cited in the petition, ''the Ledge'' is referenced in local real estate listings to describe the location of area properties, it is identified in a fact sheet provided by the Niagara Escarpment Resource Network that describes the Ledge portion of the Niagara Escarpment, and it is described in the Comprehensive Conservation Plan for the Horicon and Fox River National Wildlife Refuges.

Finally, the petition adds that Horicon Ledge Park, Ledge View County Park, and Ledge View Nature Center, all of which are county parks or nature centers located within the proposed viticultural area, include ''ledge'' in their names.

Boundary Evidence

The petition states that the geographical area encompassing the proposed Wisconsin Ledge viticultural area is an upland area between 7 and 20 miles wide at its northern end on the Door Peninsula and 25 to 50 miles wide to the south, near Port Washington. In total, the Ledge landform is 172 miles long north-to-south, and 50 miles wide east-to-west, and it is the primary basis for the proposed boundary line. The proposed Wisconsin Ledge viticultural area is generally triangular-shaped, with the west leg of the triangle primarily bounded by Lake Winnebago, the Fox River, and Green Bay, and the east leg of the triangle bounded by Lake Michigan. The base of the triangle follows various state and local roads.

According to the USGS maps and the proposed boundary description submitted with the petition, the proposed boundary line begins at the northernmost tip of the Door Peninsula, and it then continues southward along the Lake Michigan shorelines of Kewaunee, Manitowoc, and Sheboygan Counties, to a point east of Cedarburg in Ozaukee County. The boundary line then turns inland and westward away from the Lake Michigan shoreline, according to the USGS maps.

The petition explains that the southern portion of the boundary line uses state and local roads that follow terrain changes. The proposed boundary line extends through Ozaukee and Washington Counties, to a point north of Clyman Junction in Dodge County. The landscape within the proposed area contrasts with the areas to the south of the boundary line, toward Milwaukee and northern Illinois, where elevations decline to a more flat, discontinuous, and dissected topography. The area to the south of the proposed Wisconsin Ledge viticultural area has been described as generally flatter, more urbanized, densely populated, and lacking viticultural potential (''The Physical Geography of Wisconsin,'' Lawrence Martin, University of Wisconsin Press, 1965, page 281).

The western portion of the proposed boundary line extends north-northeast into Fond du Lac County, eventually meeting the southern shoreline of Lake Winnebago. The proposed boundary line then proceeds north-northeast along Lake Winnebago's eastern shoreline to a road that then connects the boundary with the Fox River. The boundary then follows the river, which flows north-northeast, to Green Bay. The proposed boundary line then follows the eastern shoreline of Green Bay north to the Porte de Morts Passage and the starting

point on the Door Peninsula. The USGS maps show a combination of large bodies of water and rural areas immediately to the west of the proposed Wisconsin Ledge viticultural area. According to the USGS maps, the Ledge landform slopes eastward within the proposed viticultural area and has decreasing elevations towards the Lake Michigan shoreline.

Distinguishing Features

According to the petition, the distinguishing features of the proposed Wisconsin Ledge viticultural area are its geology, geography, climate, hydrology, and soils. Given that the proposed viticultural area is surrounded by water to the east, north, and northwest, TTB notes that the sections below only contrast the distinguishing features of the proposed viticultural area to the surrounding areas to the south, southwest, and west.

Geology

The petition states that the proposed Wisconsin Ledge viticultural area is a geomorphologic land mass that formed over 420 million years ago. The area was shaped by repeated glaciations, including a 2,000-meter thick ice sheet and climatic erosion that altered the landform and brought in igneous and metamorphic rocks from other places (''The Physical Geography of Wisconsin,'' *supra,* at page 248).

The petition explains that, in the time between the Jurassic Era and today, erosion created much of the Ledge region landscape. During the Paleozoic Era, the edges of rock layers (Michigan Basin bowls) were leveled off and exposed. The thin outer edges of the hard, resistant formations eventually wore away, leaving high cliffs and escarpments, according to the petition.

The petition further explains that the glacial ice sheet left deposits of unsorted till (finely ground particles), or boulder clay, and stratified gravel, sand, and clay throughout the region (''Wisconsin Geological and Natural History Survey Map,'' ''General Soils of Wisconsin,'' F. D. Hale, 1973, Figure 8a). The glacial deposition of till and rock fragments created massive moraines that rise up to 20 meters above the surrounding landscape. As the glaciers slowly receded, limestone and till were deposited on the surface to form till plains, according to the petition. The petition states that the resulting broad sloping cuesta is viticulturally beneficial because the glacial till and well-drained strata are well-suited for grape-growing, especially when combined with the light breezes and moderated climate due to the surrounding bodies of water.

South of the proposed Wisconsin Ledge viticultural area are the Southeast Glacial Plains (''Ecological Landscapes of Wisconsin-Southeast Glacial Plains Landscape,'' Wisconsin Department of Natural Resources Web site, *http://dnr.wi.gov/landscapes/,* January 10, 2009). The petition states that, although the southeast plains area received glacial deposits, its topography is more discontinuous and its soils are more fertile than those of the Wisconsin Ledge region because it is covered with silt-loam loess cap.

The USGS maps submitted with the petition show that the lowlands around the Rock River, Lake Winnebago, and Green Bay are to the west of the proposed Wisconsin Ledge viticultural area. The floor of the lowlands is composed of the back slope of Galena-Black River limestone. The limestone is mainly buried beneath glacial drift, but it is evident in some surface areas near quarries. The area to the west of the proposed Wisconsin Ledge viticultural area is generally flat and includes Green Bay, several lakes, and many small ponds and streams, according to the USGS maps.

Further west of the Ledge region and the lowlands, lakes, and Green Bay are the Magnesian and Black River Cuestas (''The Physical Geography of Wisconsin,'' *supra,* at page 214). These cuestas are a part of the driftless area of southwest Wisconsin, which escaped the most recent glaciations and residual drift (''Dip Slope, West Shore of Green Bay,'' site map, ''Geological Features of Wisconsin-Niagara Escarpment,'' Steven Dutch, University of Wisconsin Green Bay, 1999). The petition notes that the lack of glacial activity to the west contrasts with the geological history to the east in the Ledge region.

Geography

The petition states that the proposed Wisconsin Ledge viticultural area has a gently rolling landscape of drifted, mantled plains broken by areas of steep slope. The upland elevations mostly contain dolomitic limestone and layers of glacial till, which are beneficial for grape-growing, according to the petition. In addition, the higher elevations of the Ledge region prevent other sediments from the lower north, south, and west elevations from spreading to the upland area. The Niagara Cuesta, which includes the Ledge region, ends at Lake Winnebago, Green Bay, and the Fox River, which generally form the western portion of the boundary line of the proposed viticultural area. To the west is the lower Magnesian Cuesta, which has flat and swampy lowland features, according to the petition.

The USGS maps submitted with the petition show that elevations vary by approximately 600 feet within the proposed Wisconsin Ledge viticultural area. TTB notes that the lowest elevations, at about 580 feet, are along the shorelines of Green Bay, which forms much of the western portion of the proposed boundary line, and Lake Michigan, which forms all of the northern and eastern portions of the proposed boundary line. The highest elevations, at approximately 1,060 feet, are located in the southwest interior part of the proposed Wisconsin Ledge viticultural area, near Herman Center in Dodge County, according to USGS maps.

The petition states that the upland part of the Niagara Cuesta landform, which is a geological mass of thick, hard, continuous limestone bedrock, extends from the northern tip of Door County southward toward the state line. As noted above, the proposed Wisconsin Ledge viticultural area is in the northern, higher elevation part of the Niagara Cuesta, and the proposed viticultural area includes most of the Wisconsin portion of the Niagara Escarpment ridgeline. The Niagara Escarpment crest, at 1,060 feet in elevation, distinguishes the Ledge region, the petition explains. To the south of the proposed viticultural area, the Niagara Escarpment decreases in elevation so that it is no longer a conspicuous topographical feature near Waukesha and Oconomowoc.

The petition adds that the broad sloping portion of the Niagara Cuesta that is within the proposed viticultural area is the portion that is best suited for viticulture, largely because of the glacial till covering in the area. According to the petition, the land in the surrounding regions does not contain the dolomitic limestone and thin layers of glacial till that are found in the proposed Wisconsin Ledge viticultural area due to the decreased glaciations and differing geological history in the lower elevation regions to the west and south.

The petition further explains that the topography changes significantly at Cedarburg, which is to the south of the proposed Wisconsin Ledge viticultural area. From that point, the landscape slowly declines in elevation to a near-flat, dissected topography that includes urban areas. The petition also states that the southwestern portion of the proposed boundary line separates the proposed Wisconsin Ledge viticultural area from the relatively flat lowlands of the Rock River, Lake Winnebago, and the Green Bay area to the west of the

proposed Wisconsin Ledge viticultural area.

Climate

According to the petition, the proposed Wisconsin Ledge viticultural area has a significant marine influence, which results in moderated climatic conditions that are conducive to viticulture. The marine influence from Lake Michigan, Lake Winnebago, and Green Bay, along with the elevated ledge landform, creates a growing season that is generally longer and warmer than in areas outside of the proposed viticultural area, the petition explains.

As described in the petition, the large bodies of water that surround much of the proposed Wisconsin Ledge viticultural area serve as heat storage tanks that moderate the near-shore land climates (''Confront Climate Change in the Great Lakes Region,'' a consensus opinion by the Union of Concerned Scientists–The Ecological Society of America). The petition further explains that the waters of the lakes and Green Bay warm and cool more slowly with the changing seasons than the surrounding land, moderating the summer mean maximum and winter mean minimum temperatures in the proposed Wisconsin Ledge viticultural area. The petition notes that climatic conditions to the west of the proposed Wisconsin Ledge viticultural area are not temperature-moderated by the warm winds from Lake Michigan, Lake Winnebago, and Green Bay because the wind speeds west of the Ledge region drop significantly further inland to the west of Lake Winnebago and Green Bay.

The petition also states that the slow seasonal changes in water temperatures surrounding the Ledge region reduce the chance for late spring frosts or early fall freezes. In addition, according to the petition, the slope and elevation changes of the Ledge create an air circulation movement pattern that reduces frost damage occurrences, mildew, and other humidity-related grape-growing problems. By contrast, to the south of the Ledge area, cold air masses pool on the flat, low terrain and are unable to drain eastward into Lake Michigan, and the areas to the west of the proposed viticultural area lack the elevational differences that are necessary for climate migration, according to the petition.

The table below shows temperature, growing degree day [1] (GDD), and growing season information for locations within the proposed Wisconsin Ledge viticultural area and in other parts of Wisconsin (based on a data provided by the State of Wisconsin Climatology Office, 1971–2000).

Weather stations	Average annual temperature	September GDD	Spring start date average-growing season	Fall end date average-growing season	Annual average number of days-growing season
Locations Within Proposed Wisconsin Ledge Viticultural Area					
Sturgeon Bay (north—Lake Michigan shore).	43.6	306	May 10	October 8	150
Kewaunkee (central—Lake Michigan shore).	44.1	294	May 3	October 8	159
Manitowoc (south—inland)	45.4	334	May 5	October 9	161
Sheboygan (south—Lake Michigan shore).	47.1	391	April 23	October 19	184
Averages	45.05	331	May 3	October 11	164
Locations Outside Proposed Wisconsin Ledge Viticultural Area					
Lakewood (northeast WI)	41.7	215	May 29	September 20	140
Rosholt (central WI)	41.5	246	May 21	September 22	126
Marshfield (central WI)	42.8	289	May 13	September 25	138
Baraboo (south central WI)	43.4	287	May 19	September 23	128
Burlington (southeast corner of WI).	45.8	348	May 10	September 20	150
Averages	43.04	277	May 18	September 22	136

As shown in the table, the climate in the proposed Wisconsin Ledge viticultural area provides an average annual temperature that is only about 2 degrees Fahrenheit higher than the other listed locations in the State, but the temperatures in the proposed viticultural area are significantly warmer than the surrounding areas in September, with an average of 54 GDD units more than the locations outside of the proposed viticultural area during the month.

The petition explains that the cumulative effect of the moderated climate and warm September temperatures in the proposed viticultural area creates an average grape growing season that is longer than in other parts of Wisconsin. The petition states that the data in the above table illustrates this point, with an average growing season in the proposed viticultural area of 164 days that on average runs from May 3 to October 11 annually, whereas in the rest of Wisconsin, the growing season averages only 136 days, running on average from May 18 to September 22 annually. As a result, according to the petition, the growing season continues in the proposed Wisconsin Ledge viticultural area for an average of three weeks longer than in other areas, resulting in additional hang time for grapes to reach maturity prior to harvest.

Hydrology

The proposed Wisconsin Ledge viticultural area is primarily underlain by the Eastern Dolomite Aquifer (''The Physical Geography of Wisconsin,'' *supra,* at pages 12 and 21). The petition states that Dolomite resembles limestone and contains ground water.

[1] In the Winkler climatic classification system, annual heat accumulation during the growing season, measured in annual GDD, defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth (''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974, pages 61–64).

The yield of water from the aquifer depends on the porosity of the carbonate rock and frequency of cracks or fractures. The unique rock formations and water patterns of the Eastern Dolomite Aquifer vary from other areas of the state, which are primarily covered by the Sand and Gravel Aquifer, according to the petition.

In addition, mineral rich water and dolomite limestone, which the petition notes are important factors for viticulture, are common in the Wisconsin Ledge region (''The Physical Geography of Wisconsin,'' page 21). The petition explains that the carbonate rock and porous karst features of the Eastern Dolomite Aquifer enhance the delivery and availability of water and nutrients to grapevines because nutrients are added to the water as it travels through the porous rock, which then enriches area soils and grapevines.

Further, according to the petition, the Eastern Dolomite Aquifer has a constant 50 degrees Fahrenheit water temperature, which provides a moderating effect that yields more consistent soil temperatures. The petition also notes that early spring and late fall fogs form from the constant 50 degree Fahrenheit groundwater that reacts to the much colder air temperatures; those fogs blanket the area and help protect the vineyards from damaging freezes and frosts.

The petition states that the Eastern Dolomite Aquifer is unique to the eastern-most part of Wisconsin, including the Wisconsin Ledge region and the adjacent parts of Lake Michigan. As described in the petition, the aquifer rock formation rises to the Earth's surface in the Ledge region and then eventually dips eastward under the waters of Lake Michigan. By comparison, the Sand and Gravel Aquifer that covers most of Wisconsin is easily contaminated because the top of the aquifer is also the land surface, according to the petition. In addition, the petition notes that water flow in the Sand and Gravel Aquifer is highly variable due to the spatial variability of the sand and gravel deposits, and water from the aquifer contains fewer nutrients because it has a short residence time in the aquifer and discharges close to the recharge point of the aquifer.

Soils

According to the petition, the soils deposited in the Ledge region by the glacial drift are unsorted till and stratified gravel, sand, and clay (''General Soils of Wisconsin,'' *supra*), which are well-suited for viticulture. As stated in the petition, these soils have ample permeability with average to steep slopes and contain fragments of local limestone, shale, and igneous and metamorphic rocks that the glacial ice sheet brought to the region. Although the soils in the Ledge region vary somewhat, they generally come from glacial drift, with Miami and Coloma loams as the two general soil types in the proposed Wisconsin Ledge viticultural area, according to the petition. The petition further states that the ground moraine that covers most of the proposed Wisconsin Ledge viticultural area has a variable, slightly rolling topography of drift-mantled plains. Composed largely of till, the ground moraine also contains small amounts of stratified sand, gravel, and a base of dolomite bedrock (''Bedrock Geology of Wisconsin,'' map, University of Wisconsin–Extension, Geological and Natural History Survey, April 1981).

The petition explains that the soils to the south and west of the proposed Wisconsin Ledge viticultural area have less glacial till and fewer rock formations. Those soils are sandier with less limestone and more organic composition (generally rich fertile black loam) as compared to the prairie soils and sandy plains that are common in the Wisconsin Ledge.

TTB Determination

TTB concludes that the petition to establish the approximately 3,800 square mile Wisconsin Ledge viticultural area merits consideration and public comment, as invited in this notice.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If TTB establishes this proposed viticultural area, its name, ''Wisconsin Ledge,'' will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point.

On the other hand, TTB does not believe that any single part of the proposed viticultural area name standing alone, that is, ''Wisconsin'' or ''Ledge,'' would have viticultural significance in relation to this proposed viticultural area because ''Wisconsin,'' standing alone, is locally and nationally known as referring to the State of Wisconsin, which is already a term of viticultural significance as a state-wide appellation of origin under 27 CFR 4.25(a)(1)(ii), which provides that a State is an American appellation of origin, and 27 CFR 4.39(i)(3), which notes that ''[a] name has viticultural significance when it is the name of a state * * *''; and the term ''ledge'' refers to a common geographical landform found in many locations in the United States and internationally. Therefore, the proposed part 9 regulatory text set forth in this document specifies only ''Wisconsin Ledge'' as a term of viticultural significance for purposes of part 4 of the TTB regulations.

If this proposed regulatory text is adopted as a final rule, wine bottlers using ''Wisconsin Ledge'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use ''Wisconsin Ledge'' as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed Wisconsin Ledge viticultural area. TTB

is interested in receiving comments on the sufficiency and accuracy of the name, boundary, climate, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Wisconsin Ledge viticultural area on wine labels that include the term ''Wisconsin Ledge'' as discussed above under Impact on Current Wine Labels, TTB is also interested in comments as to whether there will be a conflict between the proposed viticulturally significant term and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2011–0007 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 121 on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 121 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via *http://www.regulations.gov,* please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and you may view, copies of this notice, selected supporting materials, and any electronic or mailed comments TTB receives about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 121. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at *http://www.regulations.gov.* For instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''

All posted comments will display the commenter's name, organization (if any), city, and state, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202–927–2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Elisabeth C. Kann of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Subpart C is amended by adding § 9.____ to read as follows:

§ 9.____ Wisconsin Ledge.

(a) *Name.* The name of the viticultural area described in this section is ''Wisconsin Ledge''. For purposes of part 4 of this chapter, ''Wisconsin Ledge'' is a term of viticultural significance.

(b) *Approved maps.* The 11 United States Geological Survey 1:100,000 scale topographic maps used to determine the boundary of the Wisconsin Ledge viticultural area are titled:

(1) Door County, Wisconsin, 1986;

(2) Kewaunee County, Wisconsin, 1985;

(3) Manitowoc County, Wisconsin, 1986;

(4) Sheboygan County, Wisconsin, 1986;

(5) Ozaukee County, Wisconsin, 1986;
(6) Washington County, Wisconsin, 1986;
(7) Dodge County, Wisconsin, 1986;
(8) Fond du Lac County, Wisconsin, 1986;
(9) Calumet County, Wisconsin, 1986;
(10) Outagamie County, Wisconsin, 1985; and
(11) Brown County, Wisconsin, 1984.

(c) *Boundary.* The Wisconsin Ledge viticultural area is located in northeast Wisconsin in Door, Kewaunee, Manitowoc, Sheboygan, Ozaukee, Washington, Dodge, Fond du Lac, Calumet, Outagamie, and Brown Counties. The boundary of the Wisconsin Ledge viticultural area is as described below:

(1) The beginning point is shown on the Door County map and is located at the northern end of the Door Peninsula at the point where the R28E and R29E common boundary line intersects with the Lake Michigan shoreline at Gills Rock in Hedgehog Harbor. From the beginning point, proceed easterly along the shoreline to Northport and then continue southerly along the meandering Lake Michigan shoreline, passing in succession over the Kewaunee, Manitowoc, and Sheboygan County maps and onto the Ozaukee County map to the intersection of the Lake Michigan shoreline with a line drawn as an easterly extension of County Highway T (locally known as Lakefield Road), east of Cedarburg; then

(2) Proceed west on County Highway T through Cedarburg, crossing onto the Washington County map, passing over the North Western railroad single track, and continuing to the intersection of County Highway T with U.S. Route 45; then

(3) Proceed north on U.S. Route 45 to the intersection of U.S. Route 45 with State Road 60, south of Hasmer Lake; then

(4) Proceed westerly on State Road 60, crossing onto the Dodge County map, to the intersection of State Road 60 with State Road 26 at Casper Creek, north-northwest of Clyman Junction; then

(5) Proceed northerly on State Road 26 to the intersection of State Road 26 with U.S. Route 151, north of Plum Creek in the Chester Township; then

(6) Proceed northerly on U.S. Route 151, passing through Waupun onto the Fond du Lac County map, and continue northeasterly into the City of Fond du Lac to the point where U.S. Route 151 turns east, and, from that point, continue north in a straight line to the south shore of Lake Winnebago in Lakeside Park; then

(7) Proceed northerly along the eastern shoreline of Lake Winnebago, crossing onto the Calumet County map, to the intersection of the shoreline with a line drawn as a southerly extension of County Highway N at Highland Beach in Harrison Township; then

(8) Proceed north on County Highway N, crossing onto the Outagamie County map, to the intersection of County Highway N with the Fox River; then

(9) Proceed northeasterly (downstream) along the Fox River, crossing onto the Brown County map, until the Fox River meets the southern shoreline of Green Bay; and then

(10) Proceed northeasterly along the eastern shoreline of Green Bay, passing over the Kewaunee County map and onto the Door County map, returning to the beginning point.

Signed: September 13, 2011.

John J. Manfreda,

Administrator.

[FR Doc. 2011–26298 Filed 10–11–11; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0932]

Drawbridge Operation Regulation; Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the US 70 Alfred Cunningham Bridge across the Trent River, mile 0.0, at New Bern, NC. The deviation is necessary to accommodate racers in the three Neuse River Bridge Runs. This deviation allows the bridge to remain in the closed position to ensure safe passage for the racers.

DATES: This deviation is effective from 6:30 a.m. through 9:30 a.m. on October 15, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0932 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0932 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 Lindsey Middleton, Coast Guard; telephone 757–398–6629, e-mail *Lindsey.R.Middleton@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 Neuse River Bridge Run Committee on behalf of the North Carolina Department of Transportation has requested a temporary deviation from the current operating regulation of the US 70 Alfred Cunningham Bascule Bridge across the Trent River, mile 0.0, at New Bern, NC. The route of the three Neuse River Bridge Run races cross the bridge and the requested deviation is to accommodate a safe and efficient passage across the bridge for the racers. To facilitate this event, the draw of the bridge will be maintained in the closed-to-navigation position from 6:30 a.m. until 9:30 a.m. on Saturday, October 15, 2011.

The vertical clearance for this bridge in the closed position is 14 feet at Mean High Water and unlimited in the open position. The operating regulations are set forth in 33 CFR 117.843(a) which states that during this time of year the bridge shall open on signal.

Vessels that can pass through the bridge in the closed position may do so at any time. The Coast Guard will inform the waterway users of the closure through our Local Notices to Mariners and other appropriate local media to minimize any impact caused by the temporary deviation. The bridge will be able to open for emergencies. Most vessel traffic utilizing this bridge consists of recreational boaters. October is outside of the high recreational boating season therefore, only a small number of boaters may be affected by this temporary closure. There are no alternate routes to the Neuse River from the Trent River.

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: September 26, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, by direction of the Commander, Fifth Coast Guard District.

[FR Doc. 2011–26543 Filed 10–13–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0731; FRL–9479–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Amendments to Virginia's Regulation Regarding the Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia (Virginia). This revision pertains to amendments of Virginia's regulations regarding the new 1-hour primary national ambient air quality standard (NAAQS) for sulfur dioxide (SO_2). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0731 by one of the following methods:

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

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0731, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0731. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by e-mail at *khadr.asrah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. On July 12, 2011, the Virginia Department of Environmental Quality submitted a SIP revision pertaining to amendments of Virginia's regulations regarding the new 1-hour primary NAAQS for SO_2. EPA is proposing to approve this SIP revision.

I. Background

On June 2, 2010, EPA announced a new 1-hour primary NAAQS for SO_2 of 75 parts per billion (ppb), which is attained when the 3-year average of the 99th-percentile of the annual distribution of daily maximum 1-hour average concentrations does not exceed 75 ppb at each monitor within an area. On June 22, 2010 (75 FR 35520), the final rule for the 1-hour primary NAAQS for SO_2 was published and became effective on August 23, 2010. This rule also revoked the previous 24-hour and annual primary NAAQS for SO_2. On July 12, 2011, the Virginia Department of Environmental Quality submitted a SIP revision pertaining to the adoption of the new SO_2 standard. The Virginia SIP revision consists of amending the state regulations by adopting the new 1-hour primary SO_2 NAAQS of 75 ppb as well as the nullification of the previous annual primary SO_2 standard of 30 ppb, and 24-hour primary SO_2 standard of 140 ppb. The previous standards will be revoked one year after the effective date of the designations of the 1-hour primary SO_2 standard of 75 ppb, pursuant to section 107 of the CAA.

II. Summary of SIP Revision

The amendments to Virginia's regulations include the adoption of the new 1-hour SO_2 NAAQS and the nullification of the previous annual and 24-hour primary SO_2 NAAQS, one year after designations for the new 1-hour primary SO_2 NAAQS. These amendments can be found under Regulation 9VAC5–30–30. There were also administrative changes regarding these amendments. These changes include updates to documents incorporated by reference under 40 CFR part 50, as well as administrative changes in regards to those updates. These changes can be found under Regulation 9VAC5–20–21.E.1.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides

a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts * * *.'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity Law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Proposed Action

EPA is proposing to approve the Virginia SIP revision for the adoption of the new 1-hour primary SO_2 NAAQS at a level of 75 ppb to the state regulations, which was submitted on July 12, 2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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, the proposed approval of the adoption of the 1-hour primary SO_2 NAAQS into Virginia's regulation does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: October 3, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–26628 Filed 10–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–HQ–OAR–2009–0491; FRL–9479–1]

RIN 2060–AR22

Revisions to Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing or seeking comment on revisions to the final Transport Rule promulgated on August 8, 2011. These revisions address discrepancies in unit-specific modeling assumptions that affect the proper calculation of Transport Rule state budgets and assurance levels in Florida, Louisiana, Michigan, Mississippi, Nebraska, New Jersey, New York, Texas, and Wisconsin, as well as new unit set-asides in Arkansas and Texas. EPA is

also proposing to revise allowance allocations to specific units covered by certain consent decrees that restrict the use of those allowances. These important technical fixes maintain the Transport Rule's ability to achieve the elimination of significant contribution and interference with maintenance as quantified by the proper application of these methodologies.

EPA is also proposing to amend the assurance penalty provisions of the rule to make them effective beginning January 1, 2014, rather than in 2012, in order to promote the development of allowance market liquidity as these revisions are finalized. EPA believes that deferring the effective date of the assurance provisions would provide additional confidence and would not compromise the air quality goals of the program.

In addition, we are proposing to correct typographical errors in the rule.

DATES: *Comments:* Comments must be received on or before November 14, 2011 unless a public hearing is requested in which event comments must be received on or before November 28, 2011.

Public Hearing: On October 12, 2011, EPA published a document announcing that if a public hearing on this proposal is requested by October 19, 2011, it will be held on October 28, 2011, at 9 a.m. at USEPA. Please refer to the public hearing notice published at 76 FR 63251 for additional information on the public hearing.

EPA will provide further information about the hearing on its Web page if a hearing is requested. Oral testimony will be limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0491, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0491. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. 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 Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Gabrielle Stevens, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9252, e-mail at *stevens.gabrielle@epa.gov.* Electronic copies of this document can be accessed through the EPA Web site at: *http://epa.gov/crossstaterule.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Regulated Entities. Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	2211, 2212, 2213	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, *etc.,* is regulated by this action, you should carefully examine the applicability criteria in §§ 97.404, 97.504, and 97.604 of title 40 of the Code of Federal Regulations. 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. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the

World Wide Web. Following signature by the EPA Administrator, a copy of this action will be posted on the transport rule Web site *http://www.epa.gov/airtransport.*

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2009–0491.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. How is this preamble organized?

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. What should I consider as I prepare my comments for EPA?
D. How is the preamble organized?
II. Summary of Proposed Rule and Background
III. Specific Revisions
A. Budgets/New Unit Set-Aside Revisions
B. Allowance Allocation Revisions to Units Covered by Existing Utility Consent Decrees
C. Amend the Assurance Penalty Provisions To Make Them Effective Starting in 2014
D. Correct Typographical Errors
IV. Recordation of Transport Rule Allowances
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

II. Summary of Proposed Rule and Background

EPA has identified errors or potential errors in unit-specific modeling assumptions that affect the proper calculation of Transport Rule state budgets in Florida, Louisiana, Michigan, Mississippi, Nebraska, New Jersey, New York, Texas, and Wisconsin, as well as new unit set-asides in Arkansas and Texas. EPA is proposing to take the following distinct actions to revise individual state budgets and new-unit set asides: (1) Revise Michigan's annual NO_X budget to account for an erroneously assumed selective catalytic reduction (SCR) emission control device at one unit; (2) revise Nebraska's annual NO_X budget to account for an erroneously assumed SCR emission control device at one unit; (3) revise the Texas SO_2 budget to account for erroneously assumed flue gas desulphurization (FGD, or scrubber) emission control devices at three units and revised assumptions regarding flue gas treatment in existing scrubbers at seven units; (4) revise the Arkansas ozone-season new unit set-aside to account for erroneously omitted projected emissions from one new unit; (5) revise the Texas new unit set-aside to account for erroneously omitted projected emissions for SO_2, ozone-season NO_X, and annual NO_X; (6) revise New Jersey's ozone season NO_X, annual NO_X, and SO_2 budgets to account for an erroneously assumed FGD and SCR emission control devices at one unit, and taking into account operational constraints likely to necessitate non-economic generation at six facilities; (7) revise Wisconsin's SO_2 and annual NO_X budgets to account for erroneously assumed FGD and SCR devices at two units; (8) revise New York's SO_2, annual NO_X, and ozone season NO_X budgets taking into account operational constraints likely to necessitate non-economic generation at ten units; (9) revise Louisiana's ozone season NO_X budget taking into account operational constraints likely to necessitate non-economic generation at twelve units; (10) revise Mississippi's ozone season NO_X budget taking into account operational constraints likely to necessitate non-economic generation at four units; (11) revise the Texas annual NO_X and ozone season NO_X budgets taking into account operational constraints likely to necessitate non-economic generation at seven units; and (12) revise Florida's ozone-season NO_X budget taking into account the unavailability of a previously operating nuclear unit. See section III.A of this preamble for further explanation of these revisions.

These proposed revisions to state budgets also entail revisions to the affected states' assurance levels, as the variability limits for each state are calculated as a percentage of the applicable budget. See the final Transport Rule, 76 FR 48208, 48267–68, August 8, 2011 (explaining variability limit derivation). The purpose of these revisions is to establish state budgets and new unit set-asides that are consistent with the proper application of methodologies established in the final Transport Rule.

The resulting budgets maintain significant emission reductions from historic levels and are consistent with the final Transport Rule's methodology for defining significant contribution and interference with maintenance. The changes represent the proper application of the methodology established in the final Transport Rule. No changes to that methodology are being proposed, and EPA is not reopening the methodology established in the final Transport Rule for public comment. EPA is also not proposing any change to the levels of stringency (*i.e.,* cost per ton) selected in the final

Transport Rule's determination of significant contribution and interference with maintenance and is not reopening that issue for public comment. See ''Significant Contribution Assessment TSD'' in the docket for this rulemaking for a demonstration of how the revisions in this rulemaking represent the proper application of and are consistent with the methodology developed in the final Transport Rule.

It is EPA's intent, in conducting this rulemaking, to make the revisions in this proposal as well as to conduct a clearly defined, time-limited process by which any similarly justified revisions to the final Transport Rule state budgets are identified and effectuated in a timely and expeditious manner. To that end, EPA is seeking that all relevant information that may support similar revisions be submitted in full by the comment deadline on this rulemaking, such that the Agency may consider whether a subsequent and timely rulemaking should address any further revisions to the final Transport Rule state budgets. EPA believes that the likelihood of additional substantive revisions merited to the Transport Rule state budgets is limited, considering that EPA has already conducted several notice-and-comment processes through initial proposal of the Transport Rule and multiple notices of data availability (NODAs) to prompt the public to provide the relevant input information that informs the calculation of the Transport Rule state budgets. Please see section III.A of this preamble for a more detailed description of the type of information EPA is requesting in comments on this rulemaking for this purpose.

EPA is also proposing revisions to allowance allocations at certain units in six states that are affected by existing utility consent decrees. EPA has identified provisions in certain utility consent decrees which the Agency believes would restrict the use of Transport Rule allowances allocated to certain units and effectively make certain Transport Rule reduction requirements marginally more stringent than intended by making certain allowances intended for compliance purposes unavailable. When establishing the state budgets under the final Transport Rule, EPA successfully accounted for the emission reduction requirements of these consent decrees; therefore, the Transport Rule state budgets sustain the environmental protection secured by those existing utility consent decrees. However, when dividing those state budgets into individual unit-level allowance allocations, EPA included allowance allocations to certain units that exceed those units' allowable emissions under the terms of the applicable consent decree. Under these conditions, the consent decree provisions of concern identified in this proposal would determine the quantity of allocated allowances in excess of allowable emissions at the unit in question and prevent them from being available for compliance use by any source under the Transport Rule programs. Because EPA has already secured the environmental improvements required by the consent decrees by incorporating their emission reductions into the Transport Rule state budgets, there is no environmental need to prevent the allowances from being used for compliance by sources subject to the Transport Rule aside from those sources whose emissions are restricted by the terms of the consent decrees to which they are subject. Therefore, EPA is proposing to revise Transport Rule unit-level allowance allocations to the specific units affected by these consent decrees to reflect their maximum allowable emissions, such that none of the allowances affected by the provisions of concern are unnecessarily removed from use for compliance by other units. While EPA intends to perform this revision to benefit program implementation, EPA does not believe resolution of this issue is a necessary precondition for successful implementation of and compliance with the Transport Rule programs in 2012, because as described in section IV of this preamble, notwithstanding these proposed revisions, EPA will still be able to distribute 99.7 percent of all existing unit allowances under the state budgets established in the final Transport Rule by that rule's November 7 deadline. See section III.B of this preamble for further explanation of this revision.

EPA is also proposing in this action to amend the assurance penalty provisions of the Transport Rule to make them effective January 1, 2014. This change takes account of the fact that the revisions described above are being proposed, and any information described above concerning requested additional revisions may be submitted, close to the commencement of the Transport Rule programs. The proposed amendment to the assurance provisions is intended to promote the development of allowance market liquidity as these revisions are finalized, thereby smoothing the transition from the Clean Air Interstate Rule (CAIR) programs to the Transport Rule programs in 2012. See section III.C of this preamble for further explanation of this revision.

EPA is also proposing to correct typographical errors in certain sections of rule text in parts 52 and 97 in the final Transport Rule. See section III.D of this preamble for further explanation of these corrections.

III. Specific Revisions

A. Budget and New Unit Set-Aside Revisions

After the final Transport Rule was published, EPA identified discrepancies in certain data assumptions that substantially affected the calculation of a few states' budgets in the final rule. Therefore, EPA is proposing the following revisions:

(1) Increase Michigan's 2012 and 2014 annual NO_X budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed that an SCR exists at Monroe Unit 2.

EPA is proposing to revise Michigan's 2012 and 2014 annual NO_X budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed an SCR exists at Monroe Unit 2. This SCR is planned, but is not expected to be online in 2012 or 2014. Therefore, EPA is proposing to adjust its 2012 and 2014 projections to reflect projected emissions without an SCR at this unit. This would result in a 5,228 ton increase in the state's annual NO_X budget. See ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-aside, and ''Revisions to Unit Level Allocations under the FIP'' in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

This revised assumption about Monroe Unit 2 would also affect the calculation of Michigan's potential ozone-season NO_X budget (as well as the state's assurance level, new unit set-aside, Indian country new unit set-aside, and unit-level allocations under the FIP) if that state is included in the Transport Rule ozone-season NO_X program as previously proposed (76 FR 40662, July 11, 2011). EPA will address this issue, along with other public comments submitted on that rulemaking, when the Agency finalizes that rulemaking later this year.

(2) Increase Nebraska's 2012 and 2014 annual NO_X budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed that an SCR exists at Nebraska City Unit 1.

EPA is proposing to increase Nebraska's 2012 and 2014 annual NO_X budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed that an SCR exists at Nebraska City Unit 1. There is no SCR that is present, planned, or under construction at the unit. Therefore, EPA is proposing to adjust its baseline emission projections for the state to reflect projected emissions without an SCR at this unit. This adjustment results in an increase of 3,599 tons to the state's annual NO_X budget. See ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-aside, and ''Revisions to Unit Level Allocations under the FIP'' in the docket to this rulemaking for a quantitative demonstration of the effect of this proposed revision on unit-level allocations under the FIP.

(3) Increase the Texas 2012 and 2014 SO_2 budgets in accordance with a revision to the final Transport Rule analysis that erroneously assumed that scrubbers exist at W.A. Parish Unit 6, J.T. Deely Unit 1, and J.T. Deely Unit 2, and that assumed full flue gas treatment in existing scrubbers at Martin Lake, Monticello, Sandow, W.A. Parish, and Oklaunion facilities.

EPA is proposing to address several revisions to the modeling assumptions affecting the calculation of the Texas SO_2 budget. In particular, EPA is proposing to increase the Texas SO_2 budget in accordance with a revision to the final Transport Rule analysis that erroneously assumed flue-gas desulfurization (FGD) technology is installed on J.T. Deely Units 1 and 2 and W.A. Parish Unit 6 by 2012. At the time that EPA conducted its final Transport Rule analysis to determine state budgets, EPA had information (both from public sources, as cited below, as well as from a private subscription-only power sector pollution control database) showing that FGD retrofits for these sources were originally planned or announced to be installed by 2012.[1] [2] However, newer information shows that these FGDs are no longer scheduled to be installed in 2012.

A number of facilities in Texas currently face limitations regarding the amount of flue gas that can be treated in their existing FGDs. In the final Transport Rule analysis, EPA relied on the SO_2 removal efficiency that these facilities reported at their scrubbers to the Energy Information Administration (EIA). However, EPA has now determined that the facilities' reports only intended to address the removal efficiency for the portion of the flue gas treated in the scrubber. For this reason, that removal efficiency should not be applied to the total amount of sulfur combusted in the coal consumed (as some of the flue gas at these units must be vented without being treated in the scrubber as originally constructed). When the SO_2 removal rates are decreased to reflect the reported operational constraint of each affected scrubber's flue gas treatment, the projected emission level for Texas, after all significant contribution identified in the final Transport Rule is addressed, correspondingly rises.

Therefore, in accordance with the revised unit-level input assumptions regarding existing scrubbers and flue gas treatment at the Texas units described above, EPA is proposing to increase the state's 2012 and 2014 SO_2 budgets each by 70,067 tons. See ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of how each of these unit-level adjustments affects the calculation of this proposed revision, as well as for the impacts this revision would have on the state's assurance levels, new unit set-aside, and Indian country new unit set-aside.

(4) Increase Arkansas' ozone-season NO_X new unit set-aside in accordance with a revision to the final Transport Rule's calculation of the new unit set-aside that erroneously omitted Plum Point Unit 1's projected emissions.

EPA is not proposing to adjust Arkansas' ozone season NO_X budget in this rulemaking. However, EPA is proposing to adjust the portion of that budget dedicated to the new unit set-aside account. In the final Transport Rule, EPA had determined a 2 percent new unit set-aside for ozone season NO_X in the state. That value would be changed to 5 percent in this rulemaking. The revision is consistent with the new unit set-aside methodology described in the final rule. The updated value simply reflects the revised classification of one unit to be treated as a new unit for purposes of unit-level allowance allocation. This unit, Plum Point Unit 1, commenced commercial operation on or after January 1, 2010, and therefore should be considered a new unit under the final Transport Rule's unit-level allocation methodology (76 FR 48290); however, the final Transport Rule erroneously omitted this unit's projected emissions from the calculation of Arkansas' ozone-season NO_X new unit set-aside. Including this unit's projected emissions in the calculation would yield a revised new unit set-aside of 5 percent of the state's budget instead of the previous 2 percent value. See the ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision.

This proposed revision to Arkansas' new unit set-aside would necessarily result in changes to allowance allocations to existing units. See ''Revisions to Unit Level Allocations under the FIP'' tables in the docket to this rulemaking for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(5) Increase Texas' ozone-season NO_X, annual NO_X, and SO_2 new unit set-asides in accordance with a revision to the final Transport Rule's calculations of the new unit set-asides that erroneously omitted Oak Grove Unit 2's projected emissions.

EPA is also proposing a revision to the calculation of the new unit set-asides for ozone-season NO_X, annual NO_X, and SO_2 in Texas. The updated values would simply reflect the revised classification of one unit to be treated as a new unit for purposes of unit-level allowance allocation. This unit, Oak Grove Unit 2, commenced commercial operation on or after January 1, 2010, and therefore should be considered a new unit under the final Transport Rule's unit-level allocation methodology; however, the final Transport Rule erroneously omitted this unit's projected emissions from the calculation of Texas's ozone-season NO_X, annual NO_X, and SO_2 new unit set-asides. Including this unit's projected emissions in the calculation would yield revised new unit set-asides of 4 percent of the state's ozone-season NO_X budget, 4 percent of the state's annual NO_X budget, and 5 percent of the state's SO_2 budget. See the ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision.

(6) Increase New Jersey's 2012 and 2014 ozone-season NO_X, annual NO_X, and SO_2 budgets in accordance with revisions to the final Transport Rule analysis that erroneously assumed that

[1] Corporate Sustainability Report'', CPS Energy, 2010. P.57. Retrieved from *http://www.cpsenergy.com/files/Sustainability_Report.pdf.*

[2] Business Wire, (2006). NRG Announces Comprehensive Repowering Initiative [Press release]. Retrieved from *http://phx.corporate-ir.net/phoenix.zhtml?c=121544&p=irol-newsArticle_Print&ID=874575&highlight.*

an SCR and scrubber exist at BL England Unit 1 and to reflect operational constraints likely to necessitate non-economic dispatch at six other facilities in 2012.

EPA is proposing to revise New Jersey's ozone-season NO_X, annual NO_X, and SO_2 budgets in accordance with revisions to assumed control technologies at BL England Unit 1 as well as operational constraints affecting units at six other facilities. The SCR and scrubber that had been planned to be installed at BL England Unit 1, and which EPA assumed would be in place in 2012, are not actually required by a New Jersey administrative order until December 2013. Furthermore, the agreement limits operation of the unit to the ozone season. Therefore, EPA is proposing to adjust New Jersey's 2012 state budgets to reflect projected emissions without an SCR or scrubber at this unit and its operation only during the ozone season.

EPA is also proposing revisions to New Jersey's state budgets based on information demonstrating that northern New Jersey is an out-of-merit-order dispatch area, meaning that units in that area are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in this out-of-merit-order dispatch area are likely to necessitate what would otherwise be non-economic generation at six New Jersey plants (Bergen, Edison, Essex, Kearny, Linden, and Sewaren Generating Stations) in the immediate future. EPA did not consider these immediate-term conditions in its calculation of the New Jersey emission budgets in the final Transport Rule. EPA is proposing to adjust New Jersey's emission budgets based on analysis of the frequency these units have recently been called to run for non-economic purposes, according to data provided by the utility operating those units.

For this proposal, EPA has calculated the net change in the state's 2012 and 2014 total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule.

EPA re-calculated the emissions from BL England Unit 1 and the six plants with non-economic generation to account for the input assumption changes described above. These calculations yield increases to the New Jersey 2012 state budgets for SO_2 of 2,096 tons, annual NO_X of 420 tons, and ozone-season NO_X of 592 tons; and 2014 state budget increases for annual NO_X of 112 tons, and ozone-season NO_X of 195 tons. See ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level and new unit set-aside, and ''Revisions to Unit Level Allocations under the FIP'' in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(7) Increase Wisconsin's 2014 SO_2 budget and 2012 and 2014 annual NO_X budget in accordance with a revision to the final Transport Rule analysis that erroneously assumed that an FGD exists at Weston Unit 3, wet FGDs (instead of dry FGDs) exist at Columbia Units 1 and 2, and a SCR exists at John P. Madgett Unit 1.

EPA is proposing to increase Wisconsin's SO_2 budget in accordance with revisions to the Weston Unit 3 and Columbia Units 1 and 2 FGD status in 2014. EPA had assumed that a scrubber would be available at Weston Unit 3 in 2014 in its base case modeling. There is no FGD expected to be online at the facility in 2014. The final Transport Rule did not assume an operating scrubber at Weston Unit 3 in 2012, but did assume the FGD would be in place and operating by 2014. Therefore, EPA is proposing to adjust Wisconsin's 2014 SO_2 budget to reflect the unit's operation without an FGD in 2014.

EPA had also assumed that the two scrubbers being installed at Columbia Units 1 and 2 were wet scrubbers. Instead, dry scrubbers have been planned and approved at these units. In EPA's modeling, the assumed removal rate of a new wet scrubber is 96 percent and a new dry scrubber is 92 percent. Therefore, the 2014 modeled remedy emissions from these units would be twice their current amount, if the assumption of wet scrubbers was changed to dry scrubbers for the facility. No change is needed for 2012 since EPA did not model any scrubbers operating at those units in that year.

To account for these adjustments, EPA is proposing to increase the Wisconsin SO_2 budget by a total of 7,757 tons in 2014.

EPA is also proposing to increase Wisconsin's annual NO_X budget in 2012 and 2014. EPA had assumed a SCR would be installed at John P. Madgett Unit 1 in 2012 in its budget determination and remedy modeling. There is no SCR expected to be online in 2012 or 2014 at the unit. Therefore, EPA is proposing to adjust Wisconsin's annual NO_X budgets to reflect the unit's operation without a SCR. This would result in a 2,473 ton increase to the state's annual NO_X budget.

The revised assumptions about John P. Madgett Unit 1 would also affect the calculation of Wisconsin's potential ozone-season NO_X budget (as well as the state's assurance level, new unit set-aside, Indian country new unit set-aside, and unit-level allocations under the FIP) if that state is included in the Transport Rule ozone-season NO_X program as previously proposed (76 FR 40662, July 11, 2011). EPA will address this issue, along with other public comments submitted on that rulemaking, when the Agency finalizes that rulemaking later this year.

See the ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-aside, and ''Revisions to Unit Level Allocations under the FIP'' in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(8) Increase New York's 2012 and 2014 ozone-season NO_X, annual NO_X, and SO_2 budgets in accordance with a revision to the final Transport Rule analysis that did not reflect operational constraints likely to necessitate non-economic dispatch at certain units.

EPA is proposing to increase the New York state ozone-season NO_X, annual NO_X, and SO_2 budgets in accordance with revisions to the assumed operation of several specific units in 2012, to satisfy three specific immediate-term operational constraints documented by the New York Independent System Operator (NYISO). These three constraints are referred to here as the N–1–1 Contingency, the Minimum Oil Burn Rules, and out-of-merit-order dispatch conditions, which collectively affect the likely 2012 and 2014 operations of specific units in the New York City and Long Island areas.

The N–1–1 Contingency requires that certain units be available to deliver generation with advance notice of only 30 seconds at certain times during the year. These specific units require several hours to reach the necessary level of generation under these contingency circumstances; therefore, the contingency requirement frequently necessitates their ongoing operation

whether or not the contingency is actually triggered at any given time. Based on information published by NYISO, EPA identified Arthur Kill Generating Station, Ravenswood, and Astoria Generating Station as needing to maintain minimum generation levels at two units in each facility to meet the N–1–1 Contingency constraint.

The Minimum Oil Burn Rules require that certain units be able to immediately burn oil in the event of a natural gas supply disruption to the New York City and Long Island area infrastructure. Some units are incapable of immediately switching fuel, so they must burn a minimum amount of oil on an ongoing basis when operating to comply with this requirement. EPA determined that the Minimum Oil Burn Rules would require residual fuel oil consumption at the Arthur Kill Generating Station, Ravenswood, Astoria Generating Station, and Northport facilities. Based on information published by the NYISO, EPA determined that these units would burn oil in 2012 and 2014 at the same proportion of total projected heat input as shown for the share of historic heat input reported as residual fuel oil at those facilities.

Data presented in the NYISO 2010 Comprehensive Area Transmission Review Study and the NYISO Operating Study, Summer 2011, demonstrate that Long Island is an out-of-merit-order dispatch area, meaning that units in that area are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in this out-of-merit-order dispatch area are likely to necessitate in the immediate future what would otherwise be non-economic generation at 3 units at the Northport facility.

For this proposal, EPA has calculated the net change in the state's total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule. These calculations yield increases to the New York 2012 and 2014 state budgets for SO_2 of 3,527 tons, annual NO_X of 3,485 tons, and ozone-season NO_X of 1,911 tons. See ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance levels, new unit set-aside, and Indian country new unit set-aside.

(9) Increase Louisiana's 2012 and 2014 ozone-season NO_X budgets in accordance with a revision to the final Transport Rule analysis to reflect operational constraints likely to necessitate non-economic dispatch at twelve units.

EPA is proposing revisions to Louisiana's 2012 and 2014 state ozone season NO_X budgets based on information demonstrating that the West of the Atchafalaya Basin (WOTAB), Downstream of Gypsy (DSG), and Amite South regions of Louisiana are out-of-merit-order dispatch areas, meaning that units in those areas are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in these out-of-merit-order dispatch areas are likely to necessitate what would otherwise be non-economic generation at five Louisiana plants (R.S. Nelson, Nine Mile Point, Michoud, Little Gypsy, and Waterford) in the immediate future. EPA did not consider these immediate-term conditions in its calculation of the Louisiana emission budget in the final Transport Rule. EPA is proposing to adjust Louisiana's ozone season NO_X emission budget based on analysis projecting the minimum frequency these units will have to run in the immediate term for non-economic purposes, according to data provided by the utility operating those units.

For this proposal, EPA has calculated the net change in the state's total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule.

EPA re-calculated the emissions from the five plants with non-economic generation to account for the input assumption changes described above. These calculations yield increases to Louisiana's 2012 and 2014 state budgets for ozone-season NO_X of 4,231 tons. See ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-aside, and ''Revisions to Unit Level Allocations under the FIP'' in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(10) Increase Mississippi's 2012 and 2014 ozone-season NO_X budgets in accordance with a revision to the final Transport Rule analysis to reflect operational constraints likely to necessitate non-economic dispatch at certain units.

EPA is proposing revisions to Mississippi's state ozone season NO_X budget based on information demonstrating that the Mississippi Region is an out-of-merit-order dispatch area, meaning that units in that area are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in this out-of-merit-order dispatch area are likely to necessitate what would otherwise be non-economic generation at three Mississippi plants (Rex Brown, Gerald Andrus, and Baxter Wilson) in the immediate future. EPA did not consider these immediate-term conditions in its calculation of the Mississippi emission budget in the final Transport Rule. EPA is proposing to adjust Mississippi's 2012 and 2014 ozone season NO_X emission budgets based on analysis projecting the minimum frequency these units will have to run in the immediate-term for non-economic purposes, according to data provided by the utility operating those units.

For this proposal, EPA has calculated the net change in the state's total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule.

EPA re-calculated the emissions from the three plants with non-economic generation to account for the input assumption changes described above. These calculations yield increases to Mississippi's 2012 and 2014 state budgets for ozone-season NO_X of 2,136 tons. See ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-

aside, and ''Revisions to Unit Level Allocations under the FIP'' in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(11) Increase Texas's 2012 and 2014 annual and ozone-season NO_X budgets in accordance with a revision to the final Transport Rule analysis to reflect operational constraints likely to necessitate non-economic dispatch at certain units.

EPA is proposing revisions to Texas's 2012 and 2014 state annual and ozone season NO_X budgets based on information demonstrating that the West of the Atchafalaya Basin (WOTAB) and Western Regions are out-of-merit-order dispatch areas, meaning that units in those areas are frequently dispatched out of regional economic order as a result of short-run limitations on the ability to meet local electricity demand with generation from outside the area. Conditions in these out-of-merit-order dispatch areas are likely to necessitate what would otherwise be non-economic generation at two Texas plants (Lewis Creek and Sabine) in the immediate future. EPA did not consider these immediate-term conditions in its calculation of the Texas emission budgets in the final Transport Rule. EPA is proposing to adjust Texas's emission budgets based on analysis projecting the minimum frequency these units will have to run in the immediate-term for non-economic purposes, according to data provided by the utility operating those units.

For this proposal, EPA has calculated the net change in the state's total emissions (that inform the state budgets) to account for increased generation (and related emissions) from the specific units affected by the immediate-term non-economic constraints described above, as well as for a corresponding reduction in generation (and related emissions) at other units within the state, to maintain the electricity supply and demand equilibrium modeled in the final Transport Rule.

EPA re-calculated the emissions from the two plants with non-economic generation to account for the input assumption changes described above. These calculations yield increases to Texas's 2012 and 2014 state budgets for annual NO_X of 1,375 tons and ozone-season NO_X of 1,375 tons. See ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-aside, and ''Revisions to Unit Level Allocations under the FIP'' in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

(12) Increase Florida's 2012 ozone-season NO_X budget in accordance with a revision to the final Transport Rule analysis to reflect the unavailability of Crystal River Unit 3, a nuclear unit.

EPA's power sector analysis in the final Transport Rule that informed its calculation of Florida's state ozone-season budget included generation from Crystal River Unit 3, a nuclear unit that has operated historically. However, utilities in Florida have notified EPA that this unit will be offline for repairs throughout 2012 and is expected to return to service in 2013. As such, EPA expects that the generation previously projected in the Transport Rule analysis from this unit in 2012 will necessarily have a different origin with different emission consequences that should be considered in the calculation of Florida's ozone-season NO_X state budget. EPA has calculated that this replacement generation would yield an increase of 819 tons of ozone-season NO_X in 2012 and is proposing to increase Florida's 2012 ozone-season NO_X budget by 819 tons, accordingly. See ''Technical Revisions and Adjustments to State Budgets TSD'' in the docket for this rulemaking for a quantitative demonstration of this proposed revision, as well as for the impacts this revision would have on the state's assurance level, new unit set-aside, and Indian country new unit set-aside, and ''Revisions to Unit Level Allocations under the FIP'' in the docket for a quantitative demonstration of the effect of this revision on unit-level allocations under the FIP.

EPA has also received and is making available in the public docket for this proposal additional unit-level information provided by Florida utilities addressing assumptions of each unit's ability to control ozone-season NO_X. EPA requests comment on all aspects of the data in the docket, including whether the emission data provided in this information is a more accurate representation of achievable NO_X emission rates in 2012, and whether using this data would be consistent with the methodology used in the Transport Rule. EPA specifically requests comment on whether this information could support a further revision to the state's ozone-season NO_X budget, and if so, how such a revision should be calculated. See ''Information Submitted by Florida Utilities'' in the docket for this rulemaking.

Further Explanation on Revisions and Request for Comments. All of the proposed revisions to state budgets and new unit set-asides described above would correspondingly affect unit-level allowance allocations in the states involved. Specifically, any changes to the levels of new unit set-asides or state budgets would be carried through to unit-level allocations based on the final Transport Rule allocation methodology for existing units (including any amendments made to specific unit-level allocations in this rulemaking, described below). For example, if a state budget would increase, then the share of that increase going to existing units would be apportioned based on the final Transport Rule's allocation methodology to existing units (aside from specific unit-level allocation adjustments included in this proposal pertinent to utility consent decrees, discussed below in section III.B of this preamble). Unit-level allocations to potential covered sources under the Transport Rule have been updated to reflect all of the proposed revisions described in this proposal and are set forth in the ''Revisions to Unit Level Allocations under the FIP'' TSD in the docket for this rulemaking.

EPA evaluated the likely air quality impacts of the revisions presented above using the air quality assessment tool, on a state-by-state and case-by-case basis, for the SO_2 budget increases in 2014 for Texas, New York, and Wisconsin, and compared those estimates to the final Transport Rule air quality analysis. The results do not change the conclusions that EPA made about the appropriateness of controlling upwind emissions at the cost-effective thresholds selected in the final Transport Rule to successfully quantify and eliminate significant contribution to nonattainment and interference with maintenance at downwind receptors. For more information, this evaluation can be found in the ''Significant Contribution Assessment Technical Support Document'' in the docket for this rulemaking.

For this proposal, EPA also assessed this proposal's revisions to annual NO_X and ozone-season NO_X state budgets against each state's total NO_X emission inventories which informed the air quality projections in the final Transport Rule analysis. The annual NO_X budget increases for Michigan, Nebraska, New Jersey, New York, Texas, and Wisconsin are 5,228, 3,599, 112, 3,485, 1,375 and 2,473 tons, respectively. Comparing those budget increases to the total 2014 annual NO_X emission inventories in those states under the final Transport Rule's control

scenario analysis, EPA calculates that these revisions represent increases of 1.2 percent, 2.1 percent, 0.1 percent, 0.8 percent, 0.1 percent, and 1.0 percent, respectively, of the total annual NO_X emission inventories for those states in the final Transport Rule's 2014 control scenario analysis. See the ''Significant Contribution Assessment TSD'' in the docket for this rulemaking for more details. These increases represent only a small portion of each state's total NO_X emissions.

The ozone-season NO_X budget increases in 2014 for Louisiana, Mississippi, New Jersey, New York, and Texas are 4,231, 2,136, 195, 1,911, and 1,375 tons, respectively. Comparing those budget increases to the total 2014 ozone-season NO_X emission inventories in those states under the final Transport Rule's control scenario analysis, EPA calculates that these revisions represent increases of 2.2 percent, 2.4 percent, 0.2 percent, 1.0 percent, and 0.2 percent, respectively, of the total ozone-season NO_X emission inventories for those states in the final Transport Rule's 2014 control scenario analysis. See the ''Significant Contribution Assessment TSD'' in the docket for this rulemaking for more details. These increases represent only a small portion of each state's total ozone-season NO_X emissions.

EPA requests comment on the revised unit-level and utility-system operational information described above and on the corresponding proposed revisions in state budgets, variability limits, new unit set-asides, Indian country new unit set-asides, and unit-level allocations resulting from the application of such revised information using the methodologies set forth in the final Transport Rule for developing state budgets, variability limits, new unit set-asides, Indian country new unit set-asides, and unit-level allocations. EPA is not requesting comment on those methodologies set forth in the final Transport Rule. For example, EPA is not seeking comment on the methodology by which existing unit allocations are determined with regard to any given Transport Rule state budget.[3]

Moreover, EPA recognizes that parties may be aware of other immediate-term unit-specific operational constraints not accounted for in the final Transport Rule whose inclusion may warrant revisions in state budgets, with associated revisions to the state assurance levels and unit-level allocations for existing units. EPA has already provided several opportunities—through the proposed Transport Rule and subsequent notices of data availability—for the public, including stakeholders, to present unit-level information demonstrating constraints on immediate-term operations. However, EPA will accept—by the deadline for comment on this proposal—submission of additional unit-level operational information that would have a material impact on the calculation of Transport Rule state budgets (with associated impacts on corresponding assurance levels and unit-level allocations for existing units). For this purpose, EPA intends a ''material impact'' to reflect a corresponding recalculation of the relevant state budget that would be at least 1 percent different from that budget's value as calculated in the final Transport Rule (76 FR 48208, August 8, 2011). EPA remains focused on successful implementation of the Transport Rule programs and does not believe that a change of less than 1 percent in a state's budget would be a meaningful action to further this goal. As a result, EPA encourages commenters to consider whether or not revisions to a given unit's or group of units' input assumptions would yield a material impact of at least a 1 percent difference in the calculation of the relevant state budget before submitting this information to EPA for review.

EPA is therefore accepting for review information provided in comments on this rulemaking specifically addressing the following topics for specific electric generating units:

(1) Post-combustion pollution control equipment (such as SCRs and FGDs) assumed in the final Transport Rule analyses to be present by 2012 at the unit in question; and/or

(2) Immediate-term (*i.e.,* binding on 2012) operational requirements necessitating non-economic generation at the unit in question, including data that demonstrate why the unit in question is required to generate in the immediate term for reasons other than the regional economic sale of electricity, and how often during the ozone season and during the calendar year that such non-economic generation is necessitated from that unit.

EPA will review information provided in comments addressing the topics described above and will determine if any of the information merits a subsequent proposal of revisions to the Transport Rule programs beyond the actions presented in this proposal.

B. Allowance Allocation Revisions to Units Covered by Existing Utility Consent Decrees

After the final Transport Rule was published, EPA determined that while the state budgets accurately incorporated the emission reduction requirements of existing utility consent decrees, the unit-level allowance allocations under the Transport Rule FIPs did not properly account for provisions in those consent decrees that effectively require the surrender, or restrict the trading, of ''excess'' Transport Rule allowances. As a result, Transport Rule allowance allocations to certain units may unintentionally reduce the availability of some of those allowances to other sources, given the restrictions on the use of those allowances by the initial recipient unit imposed by the applicable consent decree.

In today's action, EPA is proposing to add a constraint on Transport Rule unit-level allowance allocations designed to reflect the maximum allowable emissions at the units affected by existing utility consent decrees which contain annual tonnage limits and require the surrender or restrict trading of Transport Rule allowances allocated in excess of annual tonnage limits. See ''Assessment of Impact of Consent Decree Annual Tonnage Limits on Transport Rule Allocations TSD'' in the docket for this rulemaking for information on the consent decrees covered by the proposed addition of the new constraint for purposes of determining unit-level allocations.

The addition of this constraint would align unit level allocations for units described in several existing Federally-enforceable consent decrees with the annual tonnage limits in those decrees. This constraint would prevent heat

[3] Further, EPA notes that the proposed rule text includes tables that are complete in that they show, for each Transport Rule trading program, both (i) The amounts for certain state budgets, new unit set-asides, Indian country set-asides, and state variability limits that reflect proposed revisions discussed in this notice; and (ii) the amounts for other state budgets, new unit set-asides, Indian country set-asides, and state variability limits amounts that do not reflect any proposed revisions discussed in this notice. Except as discussed below in this section of the notice, EPA is not requesting comment on those budgets, new unit set-asides, Indian country set-asides, and variability limits that are shown in the proposed rule text tables but that do not reflect the proposed revisions discussed in this notice. For example, the budget and new unit set-aside revisions discussed in this section of the notice involve only a limited number of states (*i.e.,* Arkansas, Florida, Louisiana, Michigan, Mississippi, Nebraska, New Jersey, New York, Texas, and Wisconsin). Except as discussed below in this section of the notice, EPA is not reopening, or requesting comment on, amounts in the proposed rule text tables for any other states. By further example, this section of the notice discusses a revision of Arkansas' new unit set-aside, but not of Arkansas' budget. Except as discussed below in this section of the notice, EPA is not requesting comment on the amount of Arkansas' budget.

input-based allocations from exceeding the terms of Federally-enforceable consent decrees that contain annual tonnage limits for SO_2 and/or NO_X. Because existing consent decrees that establish annual tonnage limits for SO_2 and/or NO_X do so at the system or facility level, EPA calculated unit-level annual tonnage limit equivalents (unit-level caps) for purposes of allocating allowances to individual units. EPA is not seeking comment on any elements of the allocation methodology finalized in the final Transport Rule (76 FR 48288–90). Rather, EPA is seeking comment only on the addition of a unit-level consent decree constraint and unit-level cap apportionment methodology.

The proposed additional constraint would affect unit-level allocations in six states—Alabama, Indiana, Kansas, Kentucky, Ohio, and Tennessee—with units subject to existing Federally-enforceable consent decree annual tonnage limits. These consent decree requirements have already been accounted for in the determination of budgets for these states. EPA is proposing to establish unit-level caps for 82 units covered by annual tonnage limits in Federally-enforceable consent decrees in these six states. The addition of this constraint would not alter any state budget. This additional constraint also would have no impact on existing unit-level allocations in states that do not contain units covered by a Federally-enforceable consent decree with annual tonnage limits.

EPA is proposing to revise the Transport Rule unit-level allocations for the specific units subject to these consent decrees, such that allowance allocations would be constrained by both historical emissions (as described in the final Transport Rule (76 FR 48290)) and a unit-level cap derived from the annual tonnage limit in the Federally-enforceable consent decree. Although these revisions would not alter the state budgets, they would have the effect of increasing the number of allowances within the budget that are available for use for compliance purposes and that would not otherwise be available without this proposed change to the allocation of allowances—such that the total number of allowances available would equal the state's emission budget, as intended. These proposed revisions are thus intended to revise the application of the final Transport Rule's unit-level allowance allocation methodology to enable the proper implementation of state budgets under the programs. While EPA intends to perform this revision to benefit program implementation, EPA does not believe resolution of this issue is a necessary precondition for successful implementation of and compliance with the Transport Rule programs in 2012, as notwithstanding these proposed revisions, EPA will still be able to distribute 99.7 percent of all existing unit allowances under the state budgets established in the final Transport Rule by that rule's November 7 deadline. See section IV of this preamble for further information about allowance recordation.

EPA calculated unit-level caps for each unit subject to an SO_2 and/or NO_X annual tonnage limit contained in a Federally-enforceable consent decree. A unit-level cap is an apportionment of the applicable system- or facility-wide consent decree annual tonnage limit. The apportionment of a system- or facility-wide consent decree annual tonnage limit to a unit level is solely for the purposes of Transport Rule allocations and does not modify, or create additional, consent decree requirements or limitations.

EPA is not proposing to limit allocations to units covered by consent decrees that do not contain SO_2 and or NO_X annual tonnage limits. The Agency determined that calculation of unit-level caps where annual tonnage limits do not exist would require the use of unit-level projections whose application in setting unit-level allocations would be difficult to support and that, in any event, adjustment of unit—level allocations using such unit-level caps would not be necessary. Calculating a unit-level cap from other consent decree directives would require projections about future utilization and emissions performance of each unit involved, increasing the complexity and uncertainty of the approach. Further, EPA believes that there are few Transport Rule allowances that might be rendered unavailable for compliance by the consent decrees that contain trading restrictions or allowance surrender requirements but that do not contain annual tonnage limits.

EPA is proposing to follow a two-step methodology to identify the specific unit-level allocation constraints that would be associated with this proposed additional constraint. First, EPA would determine if the annual tonnage limit in an existing Federally-enforceable consent decree that is already reflected in a state budget is more restrictive than the unit-level allocations under the Transport Rule by comparing the Federally-enforceable consent decree annual tonnage limits for calendar year 2012 and thereafter to aggregate unit-level allocations (as determined using the approach finalized in the final Transport Rule) for all units affected by the annual tonnage limit. If in 2012 or thereafter the collective unit-level allocations are greater than the Federally-enforceable consent decree annual tonnage limit, EPA would apply unit-level caps equal, in aggregate, to the Federally-enforceable consent decree annual tonnage limit.

If a unit is shut down by a Federally-enforceable consent decree or, in the case of SO_2, repowers to natural gas or shuts down, the unit-level cap would be calculated as zero in any year following the required shut down or repower when the unit would otherwise receive allocations using the approach in the final Transport Rule (76 FR 48287 and 48289–90).

Second, EPA would calculate unit-level caps for 2012 and thereafter on Transport Rule allowances for each unit covered by a system- or facility-wide annual tonnage limit in a Federally-enforceable consent decree that is more restrictive than current allocations for the units involved. To accomplish this, EPA would first calculate a ratio, expressed as a percentage, comparing the annual tonnage limit in the Federally-enforceable consent decree to the aggregate allocations listed in the ''Final Transport Rule Unit Level Allocations under the FIP'' (*http://www.epa.gov/crossstaterule/actions.html*) for units covered by the Federally-enforceable consent decree annual tonnage limit to the annual tonnage limit. EPA would then multiply this ratio by the unit-level allocation listed in the ''Final Transport Rule Unit Level Allocations under the FIP'' (*http://www.epa.gov/crossstaterule/actions.html*) for each unit involved. The allocations for a given year would be limited to this unit-level cap. As noted above, in some situations the unit level cap for a 2012 or thereafter would be zero if a Federally-enforceable consent decree requires the shutdown or repowering of a unit.

An example of how EPA would determine unit level caps follows:

Step 1—EPA determines that facility ABC consists of two units subject to both a Federally-enforceable consent decree annual tonnage limit and the Transport Rule NO_X annual program. The consent decree system-wide annual tonnage limit is 3,000 tons in calendar year 2012. The NO_X allowance heat input-based allocation (as described in the final Transport Rule (76 FR 48288–90)) for the two units in calendar year 2012 is 4,000 allowances to Unit 1 and 2,000 allowances to Unit 2—a total of 6,000 allowances. Because the total of the allowances allocated to the two units is higher than the annual tonnage limit, EPA needs to calculate unit-level caps for Unit 1 and Unit 2.

Step 2a—The consent decree system-wide annual tonnage limit of 3,000 tons is divided

by the system-wide heat input-based allocations of 6,000 tons resulting in a ratio of 0.5, or 50 percent.

Step 2b—EPA calculates the unit-level cap for Unit 1 as 4,000 allowances × 50 percent, or 2,000 allowances, and for Unit 2 as 2,000 allowances × 50 percent, or 1,000 allowances.

EPA would apply this additional unit-level constraint when calculating existing unit-level allocations under the final Transport Rule FIPs. This additional unit level constraint would be applied in steps 9 and 10 of the methodology described in the preamble to the final Transport Rule (76 FR 48290). This additional constraint would be applied in step 9 to limit allocations to existing units covered by consent decrees. This constraint would be applied in step 10 to ensure that any allowances that cannot be allocated to existing units (because all existing units are subject to either the constraint on maximum historical emissions or this additional constraint) would be directed to the state's new unit set aside. For example, EPA has determined that, if this additional constraint is finalized as proposed, all the units in the state of Tennessee would be constrained by either historical emissions or a unit-level cap for the Transport Rule SO_2 Group 1 program in calendar years 2013, 2018, 2019, and each year thereafter. As described above, the new unit set aside for the state of Tennessee would increase in 2013, 2018, 2019, and each year thereafter, by 8,460, 3,173 and 5,225 tons respectively.

EPA is not seeking comment on any aspects of the allocation methodology in the final Transport Rule (76 FR 48290). EPA is only seeking comment on the addition of the constraint described above to steps 9 and 10 of that methodology. See ''Assessment of Impact of Consent Decree Annual Tonnage Limits on Transport Rule Allocations TSD'' in the docket for this rulemaking for further information on the proposed addition of the new constraint for purposes of determining unit-level allocations.

C. Amend the Assurance Penalty Provisions To Make Them Effective Starting in 2014

EPA is also proposing in this action to amend the effective date of the Transport Rule assurance provisions to make them effective beginning on January 1, 2014. During outreach discussions with various stakeholders, the application of assurance penalties at the outset of the program has been raised as a major concern for compliance and market development in the early years of the program. Several stakeholders have expressed concern that Transport Rule allowance market development may be delayed by uncertainty over how each state will transition from 2010 and 2011 emission levels to meet the projected Transport Rule assurance levels in 2012 and 2013.

Under the assurance provisions, a state's emissions for any control period in a given year must not exceed the state assurance level, *i.e.,* the state budget plus the state's variability limit. In order to implement this requirement, EPA first determines whether, for the control period, any state's total emissions exceeded the state's assurance level. If a state had emissions exceeding the state assurance level, then EPA applies additional criteria to determine which owners and operators of units in the state will be subject to the assurance penalty, which is a requirement to surrender additional allowances. In applying the additional criteria, EPA identifies which groups of units with a common designated representative (DR) in the state had emissions exceeding the respective common DR's share of the state assurance level, and calculates what percentage each such group's emissions above the common DR's share comprise of the state's emissions above the state assurance level. The assurance penalty applied to the owners and operators of each of those groups of units is the surrender of an amount of allowances equal to the state's emissions above the state assurance level multiplied by the group's percentage and multiplied by two (in order to reflect the penalty of two allowances for each ton of the state's excess emissions). EPA implements the assurance penalty provisions through a series of notices of data availability that make available the necessary calculations and provide an opportunity for public objections to the calculations. The requirements that owners and operators comply with the assurance provisions, including where appropriate the assurance penalty, and the procedures followed by the Administrator are set forth in 40 CFR 97.406(c)(2) and 97.425 (for the TR NO_X annual program), 97.506(c)(2) and 97.525 (for the TR NO_X ozone season program), 97.606(c)(2) and 97.625 (for the TR SO_2 Group 1 program), and 97.706(c)(2) and 97.725 (for the TR SO_2 Group 2 program).

EPA proposes to determine that amending the assurance provisions to take effect starting in 2014 is appropriate. EPA believes that a limited postponement of the effectiveness of these provisions is justified in order to smooth the transition from the existing CAIR programs to the new Transport Rule programs.

In line with the Court's remand of CAIR, EPA designed the Transport Rule to achieve necessary emission reductions by relevant NAAQS attainment deadlines and to ensure that necessary reductions will be achieved within each covered state. As explained in the final Transport Rule, EPA determined that it was appropriate for the Transport Rule programs to address emissions in 2012 and beyond in order to ensure that the deadlines in the rule were aligned, as legally required, with the downwind nonattainment deadlines (76 FR 48277–48279). CAIR remains in effect to address emissions through the end of the 2011 control periods, and the Transport Rule programs address emissions in 2012 and beyond.

EPA took several steps in the final Transport Rule to ease the transition from the CAIR programs to the Transport Rule trading programs.

The Transport Rule maintains programmatic elements that were successfully implemented and recognizable to sources from compliance experiences under CAIR while also addressing that rule's legal shortcomings identified by the Court. Under both CAIR and the Transport Rule, individual units have the flexibility to supplement their own emission reductions with the acquisition from the marketplace of any additional allowances needed to cover emissions under the Transport Rule programs. Robust markets (*e.g.,* markets with a high level of liquidity and accessibility of price information) for the CAIR annual NO_X, CAIR ozone-season NO_X, and Acid Rain (SO_2) program allowances have been in existence for many years. Sources covered by CAIR have relied on the availability of these robust markets when developing compliance plans. The Transport Rule (TR) creates new TR SO_2 Group 1, TR SO_2 Group 2, TR NO_X, and TR ozone-season NO_X allowances. Markets for these allowances are developing now, and EPA is beginning to record the allowances in allowance accounts and introduce the allowances into the marketplace over a year before the Transport Rule programs' first compliance deadlines (December 1, 2012, for the 2012 ozone-season NO_X program, and March 1, 2013, for the 2012 annual NO_X and SO_2 programs). However, with the allocation revisions proposed in this rulemaking and the potential for additional revisions based on additional information that might be submitted in response to this rulemaking, some allowances would be recorded and introduced into the marketplace at later dates.

Based on observed compliance planning behavior among sources anticipating the 2012 control periods, and in light of the proposed revisions in this rulemaking and the potential for additional revisions based on additional information, EPA believes that amending the effective date of the assurance provisions to apply in 2014 would ease the transition from CAIR to Transport Rule compliance for parties across the board by promoting the liquidity of, and accessibility of price information in, new Transport Rule allowance markets and instilling confidence that utilities can flexibly comply through a variety of unit-level operational strategies that are not limited by initial Transport Rule unit-level allowance allocations.

EPA believes that this change would accelerate the development of robust Transport Rule allowance markets and facilitate a smooth transition to the Transport Rule programs. If, in response to concerns about when robust markets will develop, utilities were to artificially constrain 2012 operational plans to not exceed initially allocated allowances, the volume of early trading activity might be unnecessarily limited. Early trading activity is important for demonstrating market liquidity and assisting in price discovery to inform compliance planning by affected sources. Actions by utilities to limit early trading activity, therefore, could have negative impacts not only on those utilities, but on all participants in the Transport Rule trading programs. EPA believes that amending the effectiveness of the assurance provisions in 2012 and 2013 would encourage greater confidence among utilities for engaging immediately in cost-effective compliance planning that takes into account the flexibility of a robust market for acquiring allowances to cover emissions to the extent use of allowances is the most economic approach for compliance under the Transport Rule programs.

Amending the assurance provisions would not affect, in any way, the requirements of the rule in 2014 and beyond. EPA is proposing only a short postponement of the assurance penalty provisions to ensure a smooth transition from CAIR to the Transport Rule programs. EPA believes that, notwithstanding postponement of the assurance penalty provisions, the states covered by the Transport Rule programs will still achieve the emission reductions in 2012 and 2013 necessary to eliminate each state's significant contribution to nonattainment and interference with maintenance identified in the final Transport Rule (with the revisions included in this proposal). The highly detailed state-specific bases on which individual state budgets were determined using the approach and methodologies developed in the final Transport Rule, and included in the record for the Transport Rule, together with the derivation of the variability limits from historic data reflecting state-level year-to-year variation in power sector emissions, support EPA's belief. EPA noted in the Transport Rule proposal that knowledge about installed air pollution control equipment ''* * * provides greater certainty of where [near-term] reductions will occur and how these reductions should impact air quality in downwind areas. * * * Consequently, EPA believes that there is a high level of certainty that emissions reductions projected for 2012–2013 with interstate trading would be achieved within the states where they are projected to occur, making imposition of the assurance provisions during 2012–2013 unnecessary'' (75 FR 45314–45315).

In the final Transport Rule, EPA did not disavow the proposal's rationale for starting the assurance provisions in 2014; however, the Agency chose to make the assurance provisions effective starting in 2012 with the intent to err on the side of providing ''even further assurance'' of securing the targeted emission reductions in upwind states (76 FR 48296). EPA, therefore, has never concluded that starting the assurance provisions in 2014 would fail to meet the 110(a)(2)(D) obligation to eliminate significant contribution or interference with maintenance in 2012 and 2013. Moreover, this proposal's revisions to pollution control technology assumptions involve only 17 units of the approximately 3,600 units whose known controls inform the Transport Rule budgets. EPA continues to believe that, because the immediate-term Transport Rule state budgets for 2012 and 2013 (in contrast with the budgets for 2014 and thereafter) are uniquely based on the ability of the known existing fleet of EGUs and known existing or soon-to-be-installed pollution control equipment to deliver emission reductions in specific upwind states, there is a high level of certainty that the state assurance levels will not be exceeded in 2012 and 2013. EPA believes that this near-term certainty allows the Agency to postpone the effectiveness of the Transport Rule's assurance penalty provisions until 2014 without sacrificing the Transport Rule's ability to ensure necessary near-term emission reductions in each upwind state, supported by the calculation of each upwind state's emission reduction potential (informing the determination of state budgets) under the rule.

With the proposed, temporary postponement of the assurance provisions, EPA believes that, in the near term (as well as in the long term), Transport Rule allowance markets would provide compliance flexibility at the unit level and incentivize cost-effective, unit-level emission reductions. In the aggregate, these flexibilities and reductions at the unit level would result in achievement in each state of the state-level cost-effective emission reductions projected in the final Transport Rule (with the revisions included in this proposal). In other words, EPA is only proposing to postpone temporarily the assurance penalty provisions to address the ability of owners and operators of individual units to make the cost-effective emission reductions in 2012 and 2013 on which EPA's state-level emission projections relied in determining each state's amount of significant contribution and interference with maintenance under the final Transport Rule. Consequently, EPA believes that this proposal to postpone temporarily the assurance provisions will not yield substantially different state-level emission outcomes under the Transport Rule programs in 2012 or 2013 than the state-level emissions reflected in the state-specific budgets and assurance levels in the respective Transport Rule program.

EPA believes that a two year postponement of the effective date of the assurance penalty provisions is sufficient to guarantee robust market development, is consistent with the DC Circuit's decision leaving CAIR in place during the transition to a new rule, and will not interfere with the air quality objectives of the program. EPA does not, at this time, believe a longer postponement would be justified. EPA requests comment on all aspects of this proposal including the length of the postponement.

Since under this proposal, the assurance provisions would continue to be effective for 2014 and thereafter, EPA maintains that the Transport Rule, revised consistent with this proposal, would continue to address and meet the Court's concerns in *North Carolina*.

Any revisions to state budgets from this proposal that are finalized would also include corresponding revisions to the relevant assurance levels that would apply in 2014 with this proposed postponement.

D. Correct Typographical Errors

EPA is proposing to correct typographical errors in certain sections

of rule text in parts 52 and 97 in the final Transport Rule. Specifically, EPA proposes to change an erroneous reference in 40 CFR 52.39(i)(1)(ii) to ''TR SO_2 Group 1 allowances'' to refer instead to ''TR SO_2 Group 2 allowances'' and to redesignate sections 52.745 and 52.746 in 40 CFR part 52, subpart O as sections 52.731 and 52.732 and redesignate section 52.2241 in 40 CFR part 52, subpart VV as section 52.2441. EPA also proposes to remove some redundant words in 40 CFR 97.406(e)(2), 97.606(e)(2), and 97.706(E)(2). EPA requests comment concerning only the specific corrections and not concerning any other aspect of the provisions in which these corrections would be made.

IV. Recordation of Transport Rule Allowances

Impacts on Allocations to Existing Units

EPA recognizes that successful implementation of the Transport Rule programs in 2012 depends in part on the development of robust allowance markets, in which covered sources can locate and purchase any additional allowances necessary to comply with the rule. As such, EPA intends to allocate as many 2012 Transport Rule allowances as possible as early as possible to assist implementation and compliance planning. While none of the actions presented in this proposal would reduce any state's total number of allowances issued under that state's budgets, some of the actions presented in this proposal would slightly alter unit level allocations. For example, as described above, allocations to certain units covered by consent decrees would be limited. EPA does not believe it would be prudent or reasonable to record in allowance accounts, before taking final action on this proposal, allowance allocations in excess of the amount any given unit would receive if this proposal is finalized as proposed. EPA will record by November 7, 2011 for each unit, the lesser of the amount that unit would receive under the allocation scheme finalized in the Transport Rule or the amount the unit would receive if this proposal is finalized as proposed. This approach will allow EPA to allocate over 99.7 percent of all existing unit allowances under the state budgets established in the final Transport Rule by that rule's November 7 deadline (76 FR 48398, 48424, 48450, and 48475, August 8, 2011). During this timeframe, the only units that will receive substantially fewer allowances under this approach than under the allocations as finalized in the Transport Rule are units already subject to legally binding consent decrees that limit their emissions; therefore, EPA does not believe this approach will have any negative impact on compliance planning at sources in anticipation of the implementation of the Transport Rule programs. EPA is proposing to allocate the remaining 0.3 percent of the allowances no later than 7 days after finalization of this action is legally effective. In addition, if EPA finalizes the proposed actions that yield increases to state budgets, the Agency will act swiftly to record these additional allowances and thereby put them into the marketplace as quickly as possible following this rule's finalization, so that the allowances would be available significantly in advance of the compliance deadlines for the 2012 control periods (*i.e.,* the allowance transfer deadlines of December 1, 2012 (for the NO_X ozone season program) and March 1, 2013 (for the NO_X and SO_2 annual programs)). See the ''Transport Rule Allowance Recordation Schedule TSD'' in the docket for this rulemaking for a demonstration of how many allowances EPA will record by November 7, 2011 in each state.

V. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action makes relatively minor revisions to the emission budgets and allowance allocations or allowance allocations only in certain states in the final Transport Rule and corrects minor technical errors which are ministerial. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the final Transport Rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0667. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule 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 purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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 is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this action are electric power generators whose ultimate parent entity has a total electric output of 4 million megawatt-hours (MWh) or less in the previous fiscal year. We have determined that the changes considered in this proposed rulemaking pose no additional burden for small entities. The proposed revision to the new unit set-asides in Arkansas and Texas would yield an extremely small change in unit-level allowance allocations to existing units, including small entities, such that it would not affect the analysis conducted on small entity impacts under the finalized Transport Rule. In all other states, the revisions proposed in this rulemaking would yield additional allowance allocations to all units, including small entities, without increasing program stringency, such that it is not possible for the impact to small entities to be any larger than that already considered and reviewed in the finalized Transport Rule.

D. Unfunded Mandates Reform Act

This action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any

one year. This action is increasing the budgets and increasing the total number of allowances or maintaining the same budget but revising unit-level allocations in several other states in the Transport Rule. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

In developing the final Transport Rule, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments.

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. This action makes relatively minor revisions to the emissions budgets and allowance allocations or allowance allocations only in certain states in the final Transport Rule. Thus, Executive Order 13132 does not apply to this rule. EPA did provide information to state and local officials during development of both the proposed and final Transport Rule.

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, November 9, 2000). This action makes relatively minor revisions to the emissions budgets and allowance allocations in several states in the final Transport Rule and helps ease the transition from CAIR. Indian country new unit set-asides will increase slightly or remain unchanged in the states affected by this action. Thus, Executive Order 13175 does not apply to this action. EPA consulted with Tribal officials during the process of promulgating the final Transport Rule to permit them to have meaningful and timely input into its development.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Analyses by EPA that show how the emission reductions from the strategies in the final Transport Rule will further improve air quality and children's health can be found in the final Transport Rule RIA.

H. Executive Order 13211: Actions Concerning Regulations 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. EPA believes that there is no meaningful impact to the energy supply beyond that which is reported for the Transport Rule program in the final Transport Rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

As described in section XII.I of the preamble to the final Transport Rule, the Transport Rule program requires all sources to meet the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. This action, however, does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. EPA believes that the vast majority of communities and individuals in areas covered by the Transport Rule program inclusive of this action, including numerous low-income, minority, and Tribal individuals and communities in both rural areas and inner cities in the eastern and central U.S., will see significant improvements in air quality and resulting improvements in health. EPA's assessment of the effects of the final Transport Rule program on these communities is detailed in section XII.J of the preamble to the final Transport Rule.

List of Subjects

40 CFR Part 52

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

Administrative practice and procedure, Air pollution control, Electric utilities, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: October 6, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, parts 52 and 97 of chapter I of title 40 of the Code of Federal Regulations are proposed to be 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 A—General Provisions

§ 52.39 [Amended]

2. In § 52.39 amend paragraph (i)(1)(ii) by removing the words ''Group 1'' and adding, in their place, the words ''Group 2''.

Subpart O—Illinois

§ 52.745 [Redesignated as § 52.731]

3. Section 52.745, as published at 76 FR 48363, August 8, 2011, is redesignated as § 52.731.

§ 52.746 [Redesignated as § 52.732]

4. Section 52.746 is redesignated as § 52.732.

Subpart VV—Virginia

§ 52.2241 [Redesignated as § 52.2441]

5. Section 52.2241, as published at 76 FR 48376, August 8, 2011, is redesignated as § 52.2441.

PART 97—[AMENDED]

6. The authority citation for Part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

7. Section 97.406 is amended:

a. In paragraph (c)(3) by removing the words ''paragraphs (c)(1) and (2)'', adding in their place the words ''paragraph (c)(1)'' and designating the first sentence as paragraph (c)(3)(i);

b. By adding a new paragraph (c)(3)(ii); and

c. In paragraph (e)(2) by removing the words ''or or'' and adding, in their place, the word ''or''.

The addition reads as follows:

§ 97.406 Standard requirements.

* * * * *

(c) * * *

(3) * * *

(ii) A TR NO_X Annual unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2014 or the deadline for meeting the unit's monitor certification requirements under § 97.430(b) and for each control period thereafter.

* * * * *

8. Section 97.410 is revised to read as follows:

§ 97.410 State NO_X Annual trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) The State NO_X Annual trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of TR NO_X Annual allowances for the control periods in 2012 and thereafter are as follows:

State	NO_X Annual trading budget (tons)* for 2012 and 2013	New unit set-aside (tons) for 2012 and 2013	Indian country new unit set-aside (tons) for 2012 and 2013
Alabama	72,691	1,454	
Georgia	62,010	1,240	
Illinois	47,872	3,830	
Indiana	109,726	3,292	
Iowa	38,335	729	38
Kansas	30,714	583	31
Kentucky	85,086	3,403	
Maryland	16,633	333	
Michigan	65,421	1,243	65
Minnesota	29,572	561	30
Missouri	52,374	1,571	
Nebraska	30,039	1772	30
New Jersey	7,686	154	
New York	21,028	400	21
North Carolina	50,587	2,984	51
Ohio	92,703	1,854	
Pennsylvania	119,986	2,400	
South Carolina	32,498	617	33
Tennessee	35,703	714	
Texas	134,970	5,264	135
Virginia	33,242	1,662	
West Virginia	59,472	2,974	
Wisconsin	34,101	2,012	34

State	NO_X Annual trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Alabama	71,962	1,439	
Georgia	40,540	811	
Illinois	47,872	3,830	
Indiana	108,424	3,253	
Iowa	37,498	712	38
Kansas	25,560	485	26
Kentucky	77,238	3,090	
Maryland	16,574	331	
Michigan	63,040	1,198	63
Minnesota	29,572	561	30
Missouri	48,717	1,462	
Nebraska	30,039	1,772	30
New Jersey	7,378	148	
New York	21,028	400	21
North Carolina	41,553	2,451	42
Ohio	87,493	1,750	
Pennsylvania	119,194	2,384	
South Carolina	32,498	617	33
Tennessee	19,337	387	
Texas	134,970	5,264	135

State	NO_X Annual trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Virginia	33,242	1,662	
West Virginia	54,582	2,729	
Wisconsin	32,871	1,939	33

* Each trading budget includes the new unit set-aside and, where applicable, the Indian country new unit set-aside and does not include the variability limit.

(b) The States' variability limits for the State NO_X Annual trading budgets for the control periods in 2014 and thereafter are as follows:

State	Variability limits for 2014 and thereafter
Alabama	12,953
Georgia	7,297
Illinois	8,617
Indiana	19,516
Iowa	6,750
Kansas	4,601
Kentucky	13,903
Maryland	2,983
Michigan	11,347
Minnesota	5,323
Missouri	8,769
Nebraska	5,407
New Jersey	1,328
New York	3,785
North Carolina	7,480
Ohio	15,749
Pennsylvania	21,455
South Carolina	5,850
Tennessee	3,481
Texas	24,295
Virginia	5,984
West Virginia	9,825
Wisconsin	5,917

§ 97.425 [Amended]

9. Section 97.425 is amended in paragraph (b)(1) by removing the figure ''2013'' and adding in its place the figure ''2015''.

10. Section 97.506 is amended:

a. In paragraph (c)(3) by removing the words ''paragraphs (c)(1) and (2)'', adding in their place the words ''paragraph (c)(1)'' and designating the first sentence as paragraph (c)(3)(i); and

b. Adding a new paragraph (c)(3)(ii).

The addition reads as follows:

§ 97.506 Standard requirements.

* * * * *

(c) * * *

(3) * * *

(ii) A TR NO_X Ozone Season unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of May 1, 2014 or the deadline for meeting the unit's monitor certification requirements under § 97.530(b) and for each control period thereafter.

* * * * *

11. Section 97.510 is revised to read as follows:

§ 97.510 State NO_X Ozone Season trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) The State NO_X Ozone Season trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of TR NO_X Ozone Season allowances for the control periods in 2012 and thereafter are as follows:

State	NO_X Ozone Season trading budget (tons)* for 2012 and 2013	New unit set-aside (tons) for 2012 and 2013	Indian country new unit set-aside (tons) for 2012 and 2013
Alabama	31,746	635	
Arkansas	15,037	752	
Florida	28,644	544	29
Georgia	27,944	559	
Illinois	21,208	1,697	
Indiana	46,876	1,406	
Kentucky	36,167	1,447	
Louisiana	17,663	512	18
Maryland	7,179	144	
Mississippi	12,296	234	12
New Jersey	3,974	79	
New York	10,242	195	10
North Carolina	22,168	1,308	22
Ohio	40,063	801	
Pennsylvania	52,201	1,044	
South Carolina	13,909	264	14
Tennessee	14,908	298	
Texas	64,418	2,513	64
Virginia	14,452	723	
West Virginia	25,283	1,264	

State	NO_X Ozone Season trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Alabama	31,499	630	
Arkansas	15,037	752	
Florida	27,825	529	28
Georgia	18,279	366	
Illinois	21,208	1,697	
Indiana	46,175	1,385	
Kentucky	32,674	1,307	

State	NO_X Ozone Season trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Louisiana	17,663	512	18
Maryland	7,179	144	
Mississippi	12,296	234	12
New Jersey	3,577	72	
New York	10,242	195	10
North Carolina	18,455	1,089	18
Ohio	37,792	756	
Pennsylvania	51,912	1,038	
South Carolina	13,909	264	14
Tennessee	8,016	160	
Texas	64,418	2513	64
Virginia	14,452	723	
West Virginia	23,291	1,165	

*Each trading budget includes the new unit set-aside and, where applicable, the Indian country new unit set-aside and does not include the variability limit.

(b) The States' variability limits for the State NO_X Ozone Season trading budgets for the control periods in 2014 and thereafter are as follows:

State	Variability limits for 2014 and thereafter
Alabama	6,615
Arkansas	3,158
Florida	5,843
Georgia	3,839
Illinois	4,454
Indiana	9,697
Kentucky	6,862
Louisiana	3,709
Maryland	1,508
Mississippi	2,582
New Jersey	751
New York	2,151
North Carolina	3,876
Ohio	7,936
Pennsylvania	10,902
South Carolina	2,921
Tennessee	1,683
Texas	13,528
Virginia	3,035
West Virginia	4,891

§ 97.525 [Amended]

12. Section 97.525 is amended in paragraph (b)(1) by removing the figure ''2013'' and adding in its place the figure ''2015''.

13. Section 97.606 is amended:

a. In paragraph (c)(3) by removing the words ''paragraphs (c)(1) and (2)'' and adding in their place the words ''paragraph (c)(1)'' and designating the first sentence as paragraph (c)(3)(i);

b. By adding a new paragraph (c)(3)(ii); and

c. In paragraph (e)(2) by removing the words ''or or'' and adding, in their place, the word ''or''.

The addition reads as follows:

§ 97.606 Standard requirements.

* * * * *

(c) * * *

(3) * * *

(ii) A TR SO_2 Group 1 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2014 or the deadline for meeting the unit's monitor certification requirements under § 97.630(b) and for each control period thereafter.

* * * * *

14. Section 97.610 is revised to read as follows:

§ 97.610 State SO_2 Group 1 trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) The State SO_2 Group 1 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of TR SO_2 Group 1 allowances for the control periods in 2012 and thereafter are as follows:

State	SO_2 Group 1 trading budget (tons)* for 2012 and 2013	New unit set-aside (tons) for 2012 and 2013	Indian country new unit set-aside (tons) for 2012 and 2013
Illinois	234,889	11,744	
Indiana	285,424	8,563	
Iowa	107,085	2,035	107
Kentucky	232,662	13,960	
Maryland	30,120	602	
Michigan	229,303	4,357	229
Missouri	207,466	4,149	
New Jersey	7,670	153	
New York	30,852	586	31
North Carolina	136,881	10,813	137
Ohio	310,230	6,205	
Pennsylvania	278,651	5,573	
Tennessee	148,150	2,963	
Virginia	70,820	2,833	
West Virginia	146,174	10,232	
Wisconsin	79,480	3,099	80

State	SO_2 Group 1 trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Illinois	124,123	6,206	
Indiana	161,111	4,833	
Iowa	75,184	1,429	75
Kentucky	106,284	6,377	
Maryland	28,203	564	
Michigan	143,995	2,736	144
Missouri	165,941	3,319	
New Jersey	5,574	111	
New York	22,112	420	22
North Carolina	57,620	4,552	58
Ohio	137,077	2,742	
Pennsylvania	112,021	2,240	
Tennessee	58,833	1,177	
Virginia	35,057	1,402	
West Virginia	75,668	5,297	
Wisconsin	47,883	1867	48

* Each trading budget includes the new unit set-aside and, where applicable, the Indian country new unit set-aside and does not include the variability limit.

(b) The States' variability limits for the State SO_2 Group 1 trading budgets for the control periods in 2014 and thereafter are as follows:

State	Variability limits for 2014 and thereafter
Illinois	22,342
Indiana	29,000
Iowa	13,533
Kentucky	19,131
Maryland	5,077
Michigan	25,919
Missouri	29,869
New Jersey	1,003
New York	3,980
North Carolina	10,372
Ohio	24,674
Pennsylvania	20,164
Tennessee	10,590
Virginia	6,310
West Virginia	13,620
Wisconsin	8,619

§ 97.625 [Amended]

15. Section 97.625 is amended in paragraph (b)(1) by removing the figure ''2013'' and adding in its place the figure ''2015''.

16. Section 97.706 is amended:

a. In paragraph (c)(3) by removing the words ''paragraphs (c)(1) and (2)'' and adding in their place the words ''paragraph (c)(1)'' and designating the first sentence as paragraph (c)(3)(i);

b. By adding a new paragraph (c)(3)(ii); and

c. In paragraph (e)(2) by removing the words ''or or'' and adding, in their place, the word ''or''.

The addition reads as follows:

§ 97.706 Standard requirements.

* * * * *

(c) * * *

(3) * * *

(ii) A TR SO_2 Group 2 unit shall be subject to the requirements under paragraph (c)(2) of this section for the control period starting on the later of January 1, 2014 or the deadline for meeting the unit's monitor certification requirements under § 97.730(b) and for each control period thereafter.

* * * * *

14. Section 97.710 is revised to read as follows:

§ 97.710 State SO_2 Group 2 trading budgets, new unit set-asides, Indian country new unit set-aside, and variability limits.

(a) The State SO_2 Group 2 trading budgets, new unit set-asides, and Indian country new unit set-asides for allocations of TR SO_2 Group 2 allowances for the control periods in 2012 and thereafter are as follows:

State	SO_2 Group 2 trading budget (tons)* for 2012 and 2013	New unit set-aside (tons) for 2012 and 2013	Indian country new unit set-aside (tons) for 2012 and 2013
Alabama	216,033	4,321	
Georgia	158,527	3,171	
Kansas	41,528	789	42
Minnesota	41,981	798	42
Nebraska	65,052	2,537	65
South Carolina	88,620	1,683	89
Texas	314,021	15,387	314

State	SO_2 Group 2 trading budget (tons)* for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Alabama	213,258	4,265	
Georgia	95,231	1,905	
Kansas	41,528	789	42
Minnesota	41,981	798	42
Nebraska	65,052	2,537	65
South Carolina	88,620	1,683	89

State	SO_2 Group 2 trading budget (tons) * for 2014 and thereafter	New unit set-aside (tons) for 2014 and thereafter	Indian country new unit set-aside (tons) for 2014 and thereafter
Texas	314,021	15,387	314

* Each trading budget includes the new unit set-aside and, where applicable, the Indian country new unit set-aside and does not include the variability limit.

(b) The States' variability limits for the State SO_2 Group 2 trading budgets for the control periods in 2014 and thereafter are as follows:

State	Variability limits for 2014 and thereafter
Alabama	38,386
Georgia	17,142
Kansas	7,475
Minnesota	7,557
Nebraska	11,709
South Carolina	15,952
Texas	56,524

15. Section 97.725 is amended by, in paragraph (b)(1), removing the word ''2013'' and adding, in its place, the word ''2015''.

[FR Doc. 2011–26521 Filed 10–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2010–0750; FRL–9477–1]

RIN 2060–AQ10

New Source Performance Standards Review for Nitric Acid Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing revisions to the new source performance standards (NSPS) for nitric acid plants. Nitric acid plants include one or more nitric acid production units. These proposed revisions include a change to the nitrogen oxides (NO_X) emission limit, which applies to each nitric acid production unit commencing construction, modification, or reconstruction after October 14, 2011. These proposed revisions will also include additional testing and monitoring requirements.

DATES: Comments must be received on or before November 28, 2011. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before November 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0750, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- *E-mail: a-and-r-Docket@epa.gov.* Include EPA–HQ–OAR–2010–0750 in the subject line of the message.
- *Fax:* Fax your comments to: (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2010–0750.
- *Mail:* Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, *Attention:* Docket ID No. EPA–HQ–OAR–2010–0750. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery or Courier:* In person or by courier, deliver comments to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket Center's normal hours of operation, (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that the 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 the 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 will be made available on the Internet. If you submit an electronic comment, the 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 detailed instructions on submitting comments and additional information on the rulemaking process, see the ''General Information'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (*e.g.,* CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about these proposed standards for nitric acid production units, contact Mr. Chuck French, Sector

Policies and Program Division, Office of Air Quality Planning and Standards (D243–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7912; fax number (919) 541–3207, *e-mail address: French.chuck@epa.gov.*

SUPPLEMENTARY INFORMATION:

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments to EPA?
C. Where can I get a copy of this document?
D. When would a public hearing occur?
II. Background Information
A. What is the statutory authority for these proposed revisions?
B. What are the current NSPS for Nitric Acid Plants?
III. Summary of Proposed Standards
A. What source category is being regulated?
B. What pollutants are emitted from these sources?
C. What are the proposed standards?
IV. Rationale for the Proposed Standards
A. How is EPA proposing to revise the emissions limit for affected sources?
B. How is EPA proposing to revise the testing and monitoring requirements?
C. How is EPA proposing to revise the notification, reporting, and recordkeeping requirements?
V. Summary of Cost, Environmental, Energy, and Economic Impacts of These Proposed Standards
A. What are the impacts for new nitric acid production units?
B. What are the secondary impacts for new nitric acid production units?
C. What are the economic impacts for new nitric acid production units?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paper Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by these proposed revisions include:

Category	NAICS code [1]	Examples of regulated entities
Industry	325311	Nitrogenous Fertilizer Manufacturing.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.70a. If you have any questions regarding the applicability of this proposed action to a particular entity, contact the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments to the EPA?

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2010–0750. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of the proposed action is available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN) Web site. Following signature, EPA posted a copy of the proposed action on the TTN Web site's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN Web site provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing by October 24, 2011, a public hearing will be held on October 28, 2011. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Mr. Chuck French, listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background Information

A. What is the statutory authority for these proposed revisions?

New source performance standards (NSPS) implement Clean Air Act (CAA) section 111. Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions which (taking into consideration the cost of achieving such emission reductions, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control has sometimes been referred to as ''best demonstrated technology'' or BDT, and will be referred to in this preamble as best system of emissions reduction (BSER). In assessing whether a standard is achievable, EPA must account for routine operating variability associated with performance of the system on whose performance the standard is based. See *National Lime Ass'n* v. *EPA,* 627 F. 2d 416, 431–33 (DC Cir. 1980).

Common sources of information as to what constitutes a BSER, and for assessing that technology's level of performance, include best available control technology (BACT) determinations made as part of new source review (NSR). Also, emissions limits that exist in state and federal permits for recently permitted sources,

and emissions test data for demonstrated control technologies collected for compliance demonstration or other purposes are evaluated during these assessments. EPA compares permit limitations and BACT determination data with actual performance test data to identify any site-specific factors that could influence general applicability of this information. Also, as part of this review we evaluate if NO_X emissions limits more stringent than those in Subpart G have been established, or if emissions limits have been developed for additional air pollutants.

The use of State permit data and BACT determination developed as part of NSR is appropriate because a BACT determination evaluates information that is similar to BSER, such as available controls, their performance, cost, and non-air environmental impacts. One important difference between BACT determinations and a BSER determination for purposes of NSPS is that BACT determinations are made on a site-specific basis. Therefore, in evaluating BACT determinations, we have to account for any site-specific factors that may not be applicable to the source category as a whole.

Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

Existing affected facilities that are modified or reconstructed would also be subject to these proposed revisions for affected sources. Under CAA section 111(a)(4), ''modification'' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted. Changes to an existing facility that do not result in an increase in emissions are not considered modifications. Rebuilt affected facilities would become subject to the proposed standards under the reconstruction provisions, regardless of changes in emission rate. Reconstruction means the replacement of components of an existing facility such that (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards (40 CFR 60.15).

The NSPS are directly enforceable federal regulations issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized, when it is most cost effective to build in controls. Since 1970, the NSPS have been successful in achieving long-term emissions reductions in numerous industries by assuring that cost-effective controls are installed on new, reconstructed, or modified sources.

B. What are the current NSPS for Nitric Acid Plants NSPS?

The current NSPS for Nitric Acid Plants (40 CFR part 60, Subpart G) were promulgated in the **Federal Register** on December 23, 1971 (36 FR 24881). The first review of the Nitric Acid Plants NSPS was completed on June 19, 1979 (44 FR 35265). An additional review was completed on April 5, 1984 (49 FR 13654). No changes were made to the NSPS as a result of those reviews. Minor testing and monitoring changes were made during three reviews since the original promulgation in 1971 (October 6, 1975 (40 FR 46258), April 22, 1985 (50 FR 15894), and February 14, 1989 (54 FR 6666)). The current Nitric Acid Plants NSPS (Subpart G) applies to each nitric acid production unit constructed or modified after August 17, 1971. The present NSPS has an emissions limit of 3.0 lb of NO_X per ton of 100% nitric acid produced and a 10% opacity standard as an additional method of demonstrating compliance with the NO_X emission limit. Continuous NO_X monitors are required as well as recording daily production rates.

III. Summary of Proposed Standards

A. What source category is being regulated?

Today's proposed standards would apply to new nitric acid production units. Nitric acid plants may include one or more nitric acid production units. For purposes of these proposed regulations, a nitric acid production unit is defined as any facility producing weak nitric acid by either the pressure or atmospheric pressure process. This definition has not changed from Subpart G.

A new nitric acid production unit is defined as a nitric acid production unit for which construction, modification, or reconstruction commences on or after October 14, 2011. The affected facility under the proposed NSPS is each nitric acid production unit.

B. What pollutants are emitted from these sources?

The pollutant to be regulated under section 111(b), for new nitric acid production units, is NO_X which undergo reactions in the atmosphere to form particulate matter and ozone. Nitrogen oxides, particulate matter, and ozone are all subject to national ambient air quality standards under section 109 of the Clean Air Act, based on their adverse effects to human health and welfare. NO_X is a criteria pollutant.

These nitric acid production units also emit another nitrogen compound known as nitrous oxide (N_2O), which is considered a greenhouse gas (GHG). We are not proposing an N_2O emission standard in this action. Although we have limited data from facilities in the U.S, we believe that owners/operators of nitric acid production units should consider technologies and technology combinations that would be appropriate for controlling both NO_X and N_2O. Some technologies such as selective catalytic reduction (SCR) and hydrogen peroxide injection (HPI) are effective only in controlling NO_X. However, other technologies such as nonselective catalytic reduction (NSCR) are effective in controlling both NO_X and N_2O.

The technology combinations that control both NO_X and N_2O include SCR plus secondary catalysts (located in the ammonia reactor), and SCR plus other non-NSCR types of tertiary catalysts (located after the absorption tower). We expect any controls applied to control NO_X emissions would not preclude installing cost effective N_2O control technologies in the future. We solicit relevant comments and additional information on these technologies. Nitric acid production is also one of the industrial sectors for which ''white papers'' were written to provide basic information on GHG control options to assist state and local air pollution control agencies, tribal authorities, and regulated entities in implementing measures to reduce GHGs, particularly in the assessment of BACT under the PSD permitting program. These papers provide basic technical information that may be useful in a BACT analysis but they do not define BACT for each sector. For more information regarding the ''white papers,'' see *http://www.epa.gov/nsr/ghgpermitting.html.*

C. What are the proposed standards?

We are proposing to reduce the NO_X emissions limit from 3.0 pounds of NO_X per ton of nitric acid produced (lb NO_X/ton acid), expressed as NO_2, with the production being expressed as 100 percent nitric acid, to 0.50 lb NO_X/ton

acid as a 30-day emission rate calculated each operating day based on the previous 30 consecutive operating days.

The general provisions in 40 CFR part 60 provide that emissions in excess of the level of the applicable emissions limit during periods of startup, shutdown, and malfunction shall not be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard. See 40 CFR 60.8(c). The general provisions, however, may be amended for individual subparts. See 40 CFR 60.8(h). Here, the EPA is proposing standards in Subpart Ga that apply at all times, including periods of startup or shutdown, and periods of malfunction.

IV. Rationale for the Proposed Standards

Section 111(a)(1) requires that standards of performance for new sources reflect the—

> * * * degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

A. How is EPA proposing to revise the emissions limit for affected sources?

For affected sources constructed, modified, or reconstructed after October 14, 2011, we are proposing to reduce the NO_X emissions limit from 3.0 lb NO_X/ton acid to 0.50 lb NO_X/ton acid as a 30-day emission rate calculated each operating day based on the previous 30 consecutive operating days.

The NO_X emissions limit for affected facilities constructed, modified, or reconstructed after August 17, 1971, and before October 14, 2011 remains unchanged at 3.0 lb NO_X/ton acid.

The 1971 promulgated Nitric Acid Plants NSPS were based on emission levels achieved using catalytic reduction (see 36 FR 2881, December 23, 1971). Additional reviews of the NSPS were conducted in 1979 and 1984, where EPA again concluded that catalytic reduction was the BSER considering economic, energy, and nonair environmental impacts. No changes were made to the NSPS during these reviews.

There are currently 40 nitric acid production facilities in the U.S. with a total of 67 nitric acid production units. For this review, information was collected from responses to a section 114 information collection request (ICR), through site visits and from trade associations. The information and comments from stakeholders are contained in the docket.

The review of permits and other available information in the record revealed that SCR, NSCR, and HPI are all air pollution control technologies that are used for NO_X control in the nitric acid production source category and EPA considered all of these as candidates for BSER as we developed this proposed rule. We are not aware of any other established or emerging technologies that should be considered as candidates for BSER for this source category. SCR is used in 25 nitric acid production units in the U.S. NSCR is used in 14 nitric acid process units in the U.S. HPI is used by one facility. All of these air pollution control technologies are effective in controlling NO_X emissions. The average NO_X emission reductions for these controls are: SCR—98%; NSCR—99%, HPI—95% (for more information see Table 3.3 in the Economic Impact Analysis, which is available in the docket for this action).

The approach used for determining BSER for nitric acid production units involved reviewing the emission test data submitted in response to the section 114 ICR, recently issued state permit data, and BACT determinations developed as part of NSR. In response to clarifications of the section 114 ICRs, industry provided additional data. In determining BSER we generally look at the controls and control performance of new sources. All recent nitric acid units have installed SCR as NO_X controls. Recent BACT determinations have also identified SCR as BACT.

A 2009 BACT determination has been incorporated into the facility permit limit for a nitric acid plant in American Falls, Idaho (Southeast Idaho Energy, LLC). For this analysis, SCR was determined as BACT, and 0.60 lb NO_X/ton acid was determined as the BACT level of control. The Southeast Idaho Energy, LLC emission limit of 0.60 lb NO_X/ton acid will apply at all times during steady-state operations (no standard applies during periods of startup or shutdown, and periods of malfunction). The compliance period was not specified.

There are other recent BACT analyses at two other nitric acid production units. At Agrium in North Bend, Ohio, the BACT limit set in 2009 is 0.61 lb NO_X/ton acid on a 365-day rolling basis. At Agrium in Kennewick, Washington, the BACT limit set in 2008 is 0.60 lb NO_X/ton acid in any continuous 12-month period (including startup, shutdown and malfunction).

As part of our BSER analysis, we are proposing that the standard be stated as a rolling 30-day limit based on 30 consecutive operating days and that the limit be met at all times. We believe that the 0.50 lb NO_X/ton acid standard, supported by existing source data and BACT determinations, is more stringent than any state BACT determination because 0.50 lb NO_X/ton acid is lower than both 0.61 lb NO_X/ton acid and 0.60 lb NO_X/ton acid.

Emissions test data were obtained from a number of sources including a section 114 ICR, trade associations, and the EPA Region 5. We received nine relative accuracy test audit (RATA) reports for 5 nitric acid production units controlled with SCR, 6 RATA reports for 6 nitric acid production units controlled with NSCR, and 1 RATA report for 1 nitric acid production unit controlled with HPI. These emissions tests are short term and are presented in the memorandum *Summary of Test Data Received from Section 114 ICR,* dated August 25, 2010 (updated December 17, 2010).

In response to the section 114 request, nitric acid plants submitted NO_X Continuous Emission Monitoring Systems (CEMS) data. These included 3 facilities using SCR and 2 facilities using NSCR.

All emission test data (short term and CEMS data) indicate that lower emissions than the current Subpart G emission limit of 3.0 lb NO_X/ton acid are being achieved, regardless of the type of NO_X control being used. We decided to further analyze the long-term CEMS data because: (1) Long term data include periods of startup and shutdown, where emissions are shown to be larger than during steady state operating conditions, (2) long term data allow the seasonal impacts of temperature and humidity on NO_X controls to be evenly distributed, as these factors often vary by the time of year and location, and (3) long term data include seasonal supply and demand cycles so that all factors that influence production are equally considered.

We have concluded that SCR is BSER based on data showing lower emissions rates from SCR-controlled units. For more information, see Table 1 of this preamble and the related discussion. The fact that SCR is the only known NO_X control technology being installed in new nitric acid production units, and that SCR has been determined to be BACT supports this conclusion. Further, SCR does not produce any secondary environmental impacts.

The next step in the NSPS process is to establish an achievable standard using BSER. In assessing whether a standard is achievable, the EPA must account for routine operating variability

associated with performance of the system on which the standard is based. For each plant that submitted long-term CEMS data, these data cover the entire operating period including startups, shutdowns and malfunctions. To ensure that the new NO_X standard is achievable by all properly designed and operated SCR units and covers all operating periods including startup and shutdowns, we analyzed the statistical variation by calculating the 99th percentile. When establishing an emissions limit (which is considered a never to exceed level of emissions), we use a 99th percentile based on statistical analyses. This approach accounts for short and long-term variability in emissions associated with all normal operating conditions, including startup and shutdown (see 72 FR 54878–79, September 27, 2007). This analysis is contained in the memorandum *Statistical Evaluation of CEMS Data to Determine the NO_X* Emission Standard, dated July 18, 2011.

Using the long term CEMS data received through the ICR, the EPA determined that there were sufficient data to directly calculate the 99th percentile for the best performing sources. The EPA determined that the CEMS represents long-term performance and accounts for long-term and day-to-day variability.

Long term CEMS data were obtained from 3 plants using SCR and 2 plants using NSCR. The plant with HPI did not submit long term CEMS data. Following is a discussion of these data—the 3 plants with SCR are discussed first followed by the 2 plants with NSCR.

The 99th percentile was directly calculated for these 5 best performing sources. A summary of the values is shown in Table 1.

TABLE 1—CEMS DATA—99TH PERCENTILE BY COMPLIANCE PERIOD

[lb of NO_X/T of 100% nitric acid]

Compliance period	Control	15 minute	hourly	3-hour rolling	daily block	7-day rolling	30-day rolling
PCS Geismar (Train 5)	SCR	0.84	0.89	1.00	1.02	0.72	0.38
Agrium North Bend	SCR	NA	0.69	0.80	1.67	0.92	0.50
El Dorado Nitrogen	SCR	NA	0.47	0.47	0.44	0.40	0.37
PCS Geismar (Train 4)	NSCR	0.97	1.25	1.74	5.58	2.41	2.41
Agrium Sacramento	NSCR	NA	2.13	NA	1.60	1.31	1.29

The Agrium-North Bend plant submitted data spanning from January 2010 through December 2010. The continuous data over the 12-month period show 0.50 lb NO_X/ton acid as the 99th percentile for each 30-day rolling time period. The 30-day periods with high NO_X emissions occurred during periods of startup and shutdown.

The PCS Geismar plant submitted 15-minute average data for Train 5 for 2007–2009. Train 5 is controlled with SCR. The period spanning January 2009 through December 2009 was analyzed. The continuous data from a 12-month period show 0.38 lb NO_X/ton acid as the 99th percentile for each 30-day rolling time period.

The El Dorado plant submitted hourly averages data for the period of July 2010–June 2011. The continuous data from a 12-month period show 0.37 lb NO_X/ton acid as the 99th percentile for each 30-day rolling time period.

We also received 15-minute average data on NO_X emissions for 2007–2009 from the PCS Geismar plant for Train 4, which is controlled with NSCR. The period spanning January 2009 through December 2009 was analyzed to be consistent with Train 5 (controlled with SCR). The continuous data from a 12-month period show 2.41 lb NO_X/ton acid as the 99th percentile emissions level for a 30-day time period for train 4. The result of this analysis is limited due to the fact that the nitric acid train was operational for approximately 65 days during the 12-month period. It is unlikely that this short time period is representative of the NSCR performance over time.

The Agrium-Sacramento plant submitted data spanning from January 2010 through December 2010. The continuous data over the 12-month period show 1.29 lb NO_X/ton acid as the 99th percentile for a 30-day time period. The 30-day periods with high NO_X emissions occurred during periods of startup and shutdown.

As shown by Table 1, all units are meeting the current Subpart G NO_X emission standard of 3.0 lb NO_X/ton acid, regardless of the compliance period. We did not receive any long term data from the nitric acid train using HPI but the table shows that the NO_X emissions from nitric acid trains using SCR are lower than nitric acid trains using NSCR. For example, reviewing the 99th percentile on a 30-day rolling basis, SCR data range from 0.38 to 0.50 lb NO_X/ton acid and NSCR data range from 1.29 to 2.41 lb NO_X/ton acid. The lower emissions from SCR when compared to emissions from NSCR are the main reason that SCR has been determined as BSER.

Whether NSCR can meet the levels achievable by SCR over a long term, is uncertain. The long term CEMS data from 2 NSCR plants indicate difficulty in meeting the 0.50 lb NO_X/ton limit. However, we have monthly average data from 2 other facilities using NSCR. These plants with NSCR (Dyno Nobel-Deer Island and JR Simplot–Helm) submitted monthly block averages for a three year period. For 2009, the monthly block averages for both plants were very close and range from 7 to 17 ppm or approximately 0.15–0.36 lb NO_X/ton acid. As these data are not continuous but rather block monthly averages, comparison of these with the CEMS data discussed above is not possible. These data are presented to show that NSCR may be able to achieve the proposed emission limit. Also, the data presented in the memorandum *Summary of Test Data Received from Section 114 ICR,* dated August 25, 2010 (updated December 17, 2010) show that low short-term NO_X emissions rates are possible when using NSCR and HPI.

For the units controlled by SCR, we have not been able to identify any specific factors associated with the El Dorado Nitrogen and PCS Nitrogen Train 5 units that account for the lower emission levels compared to the Agrium-North Bend unit. Thus, based on the information currently in the record, we believe that emission levels of NO_X are not only dependent on the use of SCR but also on process factors that result in variability that cannot be avoided through better or different design or through changes in operating practices.

By selecting an emission limit based on the 99th percentile of emissions data from unit with BSER (which is SCR), we ensure that this limit reflects BSER but is also achievable during all periods by facilities that have BSER equivalent

controls. The available data for units with BSER, which were used to derive the proposed NO_X emissions limit for new, modified and reconstructed units, are from existing nitric acid units that have been in operation for at least 10 years. Therefore, we believe that reconstructed, modified and new sources will be able to meet the proposed limit. We have no reason to believe that modified or reconstructed sources would not be able to meet this limit. Thus, we do not believe different standards are needed for modified or reconstructed sources.

Moreover, in the past when companies chose to increase production or replace units, it is our understanding that they would build new production units rather than modify or reconstruct existing units. In fact, to our knowledge, no existing nitric acid production unit has been reconstructed or modified since Subpart G was promulgated. Therefore, we expect no reconstructions or modifications to occur for the nitric acid industry in the foreseeable future. Nevertheless, we request comment on any reconstructions or modifications to nitric acid production units that have taken place or information about any future plans to do such modifications or reconstructions. Also, we request data on the level of NO_X emissions that these nitric acid units are able to achieve. If these emission levels are different than 0.50 lb NO_X/ton acid on a 30 day rolling basis, the commenter should include data to support the suggested emission level.

Nevertheless, we expect that growth within the industry will be limited to newly constructed nitric acid production units. We believe that new nitric acid production units will be able to meet the proposed limit which takes into consideration routine operating variability as well as variation due to weather and periods of startups and shutdowns. The proposed emission limit of 0.50 lb NO_X/ton acid is a never to exceed limit. We have not identified any specific process or technology that new nitric acid production units could employ to consistently meet an emission limit lower than 0.50 lb NO_X/ton acid. Therefore, we are proposing a limit of 0.50 lb NO_X/ton acid for Subpart Ga.

As part of our BSER analysis, we are proposing that the standard be stated as a rolling 30-day limit based on 30 consecutive operating days and that the limit be met at all times including periods of startup and shutdown. We believe that the 0.50 lb NO_X/ton acid standard is supported by existing source data. The use of a 30-day period accounts for peaks in the data that occur during startup and shutdown. These periods occur on average about 3 to 4 hours per month and emissions during those periods are much higher than normal. Therefore, the 3 to 4 hour periods can affect average emissions beyond that 3 to 4 hour period. Setting the standard with a 30-day compliance period meets the statutory requirement that the standard reflect the degree of emission limitation that is achievable through BSER, including during periods that include startup and shutdown.

Although the proposed limit of 0.50 lb NO_X/ton acid is based on the data for SCR, NSPS do not require the use and installation of a specific control device. We request additional long-term data (in units of the standard) to determine whether NSCR and HPI can achieve the proposed limit.

For all of the reasons discussed above, we are proposing 0.50 lb NO_X/ton acid as the revised standard for Nitric Acid Plants to be established in Subpart Ga.

Periods of Startup or Shutdown. In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed different standards for those periods.

According to information received from industry in the section 114 ICR, NO_X emissions during startup and shutdown are higher than during normal operations. Due to the relatively short duration of startup and shutdown events (generally a few hours) compared to normal steady-state operations, we believe that a 30-day emission rate calculated based on 30 consecutive operating days will allow affected sources to meet the 0.50 lb NO_X/ton acid at all times, including periods of startup and shutdown. We request comment on the use of a 30-day emission rate calculated based on 30 consecutive operating days. Further, we request comment on whether the standard should be set with a compliance period that is shorter (such as 24 hours). For any comment suggesting a shorter time period, the comment should explain why that different period is appropriate and include data supporting the different compliance period and how startup and shutdown would be factored into a shorter term limit.

If you believe that the EPA's conclusion is incorrect, or that the EPA has failed to consider any relevant information on this point, we encourage you to submit comments. In particular, we note that the general provisions in Part 60 require facilities to keep records of the occurrence and duration of any startup, shutdown or malfunction (40 CFR 60.7(b)) and either report to the EPA any period of excess emissions that occurs during periods of startup, shutdown or malfunction (40 CFR 60.7(c)(2)) or report that no excess emissions occurred (40 CFR 60.7(c)(4)). Thus, any comments that contend that sources cannot meet the proposed standard during startup and shutdown periods should provide data and other specifics supporting their claim.

Periods of Malfunction. Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' (40 CFR 60.2). The EPA has determined that malfunctions should not be viewed as a distinct operating mode. Further, nothing in section 111 or in case law requires that the EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. See, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.'')

Further, it is reasonable to interpret section 111 as not requiring the EPA to account for malfunctions in setting emissions standards. For example, we note that section 111 provides that the EPA will set standards of performance which reflect the degree of emission limitation achievable through ''the application of the best system of emission reduction'' that the EPA determines is adequately demonstrated. Applying the concept of ''the application of the best system of emission reduction'' to periods during which a source is malfunctioning presents significant difficulties. The ''application of the best system of emission reduction'' is more appropriately understood to include operating in such a way as to avoid malfunctions of their units.

Moreover, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take malfunctions into account in setting CAA section 111 standards for the nitric acid production units that will

be covered in the proposed Subpart Ga. As noted above, by definition, malfunctions are sudden and unexpected events and it would be difficult to set a standard that takes into account the myriad different types of malfunctions that can occur across all sources in the category. Moreover, malfunctions can vary in frequency, degree, and duration, further complicating standard setting.

If the standard is stated as a 30-day emission rate calculated based on 30 consecutive operating days, or some other time period, we believe that sources will be able to operate their plants in compliance with the standard even if they experience malfunctions. Also, excess emissions from a nitric acid production unit during a malfunction can frequently be mitigated or avoided by shutting the plant down if a key component fails.

In the event that a source fails to comply with the applicable CAA section 111 standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to avoid malfunctions and to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 111 standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR 60.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that such failure can sometimes cause an exceedance of the relevant emission standard. (See, *e.g., State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown* (Sept. 20, 1999); *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (Feb. 15, 1983)). The EPA is therefore proposing to add an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. See 40 CFR 60.71a (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also are proposing other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 60.74a. (See 40 CFR 22.24). The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 60.2 (sudden, infrequent, not reasonably preventable and not caused by poor maintenance and/or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with section 60.72a(b) and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the Clean Air Act (see also 40 CFR part 22.77).

B. How is the EPA proposing to revise the testing and monitoring requirements?

The current NSPS requires an initial performance test, the installation of a continuous NO_X monitor and the recording of the daily production rate and hours of operations. We are proposing that the new Subpart Ga also require the installation, operation, and maintenance of an exhaust gas flow rate monitor. The capital cost of this monitor is $39,000 and the total annualized cost for this monitor for a new nitric acid production unit is estimated to be $15,000. The gas flow rate monitor provides data on the volume of gas emitted per unit of time, and this information combined with the data from the NOx monitor will result in more accurate measurements of the total NO_X being emitted.

Subpart G currently requires that owners/operators of nitric acid production units conduct an initial performance test to demonstrate initial compliance with the NO_X emission limit. The initial performance test is based on three one-hour test runs for NO_X using manual testing methods; specifically, Method 7 (or, alternatively, Method 7A, 7B, 7C, or 7D) for NO_X concentration, and Method 2 for volumetric flow rate (40 CFR 60, appendix A–4). The nitric acid production rate also must be determined during the initial performance test so that the emissions can be calculated in terms of the emissions limit, lb NO_X per ton of acid produced (100 percent acid basis). The current rule does not provide specific procedures or criteria for determining the production rate or concentration.

The current NSPS also requires the owner/operator to install, calibrate, maintain and operate a CEMS for measuring NO_X concentration (40 CFR 60, appendix B, Performance Specification 2) to demonstrate continuing compliance. The owner/operator is required to establish a conversion factor expressed as lb NO_X per ton acid produced per ppm NO_X by comparing the CEMS data (ppm NO_X) obtained during the performance test to the performance test results (lb NO_X per ton of acid). The conversion factor is used to convert the CEMS concentration data into units of the emissions standard on an on-going basis. Subsequently, the owner/operator must report periods of excess emissions defined as any 3-hour period during which the average nitric acid emissions (arithmetic average of three contiguous 1-hour periods) as measured by the CEMS exceed the emissions standard. The owner/operator must reestablish the conversion factor during any subsequent performance test.

As part of an ongoing effort to improve compliance with various federal air emission regulations, we are proposing to require use of a continuous compliance determination method (CCDM) for NO_X for nitric acid production units subject to Subpart Ga. The proposed CCDM is a continuous emissions rate monitoring system (CERMS) comprised of the NO_X CEMS and a continuous exhaust gas flow rate monitoring system. The CERMS would be required to meet the requirements of performance specification 6 (40 CFR 60, appendix B).

Performance Specification 6 (PS6) provides performance criteria for the flow rate monitoring system and stipulates the overall performance

criteria for the monitoring system in terms of pollutant emissions rate (*i.e.,* lb NO_X/hour). PS6 refers to the criteria of performance specification 2 (PS2) for the NO_X CEMS. Extractive Fourier Transform Infrared Spectroscopy (FTIR) is capable of measuring NO_X through the requirements in Performance Specification 15 (PS15). The proposed regulation allows use of the FTIR CEMS for determining compliance with the NO_X emissions limit, in lieu of a monitor meeting the requirements of PS2, at the discretion of the owner/operator.

This proposed rule would require the acid production rate to be determined on a daily basis. The daily NO_X emissions rate measured by the CERMS (lb) and the daily production rate (tons of acid per day) are used to calculate the emissions rates in units of the standard, lbs NO_X per ton of acid. This proposed rule would provide options for measuring the production rate and stipulates a minimum accuracy requirement for the measurement equipment. This proposed rule also requires that the concentration of the produced nitric acid be tested daily.

We are proposing that nitric acid production units subject to Subpart Ga will not be subject to an opacity standard; consequently no test or monitoring method for opacity is included in this proposed rule. Using the nitric acid production rate and concentration of the nitric acid, the NO_X concentration from the NO_X CEMS, and the flow rate from the proposed flow monitor, the NO_X emission rate in units of the standard (lb NO_X/ton acid) can be determined at any point in time. Therefore, an opacity standard is not required as an additional method of demonstrating compliance with a NO_X emission limit.

C. How is the EPA proposing to revise the notification, reporting, and recordkeeping requirements?

The only recordkeeping requirements in the existing Subpart G are of daily production rate and hours of operation. The reporting requirements in the existing subpart G include reports of excess emissions and production rate. The frequency of reporting is semiannually as specified in 60.7(c).

Reporting and recordkeeping requirements are being proposed as separate sections for Subpart Ga. Owners/operators subject to Subpart Ga must keep records of all performance tests and results; and dated daily records of hours of operation, nitric acid production rate, and nitric acid concentration; explanations for periods of noncompliance and corrective actions taken; span exceedances; and any modifications to CERMS which could affect the ability of the CERMS to comply with applicable performance specifications.

Owners/operators must report all performance tests and results; dated daily records of NO_X emission rates that exceed the standard, explanations for periods of noncompliance and corrective actions taken, span exceedances, and any modifications to CERMS which could affect the ability of the CERMS to comply with applicable performance specifications; and RATA (*i.e.,* from the initial certification) and performance test data. The frequency of reporting for Subpart Ga is the same as for Subpart G.

V. Summary of Cost, Environmental, Energy, and Economic Impacts of These Proposed Standards

In setting standards, the CAA requires us to consider alternative emission control approaches, taking into account the estimated costs as well as impacts on energy, solid waste, and other effects.

A. What are the impacts for new nitric acid production units?

We are presenting estimates of the impacts for the proposed 40 CFR part 60, Subpart Ga that change the performance standards for new nitric acid production units. The cost, environmental, and economic impacts presented in this section are expressed as incremental differences between the impacts of nitric acid production units complying with the proposed Subpart Ga and the current NSPS requirements of Subpart G (*i.e.,* baseline). The impacts are presented for future nitric acid production units that commence construction, reconstruction, or modification over the 5 years following promulgation of the revised NSPS. Costs are based on 2nd quarter of 2010. The analyses and the documents referenced below can be found in Docket ID No. EPA–HQ–OAR–2010–0750.

In order to determine the incremental impacts of this proposed rule, we first estimated the number of new nitric acid production units that would become subject to regulation during the five year period after promulgation of subpart Ga. Based on existing nitric acid production units and estimated future growth rates, 6 new nitric acid production units are expected to be required to meet the nitric acid production demand in that five year period. For further detail on the methodology of these calculations, see memorandum *Impacts of Nitric Acid NSPS Review—NO_X*, dated December 15, 2010, in Docket ID No. EPA–HQ–OAR–2010–0750.

The proposed Subpart Ga NO_X emission limit reflects the use of control technologies currently in use by the industry and reflects an adjustment of the limit to more accurately reflect the performance of these control technologies. The current Subpart G NSPS NO_X emissions limit can be achieved using a number of control techniques including NSCR, SCR and HPI. In many cases, the air pollution control systems used to meet the current NSPS could be used to meet the proposed revised NO_X emission limit for future affected facilities. The potential nationwide emission reduction associated with lowering the NO_X limit from 3.0 to 0.50 lb NO_X/ton acid (100 percent acid basis) is estimated to be 2,000 tons per year (tpy) NO_X. This potential emission reduction may be overestimated because the majority of control systems installed on future affected facilities would likely result in emissions at or below the proposed emissions limit even in the absence of these proposed revisions.

There are many existing nitric acid production units currently meeting 0.50 lb NO_X/ton acid. Therefore, there is no increase in control costs of meeting the proposed emission limit of 0.50 lb NO_X/ton acid for new nitric acid production units compared to the control costs to comply with subpart Ga. The only costs incurred would be the installation of an air flow monitor, which is discussed below.

There are differences in notification, testing, monitoring, reporting, and recordkeeping (MRR) between Subpart G and the new Subpart Ga that result in increased costs. We are proposing the use of a CERMS for monitoring compliance with Subpart Ga. The CERMS requires the installation of both a continuous NO_X monitor and continuous exhaust gas flow rate monitor. The current NSPS (subpart G) requires only the installation of a continuous NO_X monitor. The installation, operation, and maintenance of an exhaust gas flow rate monitor will increase the cost to nitric acid production units over what would be incurred to comply with subpart G. We estimate that the total increase in nationwide annual cost associated with this proposed monitoring revision is $90,110 for all six of the new production units projected to be built from 2011 to 2016.

The estimated nationwide incremental 5-year NO_X emissions reductions and cost impacts for these proposed revisions are summarized in Table 2 of this preamble. The methodology is detailed in the memorandum *Impacts of Nitric Acid*

NSPS Review—NO_X, dated December 13, 2010 (updated July 27, 2011). The overall cost effectiveness is about $45 per ton of NO_X removed.

TABLE 2—NATIONAL INCREMENTAL NO_X EMISSION REDUCTIONS AND COST IMPACTS FOR NEW NITRIC ACID PRODUCTION UNITS SUBJECT TO PROPOSED STANDARDS UNDER 40 CFR PART 60, SUBPART GA (FIFTH YEAR AFTER PROMULGATION)

Proposed revisions for future affected facilities	Total annualized cost [$1,000/yr]	Potential annual NO_X emission reductions [tons NO_X/yr]	Potential cost effectiveness [$/ton NO_X]
Revisions to NO_X emission limit	$0	2,000	$0.00
Revisions to MRR requirements	90		
Total	90	2,000	45

B. What are the secondary impacts for new nitric acid production units?

Indirect or secondary air quality impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*i.e.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment that would be required under this proposed rule. In most cases, to comply with the current Subpart G NO_X emission limit or this Subpart Ga NO_X emission limit, the same control system (SCR, NSCR, or HPI) would have been installed. These proposed revisions only require the addition of exhaust gas flow monitors, which would result in minimal secondary air impacts or increase in overall energy demand.

C. What are the economic impacts for new nitric acid production units?

We performed an economic impact analysis that estimates changes in prices and output for nitric acid production units nationally using the annual compliance costs estimated for this proposed rule. All estimates are for the fifth year after promulgation since this is the year for which the compliance cost impacts are estimated. The impacts to producers and consumers affected by this proposed rule are slightly higher product prices and slightly lower outputs. Prices for products (nitric acid) from affected plants should increase by less than 0.07 percent for the fifth year. The output of nitric acid should decrease by less than 0.50 percent for the fifth year. Hence, the overall economic impact of this proposed NSPS should be low on the affected industries and their consumers. For more information, please refer to the Economic Impact Analysis for this proposed rulemaking in the public docket.

VI. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a significant regulatory action because it could raise novel legal or policy issues. Accordingly, the EPA submitted this action to the Office of Management and Budget for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number [2445.01].

These proposed revisions to the existing new source performance standards for nitric acid production units would add monitoring requirements for future affected facilities. We have revised the ICR for the existing rule.

These proposed revisions to the new source performance standards for nitric acid production units for future affected facilities include a change to the emission limit and additional continuous monitoring requirements. The monitoring requirements include installing a continuous flow monitor and monitoring the nitric acid concentration. These monitoring requirements are in addition to a CEMS for NO_X concentration which is required under the current subpart G. These requirements are based on specific requirements in Subpart Ga which are mandatory for all operators subject to NSPS. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to the EPA policies set forth in 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 968 labor-hours per year at a cost of $91,808 per year. The annualized capital costs are estimated at $19,288 per year. The annualized operation and maintenance (O&M) costs are $23,488. The total annualized capital and O&M costs are $42,776 per year. Burden is defined at 5 CFR 1320.3(b).

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

To comment on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2010–0750. Submit any comments related to the ICR to the EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Office for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after October 14, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by November 14, 2011. The final rule will respond to any OMB

or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that this rule 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 purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (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 is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This certification is based on the economic impact of this action to all affected small entities. Only four small entities may be impacted by this proposed rule. We estimate that all affected small entities will have annualized costs of less than 0.3 percent of their sales. We conclude that there is no significant economic impact on a substantial number of small entities (SISNOSE) for this rule.

For more information on the small entity impacts associated with this proposed rule, please refer to the Economic Impact and Small Business Analyses in the public docket. Although this proposed rule would not have a significant economic impact on a substantial number of small entities, the EPA nonetheless tried to reduce the impact of this proposed rule on small entities. When developing the revised standards, the EPA took special steps to ensure that the burdens imposed on small entities were minimal. The EPA conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or to the private sector in any one year. This rule is not expected to impact state, local, or tribal governments. The nationwide annualized cost of this proposed rule for affected industrial sources is $90,010/yr. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not apply to such governments and will not impose any obligations upon them.

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. Nitric acid plants are privately owned companies and there will be no direct impact on states and other federal offices. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comment on this proposed rule from state and local officials.

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, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule imposes requirements on owners and operators of nitric acid production units and not tribal governments. We do not know of any nitric acid production units owned or operated by Indian tribal governments. However, if there are any, the effect of this proposed rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 22, 1997) as applying 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 based solely on technology performance.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113 (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 impractical. VCS are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes to use: ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, and ASTM E1584, Standard Test Method for Assay of Nitric Acid, which have been incorporated by reference.

The EPA welcomes comments on this aspect of the proposed rulemaking and specifically invites the public to identify

potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order 12898 (59 FR 7629, February 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 proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The EPA has also determined that a proximity-based demographic study comparing populations in closest proximity to the regulated sources to the general population is not appropriate for this rulemaking due to lack of pollutants with localized effects.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Dated: September 30, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401.

Subpart A—[Amended]

2. Section 60.17 is amended by revising paragraph (a)(82) and adding paragraph (a)(93) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(82) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, IBR approved for § 60.73a(f)(2) of subpart Ga, table 7 of subpart IIII of this part, and table 2 of subpart JJJJ of this part.

* * * * *

(93) ASTM E1584–00(2005)e1, Standard Test Method for Assay of Nitric Acid, IBR approved for § 60.73a(b)(2) of subpart Ga.

* * * * *

3. Section 60.70 is amended by revising paragraph (b) to read as follows:

§ 60.70 Applicability and designation of affected facility.

* * * * *

(b) Any facility under paragraph (a) of this section that commences construction or modification after August 17, 1971, and on or before October 14, 2011 is subject to the requirements of Subpart G. Any facility that commences construction or modification after October 14, 2011 is subject to Subpart Ga.

* * * * *

4. Add Subpart Ga to read as follows:

Subpart Ga—Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011

Sec.

60.70a Applicability and designation of affected facility.
60.71a Definitions.
60.72a Standards.
60.73a Emissions testing and monitoring.
60.74a Affirmative Defense for Exceedance of Emission Limit During Malfunction.
60.75a Calculations.
60.76a Recordkeeping.
60.77a Reporting.

Subpart Ga—Standards of Performance for Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011

§ 60.70a Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to each nitric acid production unit, which is the affected facility.

(b) This subpart applies to any nitric acid production unit that commences construction or modification on or after October 14, 2011.

§ 60.71a Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

(a) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(b) *Nitric acid production unit* means any facility producing weak nitric acid by either the pressure or atmospheric pressure process.

(c) *Operating day* means a 24-hour period beginning at 12:00 a.m. during which the nitric acid production unit at any time during this period.

(d) *Weak nitric acid* means acid which is 30 to 70 percent in strength.

§ 60.72a Standards.

(a) *Nitrogen oxides.* On and after the date on which the performance test required to be conducted by § 60.73a(a) is completed, you may not discharge into the atmosphere from any affected facility any gases which contain NO_X, expressed as NO_2, in excess of 0.50 pounds (lb) per ton of nitric acid produced, as a 30-day emission rate calculated based on 30 consecutive operating days, the production being expressed as 100 percent nitric acid. The emission standard applies at all times.

(b) *General Duty to minimize emissions.* At all times, the owner or operator must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

§ 60.73a Emissions testing and monitoring.

(a) *Nitric acid production monitoring.*

(1) For any affected facility, you must determine the daily nitric acid production parameters (production rate and concentration) by installing, calibrating, maintaining, and operating a permanent monitoring system (*e.g.,* weigh scale, volume flow meter, mass flow meter, tank volume) to measure

and record the weight rates of nitric acid produced in tons per day. You must verify that each component of the monitoring system has an accuracy and precision of no more than ±5 percent of full scale.

(2) You may analyze product concentration via titration or by determining the temperature and specific gravity of the nitric acid. You may also use ASTM E1584–00(2005)e1 (incorporated by reference, see § 60.17), for determining the concentration of nitric acid in percent. You must determine product concentration daily.

(3) For any affected facility, you must use the acid concentration to express the daily nitric acid production as 100 percent nitric acid.

(4) For any affected facility, you must record the daily nitric acid production, expressed as 100 percent nitric acid, and the hours of operation.

(b) *Nitrogen oxides continuous emissions monitoring system.* (1) You must install, calibrate, maintain, and operate a continuous emission rate monitoring system (CERMS) for measuring and recording the mass emissions of NO_X in accordance with the provisions of 60.13 and Performance Specifications 2 and 6 of appendix B of this part. The CERMS must consist of equipment for measuring NO_X concentration and stack gas volumetric flow rate monitoring equipment for measuring the volumetric flow rate and for calculating and reporting hourly and daily NO_X mass emissions rates in units of lb/hour and lb NO_X/ton of 100% nitric acid.

(2) As applicable, use a span value, as defined in Performance Specification 2 § 3.11, for all NO_X concentration monitoring equipment equal to 125 percent of the maximum estimated NO_X emission concentration.

(3) You must conduct performance evaluations of the NO_X CERMS according to the requirements in § 60.13(c) and Performance Specifications 2 and 6 of appendix B of this part. For conducting the relative accuracy evaluations, per § 8.4 of the Performance Specification 2, use either EPA Reference Method 7, 7A, 7C, 7D, or 7E of appendix A–4 of this part; EPA Reference Method 320 of appendix A of part 63 of this chapter; or ASTM D6348–03 (incorporated by reference, see § 60.17).

(4) If you use EPA Reference Method 7E of Appendix A–4 of this part, you must mitigate loss of NO_2 in water according to the requirements in paragraphs (a)(4)(i), (ii), or (iii) of this section and verify performance by conducting the system bias checks required in § 8 of EPA Reference Method 7E of appendix A–4 of this part according to (b)(4)(iv) of this section, or follow the dynamic spike procedure according to paragraph (b)(4)(v) of this section.

(i) For a wet-basis measurement system, you must measure and report temperature of sample line and components (up to analyzer inlet) to demonstrate that the temperatures remain above the sample gas dew point at all times during the sampling.

(ii) You may use a dilution probe to reduce the dew point of the sample gas.

(iii) You may use a refrigerated-type condenser or similar device (*e.g.,* permeation dryer) to remove condensate continuously from sample gas while maintaining minimal contact between condensate and sample gas.

(iv) If your analyzer measures nitric oxide (NO) and nitrogen dioxide (NO_2) separately, you must use both NO and NO_2 calibration gases. Otherwise, you must substitute NO_2 calibration gas for NO calibration gas in the performance of system bias checks.

(v) You must conduct dynamic spiking according to § 16.1 in EPA Reference Method 7E of appendix A–4 of this part using NO_2 as the spike gas.

(5) You must use stack gas flow rate measurement equipment with a full scale output of at least 125 percent of the maximum expected exhaust volumetric flow rate (see § 8 of Performance Specification 6, Appendix B, of this part).

(d) CERMS Quality Assurance and Quality Control.

(1) The CERMS must comply with the quality assurance requirements in Procedure 1 of Appendix F of this part. You must use cylinder gas audits to fulfill the quarterly auditing requirement at Appendix F, Procedure 1, § 5.1 of this part only on the NO_X concentration measurement equipment. You must conduct relative accuracy testing to provide for calculating the relative accuracy for RATA and RAA determinations in units of lb/hour and lb NO_X/ton nitric acid.

(2) You must determine daily calibration drift assessments separately for each analyzer in terms of its specific measurement. You must perform the daily assessments in accordance with the procedures specified in §§ 8.1 and 13.1 of Performance Specification 6 of appendix B of this part.

(3) Should you apply an FTIR CEMS meeting the requirements of Performance Specification 15, Appendix B of this part, you must replace the Relative Accuracy Test Audit requirements of Procedure 1 of appendix F of this part with the validation requirements and criteria of §§ 11.1.1 and 12.0 of Performance Specification 15 of appendix B of this part.

(e) For each CERMS, including NO_X concentration measurement, volumetric flow rate measurement, and nitric acid production measurement equipment, you must meet the requirements in paragraphs (e)(1) through (3) of this section.

(1) You must operate the CERMS and collect data at all required intervals at all times the affected source is operating except for periods of monitoring system malfunctions or out-of-control periods as defined in Appendix F, §§ 4 and 5, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system failures that are caused in part by poor maintenance or careless operation are not malfunctions. You are required to affect monitoring system repairs in response to monitoring system malfunctions or out-of-control periods, and to return the monitoring system to operation as expeditiously as practicable.

(2) You may not use data recorded during monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other periods in calculating emissions and the status of compliance with the applicable emissions limit in accordance with § 60.72a(a).

(3) Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments, failure to collect required data is a violation of the monitoring requirements.

(f) *Initial Performance Testing.* You, as the owner or operator of a new unit, must conduct an initial performance test to demonstrate compliance with the NO_X emissions limit under § 60.72a(a) beginning in the calendar month following initial certification of the NO_X

and flow rate monitoring CEMS. The initial performance test consists of collection of hourly NO_X average concentration, mass flow rate (SCFH) recorded with the certified NO_X concentration and flow rate CEMS and the corresponding acid generation (tons) data for all of the hours of operation for the first 30 days beginning on the first day of the first month following completion of the CEMS installation and certification as described above. You must assure that the CERMS meets all of the data quality assurance requirements as per § 60.13 and appendix F, procedure 1 of this part and you must use the data from the CERMS for this compliance determination.

§ 60.74a Affirmative Defense for Exceedance of Emission Limit During Malfunction.

In response to an action to enforce the standards set forth in paragraph § 60.72a, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 60.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standard in § 60.72a to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

§ 60.75a Calculations.

(a) The 30-day rolling NO_X emission rate is calculated as the sum of all daily NO_X mass emissions recorded by the CERMS for 30 consecutive operating days divided by the sum of nitric acid production for these 30 consecutive operating days. Calculate and record the daily mass emissions of NO_X according to the procedures in paragraphs (a)(1) through (4) of this section.

(1) You must calculate the daily mass emissions according to Equation 1:

$$M_d = \sum_{i=1}^{n} C_i * Q_i \qquad \text{(Eq. 1)}$$

Where:

M_d = daily mass emissions of NO_X as NO_2, lb NO_X.

C_i = concentration of NO_X for hour i, lb/standard cubic foot (scf).

Q_i = volumetric flow rate of effluent gas for hour i, scf/hour.

n = number of operating hours in the operating day.

(2) For any operating day where monitoring data are only available for part of the hours where nitric acid is produced during that day due to CERMS malfunctions, out-of-control periods, or repairs associated with monitoring system malfunctions or out-of-control periods, you must calculate M_d for the periods where monitoring data are available using Equation 1 in (a)(1) above, and then adjust upwards overall operating hours on a *pro rata* basis.

(3) You must ensure appropriate corrections for moisture are made when measuring flow rates.

(4) Following each calendar day on which the affected facility was operated, you must calculate the 30-day NO_X emission rate according to Equation 2:

$$E_{30-day} = \frac{\sum_{d=1}^{m} M_d}{\sum_{d=1}^{m} P_d} \qquad \text{(Eq. 2)}$$

Where:

$E_{30\text{-}day}$ = emission rate of NO_X as NO_2 calculated based on 30 consecutive operating days, lb NO_X/ton of 100 percent nitric acid.

M_d = daily mass emissions of NO_X as NO_2 for operating day d, lb NO_X

P_d = daily nitric acid production for operating day d, tons of 100 percent nitric acid.

m = number of days in the 30-day compliance period for which CERMS data is available.

§ 60.76a Recordkeeping.

(a) For the NO_X emissions rate, you must keep records of the performance test data from the initial and subsequent performance tests and from the performance evaluation of the continuous monitors.

(b) You must maintain records of the following information for each 30 day period:

(1) Hours of operation.

(2) Production rate of nitric acid, expressed as 100 percent nitric acid.

(3) NO_X mass emissions.

(c) You must maintain records of the following time periods:

(1) Times when you were not in compliance with the emissions standards.

(2) Times when the pollutant concentration exceeded full span of the NO_X pollutant monitoring equipment.

(3) Times when the volumetric flow rate exceeded the high value of the volumetric flow rate monitoring equipment.

(d) You must maintain records of the reasons for any periods of noncompliance and description of corrective actions taken.

(e) You must maintain records of any modifications to CERMS which could affect the ability of the CERMS to comply with applicable performance specifications.

(f) For each malfunction, you must maintain records of the following information:

(1) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(2) Records of actions taken during periods of malfunction to minimize emissions in accordance with section 60.72a(b), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

§ 60.77a Reporting.

(a) The performance test data from the initial and subsequent performance tests and from the performance evaluations of the continuous monitors must be submitted to the Administrator at the appropriate address as shown in 40 CFR 60.4.

(b) The following information must be reported to the Administrator for each 30 day period where you were not in compliance with the emissions standard:

(1) Time period.

(2) NO_X emission rates (lb/ton of acid produced).

(3) Reasons for noncompliance with the emissions standard; and description of corrective actions taken.

(c) You must also report the following whenever they occur:

(1) Times when the pollutant concentration exceeded full span of the NO_X pollutant monitoring equipment.

(2) Times when the volumetric flow rate exceeded the high value of the volumetric flow rate monitoring equipment.

(d) You must report any modifications to CERMS which could affect the ability of the CERMS to comply with applicable performance specifications.

(e) As of December 31, 2011 and within 60 days after the date of completing each performance evaluation or test required under this subpart, you must submit the relative accuracy test audit data and performance test data by successfully submitting the data electronically to EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/ert_tool.html/*).

(f) If a malfunction occurred during the reporting period, you must submit a report that contains the following:

(1) The number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded.

(2) A description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with 60.72a(b), including actions taken to correct a malfunction.

[FR Doc. 2011–26089 Filed 10–13–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[Docket No. CDC–2011–0007]

RIN 0920–AA37

Foreign Quarantine; Etiological Agents, Hosts, and Vectors

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS) is issuing this Notice of Proposed Rulemaking (NPRM) to revise the regulations that cover the importation of etiological agents and the hosts and vectors of human disease. The changes are proposed to improve CDC's ability to prevent the introduction, transmission, or spread of communicable diseases into the United States.

DATES: To be assured consideration, comments must be received on or before December 13, 2011. Comments received after the close of the comment period will be considered to the fullest extent possible.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 0920–AA37 in the heading of this document, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: SAPcomments@cdc.gov.* Please include the RIN number in the subject line of the message.
- *Fax:* 404–718–2093.
- *Mail:* Division of Select Agents and Toxins, Centers for Disease Control and Prevention, ATTN: Importation Regulations, 1600 Clifton Road, NE., MS A–46, Atlanta, Georgia 30333.
- *Hand Delivery/Courier:* Division of Select Agents and Toxins, Centers for Disease Control and Prevention, ATTN: Importation Regulations, 1600 Clifton Road, NE., MS A–46, Atlanta, Georgia 30333.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All relevant 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 or to download an electronic version of the NPRM, go to *http://www.regulations.gov.* Comments will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 5 p.m. at 1600 Clifton Road, NE., Atlanta, GA 30333. Please call ahead to 1–866–694–4867 and ask for a representative in the Division of Select Agents and Toxins to schedule your visit. Our general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet as they are received and without change.

FOR FURTHER INFORMATION CONTACT: Robbin Weyant, PhD, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS A–46, Atlanta, GA 30333. Telephone: 404–718–2000.

SUPPLEMENTARY INFORMATION: The Preamble to this notice of proposed rulemaking is organized as follows:

I. Background
  A. HHS/CDC Authority
II. Proposed Changes to 42 CFR 71.54
  A. Section Heading & Definitions
  B. Biosafety and Inspection Provisions

C. Permit Exemptions
D. Transportation
E. Appeals Process
III. Required Regulatory Analyses and Executive Order 12866, and the Regulatory Flexibility Act
IV. Other Administrative Requirements
A. Paperwork Reduction Act of 1995
B. Executive Order 12988, Civil Justice Reform and Executive Order 13132, Federalism
C. Plain Language in Government Writing

I. Background

A. HHS/CDC Authority

This NPRM is proposed under the authority of section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264). This provision authorizes the Health and Human Services (HHS) Secretary to make and enforce such regulations as in her judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions of the United States and from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the HHS Secretary may authorize a variety of public health measures, including inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be sources of dangerous infection to human beings, and other measures.

The Foreign Quarantine regulations (42 CFR part 71) set forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Part 71, Subpart F (Importations) contains provisions for importation of etiological agents, hosts, and vectors (42 CFR 71.54), requiring persons to obtain a permit issued by the CDC before importing or distributing after import of these materials.

II. Proposed Changes to 42 CFR 71.54

This document proposes to revise the regulations that cover the importation of etiological agents and the hosts and vectors of human disease (42 CFR 71.54) as described below. We will consider comments that are received within 60 days of publication of this notice in the **Federal Register**.

A. Section Heading and Definitions

The heading for 42 CFR 71.54 would be changed from ''Etiological agents, hosts, and vectors.'' to ''Import Regulations for Infectious Biological Agents, Infectious Material, and Vectors'' to clarify proposed changes discussed below. Under the proposed changes, only the following infectious biological agents, materials, and vectors would require a permit issued by the CDC Director prior to entry into the United States, or subsequently being transferred within the United States:

Infectious biological agent. A microorganism (including, but not limited to, bacteria (including rickettsiae), viruses, fungi, or protozoa) or prion, whether naturally occurring, bioengineered, or artificial, or a component of such microorganism or prion that is capable of causing communicable disease in a human.

Infectious material. Any material which is known or suspected to contain a biological agent infectious to humans.

Vector. Any animals (vertebrate or invertebrate) including arthropods or any noninfectious self-replicating system known to transfer or capable of transferring an infectious biological agent to a human (*e.g.,* a mosquito).

We also propose to remove the term ''host'' because we believe ''host'' means the same as the current proposed definition for ''vector.'' However, CDC is interested in comments concerning the removal of the term ''host'' from the proposed language. CDC is also interested in comments concerning the scope of the definition for ''vector'' and whether it should be limited in some manner to exclude animals intended to be exhibited in zoos or mounted animals or hides intended for museum displays while remaining broad enough to include mosquitoes that carry the malaria parasite *Plasmodium* between humans.

B. Biosafety and Inspection Provisions

The key principle in selecting the appropriate safeguards for the conduct of the microbiological research is ''risk assessment.'' Risk assessment is a process used to identify the hazardous characteristics of a known infectious agent or potentially infectious agent or material, the activities that can result in exposure to such an agent, the likelihood that such exposure will cause a laboratory-acquired infection (LAI), and the probable consequences of such an infection. The information identified through risk assessment is used to guide the selection of appropriate microbiological practices, safety equipment, and facility safeguards (biosafety measures) that, when used properly, can prevent exposures and dramatically reduce the incidence of LAIs. Risk assessment is a common first step in an overall risk-management process.

The safe possession and work with infectious biological agents, infectious material, and vectors requires that importers have the appropriate biosafety measures in place for imported material. Accordingly, CDC proposes that import regulations clearly state that the applicant have biosafety measures that are commensurate with the hazard posed by the infectious biological agent, infectious material, and/or vector to be imported, and the level of risk given its intended use. These biosafety measures may be entity-wide, laboratory-specific, or agent-specific. CDC believes importers engaged in microbiological research and related activities utilizing safe laboratory practices, safety equipment, and facility safeguards will reduce the incidence of LAIs and other incidents and will protect the public health and environment.

In developing the appropriate biosafety measures, importers working with infectious biological agents, infectious material, and vectors should use the appropriate microbiological practices, safety equipment, and facility safeguards that, when used properly, can prevent exposures and dramatically reduce the incidence of LAIs. An applicant should consider: (1) The CDC/National Institutes of Health (NIH) publication, ''Biosafety in Microbiological and Biomedical Laboratories'' (BMBL), including all appendices. Copies may be obtained at the CDC Web site at *http://www.cdc.gov/* and (2) The ''NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).'' Copies may be obtained from the NIH Web site at *http://oba.od.nih.gov/rdna/nih_guidelines_oba.html.*

To implement CDC's inspection authority as provided under 42 U.S.C. 264(a), CDC proposes that prior to CDC issuing a permit, it may inspect the applicant's facility to evaluate whether the importer's implementation of its biosafety measures (*e.g.,* physical structure and features of the facility, and operational and procedural safeguards) are effective and commensurate with the risk posed by the infectious biological agent, infectious material, and/or vector, and the level of risk given its intended use. CDC will use the following specific criteria to determine which entities are to be inspected—(1) facilities that request to perform research with imported agents that would need to be conducted in a biosafety level (BSL)–3, BSL–4, Animal biosafety level (ABSL)–3, ABSL–4 or BSL–3 Agriculture laboratory as described in the BMBL (*e.g., Mycobacterium tuberculosis*), and (2) that have not been inspected by CDC's Select Agent Program.

Even though CDC is proposing that the import regulations specifically state a requirement for appropriate biosafety measures as a prerequisite for the

issuance of a permit, we believe, based on our experience with import permit submissions addressing the capabilities of the receiving laboratories, that most, if not all, importers of etiological agents already have written biosafety plans. Based on permit applications submitted to CDC between March 1, 2011, and July 22, 2011, the total number of applicants with adequate written biosafety plans was 632 out of 644 or 98%. Based on the content of those plans, CDC is confident that each of them would meet the requirement for appropriate biosafety measures of this NPRM. If an importer's biosafety measures were found to be inadequate, CDC would offer to work with the entity to address any biosafety issues prior to denying the permit.

C. Permit Exemptions

Select Agents and Toxins

Currently, in accordance with 9 CFR part 121 and 42 CFR part 73 (Select Agent Regulations), only individuals or entities registered with the CDC or U.S. Department of Agriculture, Animal and Plant Health Inspection Service's (APHIS') Select Agent Program can legally import select agents (*i.e.,* biological agents and toxins that could pose a severe threat to public health and safety) into the United States. A select agent may only be imported under the conditions described in 9 CFR 121.16 and 42 CFR 73.16 and must be authorized by APHIS or CDC prior to importation. Therefore, we are proposing that importation of select agents in accordance with the Select Agent Regulations be exempted from the requirement to have an additional import permit under 42 CFR 71.54.

Diagnostic Specimens

As defined by the proposed rule, a diagnostic specimen is any specimen of human or animal matter (including tissue, blood, body discharges, fluids, excretions or similar material), or an environmental sample. CDC's policy regarding diagnostic specimens is that only diagnostic specimens that are known to contain, or are suspected of containing, an infectious biological agent require a permit issued by the CDC Director prior to entry into the United States or subsequent transfer within the United States. CDC proposes to clarify this policy in the regulation by adding a provision that a permit is not required for a diagnostic specimen not known by the importer to contain, or suspected by the importer of containing, an infectious biological agent and the specimen is accompanied by an importer certification statement confirming that the material is not known or suspected to contain an infectious biological agent. Importers would not be required to perform confirmatory tests on these specimens, only certify in writing that they have no reason to believe that the samples contain an infectious biological agent. Examples of these types of diagnostic specimens not known by the importer to contain, or suspected by the importer of containing, an infectious biological agent may include urine samples submitted for urine drug screens or serum samples submitted for cholesterol testing.

Genomic Material

Genomic material from infectious biological agents can consist of Deoxyribonucleic acid (DNA) or Ribonucleic acid (RNA). The nucleic acid comprising the genome may be single-stranded or double-stranded, and in a linear, circular or segmented configuration. Single-stranded viral genomes may be positive sense (same polarity as mRNA), negative sense, or ambisense (mixture of the two). Viral genomes which consist of positive sense RNA are infectious when the purified viral RNA is applied to permissive cells in the absence of any viral proteins. In some cases, viral genomes which are composed of double-stranded DNA are also infectious (*e.g.,* genome of Cercopithecine Herpesvirus 1 (Herpes B virus)). If genomic material being imported does not encode for infectious and/or replication competent forms of an infectious biological agent then a permit is not required. For example, a permit would not be required for RNA obtained from negative stranded RNA viruses or for genomic DNA isolated from bacteria. As such, CDC proposes to clarify this policy by adding a provision in the regulation that a permit is not required for nucleic acids that cannot produce infectious forms of any infectious biological agent and the specimen is accompanied by an importer certification statement confirming that the material is not known to contain or suspected of containing an infectious biological agent. Importers would not be required to perform confirmatory tests on these specimens, only certify in writing that they have no reason to believe that the samples can produce infectious forms of any infectious biological agent.

Regulated Products

CDC proposes to exempt material contained in certain products from the requirement to obtain a CDC Permit for importation into the United States or subsequent transfer within the United States. If the material is contained in a product that is cleared, approved, licensed, or authorized under the provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), Section 351 of the Public Health Service Act pertaining to biological products (42 U.S.C. 262), or the Virus-Serum-Toxin Act (21 U.S.C. 151–159), CDC has determined that it is unlikely that material in these products would present a risk of the introduction, transmission, or spreading of a communicable disease. This exemption would include all investigational products for which an Investigational New Drug application (IND) is in place with the U.S. Food and Drug Administration (FDA). Examples of products that have been cleared, approved, licensed, or authorized by the FDA include FDA-licensed live attenuated vaccines and diagnostic test kits authorized for marketing or investigational use. Examples of products for Section 351 of the Public Health Service Act pertaining to biological products (42 U.S.C. 262) or the Virus-Serum-Toxin Act (21 U.S.C. 151–159) include vaccines, antibody products, and blood products.

CDC proposes to clarify this policy by adding a provision in the regulation that a permit is not required for a product that is cleared, approved, licensed, or is otherwise authorized under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq*), Section 351 of the Public Health Service Act pertaining to biological products (42 U.S.C. 262), or the Virus-Serum-Toxin Act (21 U.S.C. 151–159).

D. Transportation

During the importation of the infectious biological agents, infectious material, or vectors, the importer must be in compliance with all applicable laws concerning the packaging and shipment of infectious substances, including the following:

- Agriculture (9 CFR parts 92, 94, 95 96, 121, 122, and 130),
- Occupational Health and Safety Administration (29 CFR 1910.1030),
- Transportation (49 CFR parts 171 through 180), and
- Postal Service (39 CFR part 111).

As such, CDC proposes to clarify this policy by adding the language ''The importer is in compliance with all applicable laws concerning the packaging and shipment of infectious substances'' at § 71.54(b)(4).

E. Appeals Process

Since 2003, CDC has denied 2 applications for permits. CDC proposes to provide applicants with an opportunity for a written appeal in the

event that the CDC Director denies a request for a permit to import infectious biological agents, infectious material, or vectors under this part. Under the proposal, an applicant who wishes to make such an appeal would have 30 calendar days after receiving the denial to submit the appeal in writing to the CDC Director. The appeal must state the factual basis for the appeal and provide any supporting documentations to justify the appeal (*e.g.,* documents that demonstrate the facility has the appropriate biosafety measures in place for working safely with requested imported material). CDC would then issue a written response, which would then constitute final agency action. CDC invites comments on this process.

F. Alternatives Considered

In researching the proposed changes, we reviewed how U.S. Department of Agriculture/Animal and Plant Health Inspection Service (USDA/APHIS) regulates the importation plant and animal products and the Federal Select Agent Program regulates the possession, use, and transfer of select agents and toxins. We learned that HHS/CDC identified, through its Select Agent Program inspection program, specific biosafety measure implementation issues in 81 of the 316 the entities inspected by CDC since 2003. Some of the biosafety measure implementation issues were serious enough to require the suspension of registration or other restrictions on biological work at these facilities. USDA/APHIS has identified similar biosafety issues.

Thus, in the proposed rule, import regulations clearly state that the applicant have biosafety measures that are commensurate with the hazard posed by the infectious biological agent, infectious material, and/or vector to be imported, and the level of risk given its intended use. The safe possession and work with infectious biological agents, infectious material, and vectors requires that importers have the appropriate biosafety measures in place for imported material. These biosafety measures may be entity-wide, laboratory-specific, or agent-specific. HHS/CDC believes importers engaged in microbiological research and related activities utilizing safe laboratory practices, safety equipment, and facility safeguards will reduce the incidence of LAIs and other incidents and will protect the public health and environment. HHS/CDC also considered a requirement that the applicant must develop and implement a written biosafety plan that is commensurate with the hazard posed by the infectious biological agent, infectious material, and/or vector to be imported, and the level of risk given its intended use, including what elements of the plan are essential to prevent exposures and dramatically reduce the incidence of LAIs and protect the public health and environment. However, we believe that most, if not all, importers of etiological agents already have such biosafety plans based on our experience with import permit submissions addressing Section G (Receiving Laboratory Capabilities) of the permit application. The total number of applicants estimated to have biosafety plans from March 2011 to the present is 632 out of 644 or 98%. CDC would be interested in comments concerning the cost and burden of formalizing a written biosafety plan.

Finally, we also provided exemptions to allow importers to import certain material that is already approved or authorized by another agency or material that has been determined not to be an infectious biological agent. We believe this will reduce burden for clinical/diagnostic laboratories or small business selling manufactured goods.

III. Required Regulatory Analyses Under Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Based on past experience, we estimate that there will be approximately 2,000 applications for both import and distribution permit requests each year and that the average response time to complete the application is 20 minutes. We believe that the burden has been limited to requesting only essential information on the application, verifying information, when required, by telephone, and mailing information to the appropriate parties.

With regard to the new proposed requirement to have in place biosafety measures, our current experience with reviewing the information submitted for the import permit applications addressing Section G (Receiving Laboratory Capabilities) (*e.g.,* detailed description of any required personal protective equipment (PPE)), and laboratory equipment (*i.e.,* biosafety cabinets, autoclaves) that ensures materials are properly handled and contained indicates that the vast majority of importers of etiological agents already have instituted such biosafety measures. In fact, based on the review of applications received since March 2011, we estimated that 98% (632 out of 644) of the applicants possess written biosafety plans and already follow standard biosafety practices and procedures.

With regard to whether CDC will inspect an import facility, as noted above, CDC will use the following specific criteria to determine which entities are to be inspected—(1) facilities that request to perform research with imported agents that would need to be conducted in a BSL–3, BSL–4, ABSL–3, ABSL–4 or BSL–3 Agriculture laboratory as described in the BMBL (*e.g., Mycobacterium tuberculosis*), and (2) that have not been inspected by CDC's Select Agent Program.

Since 2009, we have refined the CDC import permit database to include better descriptions of material being imported, the biosafety level of the laboratory where the work will be performed, and the type of work to be conducted (*e.g.,* diagnostic, research). To estimate the number of facilities that we anticipate would require a biosafety inspection; we first identified those facilities that applied to import ''BSL–3 agents'' for research. From that list, we deleted those facilities already receiving periodic biosafety from either CDC or APHIS inspections due to their registration with the Federal Select Agent Program and concluded that approximately 25 facilities would need to be inspected per year to verify that they have in place the appropriate biosafety measures that are commensurate with the risk posed by the infectious biological agent, infectious material, and/or vector, and the level of risk given its intended use. We based our estimate on fact that the remaining facilities would not need to be inspected based on our current experience with reviewing the information contained in the import permit applications which address in detail the capabilities of receiving laboratories (description of any required personal protective equipment and laboratory equipment (biosafety cabinets, autoclaves), which if used properly ensures materials are properly

handled and contained). We therefore anticipate that this requirement will impose only a minimal burden on importers. However, we believe that the addition of this requirement is important to ensure that current and future importing facilities have and maintain the appropriate biosafety measures for working safely with imported infectious agents by inspecting these facilities. HHS/CDC's belief in the importance of including a requirement that importers are subject to an inspection to verify the implementation of appropriate biosafety measures is based on our eight years of experience in the area of select agent regulatory oversight. While 100% of entities registered for the possession, use, or transfer of select agents and toxins (42 CFR part 73) had appropriately filled out their application and had an adequate written biosafety plan, HHS/CDC identified, through its Select Agent Program inspection program, specific biosafety measure implementation issues in 81 of the 316 the entities inspected by HHS/CDC since 2003. Some of the biosafety measure implementation issues were serious enough to require the suspension of registration or other restrictions on biological work at these facilities. USDA/APHIS has a similar experience with those Select Agent entities for which it has principle oversight. Thus, we have learned from inspecting entities registered with the HHS/CDC's Select Agent Program that the ''trust'' approach to accepting information received from paperwork is ineffective. We found that the information provided in the paperwork did not always match the biosafety practices that are employed by the facility. As such, we believe that HHS/CDC's Permitting Program should adopt a parallel program to verify biosafety measures.

We also anticipate that there will be no cost to CDC to implement these recommended changes since we already review documents regarding biosafety and have a staff of fully trained and experienced biosafety inspectors. Finally, we believe the projected travel costs to perform these inspections will be at no additional cost to CDC since we plan to coordinate these inspections with those we are already conducting under the Federal Select Agent Inspection Program.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 601 *et seq.*), agencies must consider the impact of regulations on small entities and analyze regulatory options that would minimize a rule's impacts on these entities. Alternatively, the agency head may certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. As discussed above, CDC does not anticipate that this NPRM will have a significant economic impact on a substantial number of small businesses and other small entities. Of the entities impacted by this rule, CDC estimates that approximately 100 applications received out of 2000 applications are from small businesses. U.S. Small Business Administration defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. For example, annual receipts may not exceed $2.5 to $21.5 million for services provided or maximum number of employees may range from 100 to 500 depending on the particular product being provided. Based on this definition, we did not consider universities or major pharmaceutical companies as small businesses. CDC would be interested in comments concerning the cost and burden of this proposed rule, especially from an importer that might be considered a small business or entity or from the private sector.

IV. Other Administrative Requirements

A. Paperwork Reduction Act of 1995

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), HHS/CDC has determined that the information collection and recordkeeping requirements included in this proposed rule are already approved by OMB under OMB control number 0920–0199, expiration 1/31/2014. There are no new information collection or recordkeeping requirements in the proposed rule.

In the past, CDC has denied applications for permits. Thus, in this rule, CDC proposes to provide applicants with an opportunity for a written appeal in the event that the CDC Director denies a request for a permit to import infectious biological agents, infectious material, or vectors under this part. Under the proposal, an applicant who wishes to make such an appeal would have 30 calendar days after receiving the denial to submit the appeal in writing to the CDC Director. The appeal must state the factual basis for the appeal and provide any supporting documentations to justify the appeal (*e.g.,* documents that demonstrate the facility has the appropriate biosafety measures in place for working safely with requested imported material). CDC would then issue a written response, which would then constitute final agency action. CDC estimates the time to prepare and submit such a request is 4 hours. CDC invites comments on this process.

B. Executive Order 12988, Civil Justice Reform and Executive Order 13132, Federalism

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform, and Executive Order 13132, Federalism. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

C. Plain Language in Government Writing

Pursuant to Presidential Memorandum of June 1, 1998 Plain Language in Government Writing (63 FR 31885), Executive Departments and Agencies are directed to use plain language in all proposed and final rules. CDC believes it has used plain language in drafting of the proposed rule and would welcome any comment from the public in this regard.

List of Subjects in 42 CFR Part 71

Airports, Animals, Communicable diseases, Harbors, Imports, Pesticides and pests, Public health, Quarantine, Reporting and recordkeeping requirements.

Dated: June 20, 2011.

Kathleen Sebelius,

Secretary.

For the reasons stated in the preamble, the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, proposes to amend 42 CFR part 71, subpart F, as follows:

PART 71—FOREIGN QUARANTINE

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

Authority: 42 U.S.C. 243, 248, 249, and 264–272.

2. Revise § 71.54 to read as follows:

§ 71.54 Import Regulations for Infectious Biological Agents, Infectious Material, and Vectors.

(a) Definitions:

Animal. Any member of the animal kingdom except a human.

Diagnostic specimen. Specimens of human and animal matter (including tissue, blood, body discharges, fluids, excretions or similar material), or environmental samples.

Genomic material. Deoxyribonucleic acid (DNA) or Ribonucleic acid (RNA) comprising the genome or organism's hereditary information may be single-stranded or double-stranded, and in a linear, circular or segmented configuration and may be positive sense (same polarity as mRNA), negative sense, or ambisense (mixture of the two).

Infectious biological agent. A microorganism (including, but not limited to, bacteria (including rickettsiae), viruses, fungi, or protozoa) or prion, whether naturally occurring, bioengineered, or artificial, or a component of such microorganism or prion that is capable of causing communicable disease in a human.

Infectious material. Any material which is known or suspected to contain a biological agent infectious to humans.

Select agents and toxins. Biological agents and toxins that could pose a severe threat to public health and safety listed in 42 CFR 73.3 and 73.4.

Vector. Any animals (vertebrate or invertebrate) including arthropods or any noninfectious self-replicating system known to transfer or capable of transferring an infectious biological agent to a human.

(b) Unless excluded pursuant to paragraph (f) of this section, a person may not import into the United States any infectious biological agent, infectious material or vector unless:

(1) It is accompanied by a permit issued by CDC. The possession of a permit issued by CDC does not satisfy permitting requirements placed on materials by the U.S. Department of Agriculture that may pose hazards to agriculture or agricultural production in addition to hazards to human health.

(2) The importer is in compliance with all permit requirements and conditions.

(3) The importer has implemented biosafety measures commensurate with the hazard posed by the infectious biological agent, infectious material, and/or vector to be imported, and the level of risk given its intended use.

(4) The importer is in compliance with all applicable laws concerning the packaging and shipment of infectious substances.

(c) If noted as a condition of the issued permit, subsequent transfers of any infectious biological agent, infectious material or vector within the United States will require an additional permit issued by the CDC.

(d) A permit is valid only for:

(1) The time period and/or term indicated on the permit, and

(2) Only for so long as the permit conditions continue to be met.

(e) A permit can be denied, revoked or suspended if:

(1) The biosafety measures of the permit holder are not commensurate with the hazard posed by the infectious biological agent, infectious materials, or vector, and the level of risk given its intended use; or,

(2) The permit holder fails to comply with all conditions, restrictions and precautions specified in permit.

(f) A permit issued under this part is not required for an item if:

(1) It is a biological agent listed in 42 CFR Part 73 as a select agent and its importation has been authorized in accordance with 42 CFR 73.16 or 9 CFR 121.16.

(2) It is a diagnostic specimen not known by the importer to contain, or suspected by the importer of containing, an infectious biological agent and the specimen is accompanied by an importer certification statement confirming that the material is not known to contain or suspected of containing an infectious biological agent.

(3) It consists only of nucleic acids that cannot produce infectious forms of any infectious biological agent and the specimen is accompanied by an importer certification statement confirming that the material is not known to contain or suspected of containing an infectious biological agent.

(4) It is a product that is cleared, approved, licensed, or otherwise authorized under any of the following laws:

(i) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), or

(ii) Section 351 of the Public Health Service Act pertaining to biological products (42 U.S.C. 262), or

(iii) The Virus-Serum-Toxin Act (21 U.S.C. 151–159).

(g) To apply for a permit, an individual must:

(1) Submit a signed, completed CDC Form 0.753 (Application for Permit to Import Biological Agents or Vectors of Human Disease into the United States) to the CDC Import Permit Program.

(2) Have in place biosafety measures that are commensurate with the hazard posed by the infectious biological agent, infectious material, and/or vector to be imported, and the level of risk given its intended use.

(h) Issuance of a permit may be contingent upon an inspection of the importer's facility by the CDC to evaluate whether the importer's biosafety measures (*e.g.,* physical structure and features of the facility, and operational and procedural safeguards) are commensurate with the hazard posed by the infectious biological agent, infectious material, and/or vector, and the level of risk given its intended use.

(i) Denial, suspension, or revocation of a permit under this section may be appealed to the CDC Director. The appeal must be in writing, state the factual basis for the appeal, and be submitted to the CDC Director within 30 calendar days of the denial, suspension, or revocation of the permit. CDC will issue a written response to the appeal, which shall constitute final agency action.

[FR Doc. 2011–26656 Filed 10–13–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 24 and 52

[FAR Case 2010–013; Docket 2010–0013; Sequence 1]

RIN 9000–AM02

Federal Acquisition Regulation; Privacy Training, 2010–013

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to require contractors to complete training that addresses the protection of privacy, in accordance with the Privacy Act of 1974, and the handling and safeguarding of personally identifiable information.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before December 13, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2010–013 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2010–013'' under

the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2010–013.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2010–013'' on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2010–013, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2010–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to add a new subpart 24.3, entitled ''Privacy Training,'' and related clause to ensure that contractors identify employees who require access to a Government system of records, handle personally identifiable information, or design, develop, maintain, or operate a system of records on behalf of the Federal Government, and who, therefore, are required to complete privacy training initially upon award of the procurement and at least annually thereafter. In addition, contractors are required to keep records indicating that employees have completed the required training and, upon request, provide those records to the Government. This rule does not apply to commercial items.

These requirements are consistent with subsection (e), Agency requirements, and subsection (m), Government contractors, of the Privacy Act of 1974, 5 U.S.C. 552a. Other applicable authorities that address the responsibility for Federal agencies to ensure that Government and contractor personnel are instructed on compliance requirements with the laws, rules, and guidance pertaining to handling and safeguarding personally identifiable information include the E–Government Act of 2002, the Federal Information Security Management Act (FISMA) of 2002, and Federal guidance from the Office of Management and Budget (OMB), *e.g.,* OMB Memorandum M–07–16, entitled ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information,'' issued May 22, 2007; OMB Memorandum M–10–23, entitled ''Guidance for Agency Use of Third-Party Web sites and Applications,'' issued June 25, 2010 (this memorandum contains the most current definition of personally identifiable information, and clarifies the definition provided in M–07–16); and OMB Circular No. A–130, entitled ''Management of Federal Information Resources,'' which address significant requirements for safeguarding and handling personally identifiable information and reporting any theft, loss, or compromise of such information. In addition, FAR subpart 24.1 requires that Federal agencies contracting for the design, development, or operation of a system of records on individuals must extend all Privacy Act safeguards to the contractor and its employees working on the contract.

Minimum requirements for privacy training are proposed for the coverage in order to ensure consistency across the Government. For example, any privacy training must address the protection of privacy, in accordance with the Privacy Act (5 U.S.C. 552a), and the handling and safeguarding of personally identifiable information. The proposed FAR text includes seven mandatory elements of the privacy training, including any agency-specific requirements. Many agencies currently require that designated contractor employees complete agency-developed privacy training, but, in some circumstances, an agency may provide a contractor with the Privacy Act requirements and have the contractor develop the training package. While the use of an agency-developed privacy training package is the most common approach, and the approach embodied in the clause at FAR 52.224–XX, Privacy Training, the proposed FAR language provides an Alternate I to the FAR clause for those cases where the agency prefers to have the contractor create the privacy training package. Additionally, the proposed FAR language provides an Alternate II to the FAR clause for those instances when it's determined to be in the best interest of the Government for a contractor employee to attend agency-provided privacy training.

Under the proposed FAR rule, a contractor employee who requires access to a Government system of records will be granted or allowed to retain such access only if the individual has (1) Completed privacy training and (2) met all other applicable agency requirements.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The change may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* The Initial Regulatory Flexibility Analysis (IRFA) is summarized as follows:

This proposed rule was initiated to ensure that contractor personnel who handle personally identifiable information; design, develop, maintain, or operate a system of records on behalf of the Government; or require access to a Government-owned system of records are properly trained on the requirements of applicable laws and appropriate safeguards to ensure the security and confidentiality of personally identifiable information.

Such training of contractor employees is required by provisions of the Privacy Act (5 U.S.C. 552a), Title III of the E-Government Act of 2002, the Office of Management and Budget (OMB) Memorandum M–07–16, and existing Privacy Act clauses (52.224–1 and 52.224–2). Various other statutes, applicable authorities, and memoranda address the responsibility of Federal agencies to ensure that Government and contractor personnel are instructed on compliance requirements pertaining to the handling and safeguarding of personally identifiable information. The list includes, but is not limited to the following:

- The Federal Information Security Management Act (FISMA) of 2002 (44 U.S.C. 3541);
- OMB Memorandum M–06–15, Safeguarding Personally Identifiable Information; and
- OMB Circular No. A–130, Management of Federal Information Resources.

The proposed rule requires all contractors with contracts that require employees to have access to personally identifiable information to complete training that addresses the

statutory requirements for protection of privacy, in accordance with the Privacy Act (5 U.S.C. 552a), and the handling and safeguarding of personally identifiable information. This rule requires the contractor to identify its employees who require access, ensure that those employees complete agency-provided privacy training before being granted access and annually thereafter, and maintain records of the training. In a few cases, the content of the training will not be provided by the agency but will be created by the contractor in accordance with Alternate I to the clause at FAR 52.224–XX. Alternate II to the clause at FAR 52.224–XX if it is determined to be in the best interest of the Government for a contractor employee to attend agency-provided privacy training. This rule does not apply to commercial items.

Information obtained from the Federal Procurement Data System for Fiscal Year 2009 demonstrates that 98,864 small business concerns were awarded contracts and 197,728 firms were awarded subcontracts. However, only contracts for the types of work identified in the paragraphs above will be subject to the privacy-training requirement. We estimated that approximately one-half of one percent of all small business Government prime contractors and subcontractors will be required to conduct privacy training as follows:

Small business prime contractors	98,864
Small business subcontractors	+ 197,728
Total small businesses	296,592
Percent w/privacy-training requirement	× 0.005
Number of small businesses impacted	1,483

Recordkeeping associated with this proposed rule is minimal; there are no required formats or templates for the records, and they will be retained by the contractor in most cases. The Government only will request a contractor's training records on an exception basis, *i.e.,* if the Government has a particular reason to check on a contractor's compliance with the training requirement.

The Regulatory Secretariat will be submitting a copy of the Interim Regulatory Flexibility Analysis (IRFA) to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2010–013) in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, the Regulatory Secretariat has submitted a request for approval of a new information collection requirement concerning ''Privacy Training'' to the Office of Management and Budget.

A. Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The recordkeeping requirements are minor, and records generally will be retained within the contractor's organization. While a contractor is required to identify its employees who require initial privacy training and annual privacy training thereafter, there is no requirement to collect this information in a particular format or provide it to the Government, other than on an exception basis, *i.e.,* when there is an indication that the contractor is not complying with the training requirements.

The annual reporting burden is estimated as follows:

Respondents	148
Responses per respondent	1
Total annual responses	148
Preparation hours per response	1
Total response burden hours	148

B. Request for Comments Regarding Paperwork Burden.

Submit comments, including suggestions for reducing this burden, not later than December 13, 2011 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat (MVCB), Attn: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417. Please cite OMB Control Number 9000–0182, FAR Case 2010–013, Privacy Training, in correspondence.

List of Subjects in 48 CFR Parts 24 and 52

Government procurement.

Dated: October 6, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 24 and 52 as set forth below:

1. The authority citation for 48 CFR parts 24 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

2. Add subpart 24.3 to read as follows:

Subpart 24.3—Privacy Training

Sec.
24.301 Privacy Training.
24.302 Contract clause.

Subpart 24.3—Privacy Training

§ 24.301 Privacy training.

(a) Contractors are responsible for conducting initial privacy training, and annual privacy training thereafter, for employees who—

(1) Require access to a Government system of records;

(2) Handle personally identifiable information; or

(3) Design, develop, maintain, or operate a system of records on behalf of the Federal Government (see subpart 24.1 and 39.105).

(b) Agencies shall provide contractors with the privacy training materials (in a format deemed appropriate) necessary to satisfy the requirement described in paragraph (a) of this section unless, on an exception basis, the contracting officer authorizes a contractor to provide its own privacy training materials (see 24.302(b)).

(c) Privacy training shall, at a minimum, address—

(1) The protection of privacy, in accordance with the Privacy Act (5 U.S.C. 552a);

(2) The handling and safeguarding of personally identifiable information;

(3) The authorized and official use of a Government system of records;

(4) Restrictions on the use of personally-owned equipment to process, access, or store personally identifiable information;

(5) The prohibition against access by unauthorized users, and unauthorized use by authorized users, of personally identifiable information or systems of records on behalf of the Federal Government;

(6) Breach notification procedures (*i.e.,* procedures for notifying appropriate individuals when privacy information is lost, stolen, or compromised) to minimize risk and to ensure prompt and appropriate actions are taken should a breach occur; and

(7) Any agency-specific privacy training requirements.

(d) The contractor is responsible for ensuring that employees identified in paragraph (a) of this section complete the required training and maintain evidence of appropriate training completed. The contractor is required, upon request, to provide evidence of completion of privacy training for all applicable employees.

(e) Each contractor employee who requires access to a Government system of records, handles personally identifiable information, or designs, develops, maintains, or operates a Government system of records, shall be granted or allowed to retain such access only if the individual—

(1) Has completed agency-mandated privacy training that, at a minimum, addresses the elements in paragraph (c) of this section; and

(2) Has met all other applicable agency requirements.

§ 24.302 Contract clause.

(a) When contractor employees will have access to a Government system of records, handle personally identifiable information, or design, develop, maintain, or operate a system of records, the contracting officer shall insert the clause at FAR 52.224–XX, Privacy Training, in solicitations and contracts.

(b) When the contracting officer elects to have the contractor provide its own privacy training materials, use Alternate I in lieu of paragraph (a) of the basic clause.

(c) When an agency elects to provide privacy training to contractor employees, use Alternate II in lieu of paragraph (a) of the basic clause.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 52.224–XX to read as follows:

52.224–XX Privacy Training.

As prescribed in 24.302(a), insert the following clause:

Privacy Training (Date)

(a) The Contractor shall conduct initial privacy training, and annual privacy training thereafter, using the Government-provided privacy training materials, for employees who—

(1) Require access to a Government system of records;

(2) Handle personally identifiable information; or

(3) Design, develop, maintain, or operate a system of records on behalf of the Federal Government (see also FAR subpart 24.1 and 39.105).

(b) The Contractor shall ensure that its employees, as identified in paragraph (a) of this clause, complete the required training in a timely manner. In addition, the Contractor shall maintain privacy training records, and, upon request, shall provide to the Contracting Officer evidence of privacy training completed for applicable employees.

(c) The Contractor shall not grant any employee access to a Government system of records or personally identifiable information until the employee has completed privacy training, as required by this clause, and has met all other applicable agency requirements.

(d) The substance of this clause, including this paragraph (d), shall be included in all subcontracts under this contract, when subcontractor employees will (1) have access to a Government system of records, (2) handle personally identifiable information, or (3) design, develop, maintain, or operate a system of records on behalf of the Federal Government.

(End of clause)

Alternate I (Date). If the agency elects to have the Contractor provide its own privacy training materials, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a)(1) The Contractor shall conduct initial privacy training, and annual privacy training thereafter, using its own privacy training materials, for employees who—

(i) Require access to a Government system of records;

(ii) Handle personally identifiable information; or

(iii) Design, develop, maintain or operate a system of records on behalf of the Federal Government (see also FAR subpart 24.1 and 39.105).

(2) The privacy-training materials shall, at a minimum, address—

(i) The protection of privacy, in accordance with the Privacy Act (5 U.S.C. 552a);

(ii) The handling and safeguarding of personally identifiable information;

(iii) The authorized and official use of a Government system of records;

(iv) Restrictions on the use of personally-owned equipment to process, access, or store personally identifiable information;

(v) The prohibition against access by unauthorized users, and unauthorized use by authorized users, of personally identifiable information or a system of records on behalf of the Federal Government;

(vi) Breach notification procedures (*i.e.,* procedures for notifying appropriate individuals when privacy information is lost, stolen, or compromised); and

(vii) Any agency-specific privacy training requirements specified by the Contracting Officer.

Alternate II (Date). If the agency elects to provide privacy training to contractor employees, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a)(1) The Government shall provide initial privacy training, and annual privacy training thereafter, to contractor employees who—

(i) Require access to a Government system of records;

(ii) Handle personally identifiable information; or

(iii) Design, develop, maintain, or operate a system of records on behalf of the Federal Government (see also subpart 24.1 and 39.105).

(2) The Government will conduct privacy training to Contractor employees in the same format given its own employees (*e.g.,* lecture, computer-based training, Web-based training, video conferencing, *etc.*).

[FR Doc. 2011–26546 Filed 10–13–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 236

[Docket No. FRA–2011–0028, Notice No. 2]

RIN 2130–AC27

Positive Train Control Systems

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

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: On August 24, 2011, FRA published a notice of proposed rulemaking that would remove regulatory provisions requiring railroads to either conduct further analyses or meet certain risk-based criteria in order to avoid positive train control (PTC) system implementation on track segments that do not transport poison- or toxic-by-inhalation (PIH) hazardous materials traffic and are not used for intercity or commuter rail passenger transportation as of December 31, 2015. 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 implementation of PTC systems. FRA is also extending the comment period for this proceeding to allow time for interested parties to submit comments after the public hearing.

DATES: A public hearing will be held on November 10, 2011, in Washington, DC and will commence at 9 a.m. The comment period in this proceeding is extended to November 25, 2011.

ADDRESSES: *Public Hearing.* The public hearing will be held at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Attendance: Any persons wishing to make a statement at the hearing should notify Michelle Silva in FRA's Office of Chief Counsel 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: Thomas McFarlin, Office of Safety Assurance and Compliance, Staff Director, Signal & Train Control Division, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W35–332, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* 202–493–6203); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–207, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* 202–493–6032).

SUPPLEMENTARY INFORMATION: The purpose of the hearing is to receive oral comments in response to a notice of proposed rulemaking (NPRM) proposing amendment of the regulations requiring certain railroads to implement PTC systems. *See* 76 FR 52918 (Aug. 24, 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 FRA 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.

Extension of Comment Period. A public hearing has been scheduled after the close of the comment period specifically provided for in the notice of proposed rulemaking. To accommodate the public hearing and to afford interested parties the opportunity to submit comments in response to views or information provided at the public hearing, FRA is extending the comment period in this proceeding to November 25, 2011.

Issued in Washington, DC, on October 11, 2011.

Jo Strang,

Associate Administrator for Railroad Safety/ Chief Safety Officer, Federal Railroad Administration.

[FR Doc. 2011–26594 Filed 10–13–11; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 76, No. 199

Friday, October 14, 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

Food Safety and Inspection Service

[Docket No. FSIS–2011–0023]

Pre-Harvest Food Safety for Cattle; Public Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This notice is announcing that the Food Safety and Inspection Service (FSIS), the Animal and Plant Health Inspection Service (APHIS), and the Agricultural Research Service (ARS), are hosting a public meeting to seek input on pre-harvest pathogen control strategies designed to reduce the likelihood that beef will be contaminated with pathogens of public health concern, such as Shiga toxin-producing *E. coli* and *Salmonella,* during the slaughter process.

DATES: The public meeting will be held on Wednesday, November 9, 2011, on-site registration is at 8 a.m., the meeting is 8:30 a.m. to 5 p.m.

ADDRESSES: The public meeting will be held at the USDA Center at Riverside, 4700 River Road, 1st floor—Oklahoma City Memorial Conference Center, Riverdale, MD 20737 (parking is $5.00 by cash or credit card—see *http://www.USDACenteratRiversideFY11_USDACenteratRiverside.pdf* for information on the Riverdale, MD facility).

FSIS will finalize an agenda on or before the meeting and post it on the FSIS Web page at *http://www.fsis.usda.gov/News/Meetings_&_Events/.*

Pre-registration is recommended. To pre-register, visit the FSIS Web site at: *http://www.fsis.usda.gov/News/Meetings_&_Events/.*

FSIS welcomes comments until January 3, 2012, on this meeting. Comments may be submitted by any of the following methods:

—*Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to Regulations.Gov at *http://www.regulations.gov/* and follow the online instructions at that site for submitting comments.

—*Mail, including floppy disks or CD–ROMs:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS Docket Room, 1400 Independence Avenue, SW., Patriots Plaza 3, Mailstop 3782, Room 163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2011–0023. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, PhD, Assistant Administrator for Office of Policy and Program Development, FSIS, USDA, Room 349–E, Jamie Whitten Building, 14th and Independence Avenue, SW., Washington, DC 20250–3700; telephone (202) 205–0495, fax (202) 720–2025, email *daniel.engeljohn@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

During the 1990s, research programs conducted by ARS on pre-harvest included projects to evaluate technology and management methods to help producers achieve lower contamination levels in animals presented for slaughter.[1]

In 2008, FSIS began to promote cattle pre-harvest interventions to prevent foodborne illness and improve food safety throughout the farm-to-table continuum. The condition of the animals entering plants, and at slaughter, and the contamination rates on their hides and elsewhere affect the ability to mitigate risk at slaughter and through the rest of the food system. Pre-harvest food safety interventions can prevent foodborne illness by helping to reduce risk in the farm-to-table continuum.

FSIS published cattle pre-harvest guidelines[2] to inform beef slaughter establishments of the interventions that can be applied before slaughter, such as on-site farm management controls, to help reduce *E. coli* O157:H7 shedding in cattle. FSIS encourages farmers and ranchers, packers and processors, and scientists in academia, industry, and government, to collaborate in identifying the best technology and practices to reduce contamination before slaughter. Collaboration on such food safety efforts benefits beef producers, slaughterers, processors, and consumers.

Pre-Harvest Guideline Recommendations

FSIS recommends that slaughter establishments procure their cattle from beef producers that implement one or more documented pre-harvest management practices to reduce fecal shedding of enteric pathogens. Research on pre-harvest interventions is ongoing. Pre-harvest interventions that can eliminate fecal shedding of enteric pathogens have yet to be discovered; however, current research suggests that at least two pre-harvest interventions, certain probiotics and vaccines, have the potential to be effective in reducing fecal shedding in cattle. FSIS encourages slaughter establishments to share this information with their suppliers and to use it in designing their food safety systems.

The goals for this meeting on pre-harvest food safety for cattle are:

1. Food safety improvement through identification and development of effective pre-harvest practices.
2. Creating an increased focus on pre-harvest food safety and the identification and development of incentives for producers and processors to adopt effective pre-harvest practices.
3. Increased producer engagement to emphasize their importance in the overall food safety system.
4. Finding effective solutions through discrete projects, including demonstration projects of new technologies and implementation of best practices.

The end product of this meeting would be the identification of effective

[1] **Federal Register**/Vol. 61, No. 144. Thursday, July 25, 1996 *http://www.fsis.usda.gov/Oa/fr/rule4.pdf.*

[2] Pre-Harvest Management Controls and Intervention Options for Reducing Escherichia Coli O157:H7 Shedding in Cattle May 2010 *http://www.fsis.usda.gov/PDF/Reducing_Ecoli_Shedding_In_Cattle_0510.pdf.*

and practical pre-harvest practices, the identification of incentives for producers and processors to adopt such measures, and the establishment of an ongoing dialogue regarding pre-harvest food safety. Also, FSIS will present a summary of the recent input from the National Advisory Committee on Meat and Poultry Inspection on pre-harvest issues.

FSIS, APHIS, and ARS have developed the following questions for discussion at the meeting:

What factors influence shedding of *Salmonella* and *Escherichia coli* (*E. coli*) O157:H7 and other Shiga toxin-producing *E. coli* (STEC) (e.g., age of cattle, stress conditions)?

What effective and practical treatments or mitigation measures are available to reduce the pathogen load in general, and *Salmonella* and STECs specifically?

How can producers, processors, and government work together to incentivize pre-harvest food safety practices and interventions?

A key outcome of this meeting will be to provide the agencies with the information to develop a ''best practice'' guidance document. The draft guidance document would be made available for comment-and ultimately for use by all stakeholders.

USDA Nondiscrimination Statement

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Persons with disabilities who require alternative means for communication of program information (Braille, large print, and audiotape) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: October 6, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–26541 Filed 10–13–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 8, 2011, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. *See Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes From Taiwan,* 76 FR 33210 (June 8, 2011) (*Preliminary Results*). This review covers one company, Yieh Phui Enterprise Co., Ltd. (Yieh Phui). Based on our analysis of the comments received, we have made no changes from the *Preliminary Results.* We have listed the final dumping margin below in the section entitled ''Final Results of Review.''

DATES: *Effective Date:* October 14, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1131 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 2011, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan for the period of review (POR) of May 1, 2009, to April 30, 2010. *See Preliminary Results.* In response to the Department's invitation to comment on the preliminary results of this review, respondent Yieh Phui filed its case brief on July 15, 2011. Domestic producer U.S. Steel Corporation filed its rebuttal brief on July 22, 2011. No parties requested a hearing.

Scope of the Order

The merchandise covered by this order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: Welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Cost of Production

As discussed in the *Preliminary Results,* we found that Yieh Phui made home market sales of the foreign like product during the POR at prices below its costs of production (COP) within the meaning of section 773(b) of the Tariff Act of 1930, as amended (the Act). *See Preliminary Results,* 76 FR at 33211. Those results apply to these final results, given that no changes have been made from the calculations made in the *Preliminary Results.*

We found 20 percent or more of the respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable

period of time in the normal course of trade. *See* sections 773(b)(1) and (2) of the Act. Therefore, for purposes of these final results, we continue to find that Yieh Phui made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for Yieh Phui and used the remaining sales as the basis for determining normal value (NV) pursuant to section 773(b)(1) of the Act. For those U.S. sales of subject merchandise for which there were no matches to home market sales in the ordinary course of trade, we compared export prices to constructed value in accordance with section 773(a)(4) of the Act. *See Preliminary Results,* 76 FR 33212.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties in this administrative review are addressed in the Issues and Decision Memorandum (Decision Memorandum) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated October 6, 2011, which is hereby adopted by this notice. All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit in room 7046 of the main Department building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made no changes in the margin calculations.

Final Results of Review

We determine the following percentage margin exists for the period May 1, 2009, through April 30, 2010:

Manufacturer/Exporter	Weighted-Average margin (percentage)
Yieh Phui Enterprise Co., Ltd.	11.47

Assessment

Pursuant to 19 CFR 351.212(b), the Department has calculated an assessment rate on all appropriate entries. The Department intends to issue appropriate assessment instructions for the company subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Because Yieh Phui did not report the entered value of its sales, we calculated importer-specific (or customer-specific) per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales of each importer (or customer) and dividing each of these amounts by the respective quantities (by weight) associated with those sales. To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific (or customer-specific) *ad valorem* ratios based on estimated entered values.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review for each importer (or customer) for which the importer-specific (or customer-specific) *ad valorem* ratio is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific (or customer-specific) *ad valorem* ratio is *de minimis* (*i.e.,* less than 0.50 percent).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by the company included in the final results where the reviewed companies did not know the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there was no rate calculated in this review for the intermediary involved in the transaction. *See id.,* 68 FR at 23954.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, consistent with section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.70 percent, the all-others rate established in the LTFV investigation. *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Antidumping Duty Order,* 49 FR 19369 (May 7, 1984). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 6, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—List of Issues in Decision Memorandum

Comment 1: Date of Sale for U.S. Sales.
Comment 2: Zeroing.

[FR Doc. 2011–26654 Filed 10–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coral Reef Conservation Program Administration

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 13, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jenny Waddell at (301) 713–3155, extension 150, or *Jenny.Waddell@noaagov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Coral Reef Conservation Act of 2000 (Act) was enacted to provide a framework for conserving coral reefs. The Coral Reef Conservation Grant Program, under the Act, provides funds to broad-based applicants with experience in coral reef conservation to conduct activities to protect and conserve coral reef ecosystems. The information submitted is used to determine: (1) Whether the applicant qualifies for a waiver of matching funds, and (2) if a proposed project is consistent with the coral reef conservation priorities of authorities with jurisdiction over the area where the project will be carried out.

II. Method of Collection

The information may be submitted via e-mail, mail or fax.

III. Data

OMB Control Number: 0648–0448.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Non-profit institutions; federal government, state, local, or tribal government.

Estimated Number of Respondents: 53.

Estimated Time per Response: Matching funds waiver request, 30 minutes; proposal comment, 1 hour and 30 minutes.

Estimated Total Annual Burden Hours: 106.

Estimated Total Annual Cost to Public: $250 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 11, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–26616 Filed 10–13–11; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA761

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Council and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet November 1–7, 2011. The Pacific Council meeting will begin on Wednesday, November 2, 2011 at 9:30 a.m., reconvening each day through Monday, November 7, 2011. All meetings are open to the public, except a closed session to be held at the end of the scheduled agenda on Thursday, November 3 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be held at the Hilton Orange County Costa Mesa Hotel, 3050 Bristol Street, Costa Mesa, CA 92626; telephone: (714) 540–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll free; or access the Pacific Council website, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment

Comments on Non-Agenda Items

C. Salmon Management

1. 2012 Methodology Review
2. Preseason Salmon Management Schedule for 2012

D. Pacific Halibut Management

2012 Pacific Halibut Regulations

E. Groundfish Management

1. Stock Assessments for 2013–14 Groundfish Fisheries
2. NMFS Report
3. Review of Exempted Fishing Permits for 2013–14 Groundfish Fisheries
4. Biennial Management Specifications for 2013–14 Groundfish Fisheries—Part 1
5. Further Direction on Biennial Management Specifications for 2013–14 Groundfish Fisheries—Part 1
6. Status Report on the 2011 Rationalized Trawl Fishery
7. Trawl Rationalization Trailing Actions
8. Consideration of Inseason Adjustments for 2011 and 2012 Groundfish Fisheries
9. Biennial Management Specifications for 2013–14 Groundfish Fisheries—Part 2

F. Coastal Pelagic Species Management

1. NMFS Report
2. Pacific Sardine Assessment and Coastal Pelagic Species Management Measures for 2012

G. Habitat

Current Habitat Issues

H. Ecosystem Based Management

1. Northwest Fisheries Science Center Integrated Ecosystem Assessment Report
2. Development of a Council Ecosystem Fishery Management Plan

I. Highly Migratory Species Management

1. Council Recommendations on International Highly Migratory Species Management
2. Consideration of the Overfished Status of Bluefin Tuna

J. Administrative Matters

1. Approval of Council Meeting Minutes
2. Fiscal Matters
3. Membership Appointments and Council Operating Procedures
4. Future Council Meeting Agenda and Workload Planning

Schedule of Ancillary Meetings

Day 1—Tuesday, November 1, 2011
- Groundfish Advisory Subpanel—8 a.m.
- Groundfish Management Team—8 a.m.
- Salmon Advisory Subpanel—8 a.m.
- Scientific and Statistical Committee—8 a.m.
- Budget Committee—3 p.m.
- Enforcement Consultants—4:30 p.m.
- Mop Up Stock Assessment Briefing—7:30 p.m.

Day 2—Wednesday, November 2, 2011
- California State Delegation—7 a.m.
- Oregon State Delegation—7 a.m.
- Washington State Delegation—7 a.m.
- Coastal Pelagic Species Advisory Subpanel—8 a.m.
- Coastal Pelagic Species Management Team—8 a.m.
- Groundfish Advisory Subpanel—8 a.m.
- Groundfish Management Team—8 a.m.
- Salmon Advisory Subpanel—8 a.m.
- Scientific and Statistical Committee—8 a.m.
- Enforcement Consultants—As Needed
- Annual Banquet—6 p.m.

Day 3—Thursday, November 3, 2011
- California State Delegation—7 a.m.
- Oregon State Delegation—7 a.m.
- Washington State Delegation—7 a.m.
- Coastal Pelagic Species Advisory Subpanel—8 a.m.
- Coastal Pelagic Species Management Team—8 a.m.
- Groundfish Advisory Subpanel—8 a.m.
- Groundfish Management Team—8 a.m.
- Enforcement Consultants—As Needed

Day 4—Friday, November 4, 2011
- California State Delegation—7 a.m.
- Oregon State Delegation—7 a.m.
- Washington State Delegation—7 a.m.
- Ecosystem Advisory Subpanel—1 p.m.
- Groundfish Advisory Subpanel—8 a.m.
- Groundfish Management Team—8 a.m.
- Habitat Committee—1 p.m.
- Enforcement Consultants—As Needed

Day 5—Saturday, November 5, 2011
- California State Delegation—7 a.m.
- Oregon State Delegation—7 a.m.
- Washington State Delegation—7 a.m.
- Ecosystem Advisory Subpanel—8 a.m.
- Groundfish Advisory Subpanel—8 a.m.
- Groundfish Management Team—8 a.m.
- Habitat Committee—8 a.m.
- Highly Migratory Species Management Team—1 p.m.
- Enforcement Consultants—As Needed

Day 6—Sunday, November 6, 2011
- California State Delegation—7 a.m.
- Oregon State Delegation—7 a.m.
- Washington State Delegation—7 a.m.
- Groundfish Advisory Subpanel—8 a.m.
- Groundfish Management Team—8 a.m.
- Highly Migratory Species Advisory Subpanel—8 a.m.
- Highly Migratory Species Management Team—8 a.m.
- Enforcement Consultants—As Needed

Day 7—Monday, November 7, 2011
- California State Delegation—7 a.m.
- Oregon State Delegation—7 a.m.
- Washington State Delegation—7 a.m.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during these meetings. 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 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

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: October 11, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–26634 Filed 10–13–11; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a service previously furnished by such agency.

Comments Must Be Received On or Before: 11/14/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe,

Telephone: (703) 603–7740, *Fax:* (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

NSN: 6140–01–413–3926—Rechargeable Battery, AA, Nickel Metal Hydride.
NPA: North Jersey Friendship House, Inc., Hackensack, NJ.
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH.
Coverage: C–List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Land and Maritime, Columbus, OH.

Services

Service Type/Location: Custodial and Grounds Maintenance, Keyport Three Dimensional Range, Bldg. 475, NAVFAC NW., Zelatched Point, WA.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept of the Navy, NAVFAC Northwest, Silverdale, WA.
Service Type/Location: Custodial Service, White Mountain National Forest, Saco Ranger Administrative Site, Routes 112, 33 Kancamagus Highway, Conway, NH.
NPA: Northern New England Employment Services, Portland, ME.
Contracting Activity: Department of Agriculture, Forest Service, Allegheny National Forest, Warren, PA.
Service Type/Location: Grounds Maintenance, United States Southern Command, 9301 NW., 33rd Street, Doral, FL.
NPA: Goodwill Industries of South Florida, Inc., Miami, FL.
Contracting Activity: Department of the Army, BASOPS Act Westside Plaza II, Miami, FL.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing a small entity to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Removal of Tool Identification Numbers, Tinker Air Force Base, OK.
NPA: Work Activity Center, Inc., Moore, OK.
Contracting Activity: Dept of the Air Force, FA8101 OC ALC PKO, Tinker AFB, OK.

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2011–26575 Filed 10–13–11; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 12–C0002]

Henry Gordy International, 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 Henry Gordy International, Inc., containing a civil penalty of $1,100,000.00.

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 October 31, 2011.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 12–C0002, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Patricia Kennedy Vieira, Esquire, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7623.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 7, 2011,

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Henry Gordy International, Inc., its current and/or former corporate parent(s), affiliates, successors, and/or assigns, and any and/or all current and/or former directors, officers, agents and employees (collectively ''Henry Gordy'') and staff (''staff'') of the United States Consumer Product Safety Commission (''Commission'') hereby enter into this Settlement Agreement (''Agreement'') under the Consumer Product Safety Act (''CPSA''). The Agreement and the incorporated attached Order resolve staff's allegations and settle any and all

claims under the CPSA and the Child Safety Protection Act, Public Law 103–267, 108 Stat. 722 (1994), which exist or arise from staff's allegations set forth below.

The Parties

2. Staff is the staff of the Consumer Product Safety Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051–2089, and the CSPA, Public Law 103–267, 108 Stat. 722.

3. Henry Gordy is a corporation, organized and existing under the laws of the State of Delaware, with its principal corporate office located at P.O. Box 2769, 900 North Avenue, Plainfield, New Jersey 07062–0769.

Staff Allegations

4. Between September 2005 and February 2008, Henry Gordy imported approximately 1,806,048 units of the ''Auto Fire Target Set'' (''Target Set''). Each Target Set consisted of the following: A toy gun; soft, pliable, plastic toy darts; and a small target. The Target Sets were sold for $1.50 nationwide by Family Dollar Stores, Inc., exclusively during the period September 2005 through January 2009.

5. The Target Sets are ''consumer products.'' At all relevant times, Henry Gordy, as importer of the Target Sets, is a ''manufacturer'' of these consumer products, which were ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5), (8) and (11) of the CPSA, 15 U.S.C. 2052(a)(5), (8) and (11).

6. The Target Sets are defective because if a child places the soft, pliable plastic toy dart in their mouth, the dart can be inhaled into the throat and it can prevent the child from breathing.

7. Henry Gordy received its first report of a death involving a Target Set on or about May 1, 2006, after an 8-year-old boy choked on a dart and died on March 9, 2006.

8. In response to the death reported on or about May 1, 2006, Henry Gordy implemented a design change, on or about August 3, 2006, to add a product warning to the Target Set's packaging, which stated: ''Parental Supervision Suggested.''

9. On January 8, 2007, Henry Gordy was notified that a 10-year-old boy had died after he swallowed a dart and asphyxiated.

10. On October 31, 2007, Henry Gordy was notified that a 9-year-old boy had died after he swallowed a dart and asphyxiated.

11. Despite being aware of the information set forth in Paragraphs 7 through 10, Henry Gordy did not report to the Commission until May 29, 2009, after staff asked Henry Gordy to do so. By May 29, 2009, Henry Gordy was aware of three deaths involving the Target Sets.

12. In its report to the Commission on May 29, 2009, Henry Gordy did not include the death on March 9, 2006, of the 8-year-old boy; nor did Henry Gordy notify the Commission of the packaging design change it made in response to that death.

13. On June 30, 2009, staff informed Henry Gordy that the Target Sets should be recalled.

14. On September 28, 2009, Henry Gordy notified staff that it would not agree to staff's request for a recall of the Target Sets.

15. Ultimately, the Target Sets were recalled on May 17, 2010, by the exclusive retailer, Family Dollar Stores, Inc.

16. On May 23, 2010, six days after the recall was announced, another 8-year-old boy died after he swallowed a dart and asphyxiated.

17. Although Henry Gordy had obtained sufficient information to reasonably support the conclusion that the Target Sets contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, Henry Gordy failed to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). In failing to report to the Commission, Henry Gordy knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

18. Henry Gordy also had obtained information to reasonably support the conclusion that a child had choked on a small part contained in a toy or game, and learned that the child had died as a result of that incident. Nevertheless, Henry Gordy did not report within 24 hours of obtaining that information, as it was required to do under section 102(a) of the CSPA, Public Law 103–267, 108 Stat. 722; 16 CFR 1117.4. By failing to report within 24 hours of obtaining the information about a child who had choked on a small part contained in a toy or game, Henry Gordy knowingly violated section 19(a)(3) of the CPSA, 15 U.S.C. 2068(a)(3), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

19. Henry Gordy made a material misrepresentation to staff in the course of an investigation under section 15(b) of the CPSA, by failing to report the March 9, 2006, death of an 8-year-old boy and also by failing to report the packaging design change that it had made to the Target Sets. In failing to provide this information to the Commission in its report under section 15(b), Henry Gordy knowingly violated section 19(a)(13) of the CPSA, 15 U.S.C. 2068(a)(13), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

20. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Henry Gordy is subject to civil penalties for its knowing failure to report under section 15(b) of the CPSA, as required under section 19(a)(4) of the CPSA. Pursuant the CPSA, 15 U.S.C. 2069, Henry Gordy is also subject to civil penalties under section 19(a)(13) of the CPSA for knowingly making a material misrepresentation to staff in the course of its section 15(b) investigation.

21. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Henry Gordy is subject to civil penalties for its knowing failure to report under the automatic reporting provisions of section 102(a) of the CSPA, pertaining to small parts incident reporting, Public Law 103–267, 108 Stat. 722.

Response of Henry Gordy

22. Henry Gordy denies all of staff's allegations in this Agreement and Order.

23. Henry Gordy specifically denies that the Target Sets contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death, and Henry Gordy denies that it knowingly violated the reporting requirements of Section 15(b) of the CPSA, 15 U.S.C. 2064(b).

24. Henry Gordy specifically denies that it had sufficient information to reasonably support the conclusion that the Target Sets contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

25. Henry Gordy specifically denies that it had information to reasonably support the conclusion that a child had choked on a small part contained in a toy or game that it imported and as a result of that incident had died, and further denies that it knowingly violated the reporting requirements of the CSPA, Public Law 103–267, 108 Stat. 722; 16 CFR 1117.4.

26. Henry Gordy specifically denies that any of the four deaths described in staff's allegations were caused by the Target Sets imported by Henry Gordy.

27. Henry Gordy specifically denies that it made a material misrepresentation to staff in the course of staff's investigation.

28. Henry Gordy is entering into this Agreement for settlement purposes only, and it has made a business decision to avoid additional expenses and distractions related to further administrative process and litigation.

Agreement of the Parties

29. Under the CPSA, the Commission has jurisdiction over this matter and over Henry Gordy.

30. In settlement of staff's allegations, Henry Gordy shall pay a civil penalty in the amount of one million, one hundred thousand dollars ($1,100,000.00) within twenty (20) calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via: *http://www.pay.gov.*

31. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Henry Gordy or a determination by the Commission, that Henry Gordy knowingly violated the CPSA or the CSPA.

32. Upon provisional acceptance of the Agreement by the Commission, 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). If the Commission does not receive any written request(s) not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

33. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Henry Gordy knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Henry Gordy failed to comply with the CPSA and the underlying regulations; (iv) a determination by the Commission of whether Henry Gordy failed to comply with the CSPA and the underlying regulations; (v) a statement of findings of fact and conclusions of law; and (vi) any claims under the Equal Access to Justice Act.

34. The Commission may publicize the terms of the Agreement and the Order.

35. Henry Gordy shall comply with the provisions of the Agreement and Order.

36. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Henry Gordy to appropriate legal action.

37. 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.

38. If any provision of the Agreement or 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 Henry Gordy agree that severing the provision materially affects the purpose of the Agreement and the Order. The Agreement may be signed in counterparts.

Henry Gordy International, Inc.
Dated: September 23, 2011.
By: _____
David Segal,
President,
Henry Gordy International, Inc.,
P.O. Box 2769, 900 North Avenue,
Plainfield, New Jersey 07062–0769, and

Dated: September 26, 2011.
By: _____
Bridget E. Calhoun,
Esq.,
Crowell & Moring LLP,
1001 Pennsylvania Ave., NW.,
Washington, D.C. 20004.

Counsel for Henry Gordy International, Inc.,
U.S. Consumer Product Safety Commission Staff,
Cheryl A. Falvey,
General Counsel.
Melissa V. Hampshire,
Assistant General Counsel.
Dated: September 28, 2011.
By: _____
Patricia Kennedy Vieira, *Esq.,*
Division of Enforcement and Information,
Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between Henry Gordy International, Inc., its current and/or former corporate parent(s), affiliates, successors, and/or assigns, and any and/or all current and/or former directors, officers, agents, and employees (collectively ''Henry Gordy'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Henry Gordy, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

Ordered that the Settlement Agreement be, and is, hereby, accepted; and it is

Further Ordered that Henry Gordy shall pay a civil penalty in the amount of one million one hundred thousand dollars ($1,100,000.00) within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made electronically to the CPSC via: *http://www.pay.gov.* Upon the failure of Henry Gordy to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Henry Gordy at the Federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). (continued on next page)

Provisionally accepted and provisional Order issued on the *7th* day of *October,* 2011.

BY ORDER OF THE COMMISSION:

_____
Todd A. Stevenson,
Secretary,
U.S. Consumer Product Safety Commission.

[FR Doc. 2011–26662 Filed 10–13–11; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Thursday, October 20, 2011, 10:30 a.m.–12 p.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue, NW., Suite 8312, Washington, DC 20525 (Please go to 10th floor reception area for escort).

CALL-IN INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–946–3503 conference call access code number 6754733. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Corporation will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 402–220–9658. The end replay date is October 27, 2011 10:59 p.m. Central Time. This meeting will also be broadcast live on the Web. Members of

the public may view proceedings by visiting *http://www.nationalservice.gov/about/newsroom/live.asp.*

STATUS: Open.

Matters To Be Considered

I. Chair's Opening Comments
II. Consideration of Previous Meeting's Minutes
III. CEO Report
IV. Committee Reports:
  a. Oversight, Governance and Audit Committee
  b. External Relations Committee
  c. Program, Budget and Evaluation Committee
V. Testimony on Accomplishments Achieved Through the Social Innovation Fund
VI. Public Comments

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *esamose@cns.gov* subject line: October 2011 CNCS Board Meeting by 12 noon on Tuesday October 18. Individuals attending the meeting in person who would like to comment will be asked to sign-in upon arrival. Comments are requested to be limited to 2 minutes.

REASONABLE ACCOMMODATIONS: The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify Ida Green at *igreen@cns.gov* or 202–606–6861 by 5 p.m., Monday, October 17, 2011.

CONTACT PERSON FOR MORE INFORMATION: Emily Samose, Strategic Advisor for Board Engagement, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525. *Phone:* (202) 606–7564. *Fax:* (202) 606–3460. *TTY:* (800) 833–3722. *E-mail: esamose@cns.gov.*

Dated: October 12, 2011.

Valerie Green,

General Counsel.

[FR Doc. 2011–26819 Filed 10–12–11; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Programmatic Environmental Impact Statement (EIS) for Modernization of Training Infrastructure at Pōhakuloa Training Area (PTA), Hawai'i

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability.

SUMMARY: The United States Army Pacific and United States Army Garrison, Hawai'i propose to modernize training ranges, training support infrastructure (e.g., roads and utilities), and training support facilities in the cantonment area at PTA to meet the training requirements of military units in Hawai'i. This modernization would improve the quality of training, make more efficient use of facilities at PTA and reduce a current shortfall in collective (group) live-fire training capabilities for units stationed in Hawai'i. The shortfall has been created by ranges that do not meet current Army design standards or are otherwise not resourced to train platoon and company-sized units when they deploy with their battalions and brigades to PTA to conduct semiannual training. In addition, much of the training support facilities and training support infrastructure at PTA are old, are operating beyond their useful life and do not meet current DoD design standards as defined in the Military Standard 3007 Unified Facilities Criteria and Unified Facilities Guide Specifications.

The Army provides a list of modernization projects that could be built in the reasonably foreseeable future within the Draft Programmatic EIS. The modernization list also includes requirements from the U.S. Marine Corps (another major user of PTA), with these projects being evaluated in the cumulative impacts section of the Draft Programmatic EIS. These projects are essential to support modernization of PTA, and to ensure that the Army and other users of PTA continue to have ready access to sustainable training ranges, training support infrastructure (*e.g.,* roads and utilities), and training support facilities in the cantonment area.

The Draft Programmatic EIS specifically addresses the requirement for an Infantry Platoon Battle Area (IPBA) at PTA that would include an Infantry Platoon Battle Course (IPBC), Live-fire Shoothouse, and Military Operations on Urban Terrain (MOUT) facility. Other projects on the modernization list are not fully mature because they are still in the planning process and are not yet ready for decision. The Army plans to tier from this Draft Programmatic EIS to address those projects at a time when design alternatives are ready for decision. The IPBA is the only modernization project ready for decision presently.

DATES: The public comment period will end 45 days after publication of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments may be addressed to PTA PEIS, P.O. Box 514, Honolulu, HI 96809; facsimiles may be sent to (808) 545–6808; and emails may be addressed to *PTAPEIS@bah.com.*

FOR FURTHER INFORMATION CONTACT: USAG–HI Public Affairs Office by phone at (808) 656–3152 Monday through Friday 9 a.m. to 5 p.m. HST.

SUPPLEMENTARY INFORMATION: The Army examined the potential environmental impacts from siting and operating the IPBA at either the Western Range Area of PTA (preferred alternative), Charlie's Circle, or near the southwest side of Range 20; or to not build and operate the IPBA at all.

An IPBC is used to train and test infantry platoons, either mounted or dismounted, on the skills necessary to conduct tactical movement techniques, and to detect, identify, engage, and defeat stationary and moving infantry and armor targets in a tactical array. The Live-fire Shoothouse provides Army unit leaders with a facility to train and evaluate the unit during a live-fire exercise. The MOUT facility includes the construction or placement of approximately 24 modular structures to replicate small villages for units to complete training tasks in an urban/semi-urban operating environment.

Each proposed IPBA location would be sited within the existing impact area at PTA. For all alternatives (with the exception of No Action), the IPBA would be available 242 training days per year.

Some of the major potential impacts discussed for the proposed IPBA are associated with the possible effects to air quality, historic resources, and threatened and endangered species; encountering munitions and explosives of concern; and igniting wildfires. The Army is formally consulting with the Hawai'i State Historic Preservation Division and other consulting parties, and the U.S. Fish and Wildlife Service to determine the extent of impacts to cultural and biological resources, respectively.

The other range-related modernization projects would have impacts similar to the IPBA; and, in addition, adverse construction-related impacts are possible in the cantonment area related to air quality, stormwater, and noise. The Army will examine all of these potential impacts more thoroughly in future project-specific National Environmental Policy Act documents.

Copies of the Draft Programmatic EIS are available at the following libraries:

Hilo Public Library, 300 Waianuenue Avenue, Hilo; Kailua-Kona Public Library, 75–138 Hualalai Road, Kailua-Kona; Thelma Parker Memorial Public and School Library, 67–1209 Mamalahoa Highway, Kamuela; and Hawai'i State Library, 478 South King Street, Honolulu. The Draft Programmatic EIS may also be accessed online *at http://www.garrison.hawaii.army.mil/PTAPEIS/*.

Public hearings on the Draft Programmatic EIS will be held on the Hawai'i Island. Notification of the times and locations for the public hearings will be published in local newspapers.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–26579 Filed 10–13–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning a Device and Method for Inducing Brain Injury in Animal Test Subjects

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/521,446, entitled ''A Device and Method for Inducing Brain Injury in Animal Test Subjects,'' filed on August 9, 2011. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates a device and method for inducing brain injury in animal test subjects through inflicting pressure-wave or projectile-mediated concussions.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–26584 Filed 10–13–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning Method for Estimating Core Body Temperature From Heart Rate

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/572,677, entitled ''*Method for Estimating Core Body Temperature from Heart Rate*,'' filed on July 8, 2011. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The inventions related to a method of estimating human core temperature from heart rate. The invention further relates to a method of determining impending heart exhaustion or strain for a human.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–26585 Filed 10–13–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Excelsior Estates Project in Sacramento County, CA, Corps Permit Application Number SPK–2004–00790

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Sacramento District, (Corps) received a complete Department of the Army permit application from Tsakopoulos Investments (applicant) to fill 39.81 acres of waters of the United States to construct the proposed Excelsior Estates Project in Sacramento County, CA, in June 2010. The Corps, as the lead agency responsible for compliance with the National Environmental Policy Act (NEPA), determined that the proposed project may result in significant impacts to the environment, and that the preparation of an Environmental Impact Statement (EIS) is required.

The applicant proposes to construct a mixed-use community including residential, commercial, office, schools, parks and open space land uses. The residential component of the proposed community would include approximately 4,400 single- and multi-family units, varying in density. The proposed project would also involve 57 acres of commercial and office uses, as well as two elementary schools and a combined middle school and high school on 102 acres. A proposed community park would be constructed on 20 acres and three neighborhood parks would be constructed on 31 acres. The proposed project would also involve the preservation of 123 acres on the eastern portion of the site, containing Morrison Creek and adjacent wetlands. The applicant also proposes to construct approximately 30 acres of drainageways and greenbelts. Finally, the proposed project would involve the construction of on-site and off-site infrastructure, consisting of roads and utility lines, including road extensions along Keifer Boulevard, Excelsior Road and the Jackson Highway.

The project site is approximately 862 acres and contains 39.81 acres of waters of the U.S. In addition, the site also contains 13.61 acres of isolated, intrastate waters that are not subject to Corps jurisdiction, which may contain suitable habitat for Federally listed

threatened and/or endangered species. The proposed project would involve the discharge of fill material into approximately 28.77 acres of waters of the United States, and the preservation of 11.04 acres of waters of the U.S. The proposed project would also involve the placement of fill material into 13.61 acres of isolated waters. The proposed project may also have indirect impacts on other waters of the U.S.

DATES: The Corps will conduct a public scoping meeting that will be held on Wednesday, November 2, 2011 from 5 p.m. to 7 p.m.

ADDRESSES: The scoping meeting will be held at Rancho Cordova City Hall, located at 2729 Prospect Park Drive, Rancho Cordova, CA 95670.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Gibson, (916) 557–5288, *e-mail: lisa.m.gibson2@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to submit written comments on the permit application on or before December 13, 2011. Scoping comments should be submitted within the next 60 days, but may be submitted at any time prior to publication of the Draft EIS. To submit comments on this notice or for questions about the proposed action and the Draft EIS, please contact: Lisa M. Gibson, U.S. Army Corps of Engineers, 650 Capitol Mall, Suite 5–200, Sacramento, CA 95814–4708. Parties interested in being added to the Corps' electronic mail (e-mail) notification list for the proposed project can e-mail a request to *spk-regulatory-info@usace.army.mil* and indicate which list you would like your e-mail address to be added. Please refer to Identification Number SPK–2004–00790 in any correspondence.

The proposed Excelsior Estates Project site is located in unincorporated eastern Sacramento County. The site is bordered on the north by Keifer Boulevard, on the south by Jackson Highway and on the west by Excelsior Road. The proposed project site is located within portions of Sections 23, 24, 25 and 26, Township 8 North, Range 6 East, Latitude 38.52393° North, Longitude 121.27833° West, Mount Diablo Meridian.

Approximately 39.81 acres of waters of the United States are present within the proposed project area. These waters include 21.99 acres of vernal pools, 5.27 acres of seasonal wetlands, 11.08 acres of perennial marsh, 1.19 acres of intermittent drainage, including Morrison Creek, and 0.28 acres of ditches. These areas are subject to the Corps' jurisdiction. The site also contains 13.61 acres of isolated aquatic habitat, which are not subject to Corps jurisdiction but will be evaluated in the EIS, including 5.80 acres of vernal pools, 2.51 acres of seasonal wetlands, 0.23 acres of ephemeral drainage, a 5.04 acre stock pond and 0.03 acres of ditches. Approximately 630 acres of the 862 acre project site has been designated by the U.S. Fish and Wildlife Service (USFWS) as critical habitat for the Federally listed vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardi*), Sacramento Orcutt grass (*Orcuttia viscida*) and slender Orcutt grass (*Orcuttia tenuis*).

The EIS will include alternatives to the Proposed Action that will meet NEPA requirements for a reasonable range of alternatives, and will also meet the requirements of *CWA Section 404(b)(1) Guidelines.* The alternatives to be evaluated within the EIS have not yet been developed, but will, at a minimum, include the No Action Alternative, the Proposed Project Alternative, additional on-site alternatives, and off-site alternatives.

Sacramento County will be the lead agency responsible for compliance with the California Environmental Quality Act (CEQA) and will prepare an Environmental Impact Report (EIR). The Corps is anticipating that Sacramento County will agree to develop a joint EIS/EIR with the Corps.

The Corps' public involvement program includes several opportunities to provide verbal and written comments on the proposed Excelsior Estates Project through the EIS process. Affected federal, state, and local agencies, Native American tribes, and other interested private organizations and parties are invited to participate. Potentially significant issues to be analyzed in depth in the EIS include loss of waters of the United States (including wetlands), and impacts related to cultural resources, biological resources, including Federally listed threatened and/or endangered species, air quality, hydrology and water quality, noise, traffic, aesthetics, utilities and service systems, and socioeconomic effects.

The Corps will initiate formal consultation with the USFWS under Section 7 of the Endangered Species Act for impacts to listed species that may result from the proposed project. The Corps will also consult with the State Historic Preservation Office under Section 106 of the National Historic Preservation Act for properties listed or potentially eligible for listing on the National Register of Historic Places, as appropriate.

The Draft EIS is expected to be made available to the public in the summer of 2012.

September 16, 2011.

William J. Leady,

Colonel, U.S. Army District Engineer.

[FR Doc. 2011–26587 Filed 10–13–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement/Environmental Impact Report (DEIS/DEIR) for a Permit Application for a Proposed Aggregate Terminal Project on Pier D in the Port of Long Beach, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is considering a permit application from Eagle Rock Aggregates, Inc., a division of Polaris Minerals Corporation, to develop an aggregate receiving and storage terminal on privately held land within the Port of Long Beach (Port). The Proposed Action would be subject to the Corps permitting authority under Section 10 of the River and Harbors Act and include the following in-water and land-based elements: dredging, wharf improvements, installation of truck scales and conveyor system for aggregate.

The primary Federal concerns are the dredging and wharf improvements within waters of the United States and the potential impacts to the natural and human environment. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) prior to consideration of any permit action. The Corps may ultimately make a determination to permit or deny the Proposed Action, or permit or deny alternatives to the Proposed Action.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as the lead agency for the preparation of an Environmental Impact Report (EIR) for its consideration of development approvals within its jurisdiction. The Corps and the Port have agreed to jointly prepare a DEIS/DEIR in order to optimize efficiency and avoid duplication. The DEIS/DEIR is intended to be sufficient in scope to address the Federal, state, and local

requirements and environmental issues concerning the proposed activities and permit approvals.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and DEIS/DEIS should be directed to Antal Szijj, Corps of Engineers, at (805) 585–2147. Comments regarding the scope of the DEIS/DEIR should be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Ventura Field Office, ATTN: Antal Szijj, 2151 Allesandro Drive, Suite 110, Ventura, CA 93001. Alternatively, comments can be e-mailed to *antal.j.szijj@usace.army.mil.* Comments should also be sent to Richard D. Cameron, Director of Environmental Planning, Port of Long Beach, 925 Harbor Plaza, Long Beach, CA 90802.

SUPPLEMENTARY INFORMATION:

1. Project Site and Background Information. The Proposed Project site is located at Berth D–44 on Pier D in the Port of the Beach (Port). The site is currently owned by L.G. Everist, Inc. and would be leased to Eagle Rock Aggregates for terminal development and operation. The site, located at 1925 Pier D Street, is bounded by Channel 3 to and SSA Matson to the north, G.P. Gypsum to the east, berths D–41, D–42, and D–43 to the west, and Pier D Street to the south. The site was previously used as an aggregate import terminal by Connolly-Pacific Company who operated the terminal from 2000 until 2009. The terminal received pre-sorted aggregate that was barged by diesel-powered tugs boats, where it was off-loaded and stockpiled by conveyor systems.

2. Proposed Action. The Project applicant, Eagle Rock Aggregates, proposes to construct a sand, gravel and granite aggregate receiving, storage, and distribution terminal. The Project site is 8.3 acres in size, of which the Project footprint would occupy 7.25 acres. The proposed dredging and wharf modifications would prepare the site to accept Panamax-class vessels which would deliver aggregate material to the site. The Proposed Project would be dredged to -44 feet Mean Lower Low Water (MLLW) over the majority of the dredge footprint. In addition, Eagle Rock Aggregates would conduct advanced maintenance dredging of an additional 2 feet (to -46 MLLW) to mitigate future accumulation of sediments, which are likely to accrete once the facility is operational. The total proposed dredge volume is approximately 6,000 cubic yards. Eagle Rock Aggregates has coordinated with the Dredge Material Management Team/Contaminated Sediments Task Force on disposal options. The dredge material is scheduled for disposal in the Port's confined disposal facility associated with the Middle Harbor Redevelopment Project, which has been approved by the Corps under a separate permit (Corps File No. SPL–2004–01053–AOA).

Wharf improvements would include the construction of a berthing system consisting of 28 steel piles driven into the adjacent uplands to provide anchor points for two V-shaped stiff-legs that would extend overwater to support the Panamax-class vessels, followed by concrete forming and the installation of additional steel legs and land-based conveyor system. These improvements, along with the land-based installation of scales and conveyor equipment would prepare the site to receive aggregate via vessel and transport via trucks from the site. No discharge of fill material into waters of the U.S. is proposed.

3. Issues. There are several potential issue that will be addressed in the DEIS/DEIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

1. Air pollutant emissions from construction and operation, including a health risk analysis.
2. Marine water resources, including potential impacts on marine biological resources.
3. Traffic, including navigational issues, and transportation related impacts.
4. Cumulative impacts.

In addition, the DEIS/DEIR will address other issues relating to the Corps' permit action including, but not limited to greenhouse gas emissions, aesthetics, water quality, noise and cumulative effects.

4. Alternatives. Alternatives initially being considered for the Proposed Project include the following:

(1) Aggregate receiving and storage terminal utilizing Panamax-class vessels, with dredging and wharf modifications (Preferred Alternative);

(2) Aggregate receiving and storage terminal where vessel discharges aggregate material to barges prior to reaching the project site, without dredging or wharf improvements (No Federal Action).

Additional alternatives are currently being considered for the Proposed Project. These alternatives with be further formulated and developed during the scoping process and an appropriate range of alternatives will be included in the DEIS/DEIR.

5. Scoping Process. The Corps and the Port will jointly conduct a scoping meeting for the Proposed Project. English and Spanish translation, as well as sign language translation services, will be provided at the meeting. The public scoping meeting will be held to receive public comment and assess public concerns regarding the appropriate scope of the DEIS/DEIR. Participation in the public meeting by Federal, state, and local agencies and other interested organizations and persons is encouraged. The Corps will also be coordinating with the U.S. Fish & Wildlife under the Fish & Wildlife Coordination Act and Endangered Species Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Fisheries Act. Additionally the DEIS/DEIR will assess the consistency of the proposed Action with the Coastal Zone Management Act and potential water quality impacts pursuant to Section 401 of the Clean Water Act. The public scoping meeting for the DEIS/DEIR will be held at the Long Beach City Council Chambers, 333 West Ocean Boulevard, Long Beach, California on November 2, 2011, and will start at 6 pm. Written comments will be accepted until November 16, 2011.

6. Availability of the DEIS/DEIR. The joint lead agencies expect the DEIS/DEIR to be published and circulated in early 2012. A Public Hearing will also be held during the public comment period for the DEIS/DEIR.

Dated: October 5, 2011.

David J. Castanon,

Chief, Regulatory Division, Los Angeles District.

[FR Doc. 2011–26660 Filed 10–13–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before December 13, 2011. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to Chris O'Gwin or by fax at (301) 903–5488, or by e-mail at *chris.ogwin@science.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Chris O'Gwin or by fax at (301) 903–5488, or by e-mail at *chris.ogwin@science.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. New; (2) Information Collection Request Title: Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Commercialization Survey; (3) Type of Request: New; (4) Purpose: The DOE needs this information to satisfy the program requirements of the Small Business Act, including requirements established in the SBIR program reauthorization legislation, Public Law 106–554 and Public Law 107–50. This data will be collected by the DOE and provided to the Small Business Administration (SBA) to maintain information about SBIR/STTR awards issued through the two programs. This data will be provided by DOE based on information collected from SBIR/STTR awardees. This data will be used by DOE, SBA, and Congress to assess the commercial impact of these two programs; (5) Annual Estimated Number of Respondents: 2,500; (6) Annual Estimated Number of Total Responses: 2,500; (7) Annual Estimated Number of Burden Hours: 2,500; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Statutory Authority: Section 9 of the Small Business Act, as amended, codified at 15 U.S.C. 638(g).

Issued in Washington, DC on October 6, 2011.

Manny Oliver,

SBIR/STTR Programs Director, Office of Science, U.S. Department of Energy.

[FR Doc. 2011–26509 Filed 10–13–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Commercial Building Workforce Job/Task Analyses

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

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy (EERE) announces the availability of a draft set of six Job/Task Analyses applicable to the commercial buildings credentialing sector and the commercial buildings workforce. Through this notice, DOE also requests comments on these documents. Job/Task Analyses were developed for the following six job classifications: Commercial Building Energy Auditor, Commercial Building Energy Modeler, Commissioning/Retro-Commissioning Authority, Energy/Sustainability Manager, Facility Manager, and Operating Engineer/Building Technician. These documents are intended for voluntary use by federal, state, municipal and utility ratepayer-funded energy efficiency programs and private sector commercial building contractors, as well as any other organization, company, or individual involved or concerned with the training of persons in the commercial building space.

DATES: Comments on the six Job/Task Analyses must be received by 5 p.m. Eastern Time on November 28, 2011.

ADDRESSES: Drafts of each of the six Job/Task Analyses are available for review online at: *http://www.buildings.energy.gov/workforce.html.*

You may submit comments by any of the following methods:

- *Internet: http://www.buildings.energy.gov/workforce.html.* Follow the instructions for submitting comments.
- *E-mail: Buildings.Workforce.Feedback@nrel.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket # ID EERE–2011–BT–NOA–0063. Follow the instructions for submitting comments.
- *Postal Mail:* National Renewable Energy Laboratory, Attn: Buildings Workforce Feedback, Mail Stop: RSF202, 1617 Cole Blvd., Golden, CO 80401–3305.

For further information on how to submit comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sonal Kemkar, Building Technologies Program, Mailstop EE–2J, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. *Phone number:* (202) 287–1897. *E-mail: sonal.kemkar@ee.doe.gov.*

For legal issues contact: Kavita K. Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. *Phone number:* (202) 586–0669. *E-mail: kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: EERE has tasked the National Renewable Energy Laboratory (NREL) with developing a suite of six Job/Task Analyses for use by federal, state, municipal and utility ratepayer-funded energy efficiency programs as well as organizations and individuals involved with training and accrediting personnel who operate in the commercial building sector. Job/Task Analyses identify and catalog all of the tasks a given worker typically performs. They include the minimum knowledge, skills, and abilities that a skilled worker should possess to perform work for the given occupation or job level.

The Job/Task Analysis development process involved NREL convening a diverse group of public and private-sector industry practitioners. Each of these practitioners attended a psychometrician-facilitated workshop (psychometrics is the field of study concerned with psychological measurement, including the application of statistical and mathematical techniques to psychological and educational testing) and worked with fellow practitioners to create the Job/Task Analysis specific to their job category. Workshops were held for each of the following job classifications: Commercial Building Energy Auditor, Commercial Building Energy Modeler, Commissioning/Retro-Commissioning Authority, Energy/Sustainability Manager, Facility Manager, and Operating Engineer/Building Technician.

Each of the six Job/Task Analyses contains (1) A description of the job; (2) a proposed content blueprint; (3) tables delineating general and specialized knowledge areas required; (4) tables delineating required skills, abilities, and attributes; (5) tables listing the tools and resources required; and (6) a developing

a curriculum (DACUM) chart. The DACUM charts detail the duties, tasks, and steps performed by a practitioner in each occupation, and also include the minimum specialized knowledge, skills and abilities, and tools, equipment, and resources, required to perform each task.

Once finalized, the Job/Task Analyses will:

1. Assist training providers in developing course content and curricula consistent with an industry-recognized suite of Job/Task Analyses.
2. Support increased workforce mobility up career ladders and across career lattices by establishing a clear set of knowledge, skills, and abilities upon which worker credentials should be based.
3. Lay the foundation for more robust private sector training programs.

Issues on Which DOE Seeks Comment

DOE is particularly interested in receiving comments and views of interested parties on the following issues:

• The tasks; minimum knowledge, skills and abilities; and tools, equipment and resources identified in the DACUM charts for each of the six job categories. DOE is also interested in receiving comments based on the individual experiences of the commenters. To the extent that commenters are providing information on individualized experiences, DOE requests that commenters provide background and context of the experience. DOE requests this information so that DOE better understands the reasoning and context behind each comment. Such a level of understanding will enable DOE to evaluate each submitted comment in a rapid and accurate manner and will also provide valuable information related to the state of the commercial building training and certification industry. DOE requests feedback on the following, as related to the commenter:

• In order for DOE to follow up with commenters should there be questions regarding a comment, DOE requests that commenters identify themselves and provide contact information (name and e-mail address).

• If the commenter is providing information as a representative of an organization, please ensure the organization is clearly identified.

• If there are comments specific to a state or region in which the commenter practices, please identify the state or region.

• If the commenter is providing information as a representative of an organization and there are comments that relate to the size of the organization (e.g., small or large business concerns), please ensure the size of the commenter's organization is clearly identified.

• If the commenter provides sector specific comments please identify the commenter's sector (e.g., public or private).

• In order for DOE to evaluate comments that may be temporally based (i.e., dependent upon when something was learned), please provide the commenter's total years of experience in the commercial buildings industry.

• If comments are provided that pertain to a specific industry field (e.g., commercial building energy auditor, commercial building energy modeler, commissioning/retro-commissioning authority, energy/sustainability manager, facility manager, and/or operating engineer/building technician), please provide (1) the number of years of experience that the commenter has in that and related industries and (2) the commenter's current field of industry and position within that industry.

• To help DOE better understand which comments are applicable across the commercial buildings sector and those that are industry specific, please provide industry credentials and professional society/organization memberships held.

• To help DOE better understand at which point in the commenter's career certain skills are obtained, please identify your highest level of education when responding.

Submission of Comments

DOE will accept comments, data, and information regarding the Job/Task Analyses no later than the date identified in the **DATES** section above. If submitting comments via internet, please follow all instructions on the web page. Basic information requested upon entering the comment website (name and email) is public record and may be published as part of the report on public comment.

Comments, data, and information submitted to DOE's email address and regular mail for this notice should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via e-mail or regular mail should include one signed paper original.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

Issued in Washington, DC, on October 5, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–26645 Filed 10–13–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2305–036]

Sabine River Authority of Texas and Sabine River Authority, State of Louisiana; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2305–036.

c. *Date Filed:* September 30, 2011.

d. *Applicant:* Sabine River Authority of Texas and Sabine River Authority, State of Louisiana (Sabine River Authorities).

e. *Name of Project:* Toledo Bend Hydroelectric Project.

f. *Location:* On the Sabine River, affecting lands and waters in Panola, Shelby, Sabine, and Newton Counties, Texas, and De Soto, Sabine, and Vernon Parishes, Louisiana. The project occupies about 3,600 acres of United States lands under the jurisdiction of the Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Melvin T. Swoboda, Licensing Manager, Toledo Bend Project Joint Operation, P.O. Box 579, Orange, Texas 77631–0579, 409–746–2192; *mswoboda@sratx.org.*

Mr. Jerry L. Clark, General Manager, Sabine River Authority of Texas, P.O. Box 579, Orange, Texas 77631–0579. 409–746–2192; *jclark@sratx.org*

Mr. James Pratt, Executive Director, Sabine River Authority, State of Louisiana, 15091 Texas Highway, Many, Louisiana 71449–5718, 318–256–4112; *jimpratt@dotd.louisiana.gov*.

Mr. Charles R. Sensiba, Van Ness Feldman, P.C., 1050 Thomas Jefferson Street, NW., Washington, DC 20007, 202–298–1800.

i. *FERC Contact:* Alan Mitchnick at (202) 502–6074 or e-mail at *alan.mitchnick@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. *The Project Description:* The existing Toledo Bend Project (figure 2) consists of: (1) A rolled, earth-fill embankment, approximately 11,250 feet long (including saddle dikes) with a top width of 25 feet and maximum height of approximately 112 feet; (2) an approximately 185,000-surface acre, 85-mile-long reservoir, with an active storage capacity of 4,477,000 acre-feet at full pool (172 feet) and 1,200 miles of shoreline; (3) a 838-foot-long spillway located along the north dam abutment in Louisiana, comprised of a concrete, gravity-type, gated weir with a concrete chute and stilling basin and a discharge channel on the left abutment with eleven 40-foot by 28-foot tainter gates; (4) a 80-foot-wide, 55-foot-high powerhouse located in the right abutment, containing two vertical Kaplan turbines with an authorized installed capacity of 81 megawatts (MW); and (5) a 220-foot-long, concrete tailrace segment leading into a 2-mile-long, excavated channel that eventually merges with the Sabine River; (6) a 138-kilovolt, primary transmission line leading from the powerhouse to the project switchyard, located immediately adjacent to the tailrace; and (7) a station transformer, located to the immediate south of and adjacent to the powerhouse. The Sabine River Authorities propose to construct a 1.3–MW minimum flow turbine-generator at the project spillway.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis	11/29/2011
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions	1/28/2012
Commission issues Draft EIS	7/26/2012
Comments on Draft EIS due	9/24/2012
Modified Terms and Conditions due	11/23/2012
Commission Issues Final EIS	2/21/2013

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: October 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26600 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–549–000]

DCP Midstream, LP; Notice of Application

Take notice that on September 23, 2011, DCP Midstream, LP (DCP), filed an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's Regulations, for a limited jurisdiction certificate authorizing DCP to construct and operate an eleven-mile, 12-inch diameter pipeline (the LaSalle Residue Line) connecting DCP's new non-jurisdictional natural gas processing facilities (the LaSalle System) with an interstate system, located in Weld County, Colorado. DCP also requests for waivers of regulatory requirements regarding the proposed LaSalle Residue Line. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

DCP is a non-jurisdictional gas gathering company having facilities in Texas, Oklahoma, New Mexico, Louisiana, Colorado, Kansas, Arkansas, and Wyoming. DCP generally operates these facilities to deliver raw gas to processing plants. To address the new development of Niobrara Shale in the Denver-Julesburg Basin (DJ Basin), DCP proposes to construct the LaSalle Residue Line connecting the LaSalle System with an interstate system, Colorado Interstate Gas Company (CIG). The LaSalle Residue Line has a design capacity of 230 MMcf/day and will be used for transportation of natural gas solely on behalf of DCP without payment of any additional charge for the service. DCP does not intend to transport gas through the LaSalle Residue Line for shippers other than DCP. The pipeline will be constructed entirely inside DCP's right of way and costs approximately $12 million.

Any questions regarding this application should be directed to Katie Rice, DCP Midstream, LP, 370 17th Street, Suite 2500, Denver, Colorado 80202. Telephone 303–605–2166, fax 303–605–2226, and *e-mail: kerice@dcpmidstream.com.*

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit original and 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 27, 2011.

Dated: October 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26567 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–551–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Application

Take notice that on September 29, 2011, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP11–551–000 an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for permission and approval to abandon Caverns 1, 2, 3, and 4 and the associated storage deliverability and capacity at the Eminence Storage Field (Eminence) in Covington County, Mississippi, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Transco states that it has experienced structural integrity problems with four of its seven caverns at Eminence. On December 26, 2010, a large, unexpected pressure drop occurred in Cavern 3. Subsequently, Transco experienced problems with Caverns 1 and 2 and began to reduce the pressure in those caverns by withdrawing gas. Cavern 4 has been out of service since 2004 due to collapsed casing which is not connected to the December incident. Transco seeks permission and approval to abandon Caverns 1, 2, 3, and 4, and reduce deliverability and capacity from 20.5 Bcf to 15.025 Bcf in Caverns 5, 6, and 7. Transco also seeks to partially abandon the total storage capacity and deliverability quantities Transco provides to its customers under Rate Schedules ESS and EESWS. Transco further seeks to reduce the total capacity and deliverability quantities available to Transco for system flexibility. Contingent upon receiving approval of its request from the Commission, Transco and its Rate Schedules ESS and EESWS customers would amend their applicable service agreements to reflect their revised Storage Capacity Quantity and the Storage Demand Capacity. Transco states that it intends to reflect the rate impact of the reduction in at the Eminence Storage Field's deliverability and capacity, as well as any costs incurred thus far, in Transco's next section 4 general rate case which will be filed no later than August 31, 2012. Transco estimates that it has already expended $76,000,000 as part of its emergency response to the events at Eminence.

Any questions regarding this application should be directed to Ingrid Germany, Staff Regulatory Analyst, Transcontinental Gas Pipe Line Company, P.O. Box 1396, Houston, Texas 77251–1396, at (713) 215–4015.

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: October 27, 2011.

Dated: October 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26573 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12711–005]

Ocean Renewable Power Company, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions, and Waiving the Timing Requirement for Filing Competing Development Applications

Take notice that the following hydrokinetic pilot project license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Pilot Project License.

b. *Project No.:* 12711–005.

c. *Date Filed:* September 1, 2011.

d. *Applicant:* Ocean Renewable Power Company, LLC.

e. *Name of Project:* Cobscook Bay Tidal Energy Project.

f. *Location:* The proposed project would be located in Cobscook Bay, in Washington County, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–828(c).

h. *Applicant Contact:* Christopher R. Sauer, Ocean Renewable Power Company, LLC, 120 Exchange Street, Suite 508, Portland, Maine 04101, (207) 772–7707.

i. *FERC Contact:* Timothy Konnert, telephone (202) 502–6359, and e-mail *timothy.konnert@ferc.gov*.

j. Deadline for Filing Motions to Intervene and Protests, Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions: 30 days from the issuance of this notice; reply comments are due 60 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The Project Description: The primary project facilities would include: (1) A single, approximately 98.5-foot-long, cross-flow Kinetic System turbine generator unit (TGU) mounted on a bottom support frame, with a rated capacity of 60 kilowatts (kW), in Phase 1; (2) four, approximately 98.5-foot-long, cross-flow Kinetic System TGUs mounted on bottom support frames, with a rated capacity of 60 kW each, in Phase 2; (3) a direct current power and data cable approximately 3,800 feet long (3,600 feet underwater and 200 feet on shore) extending from the TGUs to the onshore station house; (4) an on-shore building 32 feet wide by 35 feet long, housing the SatCon power inverter and the supervisory control and data acquisition (SCADA) system; and (5) appurtenant facilities for navigation safety and operation. The project would have a total rated capacity of 300 kW, with an estimated annual generation between 1,200,000 and 1,300,000 kilowatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b) except to the extent that this notice establishes deadlines different from those in the regulation. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule:

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, terms and conditions, and fishway prescriptions.	November 5, 2011.
Commission issues Single EA.	January 4, 2012.
Comments on EA	February 3, 2012.

p. Waiver of deadline to file competing applications filed pursuant to an NOI:

Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application or a notice of intent to file such an application. Section 4.36(b)(2) of the Commission's regulations, which allows 120 days from the specified intervention deadline date for interested parties to file competing development applications in which timely notice of intents have been submitted, is hereby waived. Due to the expedited nature of the pilot project licensing procedures, the submission of a timely notice of intent will instead allow an interested person to file the competing development application no later than 30 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant named in this public notice.

Dated: October 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26569 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–2–000]

ConocoPhillips Company v. SFPP, L.P.; Notice of Complaint

Take notice that on October 5, 2011, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2011), section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2, and section 13(1) of the Interstate Commerce Act (ICA), 49 USC App. 13(1), ConocoPhillips Company (Complainant) filed a formal complaint against SFPP, L.P. (Respondent), challenging the lawfulness of the indexed increases in ceiling rates filed by the Respondent on September 20, 2011 in Docket No. IS11–585–000 and alleging that the Respondent will violate the ICA by applying the increased ceiling rates which are unjust and unreasonable for Respondent's jurisdictional interstate service. The Complainant stated that copies of the complaint have been served on the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 25, 2011.

Dated: October 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26571 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–3–000]

Tesoro Refining and Marketing Company v. SFPP, L.P.; Notice of Complaint

Take notice that on October 5, 2011, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206; the Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.2; and section 1(13) of the Interstate Commerce Act (ICA), 49 U.S.C. App. 13(1), Tesoro Refining and Marketing Company (Complainant) filed a formal complaint against SFPP L.P. (Respondent), challenging the lawfulness of the indexed increases in ceiling rates filed by the Respondent on September 20, 2011 in Docket No. IS11–585–000 and alleging that the Respondent will violate the ICA by applying the increased ceiling rates which are unjust and unreasonable for the Respondent's jurisdictional interstate service.

The Complainant stated that copies of the complaint have been served on the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 26, 2011.

Dated: October 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26572 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13305–002]

Whitestone Power and Communications; Notice of Technical Teleconference To Discuss Information and Monitoring Needs for a License Application for a Pilot Project

a. *Type of Application:* Draft License Application for Pilot Project.

b. *Project No.:* 13305–002.

c. *Applicant:* Whitestone Power and Communications (Whitestone).

d. *Name of Project:* Microturbine Hydrokinetic River-In-Stream Energy Conversion Power Project (also known as the Whitestone Poncelet RISEC Project).

e. *Location:* On the Tanana River near Delta Junction, Alaska.

f. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

g. *Applicant Contact:* Steven M. Selvaggio, Whitestone Power and Communications, P.O. Box 1630, Delta Junction, Alaska 99737; (907) 895–4938.

h. *FERC Contact:* Dianne Rodman, (202) 502–6077 or *dianne.rodman@ferc.gov.*

i. *Project Description:* The proposed Microturbine Hydrokinetic River-In-Stream Energy Conversion Power Project would consist of: (1) A 12-foot-wide, 16-foot-diameter Poncelet undershot water wheel; (2) a 34-foot-long, 19- to 24-foot-wide aluminum-frame floatation platform mounted on a 34-foot-long, 3.5-foot-diameter high-density- polyethylene (HDPE) pontoon and a 34-foot-long, 3-foot-diameter HDPE pontoon; (3) a 100-kilowatt turbine/generator unit; (4) a 33-foot-long, 3.5-foot-wide gangway from the shore to the floating pontoon; (5) three anchoring cables to secure the flotation platform to the shore, including a 30-foot-long primary safety tether, a 117-foot-long primary cable, and a 100-foot-long secondary cable; (6) an approximately 900-foot-long transmission cable from the floatation platform to an existing Golden Valley Electric Association distribution line; and (7) appurtenant facilities. The project is anticipated to operate from April until October, with an estimated annual generation of 200 megawatt-hours.

j. *Meeting Purpose and Schedule:* On August 22, 2011, Whitestone filed (1) A notice of intent to file an application for an original license for a hydrokinetic pilot project and a draft license application; (2) a request for waivers of the integrated licensing process regulations necessary for expedited processing of a hydrokinetic pilot project license application; (3) a proposed process plan and schedule; (4) a request to be designated as the non-federal representative for section 7 of the Endangered Species Act consultation; and (5) a request to be designated as the non-Federal representative for section 106 consultation under the National Historic Preservation Act.

Commission staff will hold a technical teleconference with Whitestone to discuss the project proposal, pilot licensing process, and additional information and monitoring needs for the license application. During the teleconference, Commission staff will focus the discussion on the information gaps that need to be addressed to ensure that sufficient information exists for the Commission to make a determination on whether the proposed project meets the criteria for a pilot project and for processing a license application for a pilot project once it is filed with the Commission.

All local, state, and Federal agencies, Native Alaskan tribal entities, and other interested parties are invited to participate by phone. The date and time of the teleconference are as follows:

Monday, November 7, 2011, starting at 1 p.m. and ending no later than 4 p.m. (Eastern Standard Time).

Please call Dianne Rodman by October 31, 2011, to RSVP and to receive specific instructions on how to participate.

Dated: October 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26597 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–1–000]

City of South Daytona, FL; Notice of Petition for Declaratory Order

Take notice that on October 5, 2011, pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.207(a)(2) (2011) and 18 CFR 381.108(a), City of South Daytona, Florida (South Daytona or City), filed a Petition for Declaratory Order, seeking a declaratory order: (1) Finding that the Commission's stranded cost regulations do not apply to a retail-turned-wholesale municipal utility that intends to continue receiving its power supply, albeit at wholesale, from its former retail supplier; and (2) allows exemption as a municipality from the Commission's filing fees.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 4, 2011.

Dated: October 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26566 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13861–000]

Eldorado Pumped Storage, LLC.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 14, 2010, Eldorado Pumped Storage, LLC., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Eldorado Pumped Storage Project (Eldorado Project or project) to be located in hills west of the Eldorado Valley in Clark County, Nevada, south of Las Vegas, Nevada. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The project would consist of the following: (1) An upper dam with a height of 180 feet, a crest length of 1,970 feet, forming a reservoir having a total storage capacity of 10,680 acre-feet at a normal maximum operating elevation of 3,570 feet above mean sea level (msl); (2) a secondary upper dam with a height of 110 feet, a crest length of 1,512 feet; (3) a lower dam with a height of 10 to 110 feet, a crest length of 10,040 feet, forming a reservoir having a total storage capacity of 9,500 acre-feet at a normal maximum operating elevation of 2,420 feet msl; (4) 7,060 feet of conduit; (5) a powerhouse containing one 250-megawatt (MW), one 100-MW, and one 50-MW reversible pump turbine, tentatively located just west of the lower reservoir, at approximately a depth of 250 feet below ground level; and (6) a new 5.3-mile-long, 230-kilovolt (kV) transmission line to either the existing Marketplace, McCullough, or Eldorado substations. The tentative source for initial fill of water and evaporation compensation would be the Southern Nevada Water Authority. The specific routing for that water delivery would be identified during the study period. The estimated annual generation of the project would be 1,226 gigawatt-hours.

Applicant Contact: Eldorado Pumped Storage, LLC. 1210 W. Franklin St., Ste. 2, Boise, ID 83702; *phone:* (208) 246–9925.

FERC Contact: Matt Buhyoff; phone: (202) 502–6824.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13861–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26598 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14065–000]

Amnor Hydro West, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 24, 2011, and supplemented on April 27, 2011, Amnor Hydro West, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Clear Creek Dam Hydropower Project (project) to be located on the North Fork Tieton River, near Naches, Yakima County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize the existing outlet works of the U.S. Bureau of Reclamation's Clear Creek Dam. The applicant proposes the following new facilities: (1) A powerhouse to be constructed on the downstream side of the dam below the outlet works of the U.S.G.S monitoring station that has been fitted to accommodate a turbine generating system; (2) two Francis turbine/generator units with a combined capacity of 920 kilowatts; (3) a tailrace discharge works consisting of an exhaust apron; (4) a 14.7-kilovolt, 3,500-foot-long transmission line from the powerhouse southwest to a proposed substation; and (5) appurtenant facilities. The estimated annual generation of the project would be 3.9 gigawatt-hours.

Applicant Contact: Mr. Adam T. Supronik, 42 Pearsall Street, Staten Island, New York 10305; *phone:* (347) 415–9600.

FERC Contact: Patrick Murphy; *phone:* (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an

original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14065–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26596 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2558–029—Illinois Otter Creek Hydroelectric Project

Central Vermont Public Service Corporation; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Vermont State Historic Preservation Officer (hereinafter, ''Vermont SHPO'') and the Advisory Council on Historic Preservation, pursuant to section 106 of the National Historic Preservation Act [2] and its implementing regulations,[3] to develop and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Otter Creek Hydroelectric Project (Otter Creek Project).

The programmatic agreement, when executed by the Commission and the Vermont SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities, pursuant to section 106 for the Otter Creek Project, would be fulfilled through the programmatic agreement, which the Commission staff proposes to develop in consultation with the interested participants listed below. The executed programmatic agreement would be incorporated into any order issuance.

Central Vermont Public Service Corporation, as applicant for the Otter Creek Project, is invited to participate in the consultation to develop the programmatic agreement. For the purpose of commenting on the programmatic agreement, we propose to restrict the service list for the proposed project as follows:

John Fowler, Executive Director, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Avenue, NW., Suite 803, Washington, DC 20004.

Giovanna Peebles, State Archaeologist and State Historic Preservation Officer, Vermont Division for Historic Preservation National Life Building, 2nd Floor, Montpelier, VT 05620–1201.

Joseph Kraus, Senior Vice President, Operations, Engineering & Customer Services, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason or reasons why there is an interest to be included. Also, please identify any concerns about historic properties, including properties of traditional religious and cultural importance to a federally recognized tribe or tribal corporation that has an affiliation to the area. If historic properties are identified within the motion, please use a separate page, and label it NON–PUBLIC INFORMATION.

The original and eight copies of any such motion must be filed with Kimberly D. Bose, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and must be served on each person whose name appears on the official service list. Please put the following on the first page: Otter Creek Project No. 2558–029. Motions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

Dated: October 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26599 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

Combined PJM Regional Transmission Planning Task Force/PJM Interconnection Process Senior Task Force

October 13, 2011, 9:30 a.m.–3 p.m., Local Time.

November 14, 2011, 9:30 a.m.–3 p.m., Local Time.

December 9, 2011, 9:30 a.m.–3 p.m., Local Time.

PJM Markets and Reliability Committee

November 16, 2011, 9:30 a.m.–3 p.m., Local Time.

The above-referenced meetings will be held at:

The Chase Center on the Riverfront, Wilmington, DE.

The above-referenced meetings are open to stakeholders.

FURTHER INFORMATION MAY BE FOUND AT *http://www.pjm.com.* The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. ER06–456, ER06–954, ER06–1271, ER07–424, ER06–880, EL07–57, ER07–1186, ER08–229, ER08–1065, ER09–497, and ER10–268, *PJM Interconnection, L.L.C.*

[1] 18 CFR section 385.2010.

[2] 16 USC section 470 (2006) *et seq.*

[3] 36 CFR part 800 (2009).

Docket No. ER10–253 and EL10–14, *Primary Power, L.L.C.*

Docket No. EL10–52, *Central Transmission, LLC* v. *PJM Interconnection, L.L.C.*

Docket No. ER11–4070, *RITELine Indiana et al.*

Docket No. ER11–2875 and EL11–20, *PJM Interconnection, L.L.C.*

Docket No. ER08–386 and ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*

Docket No. ER09–1589, *FirstEnergy Service Company.*

Docket No. EL11–56, *FirstEnergy Service Company.*

FOR MORE INFORMATION CONTACT: Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov*.

Dated: October 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26570 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR09–16–000; PR09–16–001; PR09–22–000; PR09–22–001]

Enogex LLC; Notice of Stipulation and Agreement of Settlement and Notice of Comment Period

Take notice that on October 4, 2011, Enogex LLC (Enogex) filed a Stipulation and Agreement of Settlement (Settlement) in the above-docketed proceedings. Enogex states that it is the parties' belief that the Settlement will be unopposed and will resolve all issues in these dockets in their entirety. Included in its filing was a request to set the period for filing initial and reply comments in response to the Settlement.

Notice is hereby given that the deadline for filing initial comments is Monday, October 24, 2011. Reply comments should be filed on or before Thursday, November 3, 2011.

Dated: October 6, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26568 Filed 10–13–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8999–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 10/03/2011 Through 10/07/2011

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EIS are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20110341, Final EIS, FTA, NC, LYNX—Blue Line Extension Northeast Corridor Light Rail Project, Proposed Light Rail Extension from Center City Charlotte to I–485 near the Mecklenburg-Cabarrus County Line, Charlotte-Mecklenburg County, NC, *Review Period Ends:* 11/14/2011, *Contact:* Brian C. Smart 404–865–5607.

EIS No. 20110342, Draft Supplement, FHWA, CO, US 550 South Connection to US 160, Updated Information to US 160 from Durango to Bayfield, US Army COE Section 404 Permit, LaPlata County, CO, *Comment Period Ends:* 11/28/2011, *Contact:* Stephanie Gibson 720–963–3013.

EIS No. 20110343, Final EIS, FHWA, WI, Zoo Interchange Corridor Study, Interstate I–94, I–894, and U.S. Highway 45 (Zoo Interchange) 124th Street to 70th Street Lincoln Avenue to Burleigh Street, Milwaukee County, WI, *Review Period Ends:* 11/14/2011, *Contact:* Wesley Shemwell 608–829–7521.

EIS No. 20110344, Draft EIS, USA, HI, Programmatic—Pohakuloa Training Area (PTA), Proposed Modernization of Training Infrastructure to Construction and Operation of an Infantry Platoon Battle Area (IPBA), HI, *Comment Period Ends:* 11/28/2011, *Contact:* Lindy McDowell 210–466–1593.

EIS No. 20110345, Draft EIS, APHIS, 00, Glyphosate-Tolerant H7–1 Sugar Beets, Request for Nonregulated Status, United States, *Comment Period Ends:* 11/28/2011, *Contact:* Rebecca Stankiewicz Gabel, PhD 301–734–5603.

EIS No. 20110346, Final Supplement, USFS, NV, Martin Basin Rangeland Project, Updated Information on the Analysis on the Effects of Livestock Grazing on the Wilderness, Reauthorizing Grazing on Eight Existing Cattle and Horse Allotments: Bradshaw, Buffalo, Buttermilk, Granite Peak, Indian, Martin Basin, Rebel Creek, and West Side Flat Creek, Santa Rosa Ranger District, Humboldt-Toiyabe National Forest, NV, *Review Period Ends:* 11/14/2011, *Contact:* Vern Keller 775–355–5356.

EIS No. 20110347, Final EIS, BLM, CA, East County Substation/Tule Wind/Energia Sierra Juarez Gen-Tie Projects, Construction and Operation, Right-of-Way Grants, San Diego County, CA, *Review Period Ends:* 11/14/2011, *Contact:* Greg Thomsen 951–697–5237.

EIS No. 20110348, Final EIS, BR, CA, Upper Truckee River Restoration and Golf Course Reconfiguration Project, To Restore Natural Geomorphic Ecological Process, Lake Tahoe, EL Dorado County, CA, *Review Period Ends:* 11/14/2011, *Contact:* Doug Kleinsmith 916–978–5034.

Amended Notices

EIS No. 20110340, Draft EIS, BLM, CA, Withdrawn—Walker Ridge Wind Energy Generation Facility, Construction, Operation and Decommissioning of a Wind Energy Generation Facility of up to 70 megawatts, Lake and Colusa Counties, CA, *Comment Period Ends:* 11/21/2011, *Contact:* Joseph Vieira 719–852–6213.

Revision to FR Notice Published 10/07/2011: Officially.

Withdrawn by the preparing agency by letter dated 10/05/2011.

Dated: October 10, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–26610 Filed 10–13–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:36 a.m. on Tuesday, October 11, 2011, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director

Thomas J. Curry (Appointive), seconded by Director John G. Walsh (Acting Comptroller of the Currency), and concurred in by Acting Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: October 11, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–26686 Filed 10–12–11; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 2011.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *FS Bancorp, Inc.,* Mountlake Terrace, Washington; to become a bank holding company upon the conversion of 1st Security Bank of Washington, Mountlake Terrace, Washington, from a state savings bank to a commercial bank.

Board of Governors of the Federal Reserve System, October 11, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–26604 Filed 10–13–11; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[PBS–N01; Docket 2011–0006; Sequence 19]

Notice of Availability To Distribute a Final Environmental Impact Statement (FEIS) for the Construction of a New Land Port of Entry in International Falls, MN

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Notice of availability.

SUMMARY: The GSA announces its intent to distribute a FEIS under the National Environmental Policy Act (NEPA) of 1969 to assess the potential impacts from the construction and operation of a new land port of entry (LPOE) in International Falls, Minnesota (the ''Proposed Action'').

DATES: October 14, 2011.

FOR FURTHER INFORMATION CONTACT: Donald R. Melcher, Jr., GSA Public Buildings Service, Great Lakes Region, Land Ports of Entry Service Center, 230 South Dearborn Street, Room 3600, Chicago, IL 60604, (312) 353–1237, *donald.melcher@gsa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

At the request of Customs and Border Protection, the GSA is proposing to construct and operate a larger and improved LPOE which meets their needs and the design requirements of the GSA.

The existing facilities are undersized and functionally obsolete and, consequently, incapable of providing the level of security required. The Proposed Action includes: (a) Acquisition of adjoining land; (b) demolition of existing government structures at the existing LPOE; (c) construction of a main administration building and ancillary support buildings; and (d) incorporation of the principles of sustainable design through the Leadership in Energy and Environmental Design Green Building Rating System of the U.S. Green Building Council.

Alternatives studied include alternative locations and layouts for the components of the LPOE that are identified in the concurrent Feasibility Study including the main administration and ancillary support buildings, the associated transportation network, and parking. A no-build alternative also is being studied that evaluates the consequences of not constructing and operating the LPOE. This alternative is included to provide a basis for comparison to the action alternatives described above as required by the NEPA regulations (40 CFR 1002.14(d)).

The GSA announced the availability of the Draft EIS for the International Falls LPOE Improvements Study on January 14, 2010. A 45-day comment period immediately followed, during which the GSA invited Federal, State and local agencies, organizations and individuals to submit comments on the Draft EIS. A public hearing was held at the Rainy River Community College on January 27, 2010 and a transcript of the hearing was prepared. An advertisement for the public hearing appeared in International Falls' *The Daily Journal* on two occasions prior to the hearing and advertisements for the public hearing were placed at Boise, Inc., and other prominent locations. Two attendees offered substantive comments during the public hearing. The public hearing was preceded by an open house to allow attendees to view plans of the build alternatives in detail, review the Draft EIS and discuss its content with the GSA, and ask questions. The GSA received eight comment letters and one comment e-mail copies which are contained in the FEIS along with responses to the substantive comments.

After careful consideration of the comments received on the Draft EIS, the GSA identified Alternative 10 as best satisfying the proposed action's purpose and programmatic needs and has the least impact on the human and natural environment. Alternative 10 is identified as the Preferred Alternative in the FEIS and in the Record of Decision (ROD) subject also to Congressional

authorization and appropriation of availability of funds, GSA control of the site to complete archaeological investigations and continuity of the tenant agencies' Program of Requirements as they were understood at the time this study was completed.

Following this thirty (30) day notice in the Federal Register, the GSA will issue a ROD at which time its availability will be announced in the **Federal Register** and local media.

II. Distribution

Copies of the FEIS are being distributed to select stakeholders as well as being made available for public review at the International Falls Public Library, Chamber of Commerce Offices, and Koochiching County Office Building.

Dated: October 6, 2011.

Ann P. Kalayil,

Regional Commissioner, Public Buildings Service, Great Lakes Region.

[FR Doc. 2011–26647 Filed 10–13–11; 8:45 am]

BILLING CODE 6820–A9–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; the Evaluation of the Aging and Disability Resource Center Program

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the Evaluation of the Aging and Disability Resource Center Program.

DATES: Submit written or electronic comments on the collection of information by December 13, 2011.

ADDRESSES: Submit electronic comments on the collection of information to: Susan Jenkins at *Susan.Jenkins@aoa.hhs.gov.*

Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201, Attn. Susan Jenkins.

FOR FURTHER INFORMATION CONTACT: Susan Jenkins at 202.357.3591.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology. The Aging and Disability Resource Center (ADRC) Program is a collaborative effort of the Administration on Aging (AoA) and the Centers for Medicare & Medicaid Services (CMS). ADRCs target services to the elderly and individuals with physical disabilities, serious mental illness, and/or developmental/intellectual disabilities. The ultimate goal of the ADRCs is to serve all individuals with long-term care needs regardless of their age or disability. The statutory authority for the ADRC grant program is contained in Titles II and IV of the Older Americans Act (OAA) (42 U.S.C. 3032), as amended by the Older Americans Act Amendments of 2006, Public Law 109–365. (Catalog of Federal Domestic Assistance 93.048, Title IV Discretionary Projects). 42 U.S.C. 3017 specifies that the Assistant Secretary for Aging ''shall measure and evaluate the impact of all programs authorized by this chapter * * * Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated.'' This new collection of information is necessary to determine the overall effect of ADRCs on both long term support and service systems and individuals. AoA will gather information about how ADRCs provide services and whether consumers, who access ADRCs, as compared to consumers who access other systems, report that the experience is more personalized, consumer-friendly, streamlined, and efficient. Staff of the Administration on Aging's Office of Program Innovation and Demonstration will use the information to both determine the value of the ADRC model and to improve program operations. The evaluation will include both process and outcome components. The *Agency Data Collection Tool* requests respondents' names and contact information to allow the research team to contact potential respondents. The *Personal Experience Survey* will collect information about consumers' level and type of disability, and demographic characteristics including race and living status. Respondents will be asked to provide their Medicare and/or Medicaid identification numbers to allow for analysis of the effect of the ADRC program on heath care utilization and nursing home diversion. The proposed data collection tools may be found on the AoA Web site: [INSERT WEB ADDRESS WHEN DETERMINED]. AoA estimates the burden of this collection at 1,732 hours for individuals and 1,294 hours for organizations—Total Burden for Study 3,026.

Dated: October 7, 2011.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2011–26552 Filed 10–13–11; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–12–0773]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the

Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Surveillance for Severe Adverse Events Associated with Treatment of Latent Tuberculosis Infection (NSSAE)—Reinstatement with change—Division of Tuberculosis Elimination (DTBE), National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Between October 2000 and September 2004, the CDC received reports of 50 patients with severe adverse events (SAEs) associated with the use of the two or three-month regimen of rifampin and pyrazinamide (RZ) for the treatment of LTBI; 12 (24%) patients died (Morbidity and Mortality Weekly Report 2003;52[31]:735–9). In 2004, CDC began collecting reports of SAEs associated with any treatment regimen for LTBI. For surveillance purposes, an SAE was defined as any drug-associated reaction resulting in a patient's hospitalization or death after at least one treatment dose for LTBI. During 2004–2008, CDC received 17 reports of SAEs in 15 adults and two children; all patients had received isoniazid (INH) and had experienced severe liver injury (Morbidity and Mortality Weekly Report 2010; 59:224–9).

The CDC requests approval for a 3-year reinstatement with change of the previously approved National Surveillance for Severe Adverse Events Associated with Treatment of Latent Tuberculosis Infection (OMB No. 0920–0773, expired April 31, 2011). The changes include a shortened data collection form and an increase in the number of respondents. This project will continue the passive reporting system for SAEs associated with therapy for LTBI. The system will rely on medical chart review and/or onsite investigations by TB control staff.

The purpose of this information collection request is to determine the annual number and trends of SAEs associated with treatment of LTBI and identify common characteristics of patients with SAEs during treatment of LTBI. Potential correspondents are any of the 60 reporting areas for the national TB surveillance system (the 50 states, the District of Columbia, New York City, Puerto Rico, and 7 jurisdictions in the Pacific and Caribbean). Data will be collected using the data collection form for adverse event associated with LTBI treatment (NSSAE). The NSSAE form is completed for each reported hospitalization or death related to treatment of LTBI and contains demographic, clinical, and laboratory information. CDC will analyze and periodically publish reports summarizing national LTBI treatment adverse events statistics and also will conduct special analyses for publication in peer-reviewed scientific journals to further describe and interpret these data.

The Food and Drug Administration (FDA) collects data on adverse events related to drugs through the FDA MedWatch Program. CDC is collaborating with FDA in the reporting of SAEs. Reporting will be conducted through telephone, e-mail, or during CDC site visits. In this request, CDC is requesting approval for approximately 60 burden hours annually, an estimated increase of 36 hours from the previously approved 24 hours. This is due to an estimated increase of reports of SAEs after the publication of the MMWR report on SAEs in 2010. There are no costs to respondents other than their time to gather medical records to complete the reporting form.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Physicians	10	1	1
Nurses	10	1	4
Medical Clerk	10	1	1

Dated: October 7, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–26595 Filed 10–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-12-11JJ]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluating Locally-Developed HIV Prevention Interventions for African-American MSM in Los Angeles—New—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Data on HIV cases reported in 33 U.S. states with HIV reporting indicate the burden of HIV/AIDS is most concentrated in the African American population compared to other racial/ethnic groups. Of the 49,704 African American males diagnosed with HIV between 2001 and 2004, 54% of these cases were among men who have sex with men (MSM). In Los Angeles County (LAC), the proportion of HIV/AIDS cases among African American males attributable to male-to-male sexual transmission is even greater (75%). In the absence of an effective vaccine, behavioral interventions represent one of the few methods for reducing high HIV incidence among African American MSM (AAMSM). Unfortunately, in the third decade of the

epidemic, very few of the available HIV-prevention interventions for African American populations have been designed specifically for MSM. In fact, until very recently none of CDC's evidence-based, HIV-prevention interventions had been specifically tested for efficacy in reducing HIV transmission among MSM of color. Given the conspicuous absence of (1) evidence-based HIV interventions and (2) outcome evaluations of existing AAMSM interventions, our collaborative team intends to address a glaring research gap by implementing a best-practices model of comprehensive program evaluation.

The purpose of this project is to test in a real world setting the efficacy of an HIV transmission prevention intervention for reducing sexual risk among African American men who have sex with men in Los Angeles County. The intervention is a 3-session, group-level intervention that will provide participants with the information, motivation, and skills necessary to reduce their risk of transmitting or acquiring HIV. The intervention will be evaluated using baseline, 3 month and 6 month follow up questionnaires. This project will also conduct in-depth qualitative interviews with 36 men in order to assess the experiences with the intervention, elicit recommendations for improving the intervention, and to better understand the factors that put young African American MSM at risk for HIV.

CDC is requesting approval for a 3-year clearance for data collection. The data collection system involves screenings, limited locator information, contact information, baseline questionnaire, client satisfaction surveys, 3-month follow-up questionnaire, 6-month follow-up questionnaire, and case study interviews. An estimated 700 men will be screened for eligibility in order to enroll 528 men. The baseline and follow up questionnaires contain questions about participants' socio-demographic information, health and healthcare, sexual activity, substance use, and other psychosocial issues. The duration of each baseline, 3-month, and 6-month questionnaires are estimated to be 60 minutes; the Success Case Study interviews 90 minutes; Outreach Recruitment Assessment 5 minutes; limited locator information form 5 minutes; participant contact information form 10 minutes; each client satisfaction survey 5 minutes.

There are no costs to the respondents other than their time. The total estimated annual burden hours are 1662.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per respondent (in hours)
Prospective Participant	Outreach Recruitment Assessment (screener)	700	1	5/60
Prospective Participant	Limited Locator Information	700	1	5/60
Enrolled Participant	Participant Contact Information Form	528	1	10/60
Enrolled Participant	Baseline Questionnaire	528	1	1
Enrolled Participant	Client Satisfaction Survey	224	3	5/60
Enrolled Participant	3 month follow up Questionnaire	420	1	1
Enrolled Participant	6 month follow up Questionnaire	400	1	1
Enrolled Participant	Success Case Study Interview	36	1	1.5

Dated: October 7, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–26603 Filed 10–13–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Time and Date: 8 a.m.–4:30 p.m., November 9, 2011.

Place: CDC, Global Communications Center, 1600 Clifton Road, NE., Building 19, Auditorium B3, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The BSC, OID, provides advice and guidance to the Secretary, Department of Health and Human Services; the Director, CDC; the Director, OID; and the Directors of the National Center for Immunization and Respiratory Diseases, the National Center for Emerging and Zoonotic Infectious Diseases, and the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, CDC, in the following areas: strategies, goals, and priorities for programs; research within the national centers; and overall strategic direction and focus of OID and the national centers.

Matters To Be Discussed: The meeting will include brief updates from OID and the three infectious disease national centers, a report from the OID/BSC Food Safety Modernization Act working group, and presentation of the recently released strategic framework for CDC's infectious disease programs. The main topic of the meeting will include a focused discussion, with breakout groups, on the changing roles and responsibilities for public health infectious disease laboratories and the challenges and opportunities related to new diagnostics, other technologic advances, and a changing economic environment.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robin Moseley, M.A.T., Designated Federal Officer, OID, CDC, 1600 Clifton Road, NE., Mailstop D10, Atlanta, Georgia 30333, *Telephone:* (404) 639–4461.

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: October 6, 2011.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–26589 Filed 10–13–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Task Force on Antimicrobial Resistance (ITFAR): An Update on A Public Health Action Plan to Combat Antimicrobial Resistance

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance. The purpose of the meeting is to present the annual report on progress by Federal agencies in accomplishing activities outlined in *A Public Health Action Plan to Combat Antimicrobial Resistance* (*Action Plan*) and solicit comments from the public regarding ITFAR activities including the Annual Progress Report and the *Action Plan.* The meeting will take place at the Hubert H. Humphrey Building in Washington, DC on Tuesday, November 15, 2011 from 1 p.m.–3:30 p.m. The agenda will consist of welcome and introductory comments, a review of the *Action Plan* status and plans to update it; and reports of the progress toward implementing the *Action Plan* in each of the four focus areas: Surveillance, Prevention and Control, Research, and Product Development. The agenda is subject to change without notice. The meeting will then be open for comments from the general public. Persons wishing to participate, including those who wish to make an oral presentation, must register in advance and provide a copy of their presentation by noon Tuesday, November 8, 2011.

DATES: A public meeting will be held in Washington, DC, on Tuesday, November 15, 2011. The meeting will begin at 1 p.m. and end no later than 3:30 p.m.

Deadline for Registration for all Attendees: All attendees must register by noon, Tuesday, November 8, 2011.

Deadline for Requests for Special Accommodation: Requests for special accommodation should be submitted by noon, Tuesday, November 8, 2011.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC USA 20201; *http://www.hhs.gov/about/hhhmap.html.* Toll Free: 1–877–696–6775.

Participants should be aware that the meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

FOR FURTHER INFORMATION CONTACT: Marsha A. Jones, Office of Antimicrobial Resistance, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop A–28, Atlanta, GA 30333; telephone 404–639–4111; E-mail *MJones@cdc.gov.*

Submission of Written Comments: Written comments and supporting documentation can be e-mailed to *ARplancomments@cdc.gov* or sent via regular mail to Marsha Jones, Office of Antimicrobial Resistance, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Mailstop A–28, Atlanta, GA 30333.

Registration and Special Accommodations: Individuals wishing to participate or who need special accommodations or both must register at *ARplancomments@cdc.gov* or by contacting Marsha Jones at *MJones@cdc.gov.* See **REGISTRATION TO ATTEND AND/OR PARTICIPATE IN THE PUBLIC HEARING** for instructions on how to submit electronic notices of participation.

SUPPLEMENTARY INFORMATION:

1. Background

The Interagency Task Force on Antimicrobial Resistance (ITFAR) was created in 1999 to coordinate the activities of federal agencies in addressing antimicrobial resistance (AR) in recognition of the increasing importance of AR as a public health threat. The Task Force is co-chaired by the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH). Other Task Force members include the Agency for Healthcare Research and Quality (AHRQ), the Centers for Medicare and Medicaid Services (CMS), the Health Resources and Services Administration (HRSA), and the HHS Office of the Assistant Secretary for Preparedness and Response (HHS/ASPR), the Department of Agriculture (USDA), the Department of Defense (DoD), the Department of Veterans Affairs (VA), and the Environmental Protection Agency (EPA).

In 2001, the ITFAR developed an initial Action Plan to combat antimicrobial resistance. In 2011, a revised version of the *Action Plan* which addresses the evolving threat of antimicrobial resistance was published. This Plan is entitled *A Public Health Action Plan to Combat Antimicrobial Resistance* and it outlines specific goals, actions, and implementation steps important for addressing the problem of antimicrobial resistance. Action items are organized into four focus areas: Surveillance, Prevention and Control, Research, and Product Development. The *Action Plan* and Annual Report are available at *http://www.cdc.gov/drugresistance.*

2. Public Comment and Meeting

The public meeting process provides an opportunity for the public to become aware of and comment on the activities of the ITFAR to date. In addition, the ITFAR invites written comments and/or oral presentations of interested persons on the Annual Report as well as the four focus areas of the *Action Plan:* Surveillance, Prevention and Control, Research, and Product Development.

Written comments regarding ITFAR activities including the Annual Progress Report and the *Action Plan* submitted by e-mail should use the following subject line ''ITFAR Comments.'' Written comments submitted by regular mail should clearly identify ''ITFAR Comments'' as the subject.

Comments and suggestions from the public for Federal agencies related to the Annual Report and/or any of the focus areas of the Action Plan will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsement of specific commercial products.

3. Registration to Attend and/or Participate in the Public Meeting

To ensure there is sufficient room we ask that you pre-register. Seating capacity is limited to 200 persons. If you wish to make an oral presentation during the open public comment period of the hearing, state your intention to present on your registration submission. To register, please send an electronic mail message to *ARplancomments@cdc.gov* by the deadline listed under **DATES**. Your email should include your name and email address. Please submit a written statement at the time of registration, identifying each focus area you wish to address and the approximate time requested to make your presentation. Organizations should provide this information as well as the names and e-mail addresses of all participants. Registered individuals will be notified of the approximate time scheduled for their presentation prior to the meeting. The time allotted for presentations will be limited to 5 minutes. If the number of proposed presentations exceeds the

time allotted for public comment, opportunity for oral presentations would be limited to the first registered requestors. All other comments may be submitted in writing.

4. Building and Security Guidelines

The Hubert H. Humphrey Building is the headquarters of the U.S. Department of Health and Human Services located at the foot of Capitol Hill at 200 Independence Avenue, SW., Washington, DC 20201. HHS headquarters is served by Metrorail and Metrobus. The closest Metrorail station is the Federal Center SW., station, which is served by the Blue and Orange lines.

The meeting is being held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, please take account of the need to clear security. All visitors must enter through the HHS Hubert H. Humphrey Building main entrance and must present government-issued photo identification (e.g., a valid federal identification badge, state driver's license, state non-driver's license, or passport). All persons entering the building must pass through a metal detector. Visitors are issued a visitor's ID wrist band in the main lobby and are escorted in groups of five to the meeting room. All items brought to HHS are subject to inspection.

Dated: October 7, 2011.

James W. Stephens,

Director, Office of Science Quality, Office of the Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2011–26562 Filed 10–13–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Circulatory System Devices Panel of the Medical Devices 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: Circulatory System Devices Panel of the Medical Devices 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 December 7 and 8, 2011, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900.

Contact Person: James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, *james.swink@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 December 7, 2011, the committee will discuss, make recommendations, and vote on information related to a supplement to the premarket approval application (PMA) P010031, sponsored by Medtronic, Inc. Medtronic is requesting FDA approval to expand the indications for use for all commercially available Medtronic Cardiac Resynchronization Therapy Defibrillator (CRT–D) devices covered under PMA P010031. The company has proposed the following expanded indication statement based on the results of the REVERSE and RAFT clinical studies: ''Medtronic cardiac resynchronization therapy defibrillator (CRT–D) systems are indicated for heart failure patients who meet the following classification: NYHA Functional Class II who remain symptomatic despite stable, optimal medical therapy, and who have left bundle branch block (LBBB) with a QRS duration ≥120 ms, and left ventricular ejection fraction ≤30%.''

On December 8, 2011, the committee will discuss, make recommendations, and vote on information related to the PMA for the CardioMEMS HF Pressure Measurement System (HF System) sponsored by CardioMEMS, Inc. The CardioMEMS HF System is a permanently implantable pressure measurement system designed to provide daily pulmonary arterial pressure measurements including systolic, diastolic, and mean pulmonary artery pressure. These measurements are used to guide treatment of congestive heart failure. The system consists of the following:

- Implantable Sensor—The Pressure Sensor is 15 millimeters (mm) in length, 3.41 mm in width and is 2 mm thick, consisting of a three dimensional coil and pressure sensitive capacitor encased between two wafers of fused silica. The coil (inductor) electromagnetically couples to the Sensor and allows the remote measurement of the resonant frequency of the LC circuit. This allows for wireless communication with the Sensor and eliminates the need for an onboard source of energy, such as a battery.
- Delivery System—The Delivery System allows the placement of the Pressure Sensor within the distal pulmonary artery. There are two versions of the Delivery System. The first includes a hydrophilic coating on the distal portion of the catheter shaft and the second has no coating on the catheter shaft. Both delivery catheters have a usable length of 120 centimeters and are compatible with a 0.018'' guidewire. The Delivery System (with HF Sensor) is introduced over a guidewire through an 11Fr sheath. Tether wires connect the Sensor to the Delivery System until the physician determines that the Sensor is properly positioned within the distal pulmonary artery. Once the Sensor is in position, the tether wires are withdrawn, releasing the Sensor.
- Electronics Unit (Interrogator) and database—The Electronics Unit contains hardware and software to acquire and process signals from the sensor, provides a user-friendly system interface for both patients and clinicians, and transfers PA measurements to a secure database for review by medical professionals. The database is a Web-based server that contains software, which receives data transmitted from the electronics unit, and presents the data for review by medical professionals.

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 November 30, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on December 7 and 8, 2011. 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 November 22, 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 November 23, 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 James Clark at *James.Clark@fda.hhs.gov* or 301–796–5293, 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: October 7, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–26558 Filed 10–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Joint Meeting of the Drug Safety and Risk Management Advisory Committee and the Dermatologic and Ophthalmic 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 Committees: Drug Safety and Risk Management Advisory Committee and Dermatologic and Ophthalmic Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 1, 2011, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You'', click on ''Public Meetings at the FDA White Oak Campus''. Please note that visitors to the White Oak Campus must enter through Bldg. 1.

Contact Person: Kristina Toliver, 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: DSaRM@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: The Food and Drug Administration Amendments Act of 2007 (Public Law 110–85) requires FDA to bring, at least annually, one or more drugs with Risk Evaluation and Mitigation Strategies (REMS) with Elements to Assure Safe Use (ETASU) before its Drug Safety and Risk Management Advisory Committee (DSaRM). On December 1, 2011, the DSaRM and the Dermatologic and Ophthalmic Drugs Advisory Committees will meet in joint session to discuss REMS-related topics. During the morning session, the committees will discuss the REMS program for isotretinoin, also known as iPLEDGE, as an example of a REMS that has ETASU. During the afternoon session, the committees will discuss general issues related to the impact of REMS with ETASU on the health care system and patient access, such as how programs with ETASU can be better integrated into existing health systems.

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 November 16, 2011. Oral presentations from the public will be scheduled between approximately 9:40 a.m. and 10:10 a.m. (for comments related to iPLEDGE), and between 2:20 p.m. and 2:50 p.m. (for other REMS-related comments). 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 November 7, 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 November 8, 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 Kristina Toliver 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: October 11, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–26588 Filed 10–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Bureau of Health Professions (BHPr) Performance Data Collection (OMB No. 0915–0061) — [Revision]

This request is for approval from the Office of Management and Budget (OMB) of revised data collection activities required for collection of data at application, progress and performance reporting for the Health Resources and Services Administration (HRSA), Bureau of Health Professions (BHPr).

Over 40 BHPr programs award grants to health professions schools and training programs across the United States to develop, expand, and enhance training, and to strengthen the distribution of the health workforce. These programs are governed by the Public Health Service Act (42 U.S.C. 292 *et seq.*), specifically Titles III, VII, and VIII. Performance information is collected in the HRSA Performance Report for Grants and Cooperative Agreements (PRGCA). This report was formerly called the Uniform Progress Report.

The proposed data collection satisfies statutory and programmatic requirements for performance measurement and evaluation (including specific Title III, VII and VIII requirements), as well as Government Performance and Results Act (GPRA) requirements. The Affordable Care Act (Pub. L. 111–148) impacted a broad range of health workforce programs administered by BHPr. It reauthorized most of these programs and, in some cases, expanded eligibility, modified program activities, and/or established new requirements. The Affordable Care Act also created new health professions programs. Therefore, it was necessary to reexamine BHPr's existing performance measures to ensure that they address these changes, meet evolving program management needs, and respond to emerging workforce concerns.

The proposed data collection will enhance analysis and reporting of grantee training activities and education, outcomes, and intended practice locations. Data collected from these grant programs will also provide a description of the program activities of more than 2,000 reporting grantees to better inform policymakers on the barriers, opportunities, and outcomes involved in health care workforce development. The proposed measures focus on five key outcomes:

(1) Increasing the workforce supply of diverse well-educated practitioners;

(2) influencing the distribution of practitioners to practice in underserved and rural areas;

(3) enhancing the quality of education;

(4) diversifying the pipeline for new health professionals; and,

(5) supporting educational infrastructure to increase the capacity to train more health professionals.

Revisions include improving performance management at three levels of measurement: individual-level, program-specific and program cluster-level. Data collection revisions will also require the collection of some baseline data at the grant application and award stages.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Application	2500	1	2500	9	22,500
Program Aggregate Data Collection	1500	1	1500	10	15,000
Individual-level Data Collection	800	1	800	5	4,000
Total					41,500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: October 7, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–26591 Filed 10–13–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office at (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project Title: Evaluation of the Text4baby Program—(OMB No. 0915–xxxx)—[NEW]

Background: Text4baby is a mobile health education program that provides free, brief, evidence-based, health messages to women who are pregnant or have an infant under one year of age. An educational program led by the National Healthy Mothers, Healthy Babies coalition (HMHB), Text4baby is intended to help women have safe and healthy pregnancies by empowering them with information they need to give their babies the best possible start in life. The Text4baby program was launched nationally in February 2010. Text4baby is made possible through a broad, public-private partnership that includes government and Tribal agencies, corporations, academic institutions, professional associations, and non-profit organizations.

The goal of this program evaluation is to examine the characteristics of women who utilize the Text4baby mobile phone-based program, to assess their experience with the program, and to determine whether enrollment in Text4baby is associated with healthy behaviors and timely access to health care during pregnancy and an infant's first year of life.

This information will help the Department of Health and Human Services understand the usefulness of mobile health technology and the potential for expanding and/or adapting mobile phone messaging to additional health topics or conditions. The study also may offer insight into planning and implementing similar projects.

Purpose: The purpose of the evaluation is to assess the usefulness of the Text4baby program.

The four data collection components are as follows:

- *Safety Consumer Net Survey* with subscribers and non-subscribers to the Text4baby program who receive prenatal care in community health centers in four communities. The health centers will recruit eligible women, obtain their signed consent to participate in the study, and convey their contact information to the data collection contractor. Data from the telephone survey will be linked to selected data from electronic health records (EHRs) for respondents who consent to the release of their EHRs. The survey will be conducted in two rounds: Round 1 will include pregnant women and Round 2 will include the same women approximately nine months later during the postpartum period.
- *Focus Groups* with current subscribers in four communities to obtain more in-depth qualitative data regarding the usefulness of the messages and the program.
- *Key Informant Interviews* of a diverse mix of providers in four communities to obtain provider perspectives on the usefulness of the Text4baby programs. Providers could include physicians, midwives, nurses, case managers, outreach workers, and health educators.
- *Stakeholder Interviews* with Text4baby partners (public and private) to examine the implementation of Text4baby at the national, regional, state, or local level, including outreach, enrollment, coalition building, sustainability, and replication.

The annual estimate of burden is as follows:

Instrument	Person incurring burden	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Consent Training and Coordination.	Health Center Study Coordinators.	8	12	96	1.00	96
	Health Center Staff	32	1	32	1.00	32
Prenatal Patient Consent	Health Center Staff	1630	1	1630	0.08	130
	Prenatal Patient	1630	1	1630	0.08	130
Parent-of-Minor Consent	Health Center Staff	195	1	195	0.25	49
	Parent of Minor	195	1	195	0.08	16
Safety Net Consumer Survey Round 1.	Prenatal Patient	960	1	960	0.33	317
Safety Net Consumer Survey Round 2.	Postpartum Patient	768	1	768	0.33	253
Focus Groups	Prenatal/Postpartum Patient	80	1	80	1.50	120
Key Informant Interviews	Providers	40	1	40	0.75	30
Stakeholder Interviews	Stakeholders	30	1	30	0.75	23
Total						1196

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: October 7, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–26590 Filed 10–13–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, ENCODE Technology RFA–SEP.

Date: November 29, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keith McKenney, PhD, Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: October 7, 2011 .

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26617 Filed 10–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Ancillary RO1 Telephone Review SEP.

Date: November 14, 2011.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, M.D., PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK PO1 Telephone Review SEP.

Date: November 29, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, M.D., PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26620 Filed 10–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with the attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Eunice Kennedy Shriver National Institute of Child Health & Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: December 2, 2011.

Open: 8 a.m. to 11:30 a.m.

Agenda: A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

Closed: 11:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Room 2A48, Bethesda, MD 20892.

Contact Person: Constantine A. Stratakis, MD, D(med)Sci, Scientific Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31, Room 2A46, Bethesda, MD 20892, 301–594–5984, *stratakc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page *http://www.nichd.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26636 Filed 10–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Multi-Center Clinical Study Cooperative Agreement (U01).

Date: November 2, 2011.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26623 Filed 10–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Improved Diagnostic Capabilities for Select Biodefense and Emerging Pathogens Part A.

Date: November 8–9, 2011.

Time: November 8, 2011, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Time: November 9, 2011, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ellen S. Buczko, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3145 MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Improved Diagnostic Capabilities for Select Biodefense and Emerging Pathogens Part B.

Date: November 9, 2011.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ellen S. Buczko, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH/PEPFAR Collaboration for Implementation Science and Impact Evaluation (Meeting 2).

Date: December 15, 2011.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Dharmendar Rathore, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Rm 3134, Bethesda, MD 20892–7616, 301–435–2766, *rathored@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: October 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–26618 Filed 10–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Notice of Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice of an increase of the maximum amount for Small Project Grants to State and local governments and private nonprofit facilities for disasters declared on or after October 1, 2011.

DATES: *Effective Date:* October 1, 2011, and applies to major disasters declared on or after October 1, 2011.

FOR FURTHER INFORMATION CONTACT: William Roche, Recovery Directorate, Federal Emergency Management

Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5121–5207, prescribes that FEMA must annually adjust the maximum grant amount made under section 422, Simplified Procedures, relating to the Public Assistance program, to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the maximum amount of any Small Project Grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under section 422 of the Stafford Act, to $66,400 for all disasters declared on or after October 1, 2011.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.8 percent for the 12-month period ended in August 2011. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2011.

Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26609 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0204]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet on November 1–2, 2011, in San Diego, California to discuss matters relating to maritime collisions, rammings, groundings, Inland and International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. The meeting will be open to the public.

DATES: NAVSAC will meet Tuesday, November 1, 2011, from 8 a.m. to 5 p.m., and Wednesday, November 2, 2011, from 8 a.m. to 1 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Catamaran Resort Hotel and Spa, 3999 Mission Boulevard, San Diego, California 92109.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the persons listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. You may submit presentations and/or written comments no later than October 24, 2011, and they must be identified by USCG–2011–0204 using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, 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–2011–0204'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Public comments may be taken by the DFO throughout the conduct of the meeting. Additionally, a public presentation/comment period will be held during the meeting on November 1, 2011, from 3 p.m. to 4 p.m., and November 2, 2011, from 12 p.m. to 1 p.m. Speakers are requested to limit their presentations/comments to 10 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact either of the individuals listed in the **FOR FURTHER INFORMATION CONTACT** to submit written comments to appear on the agenda.

FOR FURTHER INFORMATION CONTACT: If you have questions about this meeting, please contact Mr. Mike Sollosi, the NAVSAC Alternate Designated Federal Officer (ADFO), at telephone 202–372–1545 or e-mail *mike.m.sollosi@uscg.mil,* or Mr. Dennis Fahr, at telephone 202–372–1531 or e-mail *dennis.fahr@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.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463).

The NAVSAC is an advisory committee authorized in 33 U.S.C. 2073 and chartered under the provisions of the FACA. NAVSAC provides advice and recommendations to the Secretary, through the Commandant of the U.S. Coast Guard, on matters relating to maritime collisions, rammings, and groundings, Inland and International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

Agenda

The NAVSAC will meet to review, discuss and formulate recommendations on the following topics:

Tuesday, November 1, 2011

(1) *Navigation Rules Regulatory Project.* This topic will address the Coast Guard's progress toward implementing NAVSAC approved changes to the Inland Navigation Rules.

(2) *E–Navigation Strategy.* Under the auspices of the Committee on the Marine Transportation System, the Coast Guard and other agencies have developed a National e-Navigation Strategy that will establish a framework for data exchange between and among ships and shore facilities. The Council will be updated on that effort.

(3) *Electronic Chart Display and Information System (ECDIS)Anomalies.*

Mandatory carriage of ECDIS will be phased in beginning in 2012. This series of presentations will inform the Council of developments and difficulties encountered in deploying ECDIS, including accuracy of charted positions, the range of vessels to be impacted, and training requirements for ECDIS.

The following tasks will also be discussed and further action contemplated by work groups assigned for each task:

(1) *NAVSAC Task 11–01 Kite Propulsion Systems (Sky Sails).* The use of Sky Sails to augment propulsion on vessels is a real possibility. This task will address whether there should be restrictions on their use.

(2) *NAVSAC Task 11–02 Proximity of Offshore Energy Installations (OREI) to established ships' routing measures.* The Council will be asked to complete the discussion on the need for ''buffer zones'' around offshore renewable energy.

(3) *NAVSAC Task 11–03 RACONS.* The Council will be asked to discuss and provide an opinion on the continued used of radar beacons (RACONS) as aids to navigation.

(4) *NAVSAC Task 11–04 Sound Signals.* The Council will be asked to discuss and provide an opinion on the continued use of sound signals as aids to navigation.

(5) *NAVSAC Task 11–05 ECDIS Anomalies.* The Council will be advised of the current status of Electronic Chart Display and Information Systems (ECDIS) and of the types of anomalies being discovered as more ECDIS enter into use.

(6) *NAVSAC Task 11–06 e-Nav Strategy.* The Council will be advised of the current status of the United States' e-Navigation Strategy development.

(7) *NAVSAC Task 11–07 Virtual Aids to Navigation Aids.* Navigation authorities are considering deploying virtual aids to navigation as an alternative to physical lights, daybeacons and buoys under certain circumstances. This topic will inform the Council on virtual aids and discuss their possible use in United States' waters.

(8) *NAVSAC Task 11–08 Crew Fatigue.* The Council will discuss the unintended consequences some regulations are causing regarding crew endurance and crew fatigue.

A public presentation/comment period will be held from 3 to 4 p.m. Speakers' presentations/comments are limited to 10 minutes each.

Wednesday, November 2, 2011

(1) Task Working Group Discussions continue from November 1, 2011.

(2) Working Group Reports presented to council.

(3) New Business:

a. IMO Safety Navigation Subcommittee.

The Coast Guard will update the Council on recent decisions and planned outputs of the IMO Safety Navigation Subcommittee.

b. Summary of NAVSAC Action Items.

c. Schedule Next Meeting Date—Spring 2012.

d. Committee discussion of new tasks.

(4) A public presentation/comment period will be held after the discussion of new tasks. Speakers' presentations/comments are limited to 10 minutes each.

Dated: October 11, 2011.

Dana A. Goward,

Director, Marine Transportation Systems Management U.S. Coast Guard.

[FR Doc. 2011–26641 Filed 10–13–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0731]

Notification of the Removal of Conditions of Entry on Vessels Arriving From the Republic of Congo

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it is removing the conditions of entry on vessels arriving from the country of the Republic of Congo.

DATES: The policy announced in this notice is effective on October 14, 2011.

ADDRESSES: This notice is part of docket USCG–2011–0731 and is available online by going to *http://www.regulations.gov*, inserting USCG–2011–0731 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection and 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 notice, call Mr. Michael Brown, International Port Security Evaluation Division, United States Coast Guard, telephone 202–372–1081. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826 or (toll free) 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Title 46, Section 70110, United States Code, enacted as part of section 102(a) of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, Nov. 25, 2002) authorizes the Secretary of Homeland Security to impose conditions of entry on vessels requesting entry into the United States arriving from ports that are not maintaining effective anti-terrorism measures. It also requires public notice of the ineffective anti-terrorism measures. The Secretary has delegated to the Coast Guard authority to carry out the provisions of this section. Previous notices have imposed or removed conditions of entry on vessels arriving from certain countries, and those conditions of entry and the countries they pertain to remain in effect except as modified below. All such notices are available for review online by going to *http://www.homeport.uscg.mil*, clicking on the ''Maritime Security'' and then ''International Port Security Program'' tabs, and then following the link.

On September 1, 2009 the Coast Guard published a Notice of Policy in the **Federal Register**, (74 FR 45230), announcing that it had determined that ports in the Republic of Congo were not maintaining effective anti-terrorism measures, and imposed conditions of entry.

Based on recent information, the Coast Guard has determined that the Republic of Congo is now maintaining effective anti-terrorism measures, and is accordingly removing the conditions of entry announced in the previously published Notice of Policy. With this notice, the current list of countries not maintaining effective anti-terrorism measures is as follows: Cambodia, Cameroon, Comoros, Cote d'Ivoire, Cuba, Equatorial Guinea, Guinea-Bissau, Indonesia, Iran, Liberia, Madagascar, Sao Tome and Principe, Syria, Timor-Leste, and Venezuela.

This notice is issued under authority of 46 U.S.C. 70110(d).

Dated: October 6, 2011.

Vice Admiral Brian M. Salerno, USCG,

Deputy Commandant for Operations.

[FR Doc. 2011–26602 Filed 10–13–11; 8:45 a

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Countywide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the countywide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2011, will be increased.

DATES: *Effective Date:* October 1, 2011, and applies to major disasters declared on or after October 1, 2011.

FOR FURTHER INFORMATION CONTACT: William Roche, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: In assessing damages for area designations under 44 CFR 206.40(b), FEMA uses a county-wide per capita indicator to evaluate the impact of the disaster at the county level. FEMA will adjust the countywide per capita impact indicator under the Public Assistance program to reflect annual changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice of an increase in the countywide per capita impact indicator to $3.39 for all disasters declared on or after October 1, 2011.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.8 percent for the 12-month period ended in August 2011. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2011.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26612 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Adjustment of Statewide Per Capita Impact Indicator

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice that the statewide per capita impact indicator under the Public Assistance program for disasters declared on or after October 1, 2011, will be increased.

DATES: *Effective Date:* October 1, 2011, and applies to major disasters declared on or after October 1, 2011.

FOR FURTHER INFORMATION CONTACT: William Roche, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: 44 CFR 206.48 provides that FEMA will adjust the statewide per capita impact indicator under the Public Assistance program to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

FEMA gives notice that the statewide per capita impact indicator will be increased to $1.35 for all disasters declared on or after October 1, 2011.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.8 percent for the 12-month period ended in August 2011. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2011.

(Catalog of Federal Domestic Assistance No. 97.036, Public Assistance Grants.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26611 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0024; OMB No. 1660–0087]

Agency Information Collection Activities: Proposed Collection; Comment Request; PrepCAST

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning revision of the Preparedness Comprehensive Assessment Support Tool (PrepCAST) (formerly known as the National Incident Management System Compliance Assistance Support Tool (NIMSCAST)). PrepCAST is a self-assessment tool for State, territorial, Tribal, and local governments to evaluate and report on their jurisdiction's achievement with regard to the National Incident Management System (NIMS) implementation activities relating to the preparedness of the respondent to react to emergency incidents. This information collection request is being resubmitted to remove the State Preparedness Report (SPR) from the PrepCAST data collection activity. The SPR will be resubmitted as a separate collection of information for OMB approval.

DATES: Comments must be submitted on or before December 13, 2011.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2011–0024. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA–POLICY@dhs.gov.* Include Docket ID FEMA–2011–0024 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cathy R. Knight, Program Analyst, National Preparedness Assessment Division, 202–786–9670 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202)

646–3347 or *e-mail address: FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: In 2003, Homeland Security Presidential Directive-8: National Preparedness (HSPD–8) called for establishing a system that would assess the Nation's overall preparedness and provide an annual status report of national preparedness. Three years later, the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) included requirements to establish a ''comprehensive system to assess, on an ongoing basis, the Nation's prevention capabilities and overall preparedness.''

The National Preparedness Directorate (NPD) within FEMA is charged with developing the Comprehensive Assessment System (CAS). The CAS will, as mandated by 6 U.S.C. 749, assess compliance with the national preparedness system, the National Incident Management System (NIMS), and other related plans; assess capability levels against target levels; assess resource needs to meet target levels; and assess the performance of training, exercises, and operations.

Collection of Information

Title: PrepCAST.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0087.

Form Titles and Numbers: None.

Abstract: PrepCAST is a collection instrument that will collect preparedness information at the State, local, and Tribal jurisdiction level. It also collects National Incident Management System (NIMS) compliance information. It is being deployed to eliminate the redundant data calls on national preparedness to reduce the burden on respondents. Ultimately the collection will provide insight into the overall preparedness level of the Nation.

Affected Public: State, local, or Tribal Government.

Estimated Total Annual Burden Hours: 19,630 hours.

Estimated Cost: There is no annual reporting and recordkeeping cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Gary L. Anderson,

Acting Chief Administrative Officer, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–26520 Filed 10–13–11; 8:45 am]

BILLING CODE 9110–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3338–EM; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 2 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 State of Vermont (FEMA–3338–EM), dated August 29, 2011, and related determinations.

DATES: *Effective Date:* September 26, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Craig A. Gilbert as Federal Coordinating Officer for this emergency.

(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. 2011–26615 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3330–EM; Docket ID FEMA–2011–0001]

Massachusetts; Amendment No. 2 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 Commonwealth of Massachusetts (FEMA–3330–EM), dated August 26, 2011, and related determinations.

DATES: *Effective Date:* September 27, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of James N. Russo as Federal Coordinating Officer for this emergency.

(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. 2011–26619 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4001–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Vermont (FEMA–4001–DR), dated July 8, 2011, and related determinations.

DATES: *Effective Date:* September 26, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Craig A. Gilbert as Federal Coordinating Officer for this disaster.

(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. 2011–26608 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4029–DR; Docket ID FEMA–2011–0001]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4029–DR), dated September 9, 2011, and related determinations.

DATES: *Effective Date:* September 21, 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 a major disaster declaration for the State of Texas is hereby amended to include the Hazard Mitigation Grant Program and the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 9, 2011.

Bastrop County for Public Assistance, including direct Federal assistance (already designated for Individual Assistance).

All counties in the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2011–26624 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4028–DR; Docket ID FEMA–2011–0001]

Massachusetts; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for Commonwealth of Massachusetts (FEMA–4028–DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 27, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James N. Russo as Federal Coordinating Officer for this disaster.

(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. 2011–26629 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1994–DR; Docket ID FEMA–2011–0001]

Massachusetts; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for Commonwealth of Massachusetts (FEMA–1994–DR), dated June 15, 2011, and related determinations.

DATES: *Effective Date:* September 27, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark H. Landry, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of James N. Russo as Federal Coordinating Officer for this disaster.

(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. 2011–26627 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1995–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Vermont (FEMA–1995–DR), dated June 15, 2011, and related determinations.

DATES: *Effective Date:* September 26, 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Craig A. Gilbert as Federal Coordinating Officer for this disaster.

(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. 2011–26622 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4017–DR; Docket ID FEMA–2011–0001]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* August 27, 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: Notice is hereby given that, in a letter dated August 27, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from Hurricane Irene beginning on August 21, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justo Hernández, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this major disaster:

The municipalities of Caguas, Canóvanas, Carolina, Cayey, Loíza, Luquillo, and San Juan for Individual Assistance.

The municipalities of Aguas Buenas, Carolina, Cayey, Ceiba, Comerío, Juncos, Las Marías, Luquillo, Morovis, Naguabo, Orocovis, Utuado, Vega Baja, and Villalba for Public Assistance.

All municipalities within the Commonwealth of Puerto Rico are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2011–26626 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4035–DR; Docket ID FEMA–2011–0001]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–4035–DR), dated September 23, 2011, and related determinations.

DATES: *Effective Date:* September 23, 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: Notice is hereby given that, in a letter dated September 23, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from flooding during the period of June 1 to August 1, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Bradley Harris, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Atchison, Doniphan, Leavenworth, and Wyandotte Counties for Public Assistance. Direct federal assistance is authorized.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant 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. 2011–26614 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Notice of Maximum Amount of Assistance Under the Individuals and Households Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: FEMA gives notice of the maximum amount for assistance under the Individuals and Households Program for emergencies and major disasters declared on or after October 1, 2011.

DATES: *Effective Date:* October 1, 2011, and applies to emergencies and major disasters declared on or after October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Michael Grimm, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 212–1000.

SUPPLEMENTARY INFORMATION: Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), 42 U.S.C. 5174,

prescribes that FEMA must annually adjust the maximum amount for assistance provided under the Individuals and Households (IHP) Program. FEMA gives notice that the maximum amount of IHP financial assistance provided to an individual or household under section 408 of the Stafford Act with respect to any single emergency or major disaster is $31,400. The increase in award amount as stated above is for any single emergency or major disaster declared on or after October 1, 2011. In addition, in accordance with 44 CFR 61.17(c), this adjustment includes the maximum amount of available coverage under any Group Flood Insurance Policy (GFIP) issued for those disasters.

FEMA bases the adjustment on an increase in the Consumer Price Index for All Urban Consumers of 3.8 percent for the 12-month period ended in August 2011. The Bureau of Labor Statistics of the U.S. Department of Labor released the information on September 15, 2011.

Catalog of Federal Domestic Assistance No. 97.048, Individuals and Households—Housing; 97.049, Individuals and Households—Disaster Housing Operations; 97.050, Individuals and Households—Other Needs.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–26613 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Business Transformation—Automated Integrated Operating Environment (IOE), New Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Business Transformation—Electronic Immigration System (ELIS).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), on March 28, 2011, USCIS published a 60-day notice in the **Federal Register** at 76 FR 1745, seeking comment on USCIS's information collection request for the Automated Integrated Operating Environment (IOE). The comment period expired May 27, 2011. USCIS is reviewing all comments received and will address those comments in a separate notice. USCIS has decided to change the name of the IOE to the USCIS ''Electronic Immigration System'' (ELIS). This notice provides the general public and Federal agencies with notice of the name change to the information collection request. The name change does not materially change the collection that was posted for comment.

DATES: Interested persons are invited to submit comments on or before November 14, 2011.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *USCISFRComment@dhs.gov*. When submitting comments by e-mail, please be sure to add ''USCIS ELIS'' in the subject box. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283. If you need a copy of this information collection instrument, please visit the Web site at: *http://www.regulations.gov/ or* call the Regulatory Products Division at (202) 272–8377.

Background

U.S. Citizenship and Immigration Services (USCIS) is transforming its business processes and systems to improve operational efficiency and customer service, and to strengthen the security and integrity of the immigration system. As part of this effort, USCIS may modify its data collection practices to eventually convert all data collections to e-filing in the USCIS ELIS. The intent of this change is to improve the consistency and timeliness of its immigration benefit adjudications, as well as to support identity management, evaluate benefit eligibility, promote customer service, and manage national security and benefit risk. This change will also serve to bring USCIS in to compliance with the Government Paperwork Elimination Act (GPEA), Public Law 105–277, tit. XVII, section 1703, 112 Stat. 2681, 2681–749 (Oct. 21, 1998), 44 U.S.C. 3504 *note,* and the E-Government Act of 2002 (Pub. L. 107–347, 116 Stat. 2899, 44 U.S.C. 3601 *note*). GPEA provides that Federal agencies use electronic forms, electronic filing, and electronic submissions, when possible, to conduct agency business with the public. The E-Government Act promotes the use of the Internet by federal agencies through efforts like USCIS' Business Transformation initiative.

The USCIS ELIS will be implemented by USCIS and made available in increments for the public to submit various benefit requests over the next few years USCIS has termed these increments ''releases'' and ''phases.'' As each phase is implemented, DHS will announce each benefit request type that has been converted to an e-filing format in the USCIS ELIS, if the USCIS ELIS will be the sole filing option available, or if the option of filing a paper form will remain available for that benefit for all or certain groups that may seek to submit the applicable request. In general, the USCIS ELIS will follow the immigration ''lifecycle'' to first include nonimmigrant benefits, proceeding eventually to applications for naturalization.

The first benefit type available in the automated USCIS ELIS under Release A, Phase 1, will be the Application to Extend/Change Nonimmigrant Status. Beginning in December 2011, USCIS customers will be able to apply for an extension or change of their nonimmigrant status using the USCIS ELIS or continue to use the current paper Form I–539 (OMB Control No. 1615–0003). In the future, however, USCIS may allow the current paper Form I–539 to expire, eliminate the option of filing on a paper form, and instead require this benefit application to be filed through the automated USCIS ELIS. USCIS is very interested in receiving comments concerning mandatory e-filing of this benefit and any future benefits that are added to the automated ELIS. USCIS also welcomes comments on which groups, individuals, or businesses for which it would be the most appropriate for USCIS to require (or not require) electronic filing of all benefit requests.

The supporting statement for this information collection contains a more detailed description of the USCIS Business Transformation initiative and wizard technology. The supporting statement can be viewed at: *http://www.regulations.gov/.*

USCIS is also interested in public comment addressing the following issues:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Business Transformation—USCIS Electronic Immigration System (ELIS).

(3) *Agency Form Number, if any, and the Applicable Component of the Department of Homeland Security Sponsoring the Collection:* No form number; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected Public Who Will Be Asked or Required to Respond, as Well as a Brief Abstract: Primary:* Individuals or households. As part of the Business Transformation initiative, USCIS is developing an automated Electronic Immigration System (USCIS ELIS). The USCIS ELIS will use wizard technology and will allow e-filing. Wizard technology gives USCIS the ability to electronically interact with its customers by guiding them through the application process and assisting them to file complete and accurate benefit requests.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* 58,500 responses at an average of 2 hours and 15 minutes per response.

(6) *An Estimate of the Total Public Burden (In Hours) Associated With the Collection:* 131,625 annual burden hours.

The information collection request contains selected screen shots that demonstrate the look and feel of the automated USCIS ELIS, and a decision tree to show the sequence of questions that the public will be asked by the wizard and the order in which the questions will be asked. For example, when the user answers the question ''What is your First Name?'' then he or she will be prompted with the question: ''What is your Given Name?'' If you need to review this information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

Dated: October 11, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–26653 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning a Surgical Mask With a Protective Eye Shield

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of a Surgical Mask with a Protective Eye Shield. Based upon the facts presented, CBP has concluded in the final determination that Turkey is the country of origin of the Surgical Mask with a Protective Eye Shield, for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 5, 2011. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination on or before November 14, 2011.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch: (202) 325–0132.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 5, 2011, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the Surgical Mask with a Protective Eye Shield, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H175429, was issued at the request of Berkley Surgical Company, Inc. under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP explained that, because the surgical mask is classified in the Harmonized Tariff Schedule of the United States (HTSUS) as a textile product, its country of origin is governed by the country of origin rules for textile products, which is set forth in 19 U.S.C. 3592. The country of origin rules for textile products are implemented by the CBP Regulations at 19 CFR 102.21. Applying the specific rule of origin in 19 CFR 102.21 for products classified in subheading 6370.90, HTSUS, we determined that because the manufacturing process involved in producing the surgical face mask occurs in Turkey, the country of origin of the surgical mask with an eye-shield for purposes of government procurement is Turkey.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: October 5, 2011.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H175429

October 5, 2011
MAR–02 OT:RR:CTF:VS H175429 RSD
CATEGORY: MARKING

Mr. Domenic Tommarello, Vice President
Berkley Surgical Company
49 Virginia Avenue
Uniontown, Pennsylvania 15401

RE: Final Determination; U.S. Government Procurement; Country of Origin of a Surgical Face Mask with a Protective Eye Shield; 19 CFR § 177.21; Textile Rules of Origin, 19 CFR § 102.21(c)(4)

Dear Tommarello:

This is in response to a letter dated June 27, 2011, requesting a final determination pursuant to subpart B Part 177, Customs and Border Protection (''CBP'') Regulations (19 CFR § 177.21 et. seq.). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (codified at 19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government. This final determination concerns the country of origin of a fluid resistant surgical face mask with an eye shield. We note that Berkley Surgical Company (Berkley) is a party-at-interest

within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

The product at issue is a surgical face mask with an eye shield. The product is made to be compliant with the United States Food and Drug Administration's (FDA) requirements for such medical devices. Berkley imports fluid resistant surgical face masks without the eye shields from Turkey. According to the information submitted, the surgical face masks without eye shields are manufactured in Turkey. The outer facing of the surgical face masks are made from printed cellulose or colored polypropylene spun bond non-woven. The surgical mask has two filters inside of it. The first filter is made from 100 percent melt-blown polypropylene and is made in the U.S. The second filter is made of non-woven netting. The inner facing of the mask is made from a white cellulose material. In order to keep the surgical mask in place, it contains a nose wire made from aluminum or coated metal wire. To tie the mask around the face, edge tapes and tie tapes made of polypropylene or polyester non-woven are used. The surgical mask has ear loops made from knitted polyester. All of the other fabrics used in producing the surgical face mask are made in Turkey.

After the surgical mask is imported into the U.S., the transparent eye shield is permanently attached to it through an ultrasonic bonding process. The eye shield provides the wearer splash protection for the eyes, nose and mouth area in a single-device. This eliminates the need for separate and more expensive eye-wear. The eye-shield is made in the United States of optical quality polyester film. The eye-shield accounts for more than 68 percent of the total value of the finished product. The final product is packaged in the United States with packer boxes and shipper boxes manufactured in the United States.

You have indicated that the finished surgical face mask with an eye-shield is classified in subheading 6307.90.98 of the Harmonized Tariff Schedule of the United States (HTSUS). Samples were submitted with your request.

ISSUE:

What is the country of origin of the finished surgical mask with a protective eye shield for purposes of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 C.F.R § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R § 177.22(a) defining ''country of origin'' in identical terms.

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of Subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR § 25.403(c)(1).

The Federal Procurement Regulations define ''U.S.-made end product'' as: * * * an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. *See* 48 CFR § 25.003. Therefore, the question presented in this final determination is whether, as a result of the operations performed in the United States, the imported surgical face mask is substantially transformed into a product of the United States.

With regard to the surgical face mask with a protective eye shield at issue, your request involves determining whether the article is a U.S.-made end product or a product of Turkey. The information submitted indicates that the surgical mask is made chiefly from non-woven textile fabrics. You also indicate that it is classified in subheading 6307.90.98, HTSUS, as a textile product. The rules of origin for textile products for purposes of the customs laws and the administration of quantitative restrictions are governed by 19 U.S.C. § 3592, unless otherwise provided for by statute. *See* Headquarters Ruling (HQ) H112725 dated October 6, 2010. These provisions are implemented in the CBP Regulations at 19 CFR § 102.21. Section 3592 has been described as Congress's expression of substantial transformation as it relates to textile products. Therefore, country of origin of the surgical face mask for government procurement purposes will be determined under the textile rules of origin.

As the finished surgical face mask is produced by processing in more than one country, its origin cannot be determined by application of 19 CFR § 102.21(c)(1), wholly obtained or produced rule, and resort must be made to 19 CFR § 102.21(c)(2). Section 102.21(c)(2) states that the origin of a good is the country ''in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of [102.21].'' Section 102.21(e) provides in pertinent part:

The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

6307.90 The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

As you have indicated, while most of the fabric used in producing the surgical face mask is made in Turkey, the melt-blown polypropylene fabric used in one of the filter linings of the surgical mask is made in the United States. Consequently, there is more than one country involved in the fabric-making process, and thus 19 CFR § 102.21(c)(2) is inapplicable.

19 CFR § 102.21(c)(3) states in pertinent part,

Where the country of origin of a textile or apparel cannot be determined under paragraph (c)(1) or (2) of this section:

(ii) Except for goods of * * * subheading * * * 6307.90 * * * if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

As the subject merchandise is not knit to shape, and is classified in heading 6307.90, HTSUS, section 102.21(c)(3) is also inapplicable.

Section 102.21(c)(4) states, ''Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred''.

In this case, there are two basic processes involved in producing the finished good. The first process is the manufacture of the surgical face mask in Turkey from the various non-woven textile fabrics. The second process is the attachment of the protective eye-shield to the surgical face mask using ultrasonic bonding which occurs in the United States. We believe of these two processes that the more important one is the manufacturing process of the surgical face mask from the various fabrics in Turkey. The surgical face mask is the more significant part of the completed item because even without the protective eye-shield, the surgical face mask can still be worn across the face and be used when performing surgical procedures. On the other hand, the protective eye-shield must be attached to the surgical mask; otherwise, it is completely useless. The assembly of eye-shield to the surgical mask constitutes only an enhancement to the surgical face mask, but it does not change the fundamental nature or the basic use of the product. In addition, the manufacture of the surgical facial mask from the various fabrics seems to be a more complex operation then the relatively simple assembly operation of using an ultrasonic bonding process to attach the protective eye-shield to the surgical face mask. Consequently, we conclude that the manufacture of the surgical face mask from various non-woven fabrics occurring in

Turkey is the most important process involved in producing the finished product. Therefore, we find in accordance with 19 CFR § 102.21(c)(4), the country of origin of the surgical face mask with a protective eye-shield for purposes of government procurement is Turkey.

HOLDING:

Based on the facts and analysis set forth above, the finished surgical face mask with a protective eye-shield is a product of Turkey for the purpose of government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested the final determination may request, pursuant to 19 CFR § 177.31, that CBP reexamine the matter anew and issue a new final determination. Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

Executive Director, Office of Regulations and Rulings, Office of International Trade.

[FR Doc. 2011–26550 Filed 10–13–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–41a]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 6, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2011–26317 Filed 10–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2011–N202; 30120–1112–0000–F6]

Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan and Associated Documents; Duke Energy Corp., Gibson County, IN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: We must receive any written comments on or before November 14, 2011.

ADDRESSES: Send written comments by U.S. Mail to the Regional Director, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd., West, Suite 990, Bloomington, MN 55437–1458; or by electronic mail to *permitsR3ES@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Mandell, (612) 713–5343.

SUPPLEMENTARY INFORMATION: We invite public comment on the following permit application for certain activities with endangered species authorized by section 10(a)(2)(A) of the Act (16 U.S.C. 1531 *et seq.*) and our regulations governing the taking of endangered species in the Code of Federal Regulations (CFR) at 50 CFR 17. Submit your written data, comments, or request for a copy of the complete application and Habitat Conservation Plan (HCP) to the address shown in **ADDRESSES**.

Background

In 1986, a single pair of endangered Interior least terns (*Sterna antillarum*) nested at Cinergy Corporation's (Cinergy) Gibson Generating Station in Gibson County, Indiana. Since that time, the least tern colony at the facility has grown. During the 1990s, Cinergy worked cooperatively with the Indiana Department of Natural Resources (IDNR) and the Service to maintain favorable conditions for successful tern production at the Gibson Generating Station. Between 1986 and 1999, the most terns recorded in a single year (1998) included an estimated 85 adult terns, 63 nests, and 72 fledged young.

In the late 1990s, Cinergy worked cooperatively with the IDNR and the Service to develop a Habitat Conservation Plan (HCP) regarding continued operation of the facility, and, in late 1999, the Service issued an Incidental Take Permit (ITP) to Cinergy. In 2005, the ITP was renewed. Management of the facility under the HCP has promoted the continued growth of the tern colony. In 2010, an estimated 150 adults, 110 nests, and 165 fledged young were recorded. In addition to the growth in numbers, the tern colony has expanded to areas beyond the original location along a splitter dike adjacent to a cooling pond. Nesting has now been documented on the splitter dike, adjacent to ash ponds, a coal combustion waste landfill, construction areas and station access roads. The expansion of the tern nesting area presents management challenges for the generating station and associated facilities.

Current Proposal

Duke Power Company purchased and merged with Cinergy Corp. to form Duke Energy Corporation (Duke) in 2006. Duke has continued to operate the facility in accordance with the HCP and the ITP. Duke has applied to the Service for renewal of its ITP number TE016724. An updated HCP accompanies this renewal application. The HCP describes management activities in and around the Gibson Generating Station, including water management, predator control, and minimization of human disturbance due to recreational use.

Proactive management over the past 25 years has resulted in an increase in the Interior least tern population nesting at Gibson Generating Station and surrounding areas. However, no incidental take of least terns has occurred during that time. Actions that may result in take include human disturbance during management and operations, including foot traffic,

vehicle or construction equipment, ash placement, waste disposal, and harassment due to the presence of people and equipment.

Duke proposes to continue to manage its property to protect least terns. In addition, Duke has committed to monitor the result of its activities and the effect on the population of least terns at Gibson Generating Station and the surrounding state and Federal lands.

Environmental Review

In compliance with National Environmental Protection Act (NEPA) (42 U.S.C. 4321 *et seq.*), the Service has made an initial determination that the HCP meets the criteria for a Low Effect HCP and categorical exclusion under NEPA. As such, activities in this HCP and Permit are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)). The NEPA determination is available for review by all interested parties.

Public Comments

We seek public review and comments on this permit application. Please refer to permit number TE016724 when you submit comments. The Habitat Conservation Plan, Incidental Take Permit renewal application, and NEPA determination are available for public inspection on the Midwest Region website at: *http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html.* In addition, the documents are available for public inspection by appointment during normal business hours (8 a.m.–4:30 p.m.) at the U.S. Fish and Wildlife Service, Midwest Regional Office, 5600 American Blvd., West, 10th Floor, Bloomington, MN 55437–1458, (612/713–5350) and at the U.S. Fish and Wildlife Service, Ecological Services Field Office, 620 South Walker Street, Bloomington, IN 47403 (812/334–4261).

Comments and materials we receive are available for public inspection, by appointment, during normal business hours at the address shown in the **ADDRESSES** section. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 28, 2011.

Lynn Lewis,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 2011–26593 Filed 10–13–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2011–N138; 40136–1265–0000–S3]

White River National Wildlife Refuge, AR; Draft Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for White River National Wildlife Refuge (NWR) in Desha, Monroe, Phillips, and Arkansas Counties, Arkansas, for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by November 14, 2011.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Mr. Dennis Sharp, via U.S. mail at White River NWR, P.O. Box 205, St. Charles, AR 72140, or via e-mail at *dennis_sharp@fws.gov*. Alternatively, you may download the document from our Internet Site at *http://www.fws.gov/southeast/planning/under* ''Draft Documents.'' Submit comments on the Draft CCP/EA to the above postal address or e-mail address.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Dawson, at (601) 955–1518 (telephone).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for White River NWR. We started the process through a **Federal Register** notice on January 21, 2009 (74 FR 3628). Please see that notice for more about the refuge and its purposes.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

CCP Alternatives, Including Our Proposed Alternative

We developed three alternatives (A, B, and C) for managing the refuge and chose Alternative C as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A—Current Management (No Action)

Under Alternative A, current management direction would continue at present levels. We would continue to support existing migratory waterfowl numbers and habitat acreage in an attempt to meet or exceed the foraging habitat objectives of the Lower Mississippi Valley Joint Venture and the North American Waterfowl Management Plan. We would continue to provide functional waterfowl refuge/sanctuary areas throughout the refuge, comprising at least 60 percent of its area. We would continue to provide quality wood duck nesting and brood-rearing habitat in bottomland hardwoods, cypress swamps, and scrub/shrub habitats. If time permits, we would conduct banding to support objectives of the Mississippi Flyway Council.

We would provide incidental benefits for shorebirds, but with no active management on their behalf. Likewise, there would be no active habitat management for marsh birds, but we would continue to provide habitat for them in shallow-water areas and moist-

soil units. There would be no active habitat management for wading birds, but we would continue to provide habitat for breeding and wintering colonial waterbirds in shallow-water areas and forested wetlands.

We would continue to provide both managed and unmanaged forest habitat, to provide a diversity of forest conditions that support forest-breeding birds designated as high priority in the Mississippi Alluvial Valley's Bird Conservation Region 26, through forest restoration on newly acquired parcels and silvicultural management of some existing forested tracts. We would continue to provide protection for threatened and endangered species through research, survey, recovery, conservation, and management programs.

There would be no specific management of white-tailed deer, but active management of forested habitats would continue, as would management of early succession open lands and croplands that benefit deer. Our aim would be to maintain a healthy deer herd consistent with long-term habitat capability. We would collect and analyze deer harvest data, conduct periodic herd health checks, and provide quality recreational opportunities for deer hunters.

There would be no specific management of turkeys; however, active habitat management would continue that incidentally results in enhanced habitat for turkeys and provides quality recreational opportunities. This alternative would maintain, restore, and enhance a variety of habitats suitable for use by black bears. There would be no active management for furbearers, other than controlling nuisance animals when necessary.

We would continue active habitat management to provide diverse habitats (e.g., early succession openland, agriculture, and bottomland forest) that supports healthy populations of resident small game, thus providing quality recreational activities for hunters of small game. We would continue active habitat management that provides a diversity of habitats and supports a healthy, diverse, and viable resident bat population. There would continue to be no active management for non-game mammals or their habitats, although non-game mammals and their habitats occur throughout the refuge. We would continue to manage and enhance habitat for a diverse assemblage of reptile and amphibian species. We would maintain aquatic habitat for a diverse assemblage of fish species, particularly those recognized as species of special concern by State and/or Federal agencies. We would also provide quality fishing opportunities on the refuge.

We would continue to provide a complex of habitat conditions through integrated open land rotation management, to meet the needs of migratory birds, including migratory waterfowl, shorebirds, wading birds, and secretive marsh birds. Through active forest management, we would aim to achieve desired forest conditions on 17 percent of the refuge, to protect, manage, and restore the values and functions of forestland to sustain the biological needs of native wildlife and migratory birds.

Hydrology would continue to be altered by both off-refuge (i.e., upstream within the White River watershed) and on-refuge manipulations that result in an unnatural hydrograph. We would continue to operate functioning water control structures and keep non-functioning water control structures inactive. We would continue limited efforts through the use of Best Management Practices recommended by the Arkansas Forestry Commission in refuge management and operations, to reduce levels of stream impairment from turbidity, siltation, and pollution.

We would continue to conduct incidental inventorying, monitoring, and researching, but without the guidance and priorities of an Inventorying and Monitoring Plan. Similarly, there would be no active, systematic efforts to monitor or mitigate global climate change.

We would continue to work with partners to minimize impacts of threats to natural and cultural resources. We would follow standard Service protocol and procedures according to Section 106 of the National Historic Preservation Act.

We would continue opportunistic control of nuisance and exotic terrestrial animal species, such as feral hogs, nutria, and beaver; exotic and invasive terrestrial and aquatic plant species; and nuisance and exotic aquatic animal species, such as Asian carp, northern snakeheads, zebra mussels, and Asian clams.

We would continue to provide a permit to the U.S. Army Corps of Engineers (COE), allowing the deposition of nonbeneficial dredge material at two sites in the lower White River. We would work cooperatively with the COE to develop a long-term dredge spoil disposal alternative that is compatible with refuge purposes. Grazing would continue to be allowed along the White River Drainage District's right-of-way over Service properties. Haying would be allowed after July 1 each year on the drainage district's right-of-way over Service properties. We would continue to acquire key parcels within the approved acquisition boundary. We would continue to promote communication, cooperation, and partnerships between other agencies, land managers, and private citizens to minimize impacts from external threats to the functions and values of the refuge's wetland ecosystems.

We would conduct maintenance on roads, trails, boat ramps, and other public use infrastructure. We would continue to provide existing hunting opportunities that allow for quality public recreation and that are compatible with the purposes for which the refuge was established. We would continue to provide existing fishing, wildlife observation, and environmental education and outreach programs. Existing interpretive facilities, materials, and programs would continue, including the summer campfire programs.

We would continue to provide and maintain approximately 90 miles of graveled roads for public access and 400 miles of dirt roads/trails for forest management and all-terrain vehicle use. We would continue to allow primitive camping associated with wildlife-dependent activities on about 44,000 acres and 24 maintained campgrounds. We would also continue to allow small boats to be left along the small isolated lakes year-round. Existing permitted houseboats would continue being gradually eliminated, according to the Houseboat Management Plan. We would also document non-permitted houseboats.

We would maintain the existing staff of 14 full-time employees. We would maintain existing facilities, infrastructure, and equipment necessary to perform habitat management, restoration, and improvement on the refuge. We would maintain essential infrastructure, such as roads, levees, and water control structures. Furthermore, we would maintain the volunteer program and continue to support the friends group and other cooperative partnerships.

Alternative B—Minimal Resource and Public Use Management

The thrust of Alternative B is reduced management of resources and public use. This alternative would still pursue the refuge goals, but it would approach them from the perspective of custodial stewardship, or minimal active management. The Service would be a good custodian of the landscape and the White River ecosystem without

attempting to intervene extensively in existing ecosystem processes.

With regard to migratory bird populations, Alternative B would eliminate all active management and habitat manipulation, allowing open lands and forested habitats to function and progress through habitat succession. Concerning migratory bird sanctuary, however, Alternative B would be the same as Alternative A. Functional waterfowl refuge/sanctuary areas would continue to be provided, comprising at least 60 percent of the refuge.

We would eliminate wood duck banding activities and cease active habitat management for wood ducks. With respect to shorebirds, we would also eliminate active management of moist-soil units and agricultural fields, allowing natural succession to occur. Active management of shallow-water areas, impoundments, and forested wetlands on behalf of marsh birds, colonial nesting waterbirds, and wading birds would cease, and natural succession would occur on those habitats. We would eliminate active management of forest stands for the benefit of forest breeding birds and allow natural succession to proceed on all abandoned croplands, moist-soil units, and scrub/shrub habitats. We would eliminate active management of endangered and other listed species and operate the refuge without knowing the extent or number of these species occurring on the refuge.

Hunting of game animals, such as deer, wild turkey, and bear, would continue on the refuge, but Alternative B would halt active habitat management to provide enhanced habitat. All active forest and open land management and collection of biological data about white-tailed deer would cease, but we would continue to use deer hunting to regulate population levels in support of a healthy herd consistent with long-term habitat capability. This alternative would still aim to provide quality recreational opportunities for deer hunters. With regard to wild turkey, we would stop all active habitat management and allow forest succession to occur on all lands, which would initially increase nesting habitat. Eventually, however, nesting habitat would be lost due to forest succession. Stopping all active habitat management and allowing forest succession to occur uninterrupted would incidentally support black bears.

Without control of nuisance animals, furbearer populations would be allowed to fluctuate naturally. Small game and non-game mammals would benefit if all active habitat management stopped and forest succession was allowed to occur. Natural succession would form wooded and wetland habitats that would support sustainable populations of most bat species. Stopping all active habitat management and allowing forest succession would be the preferred approach to supporting a diverse assemblage of reptiles and amphibians. Additionally, riverine and floodplain aquatic habitat would function without intervention under this alternative.

We would phase out active refuge management and habitat manipulation of open lands, gradually allowing them to undergo natural succession, except for levees and rights-of-way, which must be kept open per interagency agreements. We would also eliminate active forest management, allowing natural succession and processes to achieve desired forest conditions on 5 percent of the refuge, to protect and restore the values and functions of the refuge's forestland. This would help sustain the biological needs of native wildlife and migratory birds.

We would allow aquatic habitats to function without management practices. Hydrology under Alternative B would be the same as under Alternative A. The hydrology of the White River and its tributaries, sloughs, and lakes would continue to be altered both by off-refuge and on-refuge manipulations that result in an unnatural hydrograph. Nuisance beaver control and associated habitat impacts would be eliminated, resulting in a continual lose of forested habitat. All active water management would be eliminated, and we would allow habitat succession to occur on areas with water control capabilities.

We would eliminate all active open land and forested habitat management on the refuge. This may reduce erosion from adjacent lands through an increase in the acreage of undisturbed forested riparian habitat. All inventorying and monitoring on the refuge would cease. Under Alternative B, our approach to climate change would be the same as under Alternative A—there would be no active, systematic efforts to monitor or mitigate global climate change.

We would continue to work with partners to minimize impacts to the refuge's natural and cultural resources. Alternative B would pursue this goal through a variety of means and measures. Cultural resources would be protected through minimal implementation of standard Service protocol and procedures according to Section 106 of the National Historic Preservation Act.

We would identify and track occurrences of invasive terrestrial and aquatic animals and plants, but would make no efforts to control them.

Treatment of dredge spoil sites would be the same as under Alternative A. Grazing and haying would also be dealt with the same as under Alternative A.

With regard to refuge land acquisition, we would continue to acquire key parcels within the approved acquisition boundary. We would also continue to promote communication, cooperation, and partnerships between other agencies, land managers, and private citizens, to minimize impacts from external threats to the refuge's wetland ecosystems.

With regard to visitor services and public use management, Alternative B is the same as Alternative A, except that it would discontinue maintenance of roads, trails, boat ramps, and other public use infrastructure that accommodates priority public uses. Public uses and visitation would still be allowed, but we would no longer provide support and maintain facilities. Hunting would be permitted and encouraged, but we would cease maintenance of the facilities and infrastructure that support hunting. Commercial duck guiding on the refuge would be eliminated. The other priority public uses—fishing, wildlife observation, wildlife photography, and environmental education and interpretation—would all be allowed under Alternative B, except that maintenance of facilities and infrastructure that support these activities would be discontinued. Existing access roads and trails would not be maintained. Small boats would no longer be allowed to remain overnight along the refuge's isolated lakes. We would also cease maintenance of 24 primitive campgrounds and eliminate camping. We would continue to gradually eliminate existing permitted houseboats according to the Houseboat Management Plan. We would also document non-permitted houseboats, the same as under Alternative A.

We would reduce the staff to eight by eliminating the following positions: one assistant refuge manager, two foresters, one forestry technician, and one equipment operator. The remaining eight employees should be sufficient to manage the refuge on a custodial basis.

We would maintain a minimal inventory of facilities, infrastructure, and equipment needed for basic resource management and only tasks required by law, regulation, or policy, which include human safety, endangered species management, and law enforcement, would be conducted. We would reduce involvement with volunteers to a seasonal basis as needed. A reduction in staff could diminish

support for the friends group and other cooperative partnerships.

Alternative C—Enhanced Resource and Public Use Management (Proposed Alternative)

Alternative C, our proposed alternative, would continue to support migratory waterfowl populations, with a focus on providing wetland habitat to wintering ducks and breeding wood ducks. It would also maintain the waterfowl sanctuary and explore opportunities to improve the spatial distribution of the refuge's waterfowl sanctuaries to help meet its waterfowl objectives. We would increase wood duck nesting and brood-rearing habitat, through land acquisition and conduct banding activities, in an attempt to band 63 wood ducks annually. Doing this would support the objectives of the Mississippi Flyway Council. To improve banding efficiency, we would provide and maintain a limited number of strategically placed wood duck boxes in areas where banding is to occur.

Through managing the timing of lake draw-downs, we would provide fall migration habitat for shorebirds from July through October, to contribute to the objectives set forth in the U.S. Shorebird Conservation Plan and the Lower Mississippi Valley/West Gulf Coastal Plain Shorebird Management Plan. We would also provide high-quality habitat for breeding and migrating marsh birds, in conjunction with meeting waterfowl habitat requirements where possible, and monitor results of management actions. Alternative C would provide critical habitats for long-legged wading birds and protect all rookery sites from disturbance from March to August (i.e., their breeding season) to contribute to objectives set forth in the North American Waterbird Conservation Plan.

Forest breeding birds are also a priority of Alternative C. With the aid of additional biological and forestry specialists to assist with planning, implementing, and monitoring, we would improve, intensify, and expand forest management for the enhanced benefit of high-priority forest breeding birds.

With regard to conserving threatened and endangered species and species of concern, Alternative C would be the same as Alternative A—the refuge would continue to support their protection and enhancement. Additionally, this alternative would attempt to restore habitats for listed species.

White-tailed deer would be managed the same as under Alternative A, except that we would use harvest and health check data to adjust hunting seasons if and when necessary. Likewise with wild turkey management, Alternative C would be identical to Alternative A, except that we would monitor turkey population status with the aid of additional staff. Also with the aid of additional staff, we propose to intensify management programs to provide enhanced habitat conditions that would support a healthy and sustainable black bear population and monitor bear occurrence. Once again we would apply adaptive management, and results would be used to adjust future management decisions. Furbearer management would be the same as under Alternative A, except that additional opportunities would be identified to expand programs for controlling nuisance animals.

Small game management would also be identical to Alternative A in that we would continue active habitat management to provide diverse habitats, such as early succession openland, agriculture, and bottomland forest that support healthy populations of resident small game, and provide quality recreational activities. Bat management would also be the same as under Alternative A, except that with the aid of additional staff we could perform periodic bat surveys to document occurrence and habitat use.

Under Alternative C, resident non-game mammals and a diverse assemblage of reptiles and amphibians would benefit from enhanced habitat management; those animals and natural communities designated as Elements of Special Concern by the Arkansas Natural Heritage Commission would receive particular emphasis in management. Likewise, we would maintain and enhance aquatic habitat for a rich diversity of fishes, particularly those recognized as species of special concern by State and/or Federal agencies.

With regard to open lands under passive management (e.g., levees, fallow fields, and rights-of-way), Alternative C would maintain these to provide a complex of habitat types primarily suited to benefit migratory birds and resident wildlife. We would also explore opportunities to increase the efficiency of current open lands and maintain or increase the acreage of habitat to be included in integrated open land management. We would monitor vegetation and wildlife responses to treatment and we would implement adaptive management.

We would work with the White River Drainage District to eliminate grazing activities on the levee based on the compatibility considerations (i.e., providing habitat that negatively impacts neotropical bird species), and instead mow or hay outside of the March to August breeding dates. This would assure that woody encroachment on the levees is minimized. Optimal management would establish conditions in which grass and herbaceous growth are not inhibited or removed between March and August annually. To avoid disruption of the nesting season of neotropical migratory songbirds in the adjacent refuge forest and to prevent creating suitable brown-headed cowbird habitat during the nesting season, mowing/haying will not be allowed until August 15.

With respect to actively managed open lands, Alternative C would expand and intensify management to provide a complex of habitat types primarily suited to benefit migratory birds. We would explore opportunities to increase efficiency of current open lands and maintain or increase the acreage of habitat to be included in integrated open land management. In addition, we would monitor vegetation and wildlife responses to treatment and implement adaptive management.

Through active forest management, we would aim to achieve desired forest conditions on 40 percent of the refuge, to protect, manage, and restore the values and functions of the forestland in order to sustain the biological needs of native wildlife and migratory birds.

Alternative C would improve and restore the aquatic habitats of lakes, sloughs, and bayous. We would restore and/or mimic hydrologic patterns (i.e., the timing, frequency, duration, and extent of flooding) and the habitats associated with particular hydrologic characteristics on the refuge, and cooperate in interagency efforts to restore and/or mimic a more natural hydrograph on the White River. We would also endeavor to improve the functionality of water control structures and create more natural water regimes, while providing important resources for wetland-dependent wildlife.

We would establish and implement management actions to protect and improve water quality, while not interfering with activities associated with habitat management. We would prepare, maintain, and start to implement an inventorying and monitoring plan and use the results to implement adaptive management. Unlike alternatives A and B, Alternative C would address climate change by designing and beginning to implement long-term monitoring, with the potential to track and assess changes due to global climate change. As possible, we would

coordinate these efforts with larger regional monitoring efforts.

Under Alternative C, we would develop and begin to implement a Cultural Resources Management Plan. Until such time as the plan is complete, we would follow standard Service protocol and procedures according to Section 106 of the National Historic Preservation Act.

With regard to invasive terrestrial animals, we would intensify and expand prevention and control programs, including development of a database to track occurrences and control measures. We would develop and implement a Nuisance Animal Management Plan, to detail objectives and methods for nuisance animal control. We would also develop a Rapid Response and Prevention Plan for invasive aquatic animals. Similarly, for invasive plant species, we would develop and implement an Invasive Plants Plan for coordinated control efforts when infestations are encountered, along with a database to systematically track invasive plant occurrences and treatments.

Concerning dredge disposal sites, we would complete the Partnering Agreement with the COE that seeks a long-term dredge spoil disposal alternative. We would also complete a compatibility determination for the proposed disposal alternative. Should the proposed alternative be found not compatible, the dredge spoil deposition on refuge sites would be eliminated as expeditiously as practicable.

Working with partners, we would acquire priority lands within or adjacent to the approved acquisition boundary from willing sellers that would enhance the conservation values of the refuge; over the long term, we would consider acquisition boundary expansion to ensure the protection of bottomland hardwood habitats and to enhance landscape conservation.

Alternative C would promote, manage, and improve appropriate and compatible public uses with the recruitment of additional visitor service staff, preparation of a Visitor Services Plan, and better access and improved facilities. We would develop a new Hunt Plan to improve hunting opportunities, while ensuring safe, compatible, and quality experiences. Efforts would be made to develop more consistent hunting seasons and regulations on the north and south units of the refuge. Public use impacts would be monitored and adjustments would be made, as needed, to protect resources.

Under Alternative C, we would modify the guide program to provide fair and equitable hunting opportunities that foster a safe, ethical hunting experience, reduce the commercial guide's ability to monopolize the most easily accessible quality hunting sites, and minimize conflicts between non-guided hunters and hunting guides. We would reduce the number of commercial duck guiding permits from 17 to 5, and eliminate the availability of 10 additional guiding permits during specified flood conditions.

We would develop a new Fishing Plan to improve fishing opportunities, while ensuring safe, compatible, and quality experiences. We would strive to improve and expand wildlife observation and photography opportunities and environmental education, outreach, and interpretive opportunities, while ensuring safe, compatible, and quality experiences. We would recruit additional visitor services staff to develop a series of standard environmental education programs for visiting school groups and training for teacher-led discovery field trips. For interpretation purposes, we would develop and install a display that explains the forest management program and desired forest conditions. We would develop forest demonstration plots and interpretive panels at wildlife drive pullouts.

We would maintain existing public access in a safe and environmentally appropriate manner, to support wildlife-dependent priority public uses. We would reduce the number of miles of tertiary all-terrain vehicle trails by 25 percent and would develop an Access Plan. In addition, we would utilize seasonal closures, as necessary, to minimize resource impacts and to ensure the quantity and quality of access.

We would reduce the camping program and encourage the use of nearby private campgrounds. The number of campgrounds would be reduced and some campgrounds would only be open to accommodate peak-use periods associated with quota deer hunts. Camping would be restricted to designated areas and the minimal area necessary to meet priority public use needs. We would promote the use of surrounding private campgrounds by refuge users and encourage the development of additional private campground sites.

We would continue to gradually eliminate existing permitted houseboats according to the Houseboat Management Plan and prohibit the attachment of non-permitted houseboats to refuge property. We would work with other State and Federal agencies to ensure all remaining houseboats are in compliance with marine sanitation regulations.

As budgetary resources become available, we would strategically add 14 staff positions that would improve the capacity and capability of the refuge to achieve its legislated purposes and accomplish management goals and objectives. Like Alternative A, Alternative C would maintain existing facilities, infrastructure, and equipment necessary to perform habitat management, restoration, and improvements on the refuge, in addition to maintaining essential infrastructure, such as roads, levees, and water control structures. In addition to this, Alternative C, with the aid of additional staff and equipment, would improve facilities and infrastructure that facilitate management programs for trust species and visitor services, and maintain or improve access for management purposes and visitor use. We would also expand the volunteer program and cooperate with the friends group and other cooperative partnerships.

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: August 3, 2011.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2011–26650 Filed 10–13–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2011–N203; 30120–1112–0000–F2]

Draft Environmental Impact Statement and Multi-Species Habitat Conservation Plan; Receipt of Application for Incidental Take Permit; NiSource, Inc.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are extending the public comment period on all documents related to NiSource, Inc.'s application for an incidental take permit under the Endangered Species Act of 1973 (ESA). We announced receipt of the application and availability of documents in our July 13, 2011, **Federal Register** notice, which also opened a 90-day public comment period. If you have previously submitted comments, please do not resubmit them, because we have already incorporated them in the public record and will fully consider them in our final decision.

DATES: To ensure consideration, please send your written comments on or before December 13, 2011.

ADDRESSES: Send written comments via U.S. mail to the Regional Director, Midwest Region, Attn: Lisa Mandell, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458, or by electronic mail to *permitsR3ES@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Lisa Mandell, (612) 713–5343.

SUPPLEMENTARY INFORMATION: In a July 13, 2011, **Federal Register** notice (76 FR 41288), we provided a list of 10 species for which NiSource, Inc. (the applicant) has requested incidental take authority, and 33 species for which they have determined that implementation of certain measures will avoid incidental take. The application includes a MSHCP pursuant to Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.;* ESA). If approved as proposed by the applicant, the permit would be for a 50-year period.

The applicant's MSHCP covers a suite of activities associated with operation of a natural gas pipeline system in the States of Delaware, Indiana, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. In its MSHCP, the applicant describes activities to maintain their existing pipeline and complete certain construction projects within a distinct area. This area included in the MSHCP is referred to as the ''covered lands.'' The covered lands include a 1-mile-wide corridor along the existing pipeline, with the existing pipeline right-of-way in the center (approximately), and 9 counties that include natural gas storage fields. However, the exact locations of those fields have not been disclosed due to proprietary business information and Homeland Security concerns. A total of 9,783,200 acres is included in the covered lands footprint. However, the impact area for proposed activities will be a fraction of that acreage. NiSource anticipates that, on an annual basis, 18,500 acres will be disturbed within the existing right-of-way and less than 1,000 acres of land will be disturbed due to new construction. The total acreage anticipated to be disturbed annually is 0.2 percent of the total covered lands footprint. This is fully described in the chapter 2 of the MSHCP, available on our Web site.

Our July 13 **Federal Register** notice also announced the availability of the draft Environmental Impact Statement (DEIS) prepared pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The DEIS is also posted on the Service's Web site, along with the applicant's documents. The DEIS evaluates the impacts of permit issuance and implementation of the MSHCP, a no action alternative, and an alternative for permit issuance with a 10-year duration. The DEIS presents discussion of the development of these alternatives, as well as an evaluation of the impacts of these alternatives in a broad (''programmatic'') fashion. Tiering of future NEPA analyses is integral to the analysis presented in the DEIS. Additional background information, a description of the proposed action, and other alternatives evaluated in the DEIS are presented in the July 13, 2011 (76 FR 41288), **Federal Register** notice.

Reviewing Documents and Submitting Comments

If you have previously submitted comments, please do not resubmit them, because we have already incorporated them in the public record and will fully consider them in our final decision.

Please refer to TE02636A when submitting comments. The permit application and supporting documents (ITP application, draft MSHCP, DEIS, Implementing Agreement, and summary documents) may be obtained on the Internet at the following address: *http://www.fws.gov/midwest/endangered/permits/hcp/r3hcps.html.*

Please make it clear when commenting whether your comments address the HCP, the DEIS, both the HCP and DEIS, or other supporting documents.

Persons without access to the Internet may obtain copies of the documents (application, draft MSHCP, and DEIS) by contacting the U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. W., Suite 990, Bloomington, MN 55437–1458 (612) 713–5350, voice; (612) 713–5292, fax. The documents will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4 p.m.) at the following Regional Offices:

Midwest Region Office: U.S. Fish and Wildlife Service, Ecological Services, 10th Floor—5600 American Blvd. W., Bloomington, MN 55437 (612) 713–5350, voice; (612) 713–5292, fax;

Southeast Region: 1875 Century Blvd., Suite 200, Atlanta, GA 30345–3319 (404) 679–7140, voice; (404) 679–7081, fax;

Northeast Region: 300 Westgate Center Drive, Hadley, MA 01035–9589 (413) 253–8304, voice; (413) 253–8293, fax.

Written comments will be accepted as described under **ADDRESSES**, above.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that the entire comment, including your personal identifying information, may be made 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: We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6; 43 CFR part 46).

Dated: September 26, 2011.

Charlie Wooley,

Acting Regional Director, Midwest Region, Fort Snelling, Minnesota.

[FR Doc. 2011–26561 Filed 10–12–11; 11:15 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT–92000–11–L51100000–GA0000–LVEMJ09–CJ220, UTU85539]

Notice of Competitive Coal Lease Sale, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that that certain coal resources in the Dry Canyon Coal Tract described below in Carbon County, Utah, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 1 p.m., November 15, 2011. The sealed bid must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received on or before 10 a.m. (Mountain time) on November 15, 2011.

ADDRESSES: The lease sale will be held in the Fifth Floor Monument Conference Room, of the Bureau of Land Management (BLM), Utah State Office, 440 West 200 South, Salt Lake City, Utah 84101. Sealed bids can be hand delivered to the Cashier, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, during normal business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Sealed bids may also be sent by certified mail, return receipt requested to the Cashier, BLM Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Jeff McKenzie, 440 West 200 South, Suite 500 Salt Lake City, Utah 84101–1345, telephone 801–539–4038, or e-mail *jmkenzi@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: This coal lease sale is being held in response to a lease by application (LBA) submitted by UtahAmerican Energy, Inc. The coal resources to be offered consist of all recoverable reserves in the following described lands located approximately 3 miles northeast of Helper, Utah.

Salt Lake Meridian

T. 12 S., R. 10 E.
- Sec. 25, N½;
- Sec. 26, N½;
- Sec. 27, N½;
- Sec. 28, NE¼, E½NW¼, SW¼NW¼, and S½;
- Sec. 29, E½SE¼;
- Sec. 33, all.

T. 13 S., R. 10 E.
- Sec. 3, all;
- Sec. 4, lots 1 through 4 inclusive, S½N½, and N½S½;
- Sec. 8, lot 4;
- Sec. 10, N½, and W½SW¼;
- Sec. 11, N½, and SE¼.

Containing 4,325.01 acres, more or less, in Carbon County, Utah.

UtahAmerican Energy, Inc., submitted the application for the coal lease. The company plans to mine the coal as an extension from their existing Aberdeen Mine, if the lease is obtained. The Dry Canyon Coal Tract has three minable coal beds; the Aberdeen, the Kennilworth and the D seam bed. The minable portions of the coal beds in this area average 10 feet in thickness for the Aberdeen seam, 8 feet in thickness for the Kennilworth seam, and 6 feet in thickness for the D seam. The tract contains an estimated 42.2 million tons of recoverable high-volatile A/B bituminous coal. The coal quality in the coal beds on an ''as received basis'' is as follows: (1) Aberdeen: 13,414 Btu/lb., 2.35 percent moisture, 5.57 percent ash, 41.86 percent volatile matter, 49.83 percent fixed carbon and 0.49 percent sulfur; (2) Kenilworth: 13,287 Btu/lb., 2.06 percent moisture, 6.91 percent ash, 42.88 percent fixed carbon and 0.72 percent sulfur; (3) D: 12,470 Btu/lb., 6.00 percent moisture, 8.00 percent ash, 39.00 percent volatile matter, 47.00 percent fixed carbon and 0.50 percent sulfur.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value (FMV) of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent the FMV. The FMV of the tract will be determined by the Authorized Officer after the sale. The lease that may be issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty rate of 12.5 percent of the value of coal produced by surface methods, and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 1206.257.

All coal LBAs submitted to the BLM for processing on or after November 7, 2005, are subject to cost recovery on a case-by-case basis (See 43 CFR 3000.10(d)(1), 70 FR 58872, October 7, 2005)). Pursuant to the regulations at 43 CFR 3473.2(f) the applicant for the Dry Canyon Coal Tract, UtahAmerican Energy, Inc., will have paid a total case-by-case cost recovery processing fee of $41,300. The successful bidder of the Dry Canyon Coal Tract, if someone other than the applicant, must pay to the BLM the $41,300 previously paid by UtahAmerican Energy, Inc. In that circumstance, any refunds due to the applicant UtahAmerican Energy Inc., would be addressed in accordance with the provisions of 43 CFR 3473.2(f)(3)). Additionally, the successful bidder must pay all processing costs the BLM incurs after the date of this sale notice is published in the **Federal Register**.

The required Detailed Statement for the offered tract, including bidding instructions and sales procedures under 43 CFR 3422.3–2, and the terms and conditions of the proposed coal lease, is available from the BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84101 or in the Public Room, Room 500, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101. All case file documents and written comments submitted by the public on FMV or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection during normal business hours in the BLM Public Room.

Jeff Rawson,

Associate State Director.

[FR Doc. 2011–26352 Filed 10–13–11; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0R04766]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on November 14, 2011.

DATES: Protests of the survey must be filed before November 14, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@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: This survey was executed at the request of the Regional Director, Rocky Mountain Region, Bureau of Indian Affairs, Billings, Montana, and was necessary to determine individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 3 S., R. 44 E.

The plat, in three sheets, representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of section 28, the adjusted original meanders of the former left bank of the Tongue River, downstream, through sections 27, 28, and 29, and the adjusted original meanders of the former right bank of the Tongue River, downstream, through sections 21 and 28, the subdivision of section 28 and the survey of the meanders of the present left bank of the Tongue River, downstream, through sections 27 and 28, and a portion of section 29, the meanders of the present right bank of the Tongue River and informative traverse, downstream, through portions of sections 21 and 28, the limits of erosion in sections 27 and 28, and certain division of accretion lines, Township 3 South, Range 44 East, Principal Meridian, Montana, was accepted September 30, 2011.

We will place a copy of the plat, in three sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in three sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in three sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–26578 Filed 10–13–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0R04772]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on November 14, 2011.

DATES: Protests of the survey must be filed before November 14, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@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: This survey was executed at the request of the Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 30 N., R. 11 W.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of section 14, and the subdivision of section 14, Township 30 North, Range 11 West, Principal Meridian, Montana, was accepted September 29, 2011.

We will place a copy of the plat, in one sheet, and related field notes we described, in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–26563 Filed 10–13–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0R04760]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on November 14, 2011.

DATES: Protests of the survey must be filed before November 14, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@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: This survey was executed at the request of the Chief, Branch of Cadastral Survey, in a memo dated May 24, 2011, and was necessary to determine individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 3 S., R. 33 E.

The plat, in one sheet, representing the corrective dependent resurvey of a portion of the subdivisional lines, the adjusted original meanders of the former left bank of the Bighorn River, downstream, through section 18, a portion of the meanders of the present right bank of the Bighorn River, downstream, through section 18, the meanders of the former right and left banks of two relicted channels of the Bighorn River, downstream, through section 18, the limits of erosion, the medial lines of two relicted channels of the Bighorn River, downstream, through section 18, certain division of accretion lines, and certain partition lines and the survey of a portion of the meanders of the present right bank of the Bighorn River, downstream, through section 18, and the right bank of an abandoned channel of the Bighorn River, downstream, through section 18, Township 3 South, Range 33 East, Principal Meridian, Montana, was accepted September 28, 2011.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–26565 Filed 10–13–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0R04760]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on November 14, 2011.

DATES: Protests of the survey must be filed before November 14, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@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: This survey was executed at the request of the Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 27 N., R. 47 E.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, the adjusted original meanders of the former left bank of the Missouri River, downstream, through section 22, a portion of the subdivision of section 22, the Presbyterian Church Mission Tract (lot 6) in section 22, the medial line of an abandoned channel of the Missouri River in section 22, and a portion of the boundary of the Fifth Addition to the Townsite of Wolf Point, and the survey of the meanders of the present left bank of the Missouri River, downstream, through a portion of section 22, and certain partition lines, Township 27 North, Range 47 East, Principal Meridian, Montana, was accepted September 28, 2011.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–26564 Filed 10–13–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on October 7, 2011, a proposed Consent Decree in *United States of America* v. *John Morrell & Co.,* Civil Action No. 4:11–cv–04143–LLP, D.J. Ref. 90–5–1–1–3973/1, was lodged with the United States District Court for the District of South Dakota.

In this action the United States sought civil penalties and injunctive relief in connection with Defendant John Morrell & Co.'s (''JMC'') violations of Section 112(r) of the Clean Air Act (''CAA''), 42 U.S.C. 7412(r) at its slaughterhouse and meatpacking facility in Sioux Falls, South Dakota (the ''JMC Facility''). The United States contends that the JMC Facility's system of storing and using anhydrous ammonia was not in compliance with certain regulations of 40 CFR part 68, the chemical accident prevention provisions that implement CAA Section 112(r). JMC has fixed most of the alleged violations identified during an EPA inspection of the JMC Facility, and has agreed to institute a new nameplate and label creation procedure to fix the remaining deficiency related to the absence of appropriate nameplates and labels on various plant pipes and tanks. Finally, JMC will pay a civil penalty of $206,000.00 to resolve the alleged violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *John Morrell & Co.,* Civil Action No. 4:11–cv–04143–LLP, D.J. Ref. 90–5–1–1–3973/1.

During the public comment period, the Consent Decree may be examined on the following Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html,* maintained by

the Department of Justice. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.50 (@ 25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–26539 Filed 10–13–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on September 21, 2011, a proposed Consent Decree (''CD'') in *US and WVDEP* v. *City of Welch,* Civil Action No. 1:11–cv–00647, was lodged with the United States District Court for the Southern District of West Virginia, Charleston Division.

The United States filed a complaint concurrently with the CD. In the new action, the United States sought injunctive relief and civil penalties against the City (the ''City'') of Welch in West Virginia and the Welch Sanitary Board (the ''Board'') for violations of Sections 309 and 402 of the Clean Water Act (''CWA''), 33 U.S.C. 1319 and 1342. The United States alleged that by failing to comply with effluent limits, failing to develop and implement a Long Term Control Plan (''LTCP''), and failing to comply with Nine Minimum Control requirements of the National Pollutant Discharge Elimination System (''NPDES'') permit, the City was in violation of the CWA and its NPDES permit.

The CD resolves the alleged violations by mandating a series of injunctive relief. The CD instructs the City to establish an enforceable schedule for controlling the combined sewer overflows and correcting the effluent limitation violations. The City will comply with a mutually agreed upon schedule as part of the LTCP. It will certify that all existing and future contracts are designed, constructed, and will operate in accordance with the CD and the NPDES permit. The City will also submit a report on the status of any overflows from the Combined Sewer System (''CSS'') and their duration and frequency, by June 30, 2016. Additionally, the City will submit semiannual progress reports to the EPA and the State. The City will submit a plan to identify and eliminate sources of excess inflow and infiltration within 60 days of the CD being lodged. Six months after the CD is lodged, the City will submit a Nine Minimum Controls Plan to EPA and a Treatment Plant Plan to the Plaintiffs. In addition to injunctive relief, the City will pay a civil penalty of $5,000, divided evenly between the United States and the State of West Virginia. There will also be stipulated penalties for periods of noncompliance, ranging from $1,000 to $8,000 per day per violation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the CD. 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, and should refer to *United States and West Virginia Department of Environmental Protection* v. *City of Welch,* D.J. Ref. 90–5–1–1–813/1.

During the public comment period, the CD may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the CD may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $12.00 payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Robert Brook,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–26540 Filed 10–13–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree regarding the United States' claims against Defendants in *United States* v. *Philip A. Smith, et al.,* Case No. 3:10–cv–05364–BHS, was lodged with the United States District Court for the Western District of Washington on October 6, 2011.

This proposed Consent Decree concerns a complaint filed by the United States against Philip A. Smith and Kimberly G. Smith, pursuant to Section 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves allegations against the Defendants by requiring Philip A. Smith to pay a contingent civil penalty if certain circumstances arise.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Kent E. Hanson, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *Philip A. Smith, et al.,* DJ #90–5–1–1–18599.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of Washington, 1717 Pacific Avenue, Room 3100, Tacoma, WA 98402–3200. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 2011–26517 Filed 10–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 30, 2011, a proposed Consent Decree in *United States of America* v. *Newmont USA Limited and Dawn*

Mining Company, LLC, Civil Action No. 05–020–JLQ, was lodged with the United States District Court for the Eastern District of Washington.

In this action the United States sought reimbursement under Section 107 of CERCLA for past costs incurred at the Midnite Mine Superfund Site, located on the Spokane Indian Reservation in Stevens County, Washington. The United States also sought a declaratory judgment under Section 113 of CERCLA for future costs to be incurred at the Site. The proposed consent decree requires Newmont USA Limited and Dawn Mining Company, LLC, to perform the cleanup selected by EPA for the Site. The cleanup will address threats due to the presence of heavy metals and elevated levels of radioactivity associated with waste rock piles and open mine pits present at the Site. Additionally, the Consent Decree requires Newmont and Dawn to reimburse EPA $18.7 million for past costs associated with the Site. The United States, on behalf of the Department of Interior, will contribute approximately $54 million toward future cleanup activities and past costs incurred by EPA and the mining companies.

The Consent Decree includes a covenant not to sue Newmont and Dawn pursuant to Sections 106, 107 and 113 of CERCLA, 42 U.S.C. 9606, 9607 & 9613, Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, and Section 309 of the Clean Water Act, 33 U.S.C. 1319.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to Environmental Enforcement Section, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In either case, the comments should refer to *United States of America* v. *Newmont USA Limited,* DJ. Ref. 90–11–3–1749. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

During the comment period, the Consent Decree may be examined on the following Department of Justice *Web site: http://www.justice.gov/enrd/Consent_Decrees.html.* A paper copy of the Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a paper copy, please enclose a check in the amount of $94.50 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–26553 Filed 10–13–11; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for New Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 13, 2011,

ADDRESSES: Interested parties are invited to submit written comments to NCUA contact or OMB Reviewer listed below:

NCUA: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *ociomail@ncua.gov.*

OMB: Office of Management and Budget, Attn: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: Consumer Response Center.

OMB Number: 3133–NEW.

Form Number: None.

Type of Review: New collection.

Description: The general public may complete the form online and submit their request to the NCUA via the Internet. The information would be used to improve the way NCUA communicates with consumers requesting assistance in resolving their inquiry or complaint. NCUA would use the information to determine the nature of the inquiry or complaint, and which federal credit union is involved. It will also assist the NCUA Consumer Assistance Center (respondent) to determine the relevant response for the requestor.

Respondents: Federal credit unions.

Estimated Number of Respondents/Recordkeepers: 3,000.

Estimated Burden Hours per Response: 30 minutes.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden Hours: 1,500 hours.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board October 7, 2011.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2011–26577 Filed 10–13–11; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until December 13, 2011.

ADDRESSES: Interested parties are invited to submit written comments to NCUA contact or OMB Reviewer listed below:

NCUA: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, *E-mail: ociomail@ncua.gov.*

OMB: Office of Management and Budget, *Attn:* Desk Officer for the

National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

Title: 12 CFR 703 Investment and Deposit Activities.

OMB Number: 3133–0133.

Form Number: None.

Type of Review: Reinstatement of a previously approved collection.

Description: To ensure that federal credit unions make safe and sound investments, the rule requires that they establish written investment policies and review them annually, document details of the individual investments monthly, ensure adequate broker/dealer selection criteria and record credit decisions regarding deposits in certain financial institutions.

Respondents: Federal credit unions.

Estimated Number of Respondents/Recordkeepers: 5,732.

Estimated Burden Hours per Response: 46.15 hours.

Frequency of Response: Recordkeeping. Reporting. On Occasion. Quarterly.

Estimated Total Annual Burden Hours: 264,529 hours.

Estimated Total Annual Cost: None.

By the National Credit Union Administration Board.

Dated: October 7, 2011.

Mary Rupp,

Secretary of the Board.

[FR Doc. 2011–26580 Filed 10–13–11; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 75 FR 55359, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, *Attention:* Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Recurring Study of National Science Foundation-sponsored Graduate Education Impacts or Legacy (GEIL). (Formerly called the Evaluation of the Initial Impacts of the Integrative Graduate Education Research and Traineeship (IGERT) Program.)

OMB Control No.: 3145–0182.

I. Abstract

Since 1998, the National Science Foundation (NSF) has supported interdisciplinary training of doctoral students across the nation through the Integrative Graduate Education and Research Traineeship (IGERT) Program. NSF awards IGERT grants to institutions that develop innovative, interdisciplinary doctoral training programs in science, technology, engineering, and mathematics (STEM) disciplines. Unlike traditional graduate research or teaching assistantships, IGERT provides doctoral students with unrestricted funds, including a living stipend plus tuition and fees. NSF intends to conduct an implementation evaluation of the program to learn what program elements are most effective in fostering interdisciplinary collaborations, research, and learning. Specifically, the evaluation will assess the program's perceived progress towards its three goals of fostering interdisciplinary education, recruiting and retaining a diverse population of graduate students, and catalyzing cultural change within institutions to better support interdisciplinary endeavors. Data from this collection will be used by NSF to respond to OMB and congressional inquiries, document best practices for training interdisciplinary scientists, and inform decisions about future project modifications.

II. Method of Collection

Data will be collected via interviews and surveys from faculty members and students who have participated in the five most recent cohorts (2005–2009) of IGERT projects.

III. Data

Affected Public: Individuals.

Estimated Number of Respondents: 632 (600 IGERT Trainees; 32 IGERT PIs).

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 30 minutes—IGERT Trainees; 1.25 hours—IGERT PIs.

Estimated Total Annual Burden Hours: 340 hours.

Estimated Total Annual Cost: $12,220.

Dated: October 11, 2011.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–26640 Filed 10–13–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meeting

The National Science Board (NSB), Committee on Programs and Plans pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of NSB business and other matters specified, as follows:

DATE AND TIME: Wednesday October 19, 2011 at 3 p.m.–4 p.m., EDT.

SUBJECT MATTER: Chairman's Remarks, Updates on High-Performance Computing, Deep Underground Science and Engineering Laboratory and Giant Segmented Mirrored Telescope, and Other Committee Business.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Jennie Moehlmann, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2011–26808 Filed 10–12–11; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0292]

Consumer Product Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed revision to policy statement; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or Commission) is proposing to update its policy statement on products intended for use by the general public (consumer products). While the NRC is not making any significant changes to the policy, general updating is needed to reflect the approaches and terminology used in radiation protection that have evolved over time, as well as relevant legislation and regulatory actions.

DATES: Submit comments by December 28, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2010–0292 in the subject line of your comments. For instructions on submitting comments and accessing documents related to this action, see Section I, ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0292. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668, *e-mail: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.
- *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.
- *Hand-deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (Telephone 301–415–1677).
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

FOR FURTHER INFORMATION CONTACT: Shirley Xu, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–7640; *e-mail: Shirley.Xu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.
- *NRC's Agencywide Documents Access and Management System (ADAMS):*

Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.*

- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this proposed policy statement revision can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0292.

II. Background

On March 16, 1965 (30 FR 3462), the Atomic Energy Commission (AEC), the NRC's predecessor agency, issued its policy statement on products intended for use by the general public (consumer products). Under this policy, the AEC and then the NRC have periodically reevaluated the overall impact to the public of products allowed to be distributed for use by the general public, which are normally used under an exemption from licensing of the consumer-user and from all associated regulatory requirements. The AEC/NRC staff has reevaluated the policy at times and found it to serve the agency well in spite of the passage of considerable time. The policy is written in very general terms and, because of this, has not needed revision. However, the NRC is now proposing to update the policy to include approaches and terminology more consistent with the evolving approach to radiation protection, and to recognize relevant legislative and regulatory actions.

III. Discussion

The 1965 policy used terms consistent with the approach to radiation protection represented primarily in the early documents of the International Commission on Radiation Protection

(ICRP). These include ''permissible dose to the gonads'' and ''permissible body burden.'' Newer approaches to radiation protection do not include such limits. The recommendations of the ICRP originally included control of dose to the gonads because of concern for potential genetic risks, *i.e.,* risks to future generations. It has been determined that genetic risks are much lower than believed at the time; thus, separate limits for doses to the gonads are no longer used. Also, early approaches to radiation protection included limits on body burden, *i.e.,* the amount of a radionuclide present in a person's body. In newer approaches for controlling cumulative exposure from radionuclides retained in the body, the calculated dose for the year of intake includes doses that will result in the future.

Additional updating is needed due to legislation that has been enacted since 1965. The Energy Reorganization Act of 1974 revised the Atomic Energy Act in a number of ways, primarily to separate the regulatory responsibilities from the AEC and to create the NRC. Relevant AEC policies, such as the subject policy, became NRC policies. Also in 1974, the Commission was given the authority to create exemptions from licensing for special nuclear material in addition to byproduct material and source material. The NRC has not issued any exemptions from licensing for products containing special nuclear material, but the revised policy would recognize the authority to do so.

Another relevant legislative action was the National Environmental Policy Act (NEPA) of 1969. In subparagraph 9(c), the policy addresses the consideration of potential impacts to the environment from the possible dispersion of radioactive material and the uncontrolled disposal of products used under exemption. This is the primary environmental impact to be considered in most instances of evaluating a potential exemption from licensing. Specific procedures for complying with NEPA have been developed, and are addressed in Title 10 of the *Code of Federal Regulations* (10 CFR) part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Thus, any rulemaking to add an exemption from licensing requirements would require NRC documentation of environmental considerations in accordance with these procedures. In addition, the responsibilities of the Federal Radiation Council are now performed within the Environmental Protection Agency (EPA).

Since the issuance of the 1965 policy, the NRC has issued class exemptions, under which additional products belonging to an identified class of products can be approved through a licensing action, if an applicant to manufacture or distribute a product demonstrates that the product meets certain safety criteria. This approach to exemptions from licensing should also be recognized in the policy. Also, these safety criteria include more specific criteria for accidents than in the existing policy. The revised policy would better address the level of risks that are acceptable for accident and misuse scenarios. However, the guidance remains relatively general.

In addition, the example products noted in paragraphs 5 and 6 of the policy statement would be revised to be more relevant and up to date. For example, thoriated tungsten welding rods, while available to the public, are used in unique, expensive equipment and are not normally used by the public in the form of consumer products. Likewise, shipping containers constructed with uranium as shielding are not used by the public in the form of consumer products.

IV. Proposed Revised Statement of Policy

Products Intended for Use by General Public (Consumer Products)

Criteria for the approval of products containing radioactive material and intended for use by the general public.

This notice sets forth the essential terms of the Commission's policy with respect to approval of the use of byproduct material, source material, and special nuclear material in products intended for use by the general public (consumer products) without the imposition of regulatory controls on the consumer-user. This is accomplished by the exemption, on a case-by-case basis, of the possession and use of the approved items from the licensing requirements for byproduct, source, or special nuclear material of the Atomic Energy Act of 1954, as amended, and of the Commission's regulations in 10 CFR part 30, ''Licensing of Byproduct Material,'' 10 CFR part 40, ''Licensing of Source Material,'' or 10 CFR part 70, ''Licensing of Special Nuclear Material.''

1. At the present time it appears unlikely that the total contribution to the exposure of the general public to radiation from the use of radioactivity in consumer products will exceed a fraction of limits recommended for exposure to radiation from all sources. Information as to total quantities of radioactive materials being used in such products and the number of items being distributed will be obtained through recordkeeping and reporting requirements applicable to the manufacture and distribution of such products. Periodically, the NRC staff conducts an overall reevaluation of this information to estimate the range of likely doses to the population. If radioactive materials are used in sufficient quantities in products reaching the public so as to raise any question of the combined exposure from multiple consumer products becoming a significant fraction of the permissible dose to the public, the Commission will, at that time, reconsider its policy on the use of radioactive materials in consumer products.

2. Approval of a proposed consumer product, and adding a new exemption from licensing provision to the regulations, depends upon both associated exposures of persons to radiation and the apparent usefulness of the product. In general, risks of exposure to radiation will be considered to be acceptable if it is shown that in handling, use, and disposal of the product, it is unlikely that individuals in the population will receive more than a small fraction, less than a few hundredths, of individual dose limits in NRC regulations and as recommended by such groups as the ICRP, the National Council on Radiation Protection and Measurements, and the EPA, and that the probability of individual doses exceeding any of the specified limits is low and the probability of individual doses approaching a level that could cause immediate effects is negligible. Otherwise, a decision will be more difficult and will require a careful weighing of all factors, including benefits that will accrue or be denied to the public as a result of the Commission's action. Factors that may be pertinent are listed in paragraphs 9 and 10, below.

3. Products proposed for distribution will be useful to some degree. Normally, the Commission will not attempt an extensive evaluation of the degree of benefit or usefulness of a product to the public. However, in cases where tangible benefits to the public are questionable and approval of such a product may result in widespread use of radioactive material, such as in common household items, the degree of usefulness and benefit that accrues to the public may be a deciding factor. In particular, the Commission considers that the use of radioactive material in toys, novelties, and adornments may be of marginal benefit.

4. Applications for approval of ''off-the-shelf'' items that are subject to

mishandling, especially by children, will be approved only if they are found to combine an unusual degree of utility and safety.

5. The Commission has approved certain long-standing uses of source material, many of which antedate the atomic energy program. These include:

(a) Use of uranium to color glass for certain decorative purposes; and

(b) Thorium in various alloys and products (*e.g.,* gas mantles, optical lenses, tungsten wire in such things as electric lamps and vacuum tubes) to impart desirable physical properties.

6. The Commission also approved the use of tritium as a substitute luminous material for the long-standing use of radium for this purpose on watch and clock dials and hands.

7. The Commission has approved additional uses of byproduct and source material in consumer products. These include the following:

(a) Tritium and other radionuclides in electron tubes;

(b) Americium-241 in smoke detectors; and

(c) Thorium and uranium in piezoelectric ceramic, which is used in many electronic products and other consumer products.

8. In approving uses of byproduct, source, or special nuclear material in consumer products, the Commission establishes limits on quantities or concentrations of radioactive materials and, if appropriate, on radiation emitted. In some cases, other limitations, such as quality control and testing, considered important to health and safety are also specified. In the case of class exemptions, specific safety criteria are included in the regulations, which require the applicant to evaluate many pathways of exposure of the public.

Principal Considerations With Respect to Evaluation of Products

9. In evaluating proposals for the use of radioactive materials in consumer products the principal considerations are:

(a) The potential external and internal exposure of individuals in the population to radiation from the handling, use and disposal of individual products;

(b) The potential total cumulative radiation dose to individuals in the population who may be exposed to radiation from a number of products;

(c) The long-term potential external and internal exposure of the general population from the uncontrolled disposal and dispersal into the environment of radioactive materials from products authorized by the Commission; and

(d) The benefit that will accrue to or be denied the public because of the utility of the product by approval or disapproval of a specific product.

10. The general criteria for approval of individual products are set forth in paragraph 2, above. Detailed evaluation of potential exposures would take into consideration the following factors, together with other considerations, which may appear pertinent in the particular case:

(a) The external radiation levels from the product.

(b) The proximity of the product to human tissue during use.

(c) The area of tissue exposed. A dose to the skin of the whole body would be considered more significant than a similar dose to a small portion of the skin of the body.

(d) Potential of the radionuclides to cause exposures from intakes. Materials that result in lower cumulative exposures when taken into the body would be considered more favorably than materials that result in higher exposures from intakes.

(e) The quantity of radioactive material per individual product. The smaller the quantity the more favorably would the product be considered.

(f) Form of material. Materials with a low solubility in body fluids and the environment will be considered more favorably than those with a high solubility.

(g) Containment of the material. Products which contain the material under very severe environmental conditions will be considered more favorably than those that will not contain the material under such conditions.

(h) Degree of access to product during normal handling and use. Products which are inaccessible to children and other persons during use will be considered more favorably than those that are accessible.

Dated at Rockville, Maryland, this 7th day of October, 2011.

For the Nuclear Regulatory Commission.

Robert J. Lewis,

Acting Deputy Director, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–26581 Filed 10–13–11; 8:45 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.

1. *Title and purpose of information collection:* Appeal Under the Railroad Retirement and Railroad Unemployment Insurance Act; OMB 3220–0007.

Under Section 7(b)(3) of the Railroad Retirement Act (RRA), and Section 5(c) of the Railroad Unemployment Insurance Act (RUIA) any person aggrieved by a decision on his or her application for an annuity or benefit under that Act has the right to appeal to the RRB. This right is prescribed in 20 CFR part 260 and 20 CFR part 320. The notification letter, which is sent at the time of the original action on the application, informs the applicant of such right. When an applicant protests a decision, the concerned RRB office reviews the entire file and any additional evidence submitted and sends the applicant a letter explaining the basis of the determination. The applicant is then notified that if he or she wishes to protest further, they can appeal to the RRB's Bureau of Hearings and Appeals. The appeal process is prescribed in 20 CFR 260.5 and 260.9 and 20 CFR 320.12 and 320.38.

The form prescribed by the RRB for filing an appeal under the RRA or RUIA is Form HA–1, *Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act.* The form asks the applicant to explain the basis for their request for an appeal and, if necessary, to describe any additional evidence they wish to submit in support of the appeal. Completion is voluntary, however, if the information is not provided the RRB cannot process the appeal. The RRB proposes minor

editorial and cosmetic changes to Form HA–1.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The Estimated Annual Respondent Burden is as Follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
HA–1	600	20	200

2. *Title and purpose of information collection:* Application for Benefits Due but Unpaid at Death; OMB 3220–0055.

Under Section 2(g) of the Railroad Unemployment Insurance Act (RUIA), benefits that accrued but were not paid because of the death of the employee shall be paid to the same individual(s) to whom benefits are payable under Section 6(a)(1) of the Railroad Retirement Act. The provisions relating to the payment of such benefits are prescribed in 20 CFR 325.5 and 20 CFR 335.5.

The RRB provides Form UI–63 for use in applying for the accrued sickness or unemployment benefits unpaid at the death of the employee and for securing the information needed by the RRB to identify the proper payee. One response is requested of each respondent. Completion is required to obtain a benefit. The RRB proposes no changes to Form UI–63.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The Estimated Annual Respondent Burden is as Follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–63	25	7	3

3. *Title and purpose of information collection:* Medicare; OMB 3220–0082.

Under Section 7(d) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the railroad retirement system. The RRB uses Form AA–6, Employee Application for Medicare; Form AA–7, Spouse/Divorced Spouse Application for Medicare; and Form AA–8, Widow/Widower Application for Medicare; to obtain the information needed to determine whether individuals who have not yet filed for benefits under the RRA are qualified for Medicare payments provided under Title XVIII of the Social Security Act.

Further, in order to determine if a qualified railroad retirement beneficiary who is claiming supplementary medical insurance coverage under Medicare is entitled to a Special Enrollment Period (SEP) and/or premium surcharge relief because of coverage under an Employer Group Health Plan (EGHP), the RRB needs to obtain information regarding the claimant's EGHP coverage, if any. The RRB uses Form RL–311–F, Evidence of Coverage Under An Employer Group Health Plan, to obtain the basic information needed by the RRB to establish EGHP coverage for a qualified railroad retirement beneficiary. Completion of the forms is required to obtain a benefit. One response is requested of each respondent. The RRB proposes minor editorial changes to Forms AA–6, AA–7 and AA–8. The RRB proposes no changes to Form RL–311–F.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–6	180	8	24
AA–7	50	8	7
AA–8	10	8	1
RL–311–F	800	10	133

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. 2011–26542 Filed 10–13–11; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29831; 812–13695]

NGP Capital Resources Company, et al.; Notice of Application

October 7, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 57(a)(4) and 57(i) of

the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY: *Summary of Application:* Applicants request an order to permit a business development company (''BDC'') to co-invest with certain affiliates in portfolio companies.

Applicants: NGP Capital Resources Company (the ''Company''), NGP Co-Investment Opportunity Fund, LP (''NGPC'') and NGP Investment Advisor, L.P. (the ''Adviser'').

DATES: *Filing Dates:* The application was filed on September 8, 2009, and amended on December 17, 2009, January 5, 2011, August 25, 2011, and October 6, 2011.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 1, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090. *Applicants:* c/o Stephen K. Gardner, NGP Capital Resources Company, 1221 McKinney Street, Suite 2975, Houston, TX 77010.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company, a Maryland corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a BDC under the Act.[1] The Company's investment objective is to generate both current income and capital appreciation primarily through debt investments with certain equity components. The Company's operations are conducted by the Adviser. The Company has a five-member board of directors (''Board'') of which three members are not interested persons of the Company within the meaning of section 2(a)(19) of the Act (''Independent Directors'').

2. NGPC is organized as a limited partnership and, in reliance on the exclusion from the definition of investment company contained in section 3(c)(1), it is anticipated that NGPC will not register under the Act. NGP Energy Capital Management, LLC (the ''Affiliated Adviser'') owns 99.9% of the ownership interest in NGPC, with the Company's administrator, NGP Administration, LLC (the ''Administrator''), owning the remaining 0.1%. The Affiliated Adviser's 99.9% ownership interest will be diluted as NGPC offers its interests to outside investors. NGPC has not commenced operations and does not anticipate doing so unless and until the relief sought by this application is obtained. NGPC and any Future Co-Investment Affiliate (as defined below) will operate pursuant to an investment objective and investment strategies that are identical to those of the Company. The Adviser will manage the investment activities of NGPC.

3. Applicants state that as of August 15, 2011, the Company's capital available for investment was $145 million. The Company does not have any specific plans to raise additional capital but may do so in the future to the extent there are opportunities. Applicants also state that NGPC anticipates raising $250 to $500 million in a private offering.

The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940. The Affiliated Adviser owns 99.9% of the ownership interest in the Adviser, with the Administrator owning the remaining 0.1%. The Adviser may in the future advise other entities that are affiliated persons of the Company, as defined in section 2(a)(3)(C) of the Act (the ''Future Co-Investment Affiliates,'' and together with NGPC, the ''Co-Investment Affiliates'').[2] Applicants request relief permitting the Company and the Co-Investment Affiliates to co-invest in portfolio companies (the ''Co-Investment Program'' and each investment, a ''Co-Investment Transaction'').[3] In selecting investments for the Company the Adviser will consider only the investment objective, investment strategies, investment position, capital available for investment, and other pertinent factors applicable to the Company. Likewise, when selecting investments for the Co-Investment Affiliates, the Advisor will consider only the investment objective, investment strategies, investment position, capital available for investment, and other pertinent factors applicable to the Co-Investment Affiliates. However, as the Company and the Co-Investment Affiliates have the same investment objectives and investment strategies, the Adviser anticipates that any investment that is an appropriate investment for one entity will be an appropriate investment for the other. Applicants state that under the Co-Investment Program, co-investments between the Company and the Co-Investment Affiliates would be the norm, rather than the exception. The Company, NGPC and any Future Co-Investment Affiliate will disclose in offering documents and periodic financial reports that they will routinely co-invest with each other pursuant to the Co-Investment Program and will disclose how Co-Investment Transactions will be allocated.

4. Under the Co-Investment Program, each Co-Investment Transaction would be allocated among the Company and the Co-Investment Affiliates based upon on the relative capital of each entity available for investment (''Available Capital'').[4] These relative allocation percentages (''Relative Allocation Percentages'') would be approved each quarter or, as necessary or appropriate, between quarters by both the full Board and the required majority (within the meaning of Section 57(o)) (the ''Eligible

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Section 2(a)(3)(C) defines an ''affiliated person'' of another person as any person directly or indirectly controlling, controlled by, or under common control with, such other person.

[3] All existing entities that currently intend to rely on the order have been named as applicants and any future entities that may rely on the order in the future will comply with its terms and conditions.

[4] ''Available Capital'' consists solely of liquid assets not held for permanent investment, including cash, amounts that can currently be drawn down from lines of credit, and marketable securities held for short-term purposes. In addition, for the Co-Investment Affiliates, Available Capital would include bona fide uncalled capital commitments that can be called by the settlement date of the Co-Investment Transaction.

Directors'').[5] The Company will not deviate from its co-investment policies except as may be required by applicable law.[6] The Co-Investment Program as a whole has been approved by both the full Board and the Eligible Directors. The Relative Allocation Percentages will be approved by both the full Board and the Eligible Directors prior to the implementation of the Co-Investment Program, and any deviations from the Relative Allocation Percentages for any investment, by the Company or the Co-Investment Affiliates, would require prior approval by both the full Board and the Eligible Directors.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in a joint transaction with the BDC in contravention of rules as prescribed by the Commission. In addition, under section 57(b)(2) of the Act, any person who is directly or indirectly controlling, controlled by or under common control with a BDC is subject to section 57(a)(4). Applicants state that the Co-Investment Affiliates could be deemed to be a person related to the Company in a manner described by section 57(b) by virtue of their being under common control with the Company. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply. Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

2. Section 17(d) of the Act and rule 17d–1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company unless the Commission has granted an order permitting such transactions. Rule 17d–1, as made applicable to BDCs by section 57(i), prohibits any person who is related to a BDC in a manner described in section 57(b), acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the BDC is a participant, absent an order from the Commission. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

3. Applicants state that allowing co-investment in portfolio companies by the Company and the Co-Investment Affiliates will increase favorable investment opportunities for the Company. The Co-Investment Program has been approved by the Board and the Eligible Directors on the basis that it would be mutually advantageous for the Company to have the additional capital from the Co-Investment Affiliates available to meet the funding requirements of attractive investments in portfolio companies.

4. Applicants state that the formulae for the allocation of co-investment opportunities among the Company and Co-Investment Affiliates, and the protective conditions set forth below will ensure that the Company will be treated fairly. Applicants state that the Company's participation in the Co-Investment Transactions will be consistent with the provisions, policies, and purposes of the 1940 Act and on a basis that is not different from or less advantageous than that of other participants.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each time the Adviser considers an investment for the Co-Investment Affiliates, the Adviser will make an independent determination of the appropriateness of the investment for the Company.

2. (a) If the Adviser deems that the Company's participation in the investment is appropriate, then such investment will be made pursuant to the Relative Allocation Percentages, unless the Adviser determines that investment pursuant to the Relative Allocation Percentages is not appropriate for that investment. The Relative Allocation Percentages will be determined by both the full Board and the Eligible Directors in advance and will be based upon the Available Capital of the Company, on the one hand, and the Co-Investment Affiliates, on the other hand. The Relative Allocation Percentages will be approved each quarter, or as necessary or appropriate, between quarters, by both the full Board and the Eligible Directors, and may be adjusted, for subsequent transactions, in their sole discretion for any reason, including, among other things, changes in the Available Capital of the Company vis-à-vis the Available Capital of the Co-Investment Affiliates.

(b) If the Adviser deems that the Company's participation in the Co-Investment Transaction is appropriate, but that investment pursuant to the Relative Allocation Percentages is not appropriate, then the Adviser will recommend an appropriate level of investment for the Company and the Co-Investment Affiliates. If the aggregate amount recommended by the Adviser to be invested by the Company in such Co-Investment Transaction, together with the amount proposed to be invested by the Co-Investment Affiliates, exceeds the amount of the investment opportunity, the amount proposed to be invested by the Company will be based on a ratio of the Company's Available Capital to the aggregate Available Capital of the Company and the Co-Investment Affiliates, up to the maximum amount proposed to be invested by each. The Adviser will provide the Eligible Directors with information concerning the Company's and the Co-Investment Affiliates' Available Capital to assist the Eligible Directors with their review of the Company's investments for compliance with these allocation procedures. After making the determinations required in this paragraph (b), the Adviser will distribute written information concerning the Co-Investment Transaction, including the amount proposed to be invested by the Co-Investment Affiliates, to the Independent Directors for their consideration. Outside of the Relative Allocation Percentages, the Company will co-invest with the Co-Investment Affiliates only if, prior to the Company's and the Co-Investment Affiliates' participation in the Co-Investment Transaction, the Eligible Directors conclude that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching of the Company or its stockholders on the part of any person concerned;

(ii) the transaction is consistent with

(A) the interests of the stockholders of the Company; and

(B) the Company's investment objectives and policies (as described in the Company's registration statements on Form N–2 and other filings made with the Commission by the Company under the Securities Act of 1933, as amended (''Securities Act''), any reports filed by the Company with the Commission under the Securities

[5] The term ''Eligible Directors,'' when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

[6] Applicants are not aware of any such requirement at this time.

Exchange Act of 1934, as amended, and the Company's reports to stockholders);

(iii) the investment by the Co-Investment Affiliates would not disadvantage the Company, and participation by the Company is not on a basis different from or less advantageous than that of the Co-Investment Affiliates; provided, that if the Co-Investment Affiliates, but not the Company, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Eligible Directors from reaching the conclusions required by this condition (2)(b)(iii), if

(A) the Eligible Directors shall have the right to ratify the selection of such director or board observer, if any, and

(B) the Adviser agrees to, and does, provide, periodic reports to the Company's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(iv) the proposed investment by the Company will not benefit any affiliated person of the Company, other than the Co-Investment Affiliates, except (A) to the extent permitted by condition 12; (B) to the extent permitted by section 57(k); or (C) indirectly, as a result of an interest in securities issued by the Co-Investment Affiliates or the Company.[7]

3. The Company has the right to decline to participate in any Co-Investment Transaction or to invest less than the amount proposed.

4. Except for follow-on investments made pursuant to condition 7, the Company will not invest in reliance on this order in any portfolio company in which the Adviser, or any Co-Investment Affiliates or any person controlling, controlled by, or under common control with the Investment Adviser or the Co-Investment Affiliates is an existing investor.

5. The Company will not participate in any Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for the Company as for the Co-Investment Affiliates. The grant to the Co-Investment Affiliates, but not the Company, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 5, if conditions 2(b)(iii)(A) and (B) are met.[8]

6. Any sale, exchange, or other disposition by the Company or the Co-Investment Affiliates of an interest in a security that was acquired in a Co-Investment Transaction will be accomplished pro rata based on the original investment of each participant unless the Adviser formulates a recommendation for participation in a disposition on a non-pro rata basis and such recommendation is approved by the Eligible Directors on the basis that such non-pro rata disposition is in the best interest of the Company. The Company and the Co-Investment Affiliates will each bear its own expenses in connection with any disposition, and the terms and conditions of any disposition will apply equally to all participants.

7. Any ''follow-on investment'' (*i.e.,* an additional investment in the same entity) by the Company or the Co-Investment Affiliates, or any exercising of warrants or other rights to purchase securities of the issuer in a portfolio company whose securities were acquired in a Co-Investment Transaction will be accomplished *pro rata* based on the original investment of each participant, unless the Adviser formulates a recommendation for participation in the proposed transaction on a non-pro rata basis and such recommendation is approved by the Eligible Directors on the basis that such non-pro rata participation is in the best interest of the Company. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

8. The Independent Directors will be provided quarterly for review all information concerning (a) all investments made by the Co-Investment Affiliate during the preceding quarter and (b) Co-Investment Transactions during the preceding quarter, including investments made by the Co-Investment Affiliates which the Company considered but declined to participate in, so that the Independent Directors may determine whether the conditions of the order have been met.

9. The Company will maintain the records required by section 57(f)(3) of the Act as if each of the investments permitted under these conditions were approved by the Independent Directors under section 57(f).

10. No Independent Directors will also be a director, general partner or principal, or otherwise an ''affiliated person'' (as defined in the Act) of, the Co-Investment Affiliates.

11. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) shall, to the extent not payable by the Adviser under its investment advisory agreements with the Co-Investment Affiliates, be shared by the Company and the Co-Investment Affiliates in proportion to the relative amounts of their securities to be acquired or disposed of, as the case may be.

12. Any transaction fee (including break-up or commitment fees but excluding broker's fees contemplated by section 57(k)(2) of the Act) received in connection with a Co-Investment Transaction will be distributed to the Company and the Co-Investment Affiliates on a pro rata basis based on the amount they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by the Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata between the Company and the Co-Investment Affiliates based on the amount they invest in such Co-Investment Transaction. The Co-Investment Affiliates or any affiliated person of the Company will not receive additional compensation or remuneration of any kind (other than (a) the pro rata transaction fees described above and (b) investment advisory fees paid in accordance with investment advisory agreements with the Company and the Co-Investment Affiliates) as a result of or in connection with a Co-Investment Transaction.

[7] Co-Investment Affiliates or an affiliate of the Co-Investment Affiliates will not receive any fees or other compensation in connection with the Co-Investment Affiliates' right to nominate a director or board observer to otherwise participate in the governance or management of the portfolio company.

[8] *Id.*

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26525 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, October 19, 2011 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, October 19, 2011 will be:

Institution of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 12, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26797 Filed 10–12–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65522; File No. SR–ISE–2011–56]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Rebates for Certain Orders Executed on the Exchange

October 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on September 23, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend transaction fees and rebates for certain orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses a per contract transaction charge to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in 103 options classes (the ''Select Symbols'').[3] For removing liquidity in the Select Symbols, the Exchange currently charges a take fee of: (i) $0.25 per contract for Market Maker and Market Maker Plus orders.[4] The Exchange now proposes to change the take fees for Market Maker and Market Maker Plus orders in the Select Symbols from $0.25 per contract to $0.26 per contract.

As an incentive for members to direct customer order flow to the Exchange, Priority Customer complex orders in a select number of options classes (''Designated Symbols''),[5] currently receive a rebate of $0.26 per contract on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees. *See* Securities Exchange Act Release Nos. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25), 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43), 62282 (June 11, 2010), 75 FR 34499 (June 17, 2010) (SR–ISE–2010–54), 62319 (June 17, 2010), 75 FR 36134 (June 24, 2010) (SR–ISE–2010–57), 62508 (July 15, 2010), 75 FR 42809 (July 22, 2010) (SR–ISE–2010–65), 62507 (July 15, 2010), 75 FR 42802 (July 22, 2010) (SR–ISE–2010–68), 62665 (August 9, 2010), 75 FR 50015 (August 16, 2010) (SR–ISE–2010–82), 62805 (August 31, 2010), 75 FR 54682 (September 8, 2010) (SR–ISE–2010–90), 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106), 63534 (December 13, 2010), 75 FR 79433 (December 20, 2010) (SR–ISE–2010–114); 63664 (January 6, 2011), 76 FR 2170 (January 12, 2011) (SR–ISE–2010–120); 64303 (April 15, 2011), 76 FR 22425 (April 21, 2011) (SR–ISE–2011–18); 64992 (July 29, 2011), 76 FR 47279 (August 4, 2011) (SR–ISE–2011–43); 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR–ISE–2011–45); 65087 (August 10, 2011), 76 FR 50783 (August 16, 2011) (SR–ISE–2011–47); 65327 (September 13, 2011), 76 FR 58068 (September 19, 2011) (SR–ISE–2011–48); 65084 (August 10, 2011), 76 FR 50805 (September August 16, 2011) (SR–ISE–2011–49); and 65297 (September 8, 2011), 76 FR 56844 (September 14, 2011) (SR–ISE–2011–54).

[4] A Market Maker Plus is a market maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium across all expiration months in order to receive the rebate. The Exchange determines whether a market maker qualifies as a Market Maker Plus at the end of each month by looking back at each market maker's quoting statistics during that month. If at the end of the month, a market maker meets the Exchange's stated criteria, the Exchange rebates $0.10 per contract for transactions executed by that market maker during that month. The Exchange provides market makers a report on a daily basis with quoting statistics so that market makers can determine whether or not they are meeting the Exchange's stated criteria.

[5] The Designated Symbols are AAPL, BAC, C, F, GLD, INTC, IWM, JPM, QQQ, SLV, SPY and XLF.

all legs when these orders trade with non-customer orders in the Exchange's complex order book. The Exchange proposes to increase this rebate to $0.27 per contract. The Exchange believes it is necessary to increase the rebate for Priority Customer complex orders in the Designated Symbols in order to continue to attract Priority Customer complex order flow to the Exchange as NASDAQ OMX PHLX, Inc. (''PHLX'') recently increased a similar rebate from $0.26 to $0.27 per contract.[6]

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Act'')[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols and Designated Symbols, as applicable.

The Exchange believes that the proposed rebate for options overlying the Designated Symbols remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The Exchange believes that its proposal to assess a $0.26 per contract take fee for Market Maker and Market Maker Plus orders in the Select Symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes and the proposed nominal increase will bring this fee closer to the fee the Exchange currently charges to other market participants that employ a similar trading strategy. The Exchange further notes that with this proposed increase, the fee charged to Market Maker and Market Maker Plus orders will remain lower than the fee currently charged by the Exchange to other market participants. The Exchange believes that the price differentiation between the various market participants is justified because market makers have obligations to the market that the other market participants do not. The Exchange believes that it is equitable to assess a nominally higher fee to market participants that do not have the quoting requirements that Exchange market makers do.

The Exchange also believes that it is reasonable and equitable to provide a rebate for Priority Customer complex orders in the Designated Symbols because paying a rebate would continue to attract additional order flow to the Exchange and thereby create liquidity in the Designated Symbols that ultimately will benefit all market participants who trade on the Exchange. The proposed increased rebate of $0.27 per contract for Priority Customer complex orders in the Designated Symbols is identical to a proposal recently submitted by PHLX.[9]

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

[6] *See* Securities and Exchange Act Release No. 65312 (September 9, 2011) (SR–PHLX–2011–126).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See supra* note 6.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2011–56 and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26535 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65505; File No. SR–NYSEAmex–2011–76]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Options Rule 975NY (Obvious and Catastrophic Errors)

October 6, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 29, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Options Rule 975NY (Obvious and Catastrophic Errors). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Amex Options Rule 975NY (Obvious and Catastrophic Errors) as described below.

Applicability

The Exchange proposes to amend Rule 975NY to reflect that, unless otherwise stated, the provisions therein are applicable to electronic transactions only.[4]

Erroneous Prints & Quotes in the Underlying Security

The Exchange proposes to make the following changes relating to erroneous prints or quotes in the underlying security:[5]

1. Adjustments

Rule 975NY(a)(4) currently provides only for nullifications with respect to erroneous prints, whereas Rule 975NY(a)(5) provides for nullifications and adjustments for erroneous quotes. For consistency, the Exchange proposes to amend Rule 975NY(a)(4) to allow for adjustments and nullifications of erroneous prints in the underlying security.[6] The Exchange also proposes to clarify that such adjustment or nullification would be in the same manner and subject to the same conditions as set forth in Rule 975NY(a)(3) for Obvious Errors.

2. Average Quote Width

Rule 975NY(a)(4) and (5) currently provide that the ''average quote width'' thereunder is determined by adding the quote widths of each separate quote during the two minute time period before and after the erroneous print or erroneous quote. The Exchange proposes to revise the provisions used to determine the average quote width and instead make such a determination by adding the quote widths of sample quotations at regular 15-second intervals during the two minute time period before and after the erroneous quote or print. Such a change would make the administration of Rule 975NY(a)(4) and (5) less time consuming and burdensome, while also aligning the Exchange's method of calculation with the methods used by other options exchanges.[7]

3. Designation of Underlying Security or Market

The erroneous print and quote provisions of Rule 975NY(a)(4) and (5) currently only address the security underlying the particular option. The Exchange proposes to modify these provisions to allow the Exchange to designate the applicable underlying security(ies) or related instruments for any option.[8]

Under the revised rule, the Exchange would identify the particular underlying security—or with respect to ETF(s), HOLDRS(s), and index options the related instrument(s) that would be used to determine an erroneous print or quote—and would also identify the relevant market(s) trading the underlying security or related instrument to which the Exchange would look for purposes of applying the obvious error analysis. The ''related instrument(s)'' may include related ETF(s), HOLDRS(s), and/or index value(s),[9] and/or related futures product(s),[10] and the ''relevant

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 975NY was originally substantially based on Rule 6.87 of NYSE Arca Inc. (''NYSE Arca'') and was adopted in conjunction with new rules for the implementation of a new Exchange trading platform for options. *See* Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR–NYSEALTR–2008–14). Rule 975NY replaced then-existing Exchange Rules 936 and 936C. *See* Securities Exchange Act Release Nos. 59454 (February 25, 2009), 74 FR 9461 (March 4, 2009) (SR–NYSEALTR–2009–17) and 59660 (March 31, 2009), 74 FR 15802 (April 7, 2009) (SR–NYSEAmex–2009–03). NYSE Arca Rule 6.87 was originally applicable to the NYSE Arca ''Auto-Ex'' electronic system, not manual or open-outcry trading, and has been amended on an incremental basis over time. *See, e.g.,* Securities Exchange Act Release Nos. 48538 (September 25, 2003), 68 FR 56858 (October 2, 2003) (SR–PCX–2002–01); 50549 (October 15, 2004), 69 FR 62107 (October 22, 2004) (SR–PCX–2004–87); and 53221 (February 3, 2006), 71 FR 6811(February 9, 2006) (SR–PCX–2005–102).

[5] *See* Rule 975NY(a)(4) and (5). The changes to these provisions are based on Chicago Board Options Exchange (''CBOE'') Rule 6.25. *See* Securities Exchange Act Release No. 59981 (May 27, 2009), 74 FR 26447 (June 2, 2009) (SR–CBOE–2009–024).

[6] *See, e.g.,* CBOE Rule 6.25(a)(4).

[7] *See, e.g.,* CBOE Rule 6.25(a)(4)(ii) and CBOE Rule 6.25(a)(5)(ii).

[8] *See, e.g.,* CBOE Rule 6.25(a)(4) and CBOE Rule 6.25(a)(5).

[9] An ''index value'' is the value of an index as calculated and reported by the index's reporting authority. Use of an index value would only be applicable for purposes of identifying an erroneous print in the underlying security (and not an erroneous quote).

[10] The Exchange is only proposing that it may designate underlying or related ETF(s), HOLDRS(s),

market(s)'' may include one or more markets. The underlying security or related instrument(s) and relevant market(s) would be designated by the Exchange and announced via Regulatory Bulletin. For a particular ETF, HOLDRS, index value and/or futures product to qualify for consideration as a ''related instrument,'' the revised rule would require that the option class and related instrument be derived from or designed to track the same underlying index.

Thus, as an example for illustrative purposes only, for options on the Powershares QQQ Trust, Series 1 (the ''Nasdaq 100 ETF''), the Exchange may determine to designate the underlying ETF (ETF symbol ''QQQ'') and the primary market where it trades, as well as a related futures product overlying the Nasdaq 100 Index and the primary market where that futures product trades, as the instruments that would be considered by the Exchange in determining whether an erroneous print or an erroneous quote has occurred that would form the basis for an adjustment or nullification of a transaction in the related options.[11] As another example for illustrative purposes only, for the Exchange's class of options on International Business Machines Corporation, the underlying security would be its common stock, which trades under the symbol IBM. The Exchange may determine to designate one or more underlying stock exchanges as the ''relevant market(s),'' such as the New York Stock Exchange LLC (''NYSE'') and the NYSE Arca, Inc. (''NYSE Arca'').[12] The proposed change is intended to provide relief in those scenarios where an erroneous option transaction may occur as the result of an erroneous print or erroneous quote in markets other than the primary market for the underlying security.

The Exchange believes the proposed change recognizes that market participants trading in the equity, index, ETF and HOLDRS options may base their option prices on trading in various products and markets, while maintaining reasonable and objective criteria for these types of obvious error reviews.

No Bid Series

As discussed below, the Exchange proposes to renumber Commentary .04 to Rule 975NY as Rule 975NY(a)(6), which provides that a buyer of an option with a zero bid may request that such execution be busted. This would include certain proposed substantive changes, including with respect to the circumstances under which such an execution could be busted by specifying that certain bids and offers will not be included within such a determination, and explaining the treatment of different groups of series in an option with non-standard deliverables being treated as a separate options class for purposes of the rule.[13] These changes would benefit buyers of an option with a zero bid by adding greater specificity to the circumstances under which such a buyer may request that such execution be busted.

Catastrophic Error Theoretical Price

For purposes of determining whether a Catastrophic Error has occurred on the Exchange, the Theoretical Price of an option currently is (A) if the series is traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, that comprise the National Best Bid or Offer (''NBBO''), as disseminated by the Options Price Reporting Authority (''OPRA'') or (B) if there are not quotes for comparison purposes, as determined by a designated Trading Official.[14] The Exchange proposes that a designated Trading Official also determine the Theoretical Price in circumstances where the bid/ask differential of the NBBO for the affected series just prior to the erroneous transactions was at least two times the permitted bid/ask differential pursuant to Rule 925NY(b)(4). This proposed change would align the determination of what constitutes the Theoretical Price for both Catastrophic and Obvious Errors and is consistent with the methods used by other options exchanges.[15]

Technical and Clarifying Changes

The Exchange proposes the following technical and clarifying changes to the existing text of Rule 975NY:[16]

- First, the introductory text of Rule 975NY(a) would be amended to clarify that an ATP Holder or person associated therewith may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of Rule 975NY(b), the conditions of Rule 975NY(a)(3)—Obvious Errors, Rule 975NY(a)(4)—Erroneous Print in Underlying, Rule 975NY(a)(5)—Erroneous Quote in Underlying, or Rule 975NY(a)(6)—No Bid Series are satisfied.
- Second, Rule 975NY(a)(3)(A) and (B) would be renumbered as Rule 975NY(b)(1) and (3), respectively. Rule 975NY(b)(2) would be added to clarify that once a party to a transaction has applied for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time

and/or index value(s), and/or related futures product(s). The Exchange is not proposing to designate any of the individual underlying stocks (or related options or futures on any of the individual underlying stocks) that comprise a particular ETF, HOLDR or index. Any such proposal would be the subject of a separate rule filing.

[11] Using this example, under the revised rule, the designated instruments and markets would be announced by Regulatory Bulletin. Thereafter, for a transaction in the QQQ options class to be adjusted or nullified due to an erroneous print in an underlying security or related instrument that is later cancelled or corrected, the trade must be the result of (i) an erroneous print in the underlying Nasdaq 100 ETF that is higher or lower than the average trade in the underlying Nasdaq 100 ETF on the designated relevant market during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for the ETF during the same period, or (ii) an erroneous print in the designated futures product overlying the Nasdaq 100 Index that is higher or lower than the average trade in the designated futures product on the designated relevant market during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for the futures product during the same period. For an options transaction to be adjusted or nullified due to an erroneous quote in an underlying or related instrument, an erroneous quote would occur when (i) the underlying Nasdaq 100 ETF has a width of at least $1.00 and has a width at least five times greater than the average quote width for such ETF on the designated relevant market during the time period encompassing two minutes before and after the dissemination of such quote, or (ii) the designated futures product overlying the Nasdaq 100 Index has a width of at least $1.00 and has a width at least five times greater than the average quote width for such futures product on the designated relevant market during the period encompassing two minutes before and after the dissemination of such quote.

[12] Using this example, under the revised rule, the relevant market(s) would be announced by Regulatory Bulletin. Thereafter, for a transaction in the IBM options class to be adjusted or nullified due to an erroneous print in an underlying security that is later cancelled or corrected, the trade must be the result of an erroneous report of the underlying IBM stock value on NYSE or NYSE Arca that is higher or lower than the average price in the stock on the NYSE or NYSE Arca market, as applicable, during a two minute period before and after the erroneous report by an amount at least five times higher or lower than the difference between the highest and lowest index values during the same period. To be adjusted or nullified due to an erroneous quote in the underlying security, an erroneous quote would occur when the IBM quote on the NYSE or NYSE Arca market, as applicable, has a width of at least $1.00 and has a width at least five times greater than the average quote width for IBM on the relevant market during the time period encompassing two minutes before and after the dissemination of such quote.

[13] *See, e.g.,* CBOE Rule 6.25(a)(2).

[14] *See* Rule 975NY(b), which, as proposed below, would be renumbered as Rule 975NY(d).

[15] *See, e.g.,* CBOE Rule 6.25(a)(1)(iv), which is applicable for both Obvious and Catastrophic Errors on CBOE.

[16] The Exchange is reformatting Rule 975NY to make it more consistent with CBOE Rule 6.25.

a decision is rendered. Rule 975NY(a)(3)(C) would be renumbered as Rule 975NY(a)(3).

• Third, Rule 975NY(a)(6) would be renumbered as Rule 975NY(c) and re-titled ''Obvious Error Panel'' to clarify the content of the text therein. This change would also include text clarifying the applicability to a ''party to a determination,'' as rendered by the Exchange, instead of a ''party to an Obvious Error,'' as the current text reads.

• Fourth, Rule 975NY(b), which pertains to Catastrophic Errors on the Exchange, would be renumbered as Rule 975NY(d) and include certain other minor changes.

• Lastly, the text of Commentary .04 to Rule 975NY would be deleted and Commentary .04 would be ''reserved,'' because, as discussed above, the circumstances where a buyer of an option with a zero bid may request that such execution be busted would be moved to Rule 975NY(a)(6).

The aforementioned technical changes require that cross-references to various subsections throughout Rule 975NY be updated, as proposed herein. Additional updates to cross-references within Rule 975NY, including the subsections pertaining to erroneous prints or quotes in the underlying and pertaining to the applicable bid/ask differential under Rule 925NY,[17] are necessary for clarification purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange understands that, in approving proposals of other exchanges related to adjusting and nullifying option trades involving obvious errors, the Commission has focused on the need for specificity and objectivity with respect to exchange determinations and processes for reviewing such determinations.[20] In this regard, the Exchange believes that the proposed rule change would clarify the content of the Exchange's rule for adjusting and nullifying trades, including obvious errors, while also simplifying the administration of the rule in order to more efficiently render such determinations. The Exchange further believes that the proposed rule change would benefit investors and be in the public's interest because it would provide increased clarity and specificity concerning the objective standards used by the Exchange when making trade nullification and adjustment determinations.

The Exchange also believes that the increased specificity resulting from the proposed rule change would benefit investors and market participants that are members of multiple exchanges by more closely aligning the Exchange's rules with respect to obvious errors with those of other exchanges, including text to reflect that, unless otherwise stated, the provisions of Rule 975NY are applicable to electronic transactions only. In this respect, the proposed rule change helps foster certainty for market participants trading on multiple exchanges.

Accordingly, the Exchange believes that the increased specificity resulting from the proposed rule change, combined with the continued objective nature of the Exchange's process for rendering and reviewing trade nullification and adjustment determinations, is consistent with prior guidance from the Commission, is consistent with the Act and is consistent with the maintenance of a fair and orderly market and the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[23]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–76 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–76. This file number should be included on the

[17] A previous rule change filed by the Exchange with the Commission inadvertently added a reference within Rule 945NY(a)(2)(B) to the bid/ask differentials of Rule 925NY(b)(4)–(5) when instead only a reference to 925NY(b)(4) should have been added. *See* Securities Exchange Act Release No. 61394 (January 21, 2010), 75 FR 4435 (January 27, 2010) (SR–NYSEAmex–2010–02). The bid/ask differentials of Rule 925NY(b)(5) are not applicable to the reference within Rule 945NY(a)(2)(B).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *See, e.g., supra* note 5. *See also* Securities Exchange Act Release No. 63692 (January 11, 2011), 76 FR 2940 (January 18, 2011) (Order Granting Approval of SR–Phlx–2010–163).

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(6).

[23] Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the Exchange's principal office, and on its Web site at *http://www.nyse.com.* The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEAmex–2011–76 and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26512 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64969A; File No. SR–FINRA–2009–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 to Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook; Correction

October 7, 2011.

AGENCY: Securities and Exchange Commission.

ACTION: Notice; correction.

SUMMARY: The Securities and Exchange Commission published in the **Federal Register** of August 2, 2011 a Notice of Filing of Amendment No. 1 to Proposed Rule Change to Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook (''Notice''). The Notice contained incorrect information regarding the timing for Commission action.

FOR FURTHER INFORMATION CONTACT: Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549, (202) 551–5618.

Correction

In the **Federal Register** of August 2, 2011, in FR Doc. 2011–19420, on page 46346, the text beginning at the 8th line of the 2nd column, under the heading ''Section III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action,'' is corrected to read as follows:

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26526 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65514; File No. SR–BX–2011–066]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Inbound Routing from an Affiliated Exchange

October 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on September 30, 2011, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing with the Commission a proposed rule change to permit it to accept inbound orders routed by Nasdaq Execution Services LLC (''NES'') from the NASDAQ OMX PSX facility (''PSX'') of NASDAQ OMX PHLX (''PHLX'') (with the attendant obligations and conditions), as described further below, on a one year pilot basis.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with a proposal by PHLX to provide outbound routing services to all markets using its affiliated routing broker, NES,[3] the Exchange proposes that NES be permitted to route orders from PSX to the Exchange on a one year pilot basis.

NES is a broker-dealer and member of NASDAQ, PHLX and the Exchange. NES provides all routing functions for The NASDAQ Stock Market (''NASDAQ'') as well as, pursuant to recent proposed rule changes, BX and PHLX.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–Phlx–2011–108.

[4] *See* SR–BX–2011–048 and SR–Phlx–2011–108.

Exchange, NASDAQ, PHLX and NES are affiliates. Accordingly, the affiliate relationship between BX and NES, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and potential conflicts of interest between an exchange's self-regulatory obligations and its commercial interests.[5]

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange of which it is a member, the Exchange previously proposed, and the Commission approved, limitations and conditions on NES's affiliation with the Exchange.[6] Also recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously proposed, and the Commission approved,[7] NES's affiliation with the Exchange to permit the Exchange to accept inbound orders that NES routes in its capacity as a facility of Nasdaq, subject to the certain limitations and conditions. The Exchange now proposes to permit BX to accept inbound orders that NES routes in its capacity as a facility of PHLX, subject to these same limitations and conditions:

First, the Exchange and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[8] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NES's compliance with certain Exchange rules.[9] Pursuant to the Regulatory Contract, however, BX retains ultimate responsibility for enforcing its rules with respect to NES.

Second, FINRA will monitor NES for compliance with the Exchange's trading rules, and will collect and maintain certain related information.[10]

Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which FINRA is aware) that identify NES as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NES as a participant that has potentially violated Commission or Exchange rules.

Fourth, the Exchange has in place BX Rule 2140(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

Fifth, the Exchange proposes that the routing of orders from NES to the Exchange, in NES's capacity as a facility of PHLX, be authorized for a pilot period of one year.

The Exchange believes that the above-listed conditions protect the independence of the Exchange's regulatory responsibility with respect to NES, and that these mitigate the aforementioned concerns about potential conflicts of interest and unfair competitive advantage.

2. *Statutory Basis*

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Sections 6(b)(5) of the Act,[12] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because the proposed rule change will allow the Exchange to receive inbound routes of orders from NES, acting in its capacity as a facility of PHLX, in a manner consistent with prior approvals and established protections. The Exchange believes that the proposed conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it may have because of its affiliation with the Exchange to its advantage.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

[5] *See* Securities Exchange Act Release Nos. 59153 (December 23, 2008), 73 FR 80485 (SR–NASDAQ–2008–098); and 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100).

[6] *See* Securities Exchange Act Release Nos. 58324, 73 FR 4936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01; (''BSE Approval Order'').

[7] *See* Securities Exchange Act Release Nos. 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–048); and 64090 (March 17, 2011), 76 FR 16462 (SR–BX–2011–007).

[8] 17 CFR 240.17d–2.

[9] NES is also subject to independent oversight by FINRA, its designated examiniing authority, for compliance with financial responsibility requirements.

[10] Pursuant ot the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NES (in its capacity as a facility of PHLX routing orders to the Exchange) is identified as a participant that has potentially violated applciable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–066 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–066. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–066 and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26528 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65518; File No. SR–CBOE–2011–096]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Schedule

October 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2011, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently waives the $.18 per contract transaction fee for public customer (''C'' origin code) orders in options on Standard & Poor's Depositary Receipts (''SPY options'') that are executed in open outcry or in the Automated Improvement Mechanism (''AIM'')[3]. This fee waiver is due to expire on September 30, 2011. The Exchange proposes to extend the fee waiver through December 31, 2011.[4] The Exchange also proposes to extend the fee waiver to options on the Financial Select Sector SPDR Fund (''XLF options''),[5] which is currently traded on the Exchange. The proposed fee waiver is intended to attract more customer volume on the Exchange in these products. For competitive reasons, the customer base for open outcry and AIM trading in SPY and XLF options appears more sensitive to fees than the customer base for such trading in other exchange-traded funds (''ETFs''). The Exchange believes that waiving the transaction fee for such customer trades in SPY and XLF options will encourage greater customer trading in these products. The increased volume and liquidity resulting from greater customer trading in SPY and XLF options will benefit all market participants trading in these products. The Exchange would also like to encourage use of open

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–62902 (September 14, 2010), 75 FR 57313 (September 20, 2010), Securities Exchange Act Release No. 34–63422 (December 3, 2010), 75 FR 76770 (December 9, 2010), Securities Exchange Act Release No. 34–64197 (April 6, 2011), 76 FR 20390 (April 12, 2011), Securities Exchange Act Release No. 34–64817 (July 6, 2011), 76 FR 40948 (July 12, 2011) and CBOE Fees Schedule, footnote 8. AIM is an electronic auction system that exposes certain orders electronically in an auction to provide such orders with the opportunity to receive an execution at an improved price. AIM is governed by CBOE Rule 6.74A.

[4] The Exchange notes that transaction fees are also currently waived for customer orders of 99 contracts or less in ETF (including SPY and XLF options), ETN and HOLDRs options. *See* CBOE Fees Schedule, footnote 9.

[5] XLF seeks to provide investment results that correspond to the price and yield performance of the Financial Select Sector of the S&P 500 Index (the ''Index''). The Index includes companies from industries, such as diversified financial services, insurance, commercial banks, capital markets, real estate investment trusts, consumer finance, thrifts and mortgage finance, and real estate management and development. XLF utilizes a passive or indexing investment approach to attempt to approximate the investment performance of the Index.

outcry and AIM, which is a price improvement mechanism.

In drafting this filing, it became clear that having a separate section on the Fees Schedule for transaction fees for QQQQ and SPY options is unnecessary. Aside from the $0.00 fee for customer transactions in QQQQ, all other fees on QQQQ and SPY options are the same amounts as the fees for other ETFs (QQQQ and SPY are both ETFs). As such, the Exchange proposes to eliminate the separate section for transaction fees for QQQQ and SPY options, and simply add a line regarding the $0.00 fee for customer transactions in QQQQ to the section of the Fees Schedule that lists transaction fees for all other ETFs. This change will make the Fees Schedule easier for investors and market participants to read, thereby eliminating any potential confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [6], in general, and furthers the objectives of Section 6(b)(4) [7] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities. The Exchange believes the proposed extension of the fee waiver for open outcry and AIM trades in SPY options through December 31, 2011 and to XLF options is equitable and not unfairly discriminatory because the fee waiver would apply uniformly to all public customers trading SPY and XLF options in open outcry and AIM, and because the fee waiver is designed to attract new order flow to the Exchange. The Exchange believes that waiving the transaction fee for such customer trades in SPY and XLF options will encourage greater customer trading in these products. The increased volume and liquidity resulting from greater customer trading in SPY and XLF options will benefit all market participants trading in these products. The Exchange believes the proposed extension of the fee waiver is reasonable because it would continue to provide cost savings during the extended waiver period for public customers trading SPY options and begin to provide such savings to public customers trading XLF options. Further, the Exchange believes the proposed fee waiver is consistent with other fees assessed by the Exchange. Specifically, the Exchange assesses manually executed broker-dealer orders a different rate ($.25 per contract) as compared to electronically executed broker-dealer orders ($.45 per contract).[8] Other exchange fee schedules also distinguish between electronically and non-electronically executed orders.[9]

The Exchange believes that the elimination of the separate section of the Fees Schedule listing transaction fees in QQQQ and SPY options and the subsequent addition of a single line listing the fee for customer transactions in QQQQ options as $0.00 furthers the objectives of Section 6(b)(5) [10] of the Act in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by making the Fees Schedule easier to read, thereby eliminating any potential investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–096 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–096. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–096, and should be submitted on or before November 4, 2011.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* CBOE Fees Schedule, Section 1.

[9] NASDAQ OMX PHLX, Inc. categorizes its equity options transaction fees for Specialists, ROTs, SQTs, RSQTs and Broker-Dealers as either electronic or non-electronic. See NASDAQ OMX PHLX Fees Schedule, Equity Options Fees. NYSE Amex, Inc. categorizes its options transaction fees for Non-NYSE Amex Options Market Makers, Broker-Dealers, Professional Customers, Non BD Customers and Firms as either electronic or manual. See NYSE Amex Options Fees Schedule, Trade Related Charges. NYSE Arca, Inc. categorizes its options transaction fees for Customers, Firms and Broker-Dealers as either electronic or manual. See NYSE Arca Options Fees Schedule, Trade Related Charges.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26530 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65521; File No. SR–C2–2011–029]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Insert the Specific Conclusion Date of a Newly Approved Pilot Program

October 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 4, 2011, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a technical amendment to its rules to insert the specific conclusion date for a pilot program that permits the trading of P.M.-settled S&P 500 Index options with third-Friday-of-the-month expiration dates. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 2, 2011, the Commission approved C2's proposal for a 14-month pilot program that permits the trading on C2 of P.M.-settled S&P 500 Index options with third-Friday-of-the-month expiration dates (the ''Pilot Program'').[5] The purpose of this rule change is solely to amend the rule text to insert the specific conclusion date of the Pilot Program, which is November 2, 2012.[6]

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to update the text to reflect the actual expiration date of the Pilot Program in a matter that is consistent with the original approval of the Pilot Program. This action will remove any confusion in the C2 Rules regarding the expiration date of the Pilot Program, thereby removing impediments to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–C2–2011–029 on the subject line.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (approving SR–C2–2011–008).

[6] Previously the rule text indicated that the Exchange would insert the date 14 months from approval, which approval occurred on September 2, 2011. *Id.*

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the C2. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2011–029 and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26534 Filed 10–13–11; 8:45 am]

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[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65519; File No. SR–CBOE–2011–094]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Schedule

October 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2011, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fees Schedule related to monthly facility fees and CBOE*direct* connectivity charges.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange proposes to amend CBOE*direct* connectivity charges to clarify that charges assessed for access to a Network Access Port are per gigabyte, for both regular access and Sponsored Users. Currently, access to such Network Access Ports is only available in one-gigabyte increments. However, in the future, the Exchange may offer faster access at a higher gigabyte level, and may elect to charge a higher rate for such access (as the infrastructure and equipment involved would be costlier). To the extent the Exchange does offer faster access at a higher gigabyte level, and assesses a higher rate, the Exchange will submit a rule filing prior to doing so. The Exchange therefore proposes to clarify that the current rates assessed are for one-gigabyte access.

The Exchange also proposes to increase the fees charged for such access to a Network Access Port $250 per month for regular access and $500 per month for Sponsored User access. The Exchange recently made a sizable investment to upgrade the equipment involved in the Network Access Port, and thereby proposes to increase the fees in order to recoup such costs and maintain such equipment in the future. The Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion. Moreover, this change in Network Access Port fees is in line with the amounts assessed for similar access at other exchanges. The International Securities Exchange, Inc. (''ISE'') assesses a fee of $500 for network access up to and including 1 gigabyte.[3]

The Exchange also proposes to amend the Fees Schedule related to CBOE*direct* connectivity charges to assess a fee for each CMI Login ID. Firms may access CBOE*direct* via either a CMI Client Application Server or a FIX Port, depending on how their systems are configured. Currently, the Exchange assesses a fee for each CMI Client Application Server. However, a firm may have many users, using different Login IDs, accessing the same CMI Client Application Server, allowing the firm to only pay the monthly fee once. Alternatively, a firm may use the same Login ID to access different CMI Client Application Servers, thereby paying multiple times for the same Login ID. At the same time, FIX Ports are shared, and firms pay the monthly fee for access to FIX Ports on a per Login ID basis (though this is not currently clear on the Fees Schedule). As such, those firms who have many Login IDs but are

[3] *See* ISE Schedule of Fees, page 9.

accessing the same CMI Client Application Server are avoiding paying a fee for each Login ID. The Exchange proposes to rectify this issue by charging for each CMI Login ID, and to clarify that access via a FIX Port is also per Login ID. The amounts of the rates are the same, so there would be no preference for firms using either access point. This change, too, would allow the Exchange to recoup some of the costs related to the investment in upgrading the connectivity equipment, as well as maintain this new equipment in the future.

The Exchange also proposes to increase co-location fees to $50 per month per ''U'', or $100 per month per ''U'' for Sponsored Users (the term ''U'' is used to indicate an equipment unit 1.75'' high with a maximum power of 125 watts per U space). The Exchange recently upgraded this equipment as well, and the increased co-location fees would allow the Exchange to recoup some of the costs associated with this investment and maintain this upgraded equipment in the future. The amount of these fees is still lower than those assessed on a number of other exchanges. For example, NASDAQ OMX PHLX LLC (''Phlx'') charges a fee of $150 per U.[4]

Finally, the Exchange proposes to add the CBOE Trading Floor Terminal fee to the Fees Schedule. The Exchange provides a physical computer terminal for brokers to access the CBOE trading systems. The purpose of the $250 per month fee for use of the terminals is to recoup the costs associated with purchasing and maintaining the terminals.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities.

The proposed change to increase co-location fees is reasonable because the new fees are still lower than those assessed on other exchanges[7] and is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants.

The proposed change to increase the Network Access Port fees and clarify that such fees are for 1 gigabyte access is reasonable because the fees are within the same range as those assessed on other exchanges.[8] This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants.

The proposed change to assess CMI CBOE*direct* connectivity charges based on Login ID, as opposed to Client Application Server, is reasonable because the fees for such connectivity, on a per Login ID basis, will be the same as those for FIX connectivity, and is equitable and not unfairly discriminatory because market participants desiring connectivity will now be paying the same amount for a connection via either FIX or CMI.

Assessing higher fees for Sponsored Users is equitable and not unfairly discriminatory because Sponsored Users are able to access the Exchange and use the equipment provided without purchasing a trading permit. As such, Trading Permit Holders who have purchased a trading permit will have a higher level of commitment to transacting business on the Exchange and using Exchange facilities than Sponsored Users.

The proposed change to add the CBOE Trading Floor Terminal fee to the Fees Schedule is reasonable because the amount is within the range of other fees assessed for trading floor terminal rental[9] and is equitable and not unfairly discriminatory because the fee will be assessed to all market participants.

Finally, the proposed change to clarify that the Exchange fees for FIX connectivity are assessed on a per Login ID basis furthers the objectives of Section 6(b)(5)[10] of the Act in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by eliminating any confusion regarding the basis on which such fees are assessed.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–094 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–094. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[4] *See* Phlx Fee Schedule, Section 6.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* Note 4.

[8] *See* Note 3.

[9] *See* Exchange Fees Schedule, Section 8(F)(10).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–094, and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26533 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65517; File No. SR–CBOE–2011–097]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Schedule

October 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2011, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule regarding the Marketing Fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its Marketing Fee Program to extend for an additional three months a pilot program it implemented on December 1, 2010,[3] and extended on April 1, 2011[4] and July 1, 2011[5] relating to the assessment of the marketing fee in the SPY option class. Specifically, CBOE previously determined not to assess the marketing fee on electronic transactions in SPY options, except that it would continue to assess the marketing fee on electronic transactions resulting from its Automated Improvement Mechanism (''AIM'') pursuant to CBOE Rule 6.74A and transactions in open outcry (the ''Waiver''). This pilot program is scheduled to terminate on September 30, 2011, and CBOE now proposes to extend it until December 31, 2011.

As CBOE stated in its rule filing establishing this three month pilot program, this proposed change is intended to attract more customer volume to the Exchange in the SPY option class and to allow CBOE market-makers to better compete for order flow. CBOE noted that the SPY option class is unique in the manner in which it trades and is one of the most active option classes. CBOE also noted that DPMs and Preferred Market-Makers can utilize the marketing fee funds to attract orders from payment accepting firms that are executed in AIM and in open outcry. Finally, CBOE noted that it believes that the marketing fee funds received by payment accepting firms may be used to offset transaction and other costs related to the execution of an order in AIM and in open outcry, including in the SPY option class. CBOE believes that the current demographics of electronic SPY option order flow is more driven by the displayed best bid or offer (''BBO'') and size than payment for order flow considerations, and thus assessment of the marketing fee for those transactions is not a differentiator at this time.

For the reasons noted above, CBOE believes that it would make sense to extend the pilot program until December 31, 2011. CBOE believes that it is beneficial to continue to assess the fee on the limited bases as proposed and will continue to enable CBOE to compete for order flow in the SPY option class. However, because the SPY option class is unique in the manner in which it trades and is one of the most active option classes, CBOE would like to continue to evaluate for an additional three months the effect of not assessing the fee on all electronic transactions in the SPY option class, except for transactions resulting from AIM and in open outcry.

The Exchange also proposes to amend its Fees Schedule to remove the security EEM from a list of options on whom the marketing fee to be collected is $0.00. EEM is the acronym for the exchange-traded fund (''ETF'') iShares MSCI Emerging Markets Index Fund. The Exchange wishes to remove EEM from the abovementioned list. Hereafter, the marketing fee for EEM transactions would be $0.25 per contract, as it is with nearly all other ETFs. The purpose of this change is to increase volume on EEM options. By assessing a marketing fee on EEM transactions, the Exchange will be able to use the money collected to attract volume, pursuant to the Exchange's marketing fee plan. The Exchange believes that the demographics of EEM options order flow is inclined to seek economic considerations such as payment for order flow, so a marketing fee for EEM trades is necessary to attract EEM volume and liquidity.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 63470 (December 8, 2010), 75 FR 78284 (December 15, 2010) (SR–CBOE–2010–108).

[4] *See* Securities Exchange Act Release No. 64212 (April 6, 2011), 76 FR 20411 (April 12, 2011) (SR–CBOE–2011–033).

[5] *See* Securities Exchange Act Release No. 64818 (July 6, 2011), 76 FR 40978 (July 12, 2011) (SR–CBOE–2011–060).

2. Statutory Basis

The proposed rule change to extend the Waiver is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders in that it is intended to attract more customer volume on the Exchange in SPY options. The SPY option class is one of the most active and liquid classes and trades with a significant electronic trading volume. Because of its current trading profile, CBOE believes it might be better able to attract electronic liquidity by not assessing the marketing fee on electronic SPY transactions and therefore proposes to extend the current waiver. However, CBOE believes that continuing to collect the marketing fee on open outcry transactions, as well as electronic orders submitted to AIM for price improvement, from market makers that trade with customer orders from payment accepting firms would continue to attract liquidity in SPY to the floor and AIM mechanism, respectively. Accordingly, CBOE believes continuing the waiver is equitable because it reflects the trading profile of SPY and is designed and intended to attract additional order flow in SPY to the Exchange, which would benefit all market participants.

The proposed rule change to change the marketing fee assessed on EEM transactions furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders and other persons using Exchange facilities. The amount of the fee, $0.25 per contract, is reasonable, as it is the same amount as is charged for transactions in other ETFs. The assessment of the fee is equitable and not unfairly discriminatory because it is designed and intended to attract additional order flow in EEM to the Exchange, which would increase liquidity and benefit all market participants, and because the same fee is assessed similar transactions in nearly all other ETFs.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–097. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–097, and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26531 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65516; File No. SR–BATS–2011–040]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Inbound Router, as Described in Rule 2.12

October 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2011, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed with the Commission a proposal to extend the pilot program so that the Exchange can receive inbound routes of equities orders through BATS Trading, Inc. (''BATS Trading''), the Exchange's routing broker-dealer, from BATS Y-Exchange, Inc. (''BYX'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, BATS Trading is the approved outbound order routing facility of BYX.[3] The Exchange, through BATS Trading, has also been authorized to receive inbound routes of equities orders by BATS Trading from BYX.[4] The Exchange's authority to receive inbound routes of equities orders by BATS Trading from BYX is subject to a pilot period of twelve months, ending October 15, 2011. The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional six months, through April 15, 2012. This is reflected in the proposed amendment to BATS Rule 2.12(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from BATS Trading acting in its capacity as a facility of BYX, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via BATS Trading, including the attendant obligations and conditions.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it would permit the Exchange to continue receiving inbound routes of equities orders from BATS Trading, in a manner consistent with prior approvals and established protections.[10] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without undue delay through April 15, 2011 while the Exchange's proposal to make the pilot permanent is under consideration.[11] Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[3] *See* Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (Order Approving Application of BATS Y-Exchange, Inc. for Registration as a National Securities Exchange).

[4] *See* Securities Exchange Act Release No. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt BATS Rule 2.12, Entitled ''BATS Trading, Inc. as Inbound Router'' and To Make Related Changes) (the ''Inbound Router Notice'').

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] The Exchange plans to submit a proposal prior to the expiration of the new pilot period to make permanent the Exchange's authority to receive direct inbound routes of equities orders via BATS Trading.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] *See* SR–BATS–2011–040, Item 7.

[11] *See supra* note 7.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2011–040 and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26529 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65515; File No. SR–BYX–2011–026]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Inbound Router, as described in Rule 2.12

October 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2011, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed with the Commission a proposal to extend the pilot program so that the Exchange can receive inbound routes of equities orders through BATS Trading, Inc. (''BATS Trading''), the Exchange's routing broker-dealer, from BATS Exchange, Inc. (''BZX'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, BATS Trading is the approved outbound order routing facility of BZX.[3] The Exchange, through BATS Trading, has also been approved to receive inbound routes of equities orders by BATS Trading from BZX.[4] The Exchange's authority to receive inbound routes of equities orders by BATS Trading from BZX is subject to a pilot period of twelve months, ending October 15, 2011. The Exchange hereby seeks to extend the previously approved pilot period (with the attendant obligations and conditions) for an additional six months, through April 15, 2012. This is reflected in the proposed amendment to BYX Rule 2.12(b).

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from BATS Trading acting in its capacity as a facility of BZX, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via BATS Trading, including the attendant obligations and conditions.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58375 (August 21, 2008), 73 FR 49498 (August 21, 2008) (Order Approving Application of BATS Exchange, Inc. for Registration as a National Securities Exchange).

[4] *See* Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (Order Approving Application of BATS Y-Exchange, Inc. for Registration as a National Securities Exchange).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] The Exchange plans to submit a proposal prior to the expiration of the new pilot period to make permanent the Exchange's authority to receive direct inbound routes of equities orders via BATS Trading.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it would permit the Exchange to continue receiving inbound routes of equities orders from BATS Trading, in a manner consistent with prior approvals and established protections.[10] The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot period to be extended without undue delay through April 15, 2012 while the Exchange's proposal to make the pilot permanent is under consideration.[11] Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] *See* SR–BYX–2011–026, Item 7.

[11] *See supra* note 7.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BYX–2011–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2011–026. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2011–026 and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26527 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65504; File No. SR–NYSEArca–2011–71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Options Rule 6.87 (Obvious and Catastrophic Errors)

October 6, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 29, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Options Rule 6.87 (Obvious and Catastrophic Errors). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NYSE Arca Options Rule 6.87 (Obvious

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and Catastrophic Errors) as described below.

Applicability

The Exchange proposes to amend Rule 6.87 to reflect that, unless otherwise stated, the provisions therein are applicable to electronic transactions only.[4]

Erroneous Prints & Quotes in the Underlying Security

The Exchange proposes to make the following changes relating to erroneous prints or quotes in the underlying security: [5]

1. Adjustments

Rule 6.87(a)(4) currently provides only for nullifications with respect to erroneous prints, whereas Rule 6.87(a)(5) provides for nullifications and adjustments for erroneous quotes. For consistency, the Exchange proposes to amend Rule 6.87(a)(4) to allow for adjustments and nullifications of erroneous prints in the underlying security.[6] The Exchange also proposes to clarify that such adjustment or nullification would be in the same manner and subject to the same conditions as set forth in Rule 6.87(a)(3) for Obvious Errors.

2. Average Quote Width

Rule 6.87(a)(4) and (5) currently provide that the ''average quote width'' thereunder is determined by adding the quote widths of each separate quote during the two minute time period before and after the erroneous print or erroneous quote. The Exchange proposes to revise the provisions used to determine the average quote width and instead make such a determination by adding the quote widths of sample quotations at regular 15-second intervals during the two minute time period before and after the erroneous quote or print. Such a change would make the administration of Rule 6.87(a)(4) and (5) less time consuming and burdensome, while also aligning the Exchange's method of calculation with the methods used by other options exchanges.[7]

3. Designation of Underlying Security or Market

The erroneous print and quote provisions of Rule 6.87(a)(4) and (5) currently only address the security underlying the particular option. The Exchange proposes to modify these provisions to allow the Exchange to designate the applicable underlying security(ies) or related instruments for any option.[8]

Under the revised rule, the Exchange would identify the particular underlying security—or with respect to ETF(s), HOLDRS(s), and index options the related instrument(s) that would be used to determine an erroneous print or quote—and would also identify the relevant market(s) trading the underlying security or related instrument to which the Exchange would look for purposes of applying the obvious error analysis. The ''related instrument(s)'' may include related ETF(s), HOLDRS(s), and/or index value(s),[9] and/or related futures product(s),[10] and the ''relevant market(s)'' may include one or more markets. The underlying security or related instrument(s) and relevant market(s) would be designated by the Exchange and announced via Regulatory Bulletin. For a particular ETF, HOLDRS, index value and/or futures product to qualify for consideration as a ''related instrument,'' the revised rule would require that the option class and related instrument be derived from or designed to track the same underlying index.

Thus, as an example for illustrative purposes only, for options on the Powershares QQQ Trust, Series 1 (the ''Nasdaq 100 ETF''), the Exchange may determine to designate the underlying ETF (ETF symbol ''QQQ'') and the primary market where it trades, as well as a related futures product overlying the Nasdaq 100 Index and the primary market where that futures product trades, as the instruments that would be considered by the Exchange in determining whether an erroneous print or an erroneous quote has occurred that would form the basis for an adjustment or nullification of a transaction in the related options.[11] As another example for illustrative purposes only, for the Exchange's class of options on International Business Machines Corporation, the underlying security would be its common stock, which trades under the symbol IBM. The Exchange may determine to designate one or more underlying stock exchanges as the ''relevant market(s),'' such as the New York Stock Exchange LLC (''NYSE'') and the NYSE Amex LLC (''NYSE Amex'').[12] The proposed

[4] Rule 6.87 was originally applicable to the Exchange's ''Auto-Ex'' electronic system, not manual or open-outcry trading, and has been amended on an incremental basis over time. *See, e.g.,* Securities Exchange Act Release Nos. 48538 (September 25, 2003), 68 FR 56858 (October 2, 2003) (SR–PCX–2002–01); 50549 (October 15, 2004), 69 FR 62107 (October 22, 2004) (SR–PCX–2004–87); and 53221 (February 3, 2006), 71 FR 6811 (February 9, 2006) (SR–PCX–2005–102).

[5] *See* Rule 6.87(a)(4) and (5). The changes to these provisions are based on Chicago Board Options Exchange (''CBOE'') Rule 6.25. *See* Securities Exchange Act Release No. 59981 (May 27, 2009), 74 FR 26447 (June 2, 2009) (SR–CBOE–2009–024).

[6] *See, e.g.,* CBOE Rule 6.25(a)(4).

[7] *See, e.g.,* CBOE Rule 6.25(a)(4)(ii) and CBOE Rule 6.25(a)(5)(ii).

[8] *See, e.g.,* CBOE Rule 6.25(a)(4) and CBOE Rule 6.25(a)(5).

[9] An ''index value'' is the value of an index as calculated and reported by the index's reporting authority. Use of an index value would only be applicable for purposes of identifying an erroneous print in the underlying security (and not an erroneous quote).

[10] The Exchange is only proposing that it may designate underlying or related ETF(s), HOLDRS(s), and/or index value(s), and/or related futures product(s). The Exchange is not proposing to designate any of the individual underlying stocks (or related options or futures on any of the individual underlying stocks) that comprise a particular ETF, HOLDR or index. Any such proposal would be the subject of a separate rule filing.

[11] Using this example, under the revised rule, the designated instruments and markets would be announced by Regulatory Bulletin. Thereafter, for a transaction in the QQQ options class to be adjusted or nullified due to an erroneous print in an underlying security or related instrument that is later cancelled or corrected, the trade must be the result of (i) an erroneous print in the underlying Nasdaq 100 ETF that is higher or lower than the average trade in the underlying Nasdaq 100 ETF on the designated relevant market during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for the ETF during the same period, or (ii) an erroneous print in the designated futures product overlying the Nasdaq 100 Index that is higher or lower than the average trade in the designated futures product on the designated relevant market during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for the futures product during the same period. For an options transaction to be adjusted or nullified due to an erroneous quote in an underlying or related instrument, an erroneous quote would occur when (i) the underlying Nasdaq 100 ETF has a width of at least $1.00 and has a width at least five times greater than the average quote width for such ETF on the designated relevant market during the time period encompassing two minutes before and after the dissemination of such quote, or (ii) the designated futures product overlying the Nasdaq 100 Index has a width of at least $1.00 and has a width at least five times greater than the average quote width for such futures product on the designated relevant market during the period encompassing two minutes before and after the dissemination of such quote.

[12] Using this example, under the revised rule, the relevant market(s) would be announced by Regulatory Bulletin. Thereafter, for a transaction in the IBM options class to be adjusted or nullified due to an erroneous print in an underlying security that is later cancelled or corrected, the trade must be the result of an erroneous report of the underlying IBM stock value on NYSE or NYSE Arca that is higher or lower than the average price in the stock on the NYSE or NYSE Arca market, as applicable, during a two minute period before and after the erroneous report by an amount at least five times higher or lower than the difference between the highest and lowest index values during the same period. To be adjusted or nullified due to an erroneous quote in the underlying security, an erroneous quote would occur when the IBM quote on the NYSE or NYSE Arca market, as applicable, has a width of at least $1.00 and has a width at least five times greater than the average quote width for

Continued

change is intended to provide relief in those scenarios where an erroneous option transaction may occur as the result of an erroneous print or erroneous quote in markets other than the primary market for the underlying security.

The Exchange believes the proposed change recognizes that market participants trading in the equity, index, ETF and HOLDRS options may base their option prices on trading in various products and markets, while maintaining reasonable and objective criteria for these types of obvious error reviews.

No Bid Series

As discussed below, the Exchange proposes to renumber Commentary .04 to Rule 6.87 as Rule 6.87(a)(6), which provides that a buyer of an option with a zero bid may request that such execution be busted. This would include certain proposed substantive changes, including with respect to the circumstances under which such an execution could be busted by specifying that certain bids and offers will not be included within such a determination, and explaining the treatment of different groups of series in an option with non-standard deliverables being treated as a separate options class for purposes of the rule.[13] These changes would benefit buyers of an option with a zero bid by adding greater specificity to the circumstances under which such a buyer may request that such execution be busted.

Catastrophic Error Theoretical Price

For purposes of determining whether a Catastrophic Error has occurred on the Exchange, the Theoretical Price of an option currently is (A) if the series is traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, that comprise the National Best Bid or Offer (''NBBO''), as disseminated by the Options Price Reporting Authority (''OPRA'') or (B) if there are not quotes for comparison purposes, as determined by a designated Trading Official.[14] The Exchange proposes that a designated Trading Official also determine the Theoretical Price in circumstances where the bid/ask differential of the NBBO for the affected series just prior to the erroneous transactions was at least two times the permitted bid/ask differential pursuant to Rule 6.37(b)(1)(A)–(E). This proposed change would align the determination of what constitutes the Theoretical Price for both Catastrophic and Obvious Errors and is consistent with the methods used by other options exchanges.[15]

Technical and Clarifying Changes

The Exchange proposes the following technical and clarifying changes to the existing text of Rule 6.87:[16]

- First, the introductory text of Rule 6.87(a) would be amended to clarify that an OTP Holder or person associated therewith may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of Rule 6.87(b), the conditions of Rule 6.87(a)(3)—Obvious Errors, Rule 6.87(a)(4)—Erroneous Print in Underlying, Rule 6.87(a)(5)—Erroneous Quote in Underlying, or Rule 6.87(a)(6)—No Bid Series are satisfied.
- Second, Rule 6.87(a)(3)(A) and (B) would be renumbered as Rule 6.87(b)(1) and (3), respectively. Rule 6.87(b)(2) would be added to clarify that once a party to a transaction has applied for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered. Rule 6.87(a)(3)(C) would be renumbered as Rule 6.87(a)(3).
- Third, Rule 6.87(a)(6) would be renumbered as Rule 6.87(c) and re-titled ''Obvious Error Panel'' to clarify the content of the text therein. This change would also include text clarifying the applicability to a ''party to a determination,'' as rendered by the Exchange, instead of a ''party to an Obvious Error,'' as the current text reads.
- Fourth, Rule 6.87(b), which pertains to Catastrophic Errors on the Exchange, would be renumbered as Rule 6.87(d). This would include, among other minor changes, the heading in the right column of the chart in subsection (3)(D) thereto being modified to clarify that the values thereunder are the adjustment amounts, not the minimum amount to qualify as a catastrophic error.
- Lastly, the text of Commentary .04 to Rule 6.87 would be deleted and Commentary .04 would be ''reserved,'' because, as discussed above, the circumstances where a buyer of an option with a zero bid may request that such execution be busted would be moved to Rule 6.87(a)(6).

The aforementioned technical changes require that cross-references to various subsections throughout Rule 6.87 be updated, as proposed herein. Additional updates to cross-references within Rule 6.87, including the subsections pertaining to erroneous prints or quotes in the underlying, are necessary for clarification purposes. The Exchange also proposes to update a cross-reference to Rule 6.87 found within Rule 6.89. Additionally, the Exchange proposes to amend the text within new Rule 6.87(a)(3)(C) and (D) to clarify that the option contract quantity of any adjustment is with respect to an erroneous sell (buy) transaction and that the size referenced is the disseminated bid (offer) size.[17] New Rule 6.87(a)(3)(C) and (D) would also be amended to reflect that such disseminated bid (offer) size shall be determined by looking to the competing options exchange(s) that comprise the national best bid (offer), as disseminated by the Options Price Reporting Authority at the time of the Obvious Error, instead of the Exchange with the most liquidity in that option class in the previous two calendar months.[18]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange understands that, in approving proposals of other exchanges related to adjusting and nullifying option trades involving obvious errors, the Commission has focused on the need for specificity and objectivity with respect to exchange determinations and processes for reviewing such determinations.[21] In this regard, the Exchange believes that the proposed rule change would clarify the content of the Exchange's rule for adjusting and nullifying trades, including obvious

IBM on the relevant market during the time period encompassing two minutes before and after the dissemination of such quote.

[13] *See, e.g.,* CBOE Rule 6.25(a)(2).

[14] *See* Rule 6.87(b), which, as proposed below, would be renumbered as Rule 6.87(d).

[15] *See, e.g.,* CBOE Rule 6.25(a)(1)(iv), which is applicable for both Obvious and Catastrophic Errors on CBOE.

[16] The Exchange is reformatting Rule 6.87 to make it more consistent with CBOE Rule 6.25.

[17] This change would align the Exchange's rule text with that of other exchanges. *See, e.g.,* NYSE Amex Rule 975NY.

[18] *Id.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See, e.g., supra* note 5. *See also* Securities Exchange Act Release No. 63692 (January 11, 2011), 76 FR 2940 (January 18, 2011) (Order Granting Approval of SR–Phlx–2010–163).

errors, while also simplifying the administration of the rule in order to more efficiently render such determinations. The Exchange further believes that the proposed rule change would benefit investors and be in the public's interest because it would provide increased clarity and specificity concerning the objective standards used by the Exchange when making trade nullification and adjustment determinations.

The Exchange also believes that the increased specificity resulting from the proposed rule change would benefit investors and market participants that are members of multiple exchanges by more closely aligning the Exchange's rules with respect to obvious errors with those of other exchanges, including text to reflect that, unless otherwise stated, the provisions of Rule 6.87 are applicable to electronic transactions only. In this respect, the proposed rule change helps foster certainty for market participants trading on multiple exchanges.

Accordingly, the Exchange believes that the increased specificity resulting from the proposed rule change, combined with the continued objective nature of the Exchange's process for rendering and reviewing trade nullification and adjustment determinations, is consistent with prior guidance from the Commission, is consistent with the Act and is consistent with the maintenance of a fair and orderly market and the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–Arca–2011–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–Arca–2011–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. nd 3 p.m. Copies of the filing also will be available for inspection and copying at the Exchange's principal office, and on its Web site at *http://www.nyse.com*. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSE–Arca–2011–71 and should be submitted on or before November 4, 2011

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26511 Filed 10–13–11; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[25] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: 60 Day Notice and request for comments. 8(a) Business Development Program.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a currently approved information collection.

DATES: Submit comments on or before December 13, 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 Joan Elliston, Program Analyst, Office of Business Development, Small Business

Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joan Elliston, Program Analyst, 202–205–7190 *joan.elliston@sba.gov;* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. chapter 35, SBA is seeking public comments on the reporting and recordkeeping requirements that will affect small businesses that are seeking to maintain 8(a) Business Development program eligibility. Each such Participant firm will be required to submit certain information to SBA along with its business financials that evidences how participation in the 8(a) program has benefited the respective communities. Currently, such Participant firms submit business financials as part of the ''8(a) Annual Update''. The ''8(a) Annual Update'' will be amended to include potential benefits relating to funding cultural programs, employment assistance, jobs, scholarships, internships, subsistence activities, and other services to the affected community. This amendment to the ''8(a) Annual Update'' will be ''Attachment C: 8(a) Participant Benefits Report.'' As required by the 8(a) BD Program regulations, SBA will use the information to identify and track the benefits of participation that flow to Tribal, Alaskan Native, Native Hawaiian, and Community Development Corporation communities.

Title: ''8(a) Annual Update''.

Description of Respondents: Firms that are currently certified as Participant firms in the 8(a) Business Development program and are owned by one of the following entities: Tribe, Alaska Native Corporation (ANC), Native Hawaiian Organization (NHO), or Community Development Corporation (CDC).

Form Number: 1450.

Annual Responses: 360.

Annual Burden: 540.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2011–26642 Filed 10–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration #12871; Disaster #ZZ–00007; The Entire United States and U.S. Territories

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/01/2011.

Effective Date: 10/01/2011.

MREIDL Loan Application Deadline Date: 1 year after the essential employees is discharged or released from active duty.

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, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of Public Law 106–50, the Veterans Entrepreneurship and Small Business Development Act of 1999, and the Military Reservist and Veteran Small Business Reauthorization Act of 2008, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL).

Effective 10/01/2011, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict or have received notice of an expected call-up, and those employees are essential to the success of the small business daily operations.

The purpose of the MREIDL program is to provide funds to an eligible small business to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called up or expects to be called up to active duty in his or her role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active duty. For information/applications contact 1–800–659–2955 or visit *http://www.sba.gov.*

Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

The Interest Rate for eligible small businesses is 4.000.

The number assigned is 12871 0.

(Catalog of Federal Domestic Assistance Number 59002)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–26661 Filed 10–13–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

North Florida District Advisory Council

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the North Florida District Advisory Council. The meeting will be open to the public.

DATES: The meeting will be held on Thursday, November 3, 2011 from approximately 12 p.m. to 2 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the North Florida District Office, 7825 Baymeadows Way, Suite 100–B, Jacksonville, FL 32256.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the North Florida District Advisory Council. The North Florida District Advisory Council is tasked with providing advice and opinions to SBA regarding the effectiveness of and need for SBA programs, particularly within North Florida and for listening to what is currently happening in the Florida small business community.

The purpose of the meeting is to discuss the current economic condition for small businesses in the North Florida District area. The agenda will include: luncheon/meeting to hear from the members of the council from the Jacksonville area, and to hear from the SBA staff on SBA updates for the District.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the North Florida District Advisory Council must contact Nayana Sen by October 21, 2011 by fax or e-mail in order to be placed on the agenda. Nayana Sen, Business Development Specialist, 7825 Baymeadows Way, Suite 100–B, Jacksonville, FL 32256, (904) 443–1933, (904) 443–1980 (fax), or *Nayana.sen@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Nayana Sen, Business Development Specialist, at (904) 443–1933, or *Nayana.sen@sba.gov.*

Dated: October 7, 2011.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2011–26658 Filed 10–13–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7599]

Notice of Receipt of Cultural Property Request From the Government of the Republic of Bulgaria

Bulgaria, concerned that its cultural heritage is in jeopardy from pillage, made a request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. United States Department of State received this request in September 2011. Bulgaria's request seeks U.S. import restrictions on archaeological and ethnological material from Bulgaria dating to the Neolithic Period (7500 B.C.) through the nineteenth century A.D.

The specific contents of this request are treated as confidential government-to-government information, consistent with applicable U.S. law.

Information about U.S. implementation of the 1970 UNESCO Convention can be found at *http://exchanges.state.gov/heritage.* A public summary of Bulgaria's request will be posted on that Web site.

Dated: September 30, 2011.

Ann Stock,

Assistant Secretary of State for Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–26643 Filed 10–13–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7602]

Notice of Receipt of Cultural Property Request From the Government of the Republic of Belize

Belize, concerned that its cultural heritage is in jeopardy from pillage, made a request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. United States Department of State received this request in September 2011. Belize's request seeks U.S. import restrictions on archaeological material from Belize representing its Pre-Colombian heritage dating from the Preceramic (9000 B.C.) through the Spanish Colonial period (A.D. 1798).

The specific contents of this request are treated as confidential government-to-government information.

Information about U.S. implementation of the 1970 UNESCO Convention can be found at *http://exchanges.state.gov/heritage.* A public summary of Belize's request will be posted on that Web site.

Dated: September 30, 2011.

Ann Stock,

Assistant Secretary of State for Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–26646 Filed 10–13–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7600; Docket No. DOS–2011–0115; Docket No. DOS–2011–0116]

Notice of Closed Meeting (With Open Session) of the Cultural Property Advisory Committee

There will be a meeting of the Cultural Property Advisory Committee on November 15–17, 2011, at the U.S. Department of State, Annex 5, 2200 C Street, NW., Washington, DC.

During its meeting on November 15–16, the Committee will begin its review of a new cultural property request from the Government of the Republic of Bulgaria seeking import restrictions on archaeological and ethnological material [Docket No. DOS–2011–0115]; and from the Government of the Republic of Belize seeking import restrictions on archaeological material [Docket No. DOS–2011–0116]. On November 16, an open session to receive oral public comment on these requests will be held from 9 a.m. to 12 noon. Please see the links to the Public Summaries of these requests at *http://exchanges.state.gov/heritage/whatsnew.html.*

The Committee carries out its responsibilities in accordance with provisions of the Convention on Cultural Property Implementation Act (''the Act,'' 19 U.S.C. 2601 *et seq.*). The text of the Act, as well as related information, may be found at *http://exchanges.state.gov/heritage/culprop/html.*

If you wish to attend the open session, you should notify the Cultural Heritage Center of the Department of State at (202) 632–6301 no later than November 2, 2011, 5 p.m. (E.D.T.) to arrange for admission. Seating is limited. Special accommodation needs should be specified upon notification of attendance. The Committee agenda on November 15–17 also will include orientation (closed session) for new members as well as ethics and security briefings.

If you wish to make an oral presentation at the public session on November 16, you must request to be scheduled and must submit a written text of your oral comments no later than November 2 to allow time for distribution to Committee members prior to the meeting. Oral comments will be limited to allow time for questions from members of the Committee. All comments must relate specifically to the determinations under Section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602, pursuant to which the Committee makes findings. This statute can be found at the web site noted above.

You may also send written comments to the Committee. Again, your comments must relate specifically to the determinations under Section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602, pursuant to which the Committee must make findings.

Addresses: Submit all written materials, including the written texts of oral statements, via postal mail, commercial delivery, hand delivery, or through the eRulemaking Portal. If more than three (3) pages, 20 duplicates of written materials must be sent to the address below by commercial delivery. If you have access to the Internet and wish to make a comment of three or fewer pages regarding this Public Notice, please use the Federal eRulemaking Portal (see below). Our adoption of this procedure facilitates public participation and implements section 206 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2915. It also supports Secretary of State Hillary Rodham Clinton's Greening Diplomacy Initiative which aims to reduce the State Department's environmental footprint and reduce costs. *Comments by fax or by e-mail will not be accepted.* Please submit comments just once by November 2, 2011.

Postal Mail or Commercial Delivery. Cultural Heritage Center (ECA/P/C), SA–5, Fifth Floor, Department of State, Washington, DC 20522–0505.

- *Hand Delivery.* Cultural Heritage Center (ECA/P/C), Department of State, 2200 C Street, NW., Washington, DC 20037.
- *Federal eRulemaking Portal.* To submit comments electronically, go to *http://www.regulations.gov* and search on docket number DOS–2011–0115 for Bulgaria and on docket number DOS–

2011–0116 for Belize. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the dockets, is available on the site under ''How To Use This Site.''

Are Comments Private? No. Comments submitted in electronic form will be posted on the site *http://www.regulations.gov.* Because the comments will not be edited to remove any identifying or contact information, the Department of State cautions against including any information in an electronic submission that one does not want publicly disclosed (including trade secrets and commercial or financial information that may be considered privileged or confidential pursuant to 19 U.S.C. 2605(i)(1)). The Department of State requests that any party soliciting or aggregating comments received from other persons for submission to the Department of State inform those persons that the Department of State will not edit their comments to remove any identifying or contact information and, therefore, they should not include any information in their comments that they do not want publicly disclosed.

A Note on Closed Meetings: Portions of the meeting, will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), the latter of which stipulates that ''The provisions of the Federal Advisory Committee Act shall apply to the Cultural Property Advisory Committee except that the requirements of subsections (a) and (b) of section 10 and 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in the Committee's proceedings would compromise the Government's negotiation objectives or bargaining positions on the negotiations of any agreement authorized by this title.''

Dated: September 30, 2011.

Ann Stock,

Assistant Secretary, for Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–26648 Filed 10–13–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2011–0188]

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Nancy A. Mowry, Director, Departmental Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on October 7, 2011.

Brodi L. Fontenot,

Deputy Assistant Secretary for Administration.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Alicandri, Elizabeth
Arnold, Robert E.
Baxter, John R.
Brecht-Clark, Jan
Brown, Janice W.
Cheatham, James A.
Conner, Clara H.
Curtis, Joyce A.
Elston, Debra S.
Evans, Monique
Furst, Anthony T.
Gee, King W.
Gibbs, David C.
Griffith, Michael S.
Holian, Thomas P.
Kehrli, Mark
Knopp, Martin C.
Konove, Elissa K.
Liff, Diane R.
Lindley, Jeffrey A.
Lucero, Amy C.
Lwin, Maung Myint
Marchese, April Lynn
McElroy, Regina S.
Nadeau, Gregory
Nicol, David A.
Pagan-Ortiz, Jorge
Paniati, Jeffrey F.
Peters, Joseph I.
Prosperi, Patricia A.
Ridenour, Melisa Lee
Row, Shelley J.
Saunders, Ian C.
Shepherd, Gloria Morgan
Solomon, Gerald L.
St. Denis, Catherine
Stephanos, Peter J.
Suarez, Ricardo
Tischer, Mary Lynn
Toole, Patricia Ann
Trentacoste, Michael F.
Waidelich, Jr., Walter C.
Winter, David R.
Wlaschin, Julius

Federal Motor Carrier Administration

Amos, Anna J.
Bronrott, William
Griffin, Alais
Horan III, Charles
Leone, Geraldine K.
Minor, Larry W.
Pelcovits, Pamela
Quade III, William A.
Van Steenburg, John W.

Federal Railroad Administration

Coronel, Kim
Haley, Michael T.
Hedlund, Karen
Lauby, Robert
Logue, Michael
Nissenbaum, Paul
Rae, Karen J.
Strang, Jo E.
Yachmetz, Mark E.

Federal Transit Administration

Biehl, Scott A.
Carter, Dorval
Hynes-Cherin, Brigid
Linnertz, Ann M.
McMillan, Therese
Patrick, Robert C.
Rogers, Leslie T.
Simon, Marisol
Taylor, Yvette
Tuccillo, Robert
Valdes, Vincent
Welbes, Matthew

Maritime Administration

Bohnert, Roger
Brohl, Helen
Byrne, Joseph Andrew
Caponiti, James
Kumar, Sashi
Lesnick, H. Keith
McMahon, Christopher J.
Pixa, Rand
Tokarski, Kevin
Weaver, Janice G.

National Highway Traffic Safety Administration

Abraham, Julie
Beuse, Nathaniel
Brown, Michael
Carra, Joseph
Coggins, Colleen P.
Donaldson, K. John
Geraci, Michael
Guerci, Lloyd S.

Gunnels, Mary
Harris, Claude
Maddox, John M.
McLaughlin, Brian M.
McLaughlin, Susan
Medford, Ronald L.
Michael, Jeffrey P.
Pennington, Rebecca
Saul, Roger
Shelton, Terry
Simons, James F.
Smith, Daniel C.
Vincent, Kevin
Walter, Gregory A.
Wood, Stephen

Office of the Secretary

DeBoer, Joan
DeCarme, David G.
Eisner, Neil
Fields, George
Fontenot, Brodi
Forsgren, Janet
Geier, Paul
Gretch, Paul L.
Hazeur, Camille
Herlihy, Thomas W.
Homan, Todd
Horn, Donald
Hurdle, Lana
Jackson, Ronald
Jones, Mary N.
Jones, Maureen A.
Kaleta, Judith
Knapp, Rosalind
Lawson, Linda
Lee, Robert
Lefevre, Maria
Leusch Carnaroli, Herbert
Lowder, Michael W.
McDermott, Susan
Mowry, Nancy A.
Neal, Brandon
Osborne, Elizabeth
Petrosino-Woolverton, Marie
Podberesky, Samuel
Pradhan, Nitin
Rivait, David
Schmidt, Robert T.
Smith, Willie
Streitmatter, Marlise
Szabat, Joel M.
Thomson, Kathryn B.
Washington, Keith
Wells, John
Ziff, Laura
Zuckman, Jill

Pipeline and Hazardous Materials Safety Administration

Daugherty, Linda
El-Sibaie, Magdy A.
Mayberry, Alan
Summitt, Monica J.
Wiese, Jeffrey D.

Research and Innovative Technology Administration

Aylward, Anne
Dillingham, Steven
Johns, Robert
Russo, Anthony
Smith, Steven K.
Tompkins, Curtis
Winfree, Gregory

Saint Lawrence Seaway Development Corporation

Middlebrook, Craig H.
Pisani, Salvatore L.

[FR Doc. 2011–26586 Filed 10–13–11; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty-Fifth Meeting: RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186: Automatic Dependent Surveillance Broadcast (ADS–B) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held October 28, 2011 from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the RTCA Conference Rooms, 1150 18th Street, NW., Suite 910, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186, Automatic Dependent Surveillance—Broadcast (ADS–B) meeting. The agenda will include:

Specific Working Group Sessions

October 24th, 2011

- All Day, WG-4 Application Technical Requirements, MacIntosh-NBAA Room & Colson Board Room.

October 25th, 2011

- All Day, WH-4, This day only at NBAA, 1200 18th Street, NW., 4th Floor, Washington, DC 20036.

October 26th, 2011

- All Day, WG-4, Application Technical Requirements, MacIntosh-NBAA Room and Colson Board Room.

October 27th, 2011

- All Day, WG-3 and EUROCAE WG-51, SG-1—DO-260B/ED-102A Corrigendum-1, MacIntosh-NBAA Room.

October 27th, 2011

- All Day, WG-4, Application Technical Requirements, Colson Board Room.

October 27th, 2011

- All Day, WG-5—DO-282B Corrigendum-1, Joint Meeting with WG-3/SG-1. MacIntosh-NBAA Room.

October 28th, 2011

- Plenary Session (8 a.m.).

Agenda—Plenary Session—Agenda

October 28, 2011

****Joint Session With EUROCAE Working Group 51**

RTCA—Washington, DC—MacIntosh-NBAA Room & Hilton—ATA Room

- Chairman's Introductory Remarks.
- Review of Meeting Agenda.
- Review and Approval of the 54th Meeting Summary, RTCA Paper No. 112-11/SC186-309.
- Document Approval: DO-317A/ED-xxx—Aircraft Surveillance Application (ASA) System MOPS.
- Document Approval: Corrigendum-1 for DO-260B/ED-102A—1090MHz Extended Squitter MOPS.
- Document Approval: Corrigendum-1 for DO-282B—Universal Access Transceiver (UAT) MOPS.
- Document Approval: Supplement for DO-312—SPR/INTEROP for ATSA-ITP.
- Flight-deck Interval Management (FIM) MOPS Scope Proposal.
- ADS-B IM Coordination with SC-214/WG-78 for Data Link Rqts—Discussion—Status.
- FAA Surveillance and Broadcast Services (SBS) Program—Status.
- Working Group Reports.
  a. WG-1—Operations and Implementation:
  - TSAA OSED
  b. WG-2—TIS-B MASPS—no report.
  c. WG-3—1090 MHz MOPS—(*See agenda item #5.*).
  d. WG-4—Application Technical Requirements—(*See agenda item #4.*).
  e. WG-5—UAT MOPS—(*See agenda item #6.*).
  f. WG-6—Combined ADS-B & ASA

MASPS:
- MASPS Development Status & Schedule.
- Date, Place and Time of Next Meeting.
- New Business.
- Other Business.
- Review Action Items/Work Programs.
- Adjourn Plenary Session.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 6, 2011.

Robert L. Bostiga,

Manager, RTCA Advisory Committee.

[FR Doc. 2011–26621 Filed 10-13-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0097]

Pilot Project on NAFTA Trucking Provisions; Pre-Authorization Safety Audits

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

ACTION: Notice; response to public comments.

SUMMARY: On September 12 and 14, 2011, the Federal Motor Carrier Safety Administration (FMCSA) announced and requested public comment on data and information concerning the Pre-Authorization Safety Audits (PASAs) for two motor carriers that applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the commercial zones on the United States-Mexico border. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations. The Agency received responses to the PASA notices from 11 commenters. The purpose of this notice is to respond to those comments that were in the scope of the PASA notice.

ADDRESSES: You may search background documents or comments to the docket for this notice, identified by Docket Number FMCSA–2011–0097, by visiting the:

- *eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for reviewing documents and comments. Regulations.gov is available electronically 24 hours each day, 365 days a year; or
- *DOT Docket Room:* Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

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 Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Telephone (512) 916–5440 Ext. 228; e-mail *marcelo.perez@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2011, FMCSA announced in the **Federal Register** [76 FR 40420] its intent to proceed with the initiation of a United States-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities and commercial zones along the United States-Mexico border, as detailed in the Agency's April 13, 2011, **Federal Register** notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 [Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007].

In accordance with section 6901(b)(2)(B)(i), FMCSA is required to publish in the **Federal Register**, and provide sufficient opportunity for public notice and comment, comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that applied for authority to operate beyond the United States municipalities and commercial zones on the United States-Mexico border.

On August 25 and 26, FMCSA conducted PASAs on two Mexican carriers: Grupo Behr and Transportes Olympic. In accordance with section 6901, on September 12 and September 14, FMCSA published notices in the **Federal Register** [76 FR 56272, 56868], in which FMCSA announced that the two companies had successfully completed their PASAs and provided an opportunity for public comment on the data and information relating to those PASAs.

In accordance with section 6901, FMCSA requested public comment from all interested persons on the PASA information presented in the notice. All comments received before the close of business on the comment closing date were considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publically noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of such publication. No protests for either Grupo Behr or Transportes Olympic were received.

Response to Comments

FMCSA received 11 timely comments on its **Federal Register** notice. Seven of the 11 commenters provided general letters in support of the PASA results. These included the National Potato Council, the California Table Grape Commission, the National Pork Producers Council, the California Grape and Tree Fruit League, the Northwest Horticultural Council, the American Apparel and Footwear Association, and the U.S.-Mexico Chamber of Commerce.

Advocates for Highway and Auto Safety (Advocates), the Owner Operator Independent Driver Association (OOIDA), the International Brotherhood of Teamsters (Teamsters), and Knight Transportation provided comments questioning the PASAs for Grupo Behr and Transportes Olympic. In addition, these four groups provided more general comments on the pilot program itself. Those comments are outside of the scope of the PASA notices and will not be addressed in this notice.

PASA Process Issues

OOIDA questioned how PASAs could be completed so soon after the Office of

the Inspector General (OIG) published its August 22 report, citing concerns about the Agency's PASA process, and before FMCSA had submitted its report to Congress in response to the OIG report.

FMCSA Response

The OIG advised that FMCSA needed to finalize plans for how the Agency will comply with section 350(a) of Public Law 107–87, requirements to conduct 50 percent of the PASAs and compliance reviews in Mexico (section 350 of the Department of Transportation and Related Agencies Appropriations Act, 2002 [Pub. L. 107–87, 115 Stat. 833, 864, December 18, 2001]). The OIG did not question the Agency's PASA process. As both the Grupo Behr and Transportes Olympic PASAs were conducted in Mexico, the question raised by the OIG was not at issue. In addition, the Agency has completed its plans for ensuring compliance with section 350(a) since the August 22 report and has provided this information to the OIG.

FMCSA is required to submit its report to Congress in advance of initiating the pilot program, which it did on October 5, 2011. The Agency defines the initiation of the pilot program as the issuance of long-haul operating authority. FMCSA has not yet issued long-haul operating authority to any of the applicants.

Compliance With Section 6901

Advocates, OOIDA, and Teamsters questioned the level of information provided in the PASA notices and noted that section 6901 requires ''comprehensive'' data to be provided for notice and comment. Advocates recommended that the Agency publish the full records of the PASAs. Advocates also expressed concern that the public notice did not allow adequate time for review and comment.

Advocates and OOIDA expressed concern that information from Grupo Behr's and Transportes Olympic's participation in the Agency's previous demonstration project was not provided in the PASA notice. In addition, Advocates noted that FMCSA failed to provide public disclosure of information on the compliance reviews conducted of these carriers in 2010. Advocates and Teamsters asked that FMCSA provide public disclosure of all information on these carriers that is held by the Agency.

OOIDA provided a list of 14 additional questions to be answered in the PASA notices and requested that public information include identification of the vehicles inspected during the PASA. Additionally, OOIDA noted that the inspections for the participating vehicles were not yet in the Agency's Safety Measurement System (SMS).

OOIDA also advised that they requested copies of the applications for the two carriers and were denied copies.

FMCSA Response

FMCSA notes that it published the same categories of information in the notices for the PASAs conducted during the 2007–2009 demonstration project, and provided the same amount of time for notice and comment. As this is not a rulemaking action, the Agency does not agree that a 30 day review period is required or appropriate.

To facilitate the availability of information on the pilot program participants, FMCSA has created a link on FMCSA's public Web site—*http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx*—that contains pilot program information. Information on the demonstration program carriers is also available on this Web site, including prior compliance reviews conducted in 2010, the numbers of trucks and drivers participating under each carrier, information about numbers of inspections and the results of those inspections, FMCSA's reports on the monitoring of participating carriers, and other information about the program. This Web site also contains copies of the recent PASAs and further detail, including identification of the vehicles inspected and approved for use in the pilot.

Due to changes to FMCSA's information technology systems to support the pilot program, information from the previous demonstration project had to be removed from public view so that the system could be used for this pilot program. To ensure the most comprehensive record is available, however, FMCSA will make the demonstration project PASA information available on the public Web site.

Inspection information from the recent PASAs will become available in SMS during the monthly update following the upload of the inspections. FMCSA will also be making the results of these inspections available on the public Web site. Going forward, FMCSA will post copies of OP–1(MX) applications on its pilot program Web site at the time of publication of PASA results. Future PASA notices in the **Federal Register** will indicate the availability of this information on the Web site. The applications for Grupo Behr and Olympic have also been added to this site.

Grupo Behr

Advocates and Teamsters pointed out that Grupo Behr's out-of-service rate is 28.6%, which is higher than the national average of 20.7%. In addition, both commenters noted that Grupo Behr's vehicle maintenance rating is 45.8%. Advocates further noted that Grupo Behr had 40 vehicle violations in the 24 months prior to August 26, 2011. OOIDA indicated that publicly-available information indicates that Grupo Behr has an inadequate safety history.

OOIDA researched the vehicle identification numbers from inspections reports and questioned if Grupo Behr would be using a 1991 Class 8 Freightliner, which does not comply with the EPA requirement for vehicles of model year 1998 or later.

OOIDA questioned the safety data collected on Grupo Behr's straight trucks and asked how this is affected by SMS segmentation. In addition, OOIDA challenged the accuracy of Grupo Behr's vehicle BASIC and alleged that the event group–the group of carriers that Grupo Behr is compared against in SMS–''watered down'' their scores. Overall, OOIDA concluded that Grupo Behr's inspections indicate a lack of systemic maintenance.

Advocates asked if the drivers and vehicles to be used in the pilot program had been subject to any of Grupo Behr's out-of-service orders.

The Teamsters noted that Grupo Behr's insurance history has a period between July 2007 and April 2010 where ''cancelled'' is listed six times. Based on this information, the Teamsters questioned if Grupo Behr will be able to obtain and maintain insurance.

FMCSA Response

Based on the information provided by Advocates, OOIDA, and Teamsters, the Agency is conducting additional reviews of Grupo Behr's inspections and vehicles. As a result, the Agency will not issue long-haul operating authority to Grupo Behr until such time as this review is complete and the above noted comments are fully addressed in a subsequent **Federal Register** notice.

Transportes Olympic

OOIDA searched media records and reviewed online data and concluded that Transportes Olympic is owned by an individual who also owns two U.S.-based enterprise motor carriers. OOIDA advised that the available safety records for these U.S. motor carrier companies show that they are deficient in the Driver Fitness BASIC. OOIDA expressed concern that the PASA notice was silent

on Transportes Olympic's possible affiliations.

OOIDA also alleged that Transportes Olympic's scores are artificially low because law enforcement did not cite them as out-of-service for certain out-of-service violations.

Advocates noted that Transportes Olympic received commercial zone authority in 2009, but SMS shows no information on this company. As a result, Transportes Olympic's SMS scores indicate ''insufficient data'' or ''not public.''

FMCSA Response

In its application and during the PASA, Transportes Olympic acknowledged its affiliation with two U.S. carriers. The safety records of these two carriers include a large number of English language proficiency violations, which provide the basis for the deficiency in the Driver Fitness BASIC. In the pilot program, however, FMCSA is testing participating drivers for English language proficiency during the PASA and is only approving drivers with adequate English language proficiency for participation. Accordingly, these violations are not relevant to the approval of Transportes Olympic's application for provisional operating authority under the pilot program.

Transportes Olympic received its commercial zone authority in 2009, but has not been operating under that authority in the United States. As a result, there is no information in FMCSA's system on this company. During the PASA, however, the company provided information on its safety management processes that was validated by the FMCSA auditor.

As a result, FMCSA continues to find that Transportes Olympics meets the requirements of the pilot program. Therefore, FMCSA will issue long-haul operating authority to this carrier.

Issues Outside of the Scope of the PASA Notice

Commenters raised issues regarding the pilot program's design and implementation and the review of additional driver's license information that are outside of the scope of the PASA notices. In addition, these issues were already considered in publishing the Agency's July 8, 2011, **Federal Register** notice announcing the pilot program and the Agency's Environmental Assessment published on October 3, 2011 [76 FR 61138]. As a result, they will not be addressed in this notice.

Issued on: October 11, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–26687 Filed 10–12–11; 11:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2011–001–N–14]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

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 December 13, 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., S.E., Mail Stop 17, 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 2130–0506.'' 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 *kim.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 17, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 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 the currently approved ICR that FRA will submit for clearance by OMB as required under the PRA:

Title: Identification of Cars Moved in Accordance with Order 13528.

OMB Control Number: 2130–0506.

Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (now codified under 49 CFR 232.3).

Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR 232.3(d)(3), which requires that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the order. § 232.3(d)(3) does not require retaining cards or tags. When a car bearing a tag for movement under this provision arrives at its destination, the tags are simply removed. This requirement/record comes into play only when a railroad finds it necessary to move equipment as specified above. FRA estimates that approximately 400 cars per year are moved under this Order. As stipulated above, equipment must be tagged on both sides. FRA estimates that it takes approximately five (5) minutes to record the necessary information on each tag and attach the tags to the equipment. There is no retention requirement relative to the tags at destination. Total annual burden for this requirement is 67 hours.

Affected Public: Railroads.

Respondent Universe: 754 Railroads.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
232.3—Identification of Cars Moved in Accordance with Order 13528..	754 Railroads	800 tags	5 minutes	67

Total Responses: 800.

Estimated Total Annual Burden: 67 hours.

Cost to Respondents: Printing of 800 tags at approximately $.05 each.

Total Cost to Respondents $40.00.

Status: Extension of a Currently Approved Collection.

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 October 6, 2011.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2011–26649 Filed 10–13–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35555]

Midwest Rail d/b/a Toledo, Lake Erie and Western Railway—Lease and Operation Exemption—Toledo, Lake Erie and Western Railway and Museum, Inc.

Midwest Rail d/b/a Toledo, Lake Erie and Western Railway (Toledo), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Toledo, Lake Erie and Western Railway and Museum, Inc. (the Museum), and to operate, a 10-mile rail line extending between a point of connection with Norfolk Southern Railway's (NSR) trackage at milepost 15 in Waterville, Ohio, and the end of the line at milepost 25 in Grand Rapids, Ohio (the Line).

In the notice, Toledo states that the Line was originally constructed by the Toledo, St. Louis and Western Railroad and was subsequently acquired by the New York, Chicago & St. Louis Railway as part of its Cloverleaf Division. NSR's predecessor, the Norfolk & Western Railway, subsequently acquired the Line, abandoned it, and sold the track to the Museum. Currently, only excursion passenger rail service is being provided on the Line by the Museum.

As a result of this transaction, and pursuant to an agreement with the Museum, Toledo will provide common carrier rail service over the Line, connecting with and interchanging traffic with NSR, and also will provide excursion passenger service. Toledo states that the Museum is currently preparing a lease and operating agreement for the parties to sign and that the agreement should be executed in the very near future, before the notice becomes effective.[1]

According to Toledo, there are no agreements applicable to the Line imposing any interchange commitments. Toledo notes that the Line does not physically connect with any rail lines other than that owned by NSR.

The earliest the transaction can be consummated is October 30, 2011, the effective date of the exemption (30 days after the exemption was filed).

Toledo certifies that its projected annual revenues as a result of this transaction will not exceed $5 million annually and will not result in it becoming a Class I or Class II rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than October 21, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35555, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 11, 2011.

By the Board.

Joseph H. Dettmar,

Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–26632 Filed 10–13–11; 8:45 am]

BILLING CODE 4915–01–P

[1] Once Toledo enters into the agreement, it should submit the agreement into the record in this proceeding in order to provide sufficient information and documentation for the Board to determine whether the owner-lessor can exert undue control over the lessee-carrier's operations. *See Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc.,* FD 35296, slip op. at 3 (STB served Aug. 31, 2010); *N. Shore R.R.—Acquis. & Operation Exemption—PPL Susquehanna, LLC,* FD 35377, slip op. at 3 (STB served Apr. 26, 2011).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8845

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 8845, Indian Employment Credit.

DATES: Written comments should be received on or before December 13, 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: Indian Employment Credit.

OMB Number: 1545–1417.

Form Number: 8845.

Abstract: Under Internal Revenue Code section 45A, employers can claim an income tax credit for hiring American Indians or their spouses to work in a trade or business on an Indian reservation. Form 8845 is used by employers to claim the credit and by IRS to ensure that the credit is computed correctly.

Current Actions: There are no changes being made to the Form 8845 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 822.

Estimated Time per Respondent: 5 hrs., 27 min.

Estimated Total Annual Burden Hours: 4,332.

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: October 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–26678 Filed 10–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8894

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 8894, Request to Revoke Partnership Level Tax Treatment Election.

DATES: Written comments should be received on or before December 13, 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, 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: Request to Revoke Partnership Level Tax Treatment Election.

OMB Number: 1545–1955.

Form Number: 8894.

Abstract: IRC section 6231(a)(1)(B)(ii) allows small partnerships to elect to be treated under the unified audit and litigation procedures. This election can only be revoked with the consent of the IRS. Form 8894 will provide a standardize format for small partnership to request this revocation and for the IRS to process it.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour, 52 minutes.

Estimated Total Annual Burden Hours: 186.

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: October 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–26679 Filed 10–13–11; 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 Below-Market Loans.

DATES: Written comments should be received on or before December 13, 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 regulation 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: Below-Market Loans.

OMB Number: 1545–0913. *Regulation Project Number:* FI–165–84 (Notice of Proposed rulemaking).

Abstract: Internal Revenue Code section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years in which they have imputed income or claim imputed deductions under Code section 7872.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 1,631,202.

Estimated Time per Respondent: 18 min.

Estimated Total Annual Burden Hours: 481,722.

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: October 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–26680 Filed 10–13–11; 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 the Implementation of Form 990.

DATES: Written comments should be received on or before December 13, 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: Implementation of Form 990.

OMB Number: 1545–2117.

Regulation Project Number: TD 9423 & TD 9549.

Abstract: This document contains final regulations necessary to implement the redesigned Form 990, ''Return of Organization Exempt From Income Tax.'' The final regulations contained in TD 9549 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.

Current Actions: TD 9423 is being modified by TD 9549 published on September 8, 2011. TD 9423 is also being submitted for renewal purposes.

Affected Public: Not-for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

Current Actions: Final TD 9549 is being added to this set of information collections.

Affected Public: Not-for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

Type of Review: Revision of a currently approved collection.

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: October 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–26682 Filed 10–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8927

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 8927, Determination Under Section 860(e)(4) by a Qualified Investment Entity.

DATES: Written comments should be received on or before December 13, 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, 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: Determination Under Section 860(e)(4) by a Qualified Investment Entity.

OMB Number: 1545–2130.

Form Number: Form 8927.

Abstract: The American Jobs Creation Act of 2004 (AJCA) expanded the meaning of the term ''determination'' to include self-determinations made by a regulated investment company (RIC) or a real estate investment trust (REIT). IRC section 860(g) provides that no deficiency dividend deduction shall be allowed under IRC section 860(a) unless a claim is filed within 120 days after the date of the determination. Form 8927 is used by the RIC or REIT to establish the date of determination under IRC section 860(e)(4).

Current Actions: There are no changes being made to the Form 8927 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 2 hours 48 minutes.

Estimated Total Annual Burden Hours: 140.

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: October 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–26683 Filed 10–13–11; 8:45 am]

BILLING CODE 4830–01–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)). Currently, the IRS is soliciting comments concerning Guidance Regarding the Treatment of Certain Contingent Payment Debt Instructions with one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.

DATES: Written comments should be received on or before December 13, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette 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) 622–3634, 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: Guidance Regarding the Treatment of Certain Contingent Payment Debt Instructions with one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.

OMB Number: 1545–1831.

Form Number: REG–106486–98 (TD 9157—Final).

Abstract: This document contains final regulations regarding the treatment of contingent payment debt instruments for which one or more payments are denominated in, or determined by reference to, a currency other than the taxpayer's functional currency. These regulations are necessary because current regulations do not provide guidance concerning the tax treatment of such instruments. The regulations affect issuers and holders of such instruments.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

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 collectionof 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: October 5, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–26688 Filed 10–13–11; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

The President

Proclamation 8736—General Pulaski Memorial Day, 2011

Federal Register
Vol. 76, No. 199
Friday, October 14, 2011

Presidential Documents

Title 3—

The President

Proclamation 8736 of October 11, 2011

General Pulaski Memorial Day, 2011

By the President of the United States of America

A Proclamation

Today, America pays tribute to Brigadier General Casimir Pulaski, a proud Polish patriot who embraced our country's highest ideals. He fought for freedom on two continents, earned the title, ''Father of the American Cavalry,'' and guided his unit through some of the toughest tests of the Revolutionary War, ultimately laying down his life for our nascent country. On General Pulaski Memorial Day, we honor his memory and celebrate the many contributions Polish Americans have made to America's culture and history.

As a young soldier, General Pulaski rose to defend his homeland against foreign occupation. He fought valiantly for Poland's sovereignty but was eventually forced into exile, and it was in Paris that he met Benjamin Franklin. Franklin told him of America's aspirations, and Pulaski journeyed across the Atlantic to join our struggle for freedom, equality, and justice. Arriving in America in 1777, he served beside General George Washington, who appreciated his military experience. He later formed an independent corps of cavalry known as the Pulaski Legion, which battled bravely from the New Jersey coast to the siege of Savannah, where he was mortally wounded.

Pulaski's unit was a diverse collection of soldiers, composed of Americans, Germans, Frenchmen, Irishmen, and Poles. Their differences were many, but they were united by a basic longing for human liberty. This same longing—which moved Pulaski to make the ultimate sacrifice—has come to define America and reflect our lasting ties to the people of Poland. Today, as we commemorate Casimir Pulaski's extraordinary life, we recognize that his spirit lives on in all those who are driven to pursue a freer, more just world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 11, 2011, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and honoring all those who defend the freedom of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of October, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

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