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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0264; Directorate Identifier 2009–NM–244–AD; Amendment 39–16837; AD 2011–21–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to certain Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).* * *

Under this regulation, all holders of type certificates for passenger transport aeroplanes * * * are required to conduct a design review against explosion risks. The replacement of some types of P-clips and improvement of the electrical bonding of the equipment in the fuel tanks [were] are rendered mandatory. * * *

* * * * *

Subsequently, an internal review * * * led * * * to * * * an additional check [for blue coat] of the bonding points in the centre tank. * * *

More recently, another internal review [introduced] additional work [installing bonding points] for aeroplanes under Configuration 03 * * * and additional work [bonding the fuel jettison system—blanking plates] on the wing tanks for aeroplanes under Configuration 07. * * *

The unsafe condition is damage to wiring in the wing, center, and trim fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the wing, center, or trim fuel tanks. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 23, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2011.

The Director of the Federal Register approved the incorporation by reference of certain other publications as of March 6, 2008 (73 FR 5731, January 31, 2008).

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 6, 2011 (76 FR 18960), and proposed to supersede AD 2008–03–04, Amendment 39–15353 (73 FR 5731, January 31, 2008). That NPRM (76 FR 18960, April 6, 2011) proposed to correct an unsafe condition for the specified products. The MCAI states:

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88). In their letters referenced 04/00/02/07/01–L296, dated 04 March 2002, and 04/00/02/07/03–L024, dated 03 February 2003, the JAA recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aeroplanes with either a passenger capacity of 30 or more, or a payload capacity of 3,402 kg (7,500 lbs) or more which have received their certification since 01 January 1958, are required to conduct a design review against explosion risks. The replacement of some types of P-clips and improvement of the electrical bonding of the equipment in the fuel tasks are rendered mandatory by this AD.

Initially, EASA AD 2006–0325, which addressed the same unsafe condition, also applied to A300–600 aeroplanes. Airbus subsequently introduced additional work at Revision 1 of SB A300–28–6064 [dated April 3, 2007] applicable to A300–600 aeroplanes. As a result, EASA AD 2006–0325 was revised to remove A300–600 aeroplanes from the applicability, and concurrently EASA AD 2007–0233 was issued, applicable to A300–600 aeroplanes. Unfortunately, the 'Applicability' section of EASA AD 2007–0233 was not correctly defined, erroneously deleting one modification in the combination that would exclude aeroplanes from having to comply. Consequently, the AD 2007–0283 was issued, requiring the same actions as AD 2007–0233, which was superseded, but expanded the group of aeroplanes to which AD 2007–0283 applied [FAA AD 2008–03–04 (73 FR 5731, January 31, 2008) corresponds with EASA AD 2007–0283].

Subsequently, an internal review of Airbus SB A300–28–6064 led the manufacturer to correct the figures of the SB. In particular, an additional check [for blue coat] of the bonding points in the centre tank was introduced in Revision 03 of Airbus SB A300–28–6064 [dated December 15, 2008], prompting EASA to issue AD 2009–0143.

More recently, another internal review of Airbus SB A300–28–6064 again resulted in corrected figures in the SB. Additional work on the center tank [installing bonding points] for aeroplanes under Configuration 03 (as defined in the SB [Service Bulletin A300–28–6064, Revision 04, dated August 24, 2009]) and additional work [bonding the fuel jettison system—blanking plates] on the wing tanks for aeroplanes under Configuration 07 have been introduced in Revision 04 of Airbus SB A300–28–6064 [dated August 24, 2009].

For the reason described above, this new AD retains the requirements of EASA AD 2009–0143, which is superseded, and requires the additional work introduced in Revision 04 of Airbus SB A300–28–6064 [dated August 24, 2009].

The unsafe condition is damage to wiring in the wing, center, and trim fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the wing, center, or trim fuel tanks. The required actions also include checking the electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and

doing related investigative and corrective actions if necessary. The related investigative action is to measure the electrical resistance between the equipment and structure, if a blue coat is not present. The corrective action is to electrically bond the equipment, if the measured resistance is greater than 10 milliohms. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request for Extension of Compliance Time

UPS and FedEx requested an extension to the 8-month compliance time specified in the NPRM (76 FR 18960, dated April 6, 2011) in order to accomplish the additional actions. FedEx requested that the compliance time for the additional actions be at the latest of the 40-month compliance time specified in AD 2008–03–04, Amendment 39–15353 (73 FR 5731, January 31, 2008), any alternative methods of compliance that extend that compliance time or within 12 months after the effective date of the new AD. UPS requested that the compliance time be extended to 60 months. UPS stated that the two additional bonding points specified in the NPRM are no more unsafe than the original 264 bonding points required in AD 2008–03–04. UPS noted that it schedules tank entry checks at 60 months and that the original issue of the service information allowed for a 60-month compliance time.

We agree with extending the compliance time and have determined that extending the compliance time to 30 months is appropriate. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the modification. In consideration of these items, we have determined that a 30-month compliance time will ensure an acceptable level of safety and allow the modifications to be done during scheduled maintenance intervals for most affected operators. We have also coordinated with European Aviation Safety Agency (EASA) on this issue. We have changed the compliance time in paragraph (h) of this AD to ''within 30 months after the effective date of this AD.''

Request for Change to Cost of Compliance Work-Hours

FedEx stated that they averaged 800 work-hours versus the 632 work-hours listed in the NPRM (76 FR 18960, dated April 6, 2011) to accomplish the existing modifications. FedEx also stated that 9 work-hours, as specified for the additional actions, may be adequate if done in conjunction with the other modifications; however, additional work-hours will be required for airplanes that have been previously been modified.

We infer that FedEx is requesting that we increase the work-hours estimate to accomplish the existing and new modifications. We do not agree to revise the work-hours. Work-hours may vary among operators. Our estimate is based on the information provided in the relevant service information. We have not changed this AD in this regard.

Request for Material Substitutions

FedEx requested that we add wording to the NPRM (76 FR 18960, dated April 6, 2011) that material substitutions supplied by Airbus are approved for use and do not require an alternative method of compliance (AMOC). FedEx stated that the kits specified in Airbus Service Bulletins A300–28–6064, Revision 01, dated April 3, 2007; A300–28–6068, dated July 20, 2005; and A300–28–6077, Revision 01, dated October 26, 2006; might contain parts that are not listed in the kit description specified in the service information.

We do not agree with the request to revise the AD to include wording that material substitutions are approved for use. Airbus Service Bulletins A300–28–6064, Revision 01, dated April 3, 2007; A300–28–6068, dated July 20, 2005; and A300–28–6077, Revision 01, dated October 26, 2006; contain language in the ''Standard Practices'' section of paragraph 3.A. ''General'' of the Accomplishment Instructions that specifies which alternative materials are allowed. We have not changed this AD in this regard.

Request To Update Service Information to Latest Revision

FedEx stated that Airbus has issued Mandatory Service Bulletin A300–28–6064, Revision 05, dated September 27, 2010, and requested that we update our references in the NPRM (76 FR 18960, dated April 6, 2011).

We agree with the request and have updated the references in paragraphs (c)(1), (g)(4), and (h) of this AD to include Airbus Mandatory Service Bulletin A300–28–6064, Revision 05, dated September 27, 2010. Airbus Mandatory Service Bulletin A300–28–6064, Revision 05, dated September 27, 2010, provides clarifications of the actions and materials but contains no substantive changes.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 125 products of U.S. registry.

The actions that are required by AD 2008–03–04 Amendment 39–15353 (73 FR 5731, January 31, 2008) and retained in this AD take about 632 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $6,870 per product. Based on these figures, the estimated cost of the currently required actions is $60,590 per product.

We estimate that it will take about 9 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $100 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $108,125, or $865 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 18960, dated April 6, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15353 (73 FR 5731, January 31, 2008) and adding the following new AD:

2011–21–14 Airbus: Amendment 39–16837. Docket No. FAA–2011–0264; Directorate Identifier 2009–NM–244–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 23, 2011.

Affected ADs

(b) This AD supersedes AD 2008–03–04, Amendment 39–15353 (73 FR 5731, January 31, 2008).

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes (without trim tank), all serial numbers, certificated in any category, except airplanes on which Airbus Modifications 12226, 12365, 12490, and 12308 have been incorporated in production, or on which the service bulletins listed in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD have been performed in service.

(i) Airbus Mandatory Service Bulletin A300–28–6064, Revision 04, dated August 24, 2009; or Revision 05, dated September 27, 2010.

(ii) Airbus Service Bulletin A300–28–6068, dated July 20, 2005.

(2) Airbus Model A300 B4–605R, B4–622R, F4–605R, and F4–622R airplanes and A300 C4–605R Variant F airplanes (fitted with a trim tank), all serial numbers, certificated in any category, except airplanes on which Airbus Modifications 12226, 12365, 12490, 12308, 12294, and 12476 have been incorporated in production, or on which the service bulletins listed in paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this AD have been performed in service.

(i) Airbus Mandatory Service Bulletin A300–28–6064, Revision 03, dated December 15, 2008.

(ii) Airbus Service Bulletin A300–28–6068, dated July 20, 2005.

(iii) Airbus Service Bulletin A300–28–6077, dated July 25, 2005; or Revision 01, dated October 26, 2006.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88). * * *

Under this regulation, all holders of type certificates for passenger transport aeroplanes * * * are required to conduct a design review against explosion risks. The replacement of some types of P-clips and improvement of the electrical bonding of the equipment in the fuel tanks [were] are rendered mandatory * * *.

* * * * *

Subsequently, an internal review * * * led * * * to * * * an additional check [for blue coat] of the bonding points in the centre tank. * * *

More recently, another internal review [introduced] additional work [installing bonding points] for aeroplanes under Configuration 03 * * * and additional work [bonding the fuel jettison system—blanking plates] on the wing tanks for aeroplanes under Configuration 07 * * *.

The unsafe condition is damage to wiring in the wing, center, and trim fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the wing, center, or trim fuel tanks.

Compliance

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

Restatement of Requirements of AD 2008–03–04, Amendment 39–15353 (73 FR 5731, January 31, 2008) With Revised Service Information

Actions and Compliance

(g) For airplanes identified in paragraphs (g)(1) and (g)(2) of this AD: Within 40 months after March 6, 2008 (the effective date of AD 2008–03–04, Amendment 39–15353 (73 FR 5731, January 31, 2008)), unless already done, do the applicable actions required by paragraphs (g)(3), (g)(4), and (g)(5) of this AD.

(1) Airbus Model A300 B4–600 series airplanes (without trim tank), all serial numbers, except airplanes on which Airbus Modifications 12226, 12365, 12490, and 12308 have been incorporated in production, or Airbus Service Bulletins A300–28–6064, Revision 01, dated April 3, 2007; and A300–28–6068, dated July 20, 2005; have been performed in service.

(2) Airbus Model A300 B4–600R, A300 C4–600R, and A300 F4–600R series airplanes (fitted with a trim tank), all serial numbers, except airplanes on which Airbus Modifications 12226, 12365, 12490, 12308, 12294, and 12476 have been incorporated in production, or on which the service bulletins listed in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD have been performed in service.

(i) Airbus Service Bulletin A300–28–6064, Revision 01, dated April 3, 2007.

(ii) Airbus Service Bulletin A300–28–6068, dated July 20, 2005.

(iii) Airbus Service Bulletin A300–28–6077, dated July 25, 2005; or A300–28–6077, Revision 01, dated October 26, 2006.

(3) Remove NSA5516–XXND or NSA5516–XXNJ type P-clips, used in the wing and center fuel tanks to retain wiring and pipes, and replace them by NSA5516–XXNF type P-clips in accordance with the instructions of Airbus Service Bulletin A300–28–6068, dated July 20, 2005.

(4) Check the electrical bonding points in the center tank and do all applicable related investigative and corrective actions, and install additional bonding leads and electrical bonding points in the wing and center fuel tanks in accordance with the instructions of Airbus Service Bulletin A300–28–6064, Revision 01, dated April 3, 2007; Airbus Mandatory Service Bulletin A300–28–6064, Revision 02, dated March 10, 2008; Airbus Mandatory Service Bulletin A300–28–6064, Revision 03, dated December 15, 2008; Airbus Mandatory Service Bulletin A300–28–6064, Revision 04, dated August 24, 2009; or Airbus Mandatory Service Bulletin A300–28–6064, Revision 05, dated September 27, 2010. Do all applicable related investigative and corrective actions before further flight. As of the effective date of this AD, only use Airbus Mandatory Service Bulletin A300–28–6064, Revision 05, dated September 27, 2010.

(5) For airplanes fitted with a trim tank, in addition to the actions defined in paragraphs (g)(3) and (g)(4) of this AD, install bonding leads and electrical bonding points in the trim tanks, in accordance with the instructions of Airbus Service Bulletin A300–28–6077, Revision 01, dated October 26, 2006.

(6) Actions done before March 6, 2008, in accordance with Airbus Service Bulletin A300–28–6064, dated July 28, 2005, for aircraft under configuration 05, as defined in Airbus Service Bulletin A300–28–6064, dated July 28, 2005, are considered acceptable for compliance with the requirements of paragraph (g)(4) of this AD.

(7) Actions done before March 6, 2008, in accordance with Airbus Service Bulletin A300–28–6077, dated July 25, 2005, for aircraft under configuration 05, as defined in Airbus Service Bulletin A300–28–6077, dated July 25, 2005, are considered acceptable for compliance with the requirements of paragraph (g)(5) of this AD.

New Requirments of This AD

Additional Actions

(h) Within 30 months after the effective date of this AD, do the applicable actions required by paragraphs (h)(1), (h)(2), and (h)(3) of this AD.

(1) For airplanes that have been modified before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–6064, dated July 28, 2005, or Revision 01, dated April 3, 2007; or Airbus Mandatory Service Bulletin A300–28–6064, Revision 02, dated March 10, 2008: Do the additional work on the center tank specified in Airbus Mandatory Service Bulletin A300–28–6064, Revision 03, dated December 15, 2008 (*i.e.,* a check for blue coat at additional bonding points and all applicable related investigative and corrective actions), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–28–6064, Revision 03, dated December 15, 2008; Revision 04, dated August 24, 2009; or Revision 05, dated September 27, 2010. Do all applicable related investigative and corrective actions before further flight.

(2) For configuration 03 airplanes, as defined in Airbus Mandatory Service Bulletin A300–28–6064, Revision 04, dated August 24, 2009; or Revision 05, dated September 27, 2010; that have been modified before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–6064, Revision 01, dated April 3, 2007; or Airbus Mandatory Service Bulletin A300–28–6064, Revision 02, dated March 10, 2008, or Revision 03, dated December 15, 2008: Do the additional work on the center tank (*i.e.,* install bonding points), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–28–6064, Revision 04, dated August 24, 2009; or Revision 05, dated September 27, 2010.

(3) For configuration 07 airplanes, as defined in Airbus Mandatory Service Bulletin A300–28–6064, Revision 04, dated August 24, 2009; or Revision 05, dated September 27, 2010; that have been modified before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–6064, dated July 28, 2005; or Revision 01, dated April 3, 2007; or Airbus Mandatory Service Bulletin A300–28–6064, Revision 02, dated March 10, 2008, or Revision 03, dated December 15, 2008: Do the additional work on the wing tanks (*i.e.,* bond the fuel jettison system—blanking plates), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–28–6064, Revision 04, dated August 24, 2009; or Revision 05, dated September 27, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI provides a compliance time of 8 months to do the actions specified in paragraph (h) of this AD. This AD requires that the actions specified in paragraph (h) of this AD be done within 30 months.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2008–03–04, Amendment 39–15353 (73 FR 5731, January 31, 2008), are approved as AMOCs for the corresponding provisions of this AD.

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

Related Information

(j) Refer to MCAI EASA Airworthiness Directive 2010–0074, dated April 16, 2010, and the following service information, for related information.

(1) Airbus Mandatory Service Bulletin A300–28–6064, Revision 03, dated December 15, 2008.

(2) Airbus Mandatory Service Bulletin A300–28–6064, Revision 04, dated August 24, 2009.

(3) Airbus Mandatory Service Bulletin A300–28–6064, Revision 05, dated September 27, 2010.

(4) Airbus Service Bulletin A300–28–6068, dated July 20, 2005.

(5) Airbus Service Bulletin A300–28–6077, Revision 01, dated October 26, 2006.

Material Incorporated by Reference

(k) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR Part 51 of the following service information on the date specified.

(1) Airbus Mandatory Service Bulletin A300–28–6064, Revision 03, dated December 15, 2008, approved for IBR November 23, 2011.

(2) Airbus Mandatory Service Bulletin A300–28–6064, Revision 04, dated August 24, 2009, approved for IBR November 23, 2011.

(3) Airbus Mandatory Service Bulletin A300–28–6064, Revision 05, dated September 27, 2010, approved for IBR November 23, 2011.

(4) Airbus Service Bulletin A300–28–6068, dated July 20, 2005, approved for IBR on March 6, 2008 (73 FR 5731, January 31, 2008).

(5) Airbus Service Bulletin A300–28–6077, Revision 01, dated October 26, 2006, approved for IBR on March 6, 2008 (73 FR 5731, January 31, 2008).

(6) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; *e-mail: account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

(8) You may also review copies of the service information that is incorporated by

reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 3, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26257 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39s

[Docket No. FAA–2011–0312; Directorate Identifier 2010–NM–159–AD; Amendment 39–16838; AD 2011–21–15]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This [Brazilian] AD results from reports of cracking in the firewall of the auxiliary power unit (APU). This AD is being issued to detect and correct this cracking, which could result in reduced structural integrity of the fuselage and empennage in the event that a fire penetrates through the firewall of the APU.

* * * * *

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

DATES: This AD becomes effective November 23, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2011.

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 19, 2011 (76 FR 21822). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This [Brazilian] AD results from reports of cracking in the firewall of the auxiliary power unit (APU). This AD is being issued to detect and correct this cracking, which could result in reduced structural integrity of the fuselage and empennage in the event that a fire penetrates through the firewall of the APU.

* * * * *

The required actions include repetitive detailed inspections for cracking of the rearward and forward face of the APU firewall, and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Request To Reference Latest Revision of Embraer Service Bulletin 145–53–0062

EMBRAER and ExpressJet Airlines requested that we reference EMBRAER Service Bulletin 145–53–0062, Revision 07, dated May 27, 2011, in the NPRM (76 FR 21822, April 19, 2011) as it is the most current.

We agree that the latest service information should be referenced in this AD. We have changed references in paragraphs (h) and (l) of this AD to include EMBRAER Service Bulletin 145–53–0062, Revision 07, dated May 27, 2011. The effectivity of Revision 07 was changed to add serial numbers that were inadvertently omitted in EMBRAER Service Bulletin 145–53–0062, Revision 06, dated August 11, 2010. (The applicability of this final rule remains unchanged.) In addition, we have added EMBRAER Service Bulletin 145–53–0062, Revision 06, dated August 11, 2010, to ''Table 1—Credit Service Bulletins'' of this AD.

Request To Remove Date and Revision Level of the Airplane Maintenance Manual (AMM) or Allow for Later Revisions

American Eagle Airlines requested that we remove the date and revision level of the AMM specified in paragraph (g) of the NPRM (76 FR 21822, April 19, 2011), or allow for future revisions to the AMM. The commenter noted that if either of the AMM sections is updated by the manufacturer, the operators would be required to accomplish an obsolete task.

We disagree with removing the date and revision level of the AMM because all documents incorporated by reference are required to have the date and revision level in accordance with the Office of the Federal Register regulations for approval of materials ''incorporated by reference'' in rules. See 1 CFR 51.1(f). We also disagree with allowing the use of ''future'' revisions to the AMM. When referring to a specific service document in an AD, using the phrase, ''or later FAA-approved revisions,'' violates Office of the Federal Register regulations for approval of materials ''incorporated by reference'' in rules. See 1 CFR 51.1(f). In general terms, we are required by these OFR regulations to either publish the service document contents as part of the actual AD language; or submit the service document to the OFR for approval as ''referenced'' material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for ''incorporation by reference.'' See 1 CFR part 51.

However, because a later revision of the AMM has been issued since the NPRM (76 FR 21822, April 19, 2011) was published, we have revised paragraphs (g) and (l), and Note 2 of this AD to refer to EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 54, dated April 28, 2011. We have also added new paragraph (i) (and re-identified subsequent paragraphs accordingly) to this AD to give credit for EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 53, dated October 28, 2010, which was referenced as the appropriate source of service information for certain actions specified in the NPRM. However, operators may request approval of an AMOC to use later revisions of this AMM under the provisions of paragraph (k) of this AD. No changes have been made to the AD in this regard.

Request To Change the Initial Compliance Time

ExpressJet Airlines requested that we change the initial compliance time from 3,300 flight hours to ''5,000 flight hours or at the next heavy maintenance visit.'' The commenter stated that its experience with repairing and replacing APU firewalls can be a very time consuming process which would be better suited for a heavy check.

We disagree with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the inspection. In consideration of these items, as well as the reports of cracking in the firewall of the APU, we have determined that the initial compliance time of 3,300 flight hours will ensure an acceptable level of safety. However, operators may request approval of an AMOC under the provisions of paragraph (k) of this AD. No changes have been made to the AD in this regard.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 668 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $113,560, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $10,060 for a cost of $10,910 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 21822, April 19, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–21–15 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16838. Docket No. FAA–2011–0312; Directorate Identifier 2010–NM–159–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 23, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145MP, and –145EP airplanes; certificated in any category; equipped with titanium auxiliary power unit (APU) firewall part number (P/N) 145–47494–401, 145–26850–401, 145–26850–601, or 145–47494–403.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

This [Brazilian] AD results from reports of cracking in the firewall of the auxiliary power unit (APU). This AD is being issued to detect and correct this cracking, which could result in reduced structural integrity of the fuselage and empennage in the event that a fire penetrates through the firewall of the APU.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Actions

(g) Within 3,300 flight hours after the effective date of this AD, do a detailed inspection for cracking of the rearward and forward face of the APU firewall, including its attachment to the fuselage, removing neither the structural reinforcements nor the dampers, in accordance with Task 05–20–47–200–801–A, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal General Visual Inspection, of Subject 5–20–47, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal, and Task 05–20–57–200–801–A, Rear Fuselage II—Tail Cone Fairing—Internal General Visual Inspection, of Subject 5–20–57, Rear Fuselage II—Tail Cone Fairing—Internal, of Chapter 5, Time Limits Maintenance Checks, of EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 54, dated April 28, 2011.

(1) If no cracking is found during any inspection required by paragraph (g) of this AD, repeat the inspection thereafter at intervals not to exceed 6,600 flight hours, until the terminating action specified in paragraph (h) of this AD has been accomplished.

(2) If any cracking is found during any inspection required by paragraph (g) of this AD, before further flight, repair in accordance with Subject 53–32–13, Rear Fuselage II—APU Firewall, of Chapter 53, Fuselage, of the EMBRAER EMB135, ERJ140, EMB145, Structural Repair Manual, SRM–145/1142, Revision 43, dated December 1, 2010; or in accordance with a method approved by the International Branch, ANM–116, Transport Airplane Directorate, FAA; or Agência Nacional de Aviação Civil (ANAC) (or its delegated agent). Within 6,600 flight hours after doing the repair, do the inspection required by paragraph (g) of this AD and repeat the inspection thereafter at intervals not to exceed 6,600 flight hours, until the terminating action specified in paragraph (h) of this AD has been accomplished.

Note 1: For the purpose of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirrors, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate access procedures may be required.''

Optional Terminating Action

(h) Replacing the APU firewall having P/N 145–47494–401, 145–26850–401, 145–26850–601, or 145–47494–403, with a new APU firewall having P/N 145–47494–607, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–53–0062, Revision 07, dated May 27, 2011, terminates the repetitive inspections required by paragraphs (g)(1) and (g)(2) of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Actions done before the effective date of this AD, in accordance with Task 05–20–47–200–801–A, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal General Visual Inspection, of Subject 5–20–47, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal, of Chapter 5, Time Limits Maintenance Checks, of EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 53, dated October 28, 2010, are acceptable for compliance with the requirements of paragraph (g) of this AD.

(j) Actions done before the effective date of this AD, in accordance with the applicable service bulletin specified in table 1 of this AD, are acceptable for compliance with the requirements of paragraph (h) of this AD.

TABLE 1—CREDIT SERVICE BULLETINS

EMBRAER Service Bulletin—	Revision—	Dated—
145–53–0062	06	August 11, 2010.
145–53–0062	05	May 20, 2008.
145–53–0062	04	November 23, 2007.
145–53–0062	03	September 21, 2007.
145–53–0062	02	January 25, 2006.
145–53–0062	01	October 28, 2005.
145–53–0062		July 29, 2005.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI AD does not specify how to do the inspection for cracking. This AD requires doing a detailed inspection of the rearward and forward face of the APU firewall, including its attachment to the fuselage, in accordance with Task 05–20–47–200–801–A, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal General Visual Inspection, of Subject 5–20–47, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal, and Task 05–20–57–200–801–A, Rear Fuselage II—Tail Cone Fairing—Internal General Visual Inspection, of Subject 5–20–57, Rear Fuselage II—Tail Cone Fairing—Internal, of Chapter 5, Time Limits Maintenance Checks, of EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 54, dated April 28, 2011.

(2) Where Subjects 5–20–47, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal, and 5–20–57, Rear Fuselage II—Tail Cone Fairing—Internal, of Chapter 5, Time Limits Maintenance Checks, of EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 54, dated April 28, 2011, specify an internal general visual inspection, this AD requires a detailed inspection.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(l) Refer to MCAI ANAC Airworthiness Directive 2010–06–03R1, dated September 20, 2010; EMBRAER Service Bulletin 145–53–0062, Revision 07, dated May 27, 2011; Task 05–20–47–200–801–A, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal General Visual Inspection, of Subject 5–20–47, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal, and Task 05–20–57–200–801–A, Rear Fuselage II—Tail Cone Fairing—Internal General Visual Inspection, of Subject 5–20–57, Rear Fuselage II—Tail Cone Fairing—Internal, of Chapter 5, Time Limits Maintenance Checks, of EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 54, dated April 28, 2011; and Subject 53–32–13, Rear

Fuselage II—APU Firewall, of Chapter 53, Fuselage, of the EMBRAER EMB135, ERJ140, EMB145, Structural Repair Manual, SRM–145/1142, Revision 43, dated December 1, 2010; for related information.

Material Incorporated by Reference

(m) You must use Task 05–20–47–200–801–A, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal General Visual Inspection, of Subject 5–20–47, Rear Fuselage II—Aft of Rear Pressure Bulkhead—Internal, and Task 05–20–57–200–801–A, Rear Fuselage II—Tail Cone Fairing—Internal General Visual Inspection, of Subject 5–20–57, Rear Fuselage II—Tail Cone Fairing—Internal, of Chapter 5, Time Limits Maintenance Checks, of EMBRAER EMB145 Aircraft Maintenance Manual, Part II, AMM–145/1124, Revision 54, dated April 28, 2011; and Subject 53–32–13, Rear Fuselage II—APU Firewall, of Chapter 53, Fuselage, of the EMBRAER EMB135, ERJ140, EMB145, Structural Repair Manual, SRM–145/1142, Revision 43, dated December 1, 2010; to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional terminating action specified in this AD, you must use EMBRAER Service Bulletin 145–53–0062, Revision 07, dated May 27, 2011, to do those actions, unless the AD specifies otherwise. The revision level of the EMBRAER EMB145 Aircraft Maintenance Manual AMM–145/1124 is specified on only the title page and Chapter 5 List of Effective Pages of this document; the Chapter 5 title page of this document does not contain a revision level or date. The revision level of the EMBRAER EMB135, ERJ140, EMB145, Structural Repair Manual SRM–145/1142 is specified on only the title page and Chapter 53 List of Effective pages of this document; the Chapter 53 title page does not contain a revision level or date.

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

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; e-mail *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.*

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

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

Issued in Renton, Washington, on October 3, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26718 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0306; Directorate Identifier 2010–NM–176–AD; Amendment 39–16829; AD 2011–21–06]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (Operations) Limited Model 4101 Airplanes

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

ACTION: Final rule.

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

* * * BAE Systems (Operations) Ltd has issued Revision 33 of the AMM [airplane maintenance manual] to amend Chapter 05–10–10 by adding one new Structurally Significant Item (SSI) and increasing the repeat inspection period on another SSI. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is failure of certain structurally significant items, including the main landing gear and the nose landing gear, which could result in reduced structural integrity of the airplane; and fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 23, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2011.

The Director of the Federal Register previously approved the incorporation by reference of certain other publications listed in this AD as of June 11, 2009 (74 FR 21246, May 7, 2009).

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 8, 2011 (76 FR 19716), and proposed to supersede AD 2009–10–02, Amendment 39–15897 (74 FR 21246, May 7, 2009). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

The Jetstream J41 Aircraft Maintenance Manual (AMM), includes the following chapters:

—05–10–10 ''Airworthiness Limitations'',
—05–10–20 ''Certification Maintenance Requirements'', and,
—05–10–30 ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System.''

Compliance with these chapters has been identified as mandatory actions for continued airworthiness and EASA AD 2009–0052 was issued to require operators to comply with those instructions.

Since the issuance of that AD, BAE Systems (Operations) Ltd has issued Revision 33 of the AMM to amend Chapter 05–10–10 by adding one new Structurally Significant Item (SSI) and increasing the repeat inspection period on another SSI. Failure to comply with this revision constitutes an unsafe condition.

For the reasons described above, this [EASA] AD, which supersedes EASA AD 2009–0052, requires the implementation of the new or more restrictive maintenance requirements and/or airworthiness limitations as specified in the defined parts of Chapter 05 of the AMM at Revision 33.

The unsafe condition is failure of certain structurally significant items, including the main landing gear and the nose landing gear, which could result in reduced structural integrity of the airplane; and fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 19716, April 8, 2011) or on the determination of the cost to the public.

Revised Aircraft Maintenance Manual (AMM)

Since issuance of the NPRM (76 FR 19716, April 8, 2011), we have reviewed Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations'', of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011. We have revised paragraph (i) of this AD to reference this revision.

We have also added paragraph (j) to this AD to give credit for Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05 ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 33, dated February 15, 2010.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 3 products of U.S. registry.

The actions that are required by AD 2009–10–02 (74 FR 21246, May 7, 2009) and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Required parts cost about $85 per product. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it will take about 1 additional work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $255, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 19716, April 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15897 (74 FR 21246, May 7, 2009) and adding the following new AD:

2011–21–06 BAE SYSTEMS (Operations) Limited: Amendment 39–16829. Docket No. FAA–2011–0306; Directorate Identifier 2010–NM–176–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 23, 2011.

Affected ADs

(b) This AD supersedes AD 2009–10–02, Amendment 39–15897 (74 FR 21246, May 7, 2009).

Applicability

(c) This AD applies to all BAE SYSTEMS (Operations) Limited Model 4101 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC)

according to paragraph (l) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 05.

Reason

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

* * * BAE Systems (Operations) Ltd has issued Revision 33 of the AMM [airplane maintenance manual] to amend Chapter 05–10–10 by adding one new Structurally Significant Item (SSI) and increasing the repeat inspection period on another SSI. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is failure of certain structurally significant items, including the main landing gear and the nose landing gear, which could result in reduced structural integrity of the airplane; and fuel vapor ignition sources, which could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Restatement of Requirements of AD 2009–10–02, Amendment 39–15897 (74 FR 21246, May 7, 2009)

Revise Airworthiness Limitations Section (AWL) of Instructions for Continued Airworthiness

(g) Within 90 days after June 11, 2009 (the effective date of AD 2009–10–02, Amendment 39–15897 (74 FR 21246, May 7, 2009)): Revise the AWL section of the Instructions for Continued Airworthiness by incorporating the instructions of Subjects 05–10–10, ''Airworthiness Limitations,'' 05–10–20, ''Certification Maintenance Requirements,'' and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 Airplane Maintenance Manual (AMM), Revision 31, dated February 15, 2009. Thereafter, except as provided in paragraph (l) of this AD, no alternative replacement times or inspection intervals may be approved for any affected component. Doing the actions required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Where paragraph 2.A.(2) of Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 31, dated February 15, 2009, specifies that certain landing gear units ''must be removed before 31st March 2008,'' this AD requires compliance within 60 days after June 11, 2009.

New Requirements of This AD With Revised Service Information

Maintenance Program Revision

(i) Within 90 days after the effective date of this AD: Revise the maintenance program by incorporating Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011. Doing the actions required by this paragraph terminates the requirements of paragraph (g) of this AD. The initial compliance times for the tasks are at the applicable times specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(1) For replacement tasks of life limited parts specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011: Prior to the applicable flight cycles (landings) or flight hours (flying hours) on the part specified in the ''Mandatory Life Limits'' column in Subject 05–10–10, or within 90 days after the effective date of this AD, whichever occurs later.

(2) For structurally significant item tasks specified in Subject 05–10–10, ''Airworthiness Limitations,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011: Prior to the accumulation of the applicable flight cycles specified in the ''Initial Inspection'' column in Subject 05–10–10, or within 90 days after the effective date of this AD, whichever occurs later.

(3) For certification maintenance requirements tasks specified in Subject 05–10–20, ''Certification Maintenance Requirements,'' of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011: Prior to the accumulation of the applicable flight hours specified in the ''Time Between Checks'' column in Subject 05–10–20, or within 90 days after the effective date of this AD, whichever occurs later; except for tasks that specify ''first flight of the day'' in the ''Time Between Checks'' column in Subject 05–10–20, the initial compliance time is the first flight of the next day after doing the revision required by paragraph (i) of this AD, or within 90 days after the effective date of this AD, whichever occurs later.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) Actions done before the effective date of this AD in accordance with Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 33, dated February 15, 2010; are acceptable for compliance with the requirements of paragraph (i) of this AD.

No Alternative Actions, Intervals, and/or CDCCLs

(k) After accomplishing the revision required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although EASA Airworthiness Directive 2010–0098, dated May 27, 2010, specifies both revising the maintenance program to include limitations, and doing certain repetitive actions (*e.g.,* inspections) and/or maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring individual repetitive actions and/or maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Repetitive actions and/or maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(m) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0098, dated

May 27, 2010; Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 31, dated February 15, 2009; and Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011; for related information.

Material Incorporated by Reference

(n) You must use the following service information to do the applicable actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; and 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 35, dated February 15, 2011; under 5 U.S.C. 552(a) and 1 CFR part 51 on November 23, 2011. Page 1 of the Publications Transmittal of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM is the only page that shows the revision level of this document.

(2) The Director of the Federal Register previously approved the incorporation by reference of Subjects 05–10–10, ''Airworthiness Limitations''; 05–10–20, ''Certification Maintenance Requirements''; 05–10–30, ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System''; of Chapter 05, ''Airworthiness Limitations,'' of the BAE Systems (Operations) Limited Jetstream Series 4100 AMM, Revision 31, dated February 15, 2009; on June 11, 2009 (74 FR 21246, May 7, 2009).

(3) For service information identified in this AD, contact BAE SYSTEMS (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; e-mail *RApublications@baesystems.com*; Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

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

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

Issued in Renton, Washington, on September 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–25802 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0684; Directorate Identifier 2010–NE–27–AD; Amendment 39–16842; AD 2011–22–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–710 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

Analysis of service data carried out by Rolls-Royce Deutschland has shown that the effect of touch-and-go and overshoot on life cycle counting is higher than anticipated. Therefore, the life cycle counting method for touch-and-go and overshoot as defined by the Time Limits Manual needs to be changed to reflect this higher effect on life.

We are issuing this AD to prevent failure of high-energy, life-limited parts, uncontained engine failure, and damage to the airplane.

DATES: This AD becomes effective November 23, 2011.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: mark.riley@faa.gov; phone:* 781–238–7758; *fax:* 781–238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 5, 2011 (76 FR 39033). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Analysis of service data carried out by Rolls-Royce Deutschland has shown that the effect of touch-and-go and overshoot on life cycle counting is higher than anticipated. Therefore, the life cycle counting method for touch-and-go and overshoot as defined by the Time Limits Manual needs to be changed to reflect this higher effect on life.

This AD requires a change of the life cycle counting method for touch-and-go and overshoot for all critical parts and the Low Pressure (LP) compressor blades as specified in the Rolls-Royce Deutschland Alert NMSB–BR700–72–A900504 Revision 1. The chapter 05–00–01 and 05–00–02 of the applicable Time Limits Manuals will be revised accordingly.

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

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are described in a separate paragraph of the AD, and take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this AD would affect about 1,052 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this AD. The average labor rate is $85

per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $89,420.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–22–01 Rolls-Royce Deutschland Ltd & Co KG (Formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH)]: Amendment 39–16842; Docket No. FAA–2011–0684; Directorate Identifier 2011–NE–27–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 23, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Rolls-Royce Deutschland BR700–710A1–10 and BR700–710A2–20 turbofan engines, all BR700–710C4–11 model engines that have hardware configuration standard 710C4–11 engraved on the engine data plate (Service Bulletin SB–BR700–72–101466 standard not incorporated), and all BR700–710C4–11 model engines that have hardware configuration standard 710C4–11/10 engraved on the engine data plate (Service Bulletin SB–BR700–72–101466 standard incorporated). These engines are installed on, but not limited to, Bombardier BD–700–1A10 and BD–700–1A11 airplanes and Gulfstream GV (G500) and GV–SP (G550) airplanes.

Reason

(d) This AD results from:

Analysis of service data carried out by Rolls-Royce Deutschland has shown that the effect of touch-and-go and overshoot on life cycle counting is higher than anticipated. Therefore, the life cycle counting method for touch-and-go and overshoot as defined by the Time Limits Manual needs to be changed to reflect this higher effect on life.

We are issuing this AD to prevent failure of high-energy, life-limited parts, uncontained engine failure, and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within 30 days after the effective date of this AD, revise the airworthiness limitations section (ALS) of the operators' approved maintenance program (reference the Time Limits Manual (TLM), chapters 05–00–01 and 05–00–02 of the applicable engine manuals (EMs)) to remove the requirement to record each touch-and-go or overshoot as ⅕ of a flight cycle (FC) on an engine installed on an airplane used for Pilot Training.

(2) Within 30 days after the effective date of this AD, revise the ALS of the operators' approved maintenance program (reference the TLM, chapters 05–00–01 and 05–00–02 of the applicable EMs) to add a requirement to record each touch-and-go or overshoot as 1 FC to the life of all critical parts and the fan blades.

(3) Within 120 days after the effective date of this AD, determine the number of touch-and-go's and overshoots that each individual critical part except the fan shaft and LP turbine rotor shaft has experienced since entry into service for Pilot Training.

(i) If the number of touch-and-go's and overshoots on an individual critical part is less than one percent of the total number of FCs on the critical part, no further action is required by this AD.

(ii) If the number of touch-and-go's and overshoots on an individual critical part is one percent or more of the total number of FCs on the critical part, disregard the previous calculations of life on that individual critical part and retrospectively re-calculate the accumulated FCs of that individual critical part by the addition of one FC for every touch-and-go and overshoot to the total number of FCs.

Definitions

(f) A touch-and-go is a phase of a flight where a landing approach of an airplane is continued to the touch-down point and the airplane immediately takes off again without stopping.

(g) An overshoot is a phase of a flight where a landing approach of an airplane is not continued to the touch-down point. This includes missed approaches due to safety reasons, weather minimums, airplane engine configurations, runway incursions, and any other undetermined causes.

FAA AD Differences

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

(1) This AD requires within 30 days after the effective date of this AD, revising the ALS of the operators' approved maintenance program (reference the TLM chapters 05–00–01 and 05–00–02 of the applicable EMs) to remove the requirement to record each touch-and-go or overshoot as ⅕ of a FC on an engine installed on an airplane used for Pilot Training, and adding a requirement to record each touch-and-go or overshoot as 1 FC to the life of all critical parts and the fan blades. The MCAI requires that the revised method of life counting for each touch-and-go and overshoot be accomplished within 4 months.

(2) The MCAI requires determining the total number of touch-and-go's and overshoots that each individual critical part

(except the fan shaft and LP turbine rotor shaft) has experienced since entry into service. This AD only requires determining those numbers for touch-and-go's and overshoots that had occurred during Pilot Training.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0077, dated April 20, 2010, and Rolls-Royce Deutschland Ltd & Co KG Alert Service Bulletin SB–BR700–72–A900504, Revision 1, dated February 19, 2010, for related information. Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1883; fax: 49 0 33–7086–3276, for a copy of this service information.

(k) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: mark.riley@faa.gov; phone:* 781–238–7758; *fax:* 781–238–7199, for more information about this AD.

Material Incorporated by Reference

(l) None.

Issued in Burlington, Massachusetts, on October 7, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–26885 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0811; Directorate Identifier 2011–CE–026–AD; Amendment 39–16839; AD 2011–21–16]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries Powered Sailplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Diamond Aircraft Industries Model H–36 ''DIMONA'' powered sailplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A report has been received of a failed air brake control system torsion tube on a Diamond (formerly Hoffman) H 36 powered sailplane. The results of the subsequent investigation show that the failure was due to corrosion damage.

This condition, if not detected and corrected, may lead to failure of the air brake control system in flight, resulting in reduced control of the aeroplane.

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

DATES: This AD is effective November 23, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 23, 2011.

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

For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; e-mail: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; e-mail: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 8, 2011 (76 FR 48047). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A report has been received of a failed air brake control system torsion tube on a Diamond (formerly Hoffman) H 36 powered sailplane. The results of the subsequent investigation show that the failure was due to corrosion damage.

This condition, if not detected and corrected, may lead to failure of the air brake control system in flight, resulting in reduced control of the aeroplane.

To address this unsafe condition, Diamond published Mandatory Service Bulletin (MSB) 36–105, containing instructions to test and inspect the air brake control system torsion tube for corrosion damage and, depending on findings, the application of anticorrosive agent to the inside of the torsion tube, or replacement of the torsion tube with a serviceable part.

For the reasons described above, this new AD requires repetitive tests and inspections of the air brake control system torsion tube and applicable corrective actions, depending on findings.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 48047, August 8, 2011) or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 9 products of U.S. registry. We also estimate that it will take about 4.5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will about $172 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $4,990.50, or $554.50 per product.

In addition, we estimate that any necessary follow-on actions will take about 5 work-hours and require parts costing $275, for a cost of $700 per

product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 48047, August 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–21–16 Diamond Aircraft Industries: Amendment 39–16839; Docket No. FAA–2011–0811; Directorate Identifier 2011–CE–026–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective November 23, 2011.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Diamond Aircraft Industries Model H–36 ''DIMONA'' powered sailplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

The mandatory continuing airworthiness information (MCAI) states:

A report has been received of a failed air brake control system torsion tube on a Diamond (formerly Hoffman) H 36 powered sailplane. The results of the subsequent investigation show that the failure was due to corrosion damage.

This condition, if not detected and corrected, may lead to failure of the air brake control system in flight, resulting in reduced control of the aeroplane.

To address this unsafe condition, Diamond published Mandatory Service Bulletin (MSB) 36–105, containing instructions to test and inspect the air brake control system torsion tube for corrosion damage and, depending on findings, the application of anticorrosive agent to the inside of the torsion tube, or replacement of the torsion tube with a serviceable part.

For the reasons described above, this new AD requires repetitive tests and inspections of the air brake control system torsion tube and applicable corrective actions, depending on findings.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within the next 6 months after November 23, 2011 (the effective date of this AD), remove, test, and inspect the air brake control system torsion tube for corrosion damage following Diamond Aircraft Industries GmbH Work Instruction WI–MSB 36–105, dated April 21, 2011, as specified in Diamond Aircraft Industries GmbH Service Bulletin No. MSB 36–105/1, dated May 2, 2011.

(2) If corrosion damage is found during the inspection required in paragraph (f)(1) of this AD or during any repetitive inspection required in paragraphs (f)(2) and (f)(3) of this AD, before further flight after the inspection in which corrosion damage is found, replace the affected torsion tube with a serviceable part. Before installation, apply an anticorrosive agent to the inside of the torsion tube. Do these required actions following Diamond Aircraft Industries GmbH Work Instruction WI–MSB 36–105, dated April 21, 2011, as specified in Diamond Aircraft Industries GmbH Service Bulletin No. MSB 36–105/1, dated May 2, 2011. After replacement, repetitively thereafter at intervals not to exceed 60 months, remove, test, and inspect the newly installed air brake control system torsion tube for corrosion damage following the procedures specified in paragraph (f)(1) of this AD.

(3) If no corrosion damage is found during the inspection required in paragraph (f)(1) of this AD or during any repetitive inspection required in paragraphs (f)(2) and (f)(3) of this AD, before reinstalling the torsion tube, apply an anticorrosive agent to the inside of the torsion tube. Do these required actions following Diamond Aircraft Industries GmbH Work Instruction WI–MSB 36–105, dated April 21, 2011, as specified in Diamond Aircraft Industries GmbH Service Bulletin No. MSB 36–105/1, dated May 2, 2011. Repetitively thereafter at intervals not to exceed 60 months, remove, test, and inspect the air brake control system torsion tube for corrosion damage following the procedures specified in paragraph (f)(1) of this AD.

(4) As of November 23, 2011 (the effective date of this AD), do not install an air brake control system torsion tube on an affected sailplane unless it has been inspected following the procedures specified in paragraph (f)(1) of this AD, is found to be corrosion free, and an anticorrosive agent has been applied to the inside of the tube as specified in Diamond Aircraft Industries GmbH Work Instruction WI–MSB 36–105, dated April 21, 2011, as specified in Diamond Aircraft Industries GmbH Service Bulletin No. MSB 36–105/1, dated May 2, 2011.

Note 1: Credit will be given for the initial test and inspection required in paragraph (f)(1) of this AD and the corrective actions required in paragraphs (f)(2) and (f)(3) of this AD if already done before November 23, 2011 (the effective date of this AD) following Diamond Aircraft Industries GmbH Service Bulletin No. MSB 36–105, original issue.

(g) FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any sailplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2011–0110, dated June 16, 2011; Diamond Aircraft Industries GmbH Service Bulletin No. MSB 36–105/1, dated May 2, 2011; and Diamond Aircraft Industries GmbH Work Instruction WI–MSB 36–105, dated April 21, 2011, for related information.

(j) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(2) Diamond Aircraft Industries GmbH Service Bulletin No. MSB 36–105/1, dated May 2, 2011; and Diamond Aircraft Industries GmbH Work Instruction WI–MSB 36–105, dated April 21, 2011, approved for IBR on November 23, 2011.

(3) For service information identified in this AD, contact Diamond Aircraft Industries GmbH, N.A. Otto-Straße 5, A–2700 Wiener Neustadt, Austria, telephone: +43 2622 26700; fax: +43 2622 26780; E-mail: *office@diamond-air.at;* Internet: *http://www.diamond-air.at.*

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

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

Issued in Kansas City, Missouri, on October 5, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26300 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0040; Directorate Identifier 2008–NM–203–AD; Amendment 39–16831; AD 2011–21–08]

RIN 2120–AA64

Airworthiness Directives; Sicma Aero Seat Passenger Seat Assemblies Installed on Various Transport Category Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Sicma Aero Seat 88xx, 89xx, 90xx, 91xx, 92xx, 93xx, 95xx, and 96xx series passenger seat assemblies, installed on various transport category airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Cracks have been found on seats [with] backrest links P/N (part number) 90–000200–104–1 and 90–000200–104–2. These cracks can significantly affect the structural integrity of seat backrests.

Failure of the backrest links could result in injury to an occupant during emergency landing conditions. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 23, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 23, 2011.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7161; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on April 25, 2011 (76 FR 22830). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Cracks have been found on seats [with] backrest links P/N (part number) 90–000200–104–1 and 90–000200–104–2. These cracks can significantly affect the structural integrity of seat backrests.

Failure of the backrest links could result in injury to an occupant during emergency landing conditions. The required actions include a general visual inspection for cracking of backrest links; replacement with new, improved links if cracking is found; and eventual replacement of all links with new, improved links. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Support for the Supplemental NPRM (76 FR 22830, April 25, 2011)

Boeing concurs with content of the supplemental NPRM (76 FR 22830, April 25, 2011).

Request to Remove Airplanes From the Proposed Applicability

Airbus stated that the Model A330–200 and –300 series airplanes that were included in table 1 of the supplemental NPRM (76 FR 22830, April 25, 2011) were delivered with 16G-rated seats, not the 9G-rated seats affected by the proposed AD. Airbus requested that Model A330–200 and –300 series airplanes be removed from the supplemental NPRM applicability.

We agree with the comment because it correctly updates table 1 of this AD by removing airplanes that do not have the affected seats. We have changed table 1 of this AD accordingly.

Clarification of Service Bulletin Citation

We have corrected the issue number and date for Annex 1 of Sicma Aero Seat Service Bulletin 90–25–013, Issue 3, dated December 19, 2001, to be Annex 1, Issue 1, dated June 26, 2001 (referenced in paragraph (f)(6) of this AD).

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 611 seats on 4 products of U.S. registry. We also estimate that it will take about 1 work-hour per seat to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per seat. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $51,935, or $85 per seat.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (75 FR 2826, January 19, 2010), the supplemental NPRM (76 FR 22830, April 25, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–21–08 SICMA AERO SEAT: Amendment 39–16831. Docket No. FAA–2010–0040; Directorate Identifier 2008–NM–203–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 23, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Sicma Aero Seat 88xx, 89xx, 90xx, 91xx, 92xx, 93xx, 95xx, and 96xx series passenger seat assemblies identified in Annex 1, Issue 2, dated March 19, 2004, of Sicma Aero Seat Service Bulletin 90–25–013, Issue 4, dated March 19, 2004, that have backrest links having part numbers (P/Ns) 90–000200–104–1 and 90–000200–104–2; and that are installed on, but not limited to, the airplanes identified in table 1 of this AD, certificated in any category. This AD does not apply to Sicma Aero Seat series 9140, 9166, 9173, 9174, 9184, 9188, 9196, 91B7, 91B8, 91C0, 91C2, 91C4, 91C5, 9301, and 9501 passenger seat assemblies.

TABLE 1—CERTAIN AFFECTED AIRPLANE MODELS

Manufacturer	Model
Airbus	A300 airplanes.
Airbus	A310, A318, A319, A320, A321 series airplanes.
ATR—GIE Avions de Transport Régional	ATR42–200, –300, –320, and –500 airplanes.
ATR—GIE Avions de Transport Régional	ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes.
The Boeing Company	727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes.
The Boeing Company	737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800, –900, and –900ER series airplanes.
The Boeing Company	747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.
The Boeing Company	757–200, –200PF, –200CB, and –300 series airplanes.
The Boeing Company	767–200, –300, –300F, and –400ER series airplanes.
Bombardier, Inc	CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) airplanes.
Bombardier, Inc	CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.
Bombardier, Inc	CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes.
Bombardier, Inc	CL–600–2D15 (Regional Jet Series 705) airplanes.
Bombardier, Inc	CL–600–2D24 (Regional Jet Series 900) airplanes.
Bombardier, Inc	DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 airplanes.
Fokker Services B.V	F.27 Mark 050, 100, 200, 300, 400, 500, 600, and 700 airplanes.
Fokker Services B.V	F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 airplanes.
The Boeing Company	DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–61, DC–8–62, DC–8–63, DC–8–61F, DC–8–62F, DC–8–63F, DC–8–71, DC–8–72, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes.
The Boeing Company	DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes.
The Boeing Company	DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes.
The Boeing Company	MD–11 and MD–11F airplanes.

Note 1: This AD applies to Sicma Aero Seat passenger seat assemblies as installed on any airplane, regardless of whether the airplane has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance according to paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

Reason

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

Cracks have been found on seats [with] backrest links P/N (part number) 90–000200–104–1 and 90–000200–104–2. These cracks can significantly affect the structural integrity of seat backrests.

Failure of the backrest links could result in injury to an occupant during emergency landing conditions. The required actions include a general visual inspection for cracking of the backrest links; replacement with new, improved links if cracking is found; and eventual replacement of all links with new, improved links.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) At the later of the compliance times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, do a general visual inspection of the backrest links having P/Ns 90–000200–104–1 and 90–000200–104–2, in accordance with Part One of Sicma Aero Seat Service Bulletin 90–25–013, Issue 4, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004:

(i) Before 6,000 flight hours on the backrest link since new.

(ii) Within 900 flight hours or 5 months after the effective date of this AD, whichever occurs later.

(2) If, during the inspection required by paragraph (f)(1) of this AD, cracking is found between the side of the backrest link and the lock-out pin hole but the cracking does not pass this lock-out pin hole (refer to Figure 2 of Sicma Aero Seat Service Bulletin 90–25–013, Issue 4, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004): Within 600 flight hours or 3 months after doing the inspection, whichever occurs first, replace both backrest links of the affected seat with new, improved backrest links having P/Ns 90–100200–104–1 and 90–100200–104–2, in accordance with Part Two of Sicma Aero Seat Service Bulletin 90–25–013, Issue 4, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004.

(3) If, during the inspection required by paragraph (f)(1) of this AD, cracking is found that passes beyond the lock-out pin hole (refer to Figure 2 of Sicma Aero Seat Service Bulletin 90–25–013, Issue 4, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004): Before further flight, replace both backrest links of the affected seat with new, improved backrest links having P/Ns 90–100200–104–1 and 90–100200–104–2, in accordance with Part Two of Sicma Aero Seat Service Bulletin 90–25–013, Issue 4, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004.

(4) If no cracking is found during the inspection required by paragraph (f)(1) of this AD: Do the replacement required by paragraph (f)(5) of this AD at the compliance time specified in paragraph (f)(5) of this AD.

(5) At the later of the compliance times specified in paragraphs (f)(5)(i) and (f)(5)(ii) of this AD, replace the links, P/Ns 90–000200–104–1 and 90–000200–104–2, with new improved links, P/Ns 90–100200–104–1 and 90–100200–104–2, in accordance with Part Two of Sicma Aero Seat Service Bulletin 90–25–013, Issue 4, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004. Doing this replacement for an affected passenger seat assembly terminates the inspection requirements of paragraph (f)(1) of this AD for that passenger seat assembly.

(i) Before 12,000 flight hours on the backrest links, P/Ns 90–000200–104–1 and 90–000200–104–2, since new.

(ii) Within 900 flight hours or 5 months after the effective date of this AD, whichever occurs later.

Credit for Actions Done in Accordance With Previous Service Information

(6) Actions done before the effective date of this AD in accordance with Sicma Aero Seat Service Bulletin 90–25–013, Issue 3, dated December 19, 2001, including Annex 1, Issue 1, dated June 26, 2001, are acceptable for compliance with the corresponding actions of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: The MCAI specifies doing repetitive inspections for cracking of links having over 12,000 flight hours since new until the replacement of the link is done. This AD does not include those repetitive inspections because we have reduced the compliance time for replacing those links. This AD requires replacing the link before 12,000 flight hours since new or within 900 flight hours or 5 months of the effective date of this AD, whichever occurs later.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (781) 238–7161; fax (781) 238–7170. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(h) Refer to MCAI French Airworthiness Directive 2001–613(AB), dated December 12, 2001; and Sicma Aero Seat Service Bulletin 90–25–013, Issue 4, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004; for related information.

Material Incorporated by Reference

(i) You must use Sicma Aero Seat Service Bulletin 90–25–013, Issue 4, dated March 19, 2004, including Annex 1, Issue 2, dated March 19, 2004, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Sicma Aero Seat, 7 Rue Lucien Coupet, 36100 ISSOUDUN, France, telephone: +33 (0) 2 54 03 39 39; fax: +33 (0) 2 54 03 39 00; e-mail: *customerservices.sas@zodiacaerospace.com;* Internet: *http://www.sicma.zodiacaerospace.com/en/.*

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

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

Issued in Renton, Washington, on September 28, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26083 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0478; Directorate Identifier 2010–NM–138–AD; Amendment 39–16832; AD 2011–21–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–103, B4–203, and B4–2C Airplanes

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

ACTION: Final rule.

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

One operator reported a failure of the MLG [main landing gear] retraction actuator sliding rod. This incident occurred at a number of operating flight cycles lower than the limit value imposed by the MLG manufacturer.

This condition, if not detected and corrected, results in undampened extension of the MLG, leading to higher than usual loads on the MLG attachment. Higher loads affect the structural integrity of the MLG and could lead to MLG failure.

* * * * *

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

DATES: This AD becomes effective November 23, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2011.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 8, 2011 (76 FR 33176), and proposed to supersede AD 2007–25–15, Amendment 39–15297 (72 FR 69601, December 10, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

One operator reported a failure of the MLG [main landing gear] retraction actuator sliding rod. This incident occurred at a number of operating flight cycles lower than the limit value imposed by the MLG manufacturer.

This condition, if not detected and corrected, results in undampened extension of the MLG, leading to higher than usual loads on the MLG attachment. Higher loads affect the structural integrity of the MLG and could lead to MLG failure.

To address and correct this unsafe condition, EASA issued AD 2006–0075 (now at Revision 2) [which corresponds to FAA AD 2007–25–15 (72 FR 69601, December 10, 2007)] to require repetitive inspections of the retraction actuator sliding rod as installed on A300, A300–600 and A300–600ST aeroplanes and, depending on findings, repair or replacement of the affected parts.

Since this event, studies have been performed by Airbus, the consequences of which are that for A300 aeroplanes, a new inspection program (new threshold and interval) has been established.

For the reason described above, this new [EASA] AD retains the requirements of AD

2006–0075R2, which is superseded and requires the accomplishment of the repetitive inspections and associated corrective actions at the new intervals. In addition, the Airbus A300 Aircraft Maintenance Manual (AMM) Chapter 12–22–32 (associated to Maintenance Planning Document (MPD) task 321112–0505–1) has been revised to introduce a greasing action at the level of the pick-up jack fitting. Consequently, this AD also requires the repetitive lubrication task.

For A300–600 and A300–600ST aeroplanes, the analyses have shown that, due to design differences, the loads induced on the MLG attachments are within acceptable margins. For that reason, this AD does not apply to those aeroplanes which were previously included in the applicability of EASA AD 2006–0075R2.

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

Comments

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

Request To Change Proposed Compliance Time

The Air Line Pilots Association, International (ALPA) stated it supports the intent and language of the subject NPRM (76 FR 33176, June 8, 2011), but requested the compliance time be changed in paragraph (g) of the NPRM to ''not to exceed 1000 flight hours or 12 months, whichever occurs first, under any circumstances.''

We disagree with this request because the unsafe condition is flight-cycle dependent, and the commenter did not provide any supporting data to justify a change in the compliance time. We have not changed the AD in this regard.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 3 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,530, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $0, for a cost of $510 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 33176, June 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15297 (72 FR 69601, December 10, 2007) and adding the following new AD:

2011–21–09 Airbus: Amendment 39–16832. Docket No. FAA–2011–0475; Directorate Identifier 2010–NM–138–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 23, 2011.

Affected ADs

(b) This AD supersedes AD 2007–25–15, Amendment 39–15297 (72 FR 69601, December 10, 2007).

Applicability

(c) This AD applies to Airbus Model A300 B4–103, B4–203, and B4–2C airplanes; certificated in any category; equipped with main landing gear (MLG) retraction actuator having part number (P/N) C23129 fitted with sliding rod P/N C69029–2 or C69029–3.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

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

One operator reported a failure of the MLG [main landing gear] retraction actuator sliding rod. This incident occurred at a number of operating flight cycles lower than

the limit value imposed by the MLG manufacturer.

This condition, if not detected and corrected, results in undampened extension of the MLG, leading to higher than usual loads on the MLG attachment. Higher loads affect the structural integrity of the MLG and could lead to MLG failure.

* * * * *

Compliance

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

Revised Compliance Times for Inspection of MLG Retraction Actuator and Corrective Actions

(g) At the applicable time specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Remove the MLG retraction actuator having P/N C23129 and do a detailed and high frequency eddy current inspection for defects that exceed the criteria defined in Messier-Dowty Special Inspection Service Bulletin 470–32–806, dated October 27, 2005, of the retraction actuator sliding rods having P/N C69029–2 or C69029–3, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–32–0450, Revision 02, dated July 28, 2009.

(1) For airplanes on which the retraction actuator sliding rod has accumulated 12,000 or fewer total flight cycles as of the effective date of this AD: Inspect at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the retraction actuator sliding rod.

(ii) Within 2,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(2) For airplanes on which the retraction actuator sliding rod has accumulated more than 12,000 total flight cycles, and 22,000 or fewer total flight cycles, as of the effective date of this AD: Inspect at the earliest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Before the accumulation of 23,000 total flight cycles on the retraction actuator sliding rod.

(ii) Within 2,000 flight cycles after the effective date of this AD.

(iii) Within 24 months after the effective date of this AD.

(3) For airplanes on which the retraction actuator sliding rod has accumulated more than 22,000 total flight cycles as of the effective date of this AD: Inspect within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.

(h) Thereafter, repeat the inspections required by paragraph (g) of this AD at intervals not to exceed 12,000 flight cycles.

(i) If, during any inspection required by paragraph (g) or (h) of this AD, any defect is detected that exceeds the criteria defined in Messier-Dowty Special Inspection Service Bulletin 470–32–806, dated October 27, 2005, before further flight, replace the affected sliding rod with a serviceable unit in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–32–0450, Revision 02, dated July 28, 2009.

(j) Before the accumulation of 32,000 flight cycles on any retraction actuator sliding rod, it must be replaced with a serviceable unit in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–32–0450, Revision 02, dated July 28, 2009. Parts removed from an airplane as required by this paragraph must be returned to Messier-Dowty within 30 days after removing the part from the airplane.

(k) As of the effective date of this AD, any MLG retraction actuator sliding rod having P/N C69029–2 or C69029–3 that has accumulated less than 32,000 total flight cycles, may be installed on any airplane, provided that the inspections required by paragraphs (g) and (h) of this AD are accomplished at the compliance times specified in paragraphs (g) and (h) of this AD and all applicable replacements required by paragraphs (i) and (j) of this AD are done.

Lubrication of the MLG Assembly

(l) Within 1,500 flight hours after the effective date of this AD: Clean and lubricate the MLG assembly, in accordance with Task 321112–0505–1 ''Main Landing Gear Assy,'' of Section 2–32, ''Systems and Powerplant Program: Landing Gear,'' of the Airbus A300 Maintenance Planning Document, Revision 30, dated April 1, 2010. Repeat the cleaning and lubrication thereafter at intervals not to exceed 1,500 flight hours.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Inspections accomplished before the effective date of this AD, in accordance with Airbus Mandatory Service Bulletin A300–32–0450, dated December 1, 2005; or Airbus Mandatory Service Bulletin A300–32–0450, Revision 01, dated May 10, 2006; are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2007–25–15, Amendment 39–15297 (72 FR 69601, December 10, 2007), are approved as AMOCs for the corresponding provisions of this AD.

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

Related Information

(o) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0102, dated June 8, 2010; Airbus Mandatory Service Bulletin A300–32–0450, Revision 02, dated July 28, 2009; Messier-Dowty Special Inspection Service Bulletin 470–32–806, dated October 27, 2005; and Task 321112–0505–1, ''Main Landing Gear Assy,'' of Section 2–32, ''Systems and Powerplant Program: Landing Gear,'' of the Airbus A300 Maintenance Planning Document, Revision 30, dated April 1, 2010; for related information.

Material Incorporated by Reference

(p) You must use Airbus Mandatory Service Bulletin A300–32–0450, Revision 02, excluding Appendix 1, dated July, 28, 2009; Messier-Dowty Special Inspection Service Bulletin 470–32–806, dated October 27, 2005; and Task 321112–0505–1, ''Main Landing Gear Assy,'' of Section 2–32, ''Systems and Powerplant Program: Landing Gear,'' of the Airbus A300 Maintenance Planning Document, Revision 30, dated April 1, 2010; to do the actions required by this AD, unless the AD specifies otherwise. (The revision level of the Airbus A300 Maintenance Planning Document is identified in only the title page and transmittal letter of this document.)

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

(2) For Messier-Dowty service information identified in this AD, contact Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, Virginia 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet *https://techpubs.services/messier-dowty.com.*

(3) For Airbus service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on September 28, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26082 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0564; Directorate Identifier 2011–NM–021–AD; Amendment 39–16830; AD 2011–21–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440); Model CL–600–2C10 (Regional Jet Series 700, 701, & 702); Model CL–600–2D15 (Regional Jet Series 705); and Model CL–600–2D24 (Regional Jet Series 900) airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There have been several in-service reports of airspeed mismatch between the pilot and co-pilot's airspeed indicators. It was discovered that during or after heavy rain, the pitot-static tubing may become partially or completely blocked by water, which fails to enter the drain bottles. Investigation revealed that drain bottles used in the primary pitot-static system include check valves, which impede the entry of water into the drain bottle. This condition, if not corrected, may result in erroneous airspeed and altitude indications.

* * * * *

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

DATES: This AD becomes effective November 23, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2011.

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

FOR FURTHER INFORMATION CONTACT: Christopher Alfano, Aerospace Engineer, Airframe & Mechanical Systems Branch, ANE–171, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; *telephone:* (516) 228–7340; *fax:* (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 9, 2011 (76 FR 33658). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There have been several in-service reports of airspeed mismatch between the pilot and co-pilot's airspeed indicators. It was discovered that during or after heavy rain, the pitot-static tubing may become partially or completely blocked by water, which fails to enter the drain bottles. Investigation revealed that drain bottles used in the primary pitot-static system include check valves, which impede the entry of water into the drain bottle. This condition, if not corrected, may result in erroneous airspeed and altitude indications.

This [Transport Canada Civil Aviation (TCCA)] directive mandates replacement of the [certain] Water Accumulator Assemblies [with new water accumulator assemblies] to improve drainage of the pitot-static tubing.

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

Comments

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

Request for Frequent Repetitive Inspections Instead of Replacements

Mesa Airlines requested we revise the NPRM (76 FR 33658, June 9, 2011) to change the maintenance program to reduce the repetitive inspection intervals for the water accumulator as an option to installing the enlarged drain tubes. Mesa stated that the main pitot-static drain assemblies on its fleet are inspected for moisture every 500 or 600 flight hours (depending on the model).

We disagree because the pitot static tubing/water accumulator has a design deficiency that may cause it to become partially or completely blocked by water. This pitot static tubing/water accumulator design must be replaced with a new pitot static water accumulator design to eliminate this unsafe condition. Inspecting the pitot static water accumulator more frequently will not meet the intent of this AD. Once we issue this AD, any operator may request approval of an alternative method of compliance (AMOC) under the provisions of paragraph (k)(1) of this AD. Sufficient data must be submitted to substantiate that repetitive inspections would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Change Applicability Serial Numbers To Match Service Bulletin

American Eagle Airlines requested that paragraph (c) of the NPRM (76 FR 33658, June 9, 2011) be changed from including all serial numbers of the specified airplanes to only those serial numbers called out in Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011; and Bombardier Service Bulletin 670BA–34–030, Revision B, dated March 23, 2010. American Eagle stated as justification that the requirements of the NPRM were incorporated on airplanes going forward in production, and the illustrated parts catalog applicability has been updated for the affected part as well.

We disagree. Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has determined that all serial numbers of the specified airplane models need to be called out in its AD in order to prevent unsafe parts from being installed in any airplane. We agree with TCCA that all serial numbers need to be included in this AD, and also have included in paragraph (h) of the AD a prohibition against installing certain unsafe water accumulator assemblies on the pitot and static lines of the air data computer on any airplane.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements, if any, take precedence over the actions copied from the MCAI.

Costs of Compliance

We estimate that this AD will affect 1,041 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,200 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,426,170, or $1,370 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 33658, June 9, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–21–07 Bombardier, Inc.: Amendment 39–16830. Docket No. FAA–2011–0564; Directorate Identifier 2011–NM–021–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 23, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7067 inclusive, 7069 through 7990 inclusive, 8000 through 8107 inclusive, and subsequent; all Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes; all Model CL–600–2D15 (Regional Jet Series 705) airplanes; and all Model CL–600–2D24 (Regional Jet Series 900) airplanes; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 34: Navigation.

Reason

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

There have been several in-service reports of airspeed mismatch between the pilot and co-pilot's airspeed indicators. It was discovered that during or after heavy rain, the pitot-static tubing may become partially or completely blocked by water, which fails to enter the drain bottles. Investigation revealed that drain bottles used in the primary pitot-static system include check valves, which impede the entry of water into the drain bottle. This condition, if not corrected, may result in erroneous airspeed and altitude indications.

* * * * *

Compliance

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

Actions

(g) Within 9 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) For Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes identified in Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011: Replace water accumulator assemblies having part numbers (P/N) 50029–001, 9435015, 50030–001, and 9435014 installed on the pitot and static lines of the air data computer (ADC) with new or serviceable water accumulator assemblies having P/N 50036–001, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011.

(2) For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes: Replace water accumulator assemblies having P/N 50033–001 installed on the pitot and static lines of the ADC with new or serviceable water accumulator assemblies having P/N 50036–001, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–34–030, Revision B, dated March 23, 2010.

Parts Installation

(h) As of the effective date of this AD, no person may install on any airplane a water accumulator assembly, P/N 50029–001, 9435015, 50030–001, or 9435014 for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, or P/N 50033–001 for Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), Model CL–600–2D15 (Regional Jet Series 705), and Model CL–600–2D24 (Regional Jet Series 900) airplanes on the pitot and static lines of the ADC.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Replacing water accumulator assemblies in accordance with Bombardier Service Bulletin 670BA–34–147, dated April 1, 2009; or Revision A, dated November 3, 2009 ((for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes)), before the effective date of this AD is acceptable for compliance with the corresponding replacement required by paragraph (g)(1) of this AD.

(j) Replacing water accumulator assemblies in accordance with Bombardier Service Bulletin 670BA–34–030, dated April 1, 2009; or Revision A, dated November 3, 2009 ((for Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes)); before the effective date of this AD, is acceptable for compliance with the corresponding replacement required by paragraph (g)(2) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; *telephone:* (516) 228–7300; *fax:* (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(l) Refer to MCAI Transport Canada Civil Aviation Airworthiness Directive CF–2010–37, dated October 28, 2010; Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011; and Bombardier Service Bulletin 670BA–34–030, Revision B, dated March 23, 2010; for related information.

Material Incorporated by Reference

(m) You must use Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011; and Bombardier Service Bulletin 670BA–34–030, Revision B, dated March 23, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on September 28, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–26081 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Part 210

[Docket No. MISC–032]

Rules of Adjudication and Enforcement

AGENCY: International Trade Commission

ACTION: Final rule.

SUMMARY: The United States International Trade Commission (''Commission'') amends its Rules of Practice and Procedure concerning rules of adjudication and enforcement. The amendments are necessary to gather more information on public interest issues arising from complaints filed with the Commission requesting institution of an investigation under Section 337 of the Tariff Act of 1930. The intended effect of the amendments is to aid the Commission in identifying investigations that require further development of public interest issues in the record, and to identify and develop information regarding the public interest at each stage of the investigation.

DATES: Effective November 18, 2011.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, United States International Trade Commission, telephone 202–708–2301. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to update certain provisions of the Commission's existing Rules of Practice and Procedure. The Commission is amending its rules covering investigations under Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) (''Section 337'') in order to increase the efficiency of its Section 337 investigations. Specifically, the changes to the Commission's Rules are for the purpose of improving the Commission's procedures and ensuring the completeness of the record with respect to the required analysis concerning the public interest under Sections 337(d)(1) and (f)(1). There is no change in the Commission's substantive practice with respect to its consideration of the public interest factors in its determinations relating to the appropriate remedy.

The Commission published a notice of proposed rulemaking (''NOPR'') in the **Federal Register** at 75 FR 60671 (Oct. 1, 2010), proposing to amend the Commission's Rules of Practice and Procedure to gather more information on public interest issues. Consistent with its ordinary practice, the Commission invited the public to comment on all the proposed rules amendments. This practice entails the following steps: (1) Publication of an NOPR; (2) solicitation of public comments on the proposed

amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

The NOPR requested public comment on the proposed rules within 60 days of publication of the NOPR. In response to requests from the American Intellectual Property Law Association (''AIPLA'') and the Intellectual Property Owners Association (''IPO''), the Chairman granted an extension by letter of December 2, 2010, to allow those entities to submit comments until January 7, 2011. The Commission received a total of eight sets of comments from corporations or organizations, including one each from the ITC Trial Lawyers Association (''ITCTLA''); Microsoft Corp. (''Microsoft''); Intellectual Ventures, LLC (''Intellectual Ventures''); the Ministry of Commerce of the People's Republic of China (''MOFCOM''); the China Chamber of Commerce for Light Industrial Products & Arts-Crafts (''CCCLA''); the Computer & Communications Industry Association (''CCIA''), and the IPO. In addition, the law firm of Adduci, Mastriani & Schaumberg LLP (''AMS'') filed a set of comments. Three sets of comments were received from persons writing in their individual capacities, *viz.,* Ms. Mary White, Mr. Steven Beard, and a group of economists including Messrs. Fei Deng, Greg Leonard, and Mario Lopez. The IPO's comments were filed one week late on January 14, 2011. The AIPLA did not submit comments.

The Commission has carefully considered all comments that it received. The Commission's response is provided below in a section-by-section analysis. The Commission appreciates the time and effort of the commentators in preparing their submissions.

As required by the Regulatory Flexibility Act, the Commission certifies that these regulatory amendments will not have a significant impact on small business entities.

Overview of the Amendments to the Regulations

The final regulations contain eleven (11) changes from those proposed in the NOPR. These changes are summarized here.

First, with regard to rule 210.12, relating to the complaint, the Commission has determined that it will not require complainants to include public interest allegations in the complaint. Second, the Commission has determined to add final rule 210.8(b) to require complainants to file a separate statement of public interest concurrently with the complaint. Final rule 210.8(b) contains a list of the issues that a complainant should address in its public interest statement, which is similar to the list contained in proposed rule 210.12(a)(12). Third, the Commission has determined to add final rule 210.8(c)(1) to provide for the responses to a Commission pre-institution **Federal Register** notice that will solicit comments regarding the public interest, including addressing complainant's filing under rule 210.8(b), from proposed respondents and the public upon receipt of a complaint. Included in this section is a requirement that public interest submissions are due eight (8) calendar days after publication of the pre-institution notice in the **Federal Register**. Fourth, the Commission has added final rule 210.8(c)(2) to provide that complainants may file reply submissions to responses submitted by the public and proposed respondents in response to the Commission's pre-institution **Federal Register** notice under final rule 210.8(c)(1). Any such replies are due within three (3) calendar days following the filing of submissions by proposed respondents and the public. Fifth, current rule 210.8(b) is redesignated 210.8(d).

Sixth, with regard to proposed rule 210.13(b), the Commission has determined that respondents will likewise not be required to address the public interest in their response to the complaint. Therefore, proposed rule 210.13(b) will not appear in the final rules. Seventh, the Commission has determined to add final rule 210.14(f) to require respondents to submit a statement of public interest in response to complainants' filings under § 210.8(b) and (c)(2) when the Commission has delegated the matter of public interest to the presiding administrative law judge (''ALJ'').

Eighth, the Commission has determined to amend proposed rule 210.50(a)(4) to clarify that the parties are requested, but not required, to file comments on the public interest thirty (30) days after issuance of the presiding ALJ's recommended determination (''RD'') on remedy, bonding, and where ordered, the public interest. These comments may include any information relating to the public interest, including any updates to the information provided pursuant to sections 210.8(b) and (c) and 210.14(f), and are limited to five (5) pages, inclusive of attachments. Members of the public will be given an opportunity to comment on the RD in response to a **Federal Register** notice that will be issued by the Commission after issuance of the presiding ALJ's RD. Ninth, the Commission has determined to redesignate the currently undesignated paragraph following current rule 210.50(a)(4) as final rules 210.50(a)(4)(i), (ii), (iii), and (iv).

Tenth, the Commission has determined to amend rule 210.10(b) to indicate that the comments received during the pre-institution period—under final rules 210.8(b) and (c)—are the general basis for the Commission's determination as to whether to delegate the issue of public interest to the ALJ. Rule 210.10(b) is also amended to clarify the limits on discovery when the Commission orders the ALJ to consider the public interest. Eleventh, the Commission has determined to add final rule 210.42(a)(1)(ii)(C) to clarify that, when ordered to take evidence on the public interest, the ALJ shall include analysis of the public interest in his RD.

A comprehensive explanation of the rule changes is provided in the section-by-section analysis below. The section-by-section analysis includes a discussion of all modifications suggested by the commentators. As a result of some of the comments, the Commission has determined to modify several of the proposed amendments and to add several new sections to the final rule as summarized above. The section-by-section analysis will refer to the rules as they appeared in the NOPR. Any new rules will be discussed with respect to the previously proposed rules.

Section-by-Section Analysis

19 CFR Part 210

Subpart C—Pleadings

Section 210.12

The NOPR proposed to amend § 210.12 by adding a subsection (12) to § 210.12(a) to require that the complainant provide in its complaint specific information regarding how issuance of an exclusion order and/or a cease and desist order in an investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

The NOPR further proposed adding a paragraph (k) to § 210.12 to provide that, when a complaint is filed, the Secretary to the Commission will publish a notice in the **Federal Register** soliciting comments from the public and the proposed respondents on any public interest issues arising from the complaint. Under the proposed rules, these comments would be limited to

five pages and would be required to be filed within five days of publication of the notice. The purpose of the proposed amendments to 210.12 was to gather information for the Commission to consider in deciding whether to refer the public interest issues to the ALJ.

Microsoft, Intellectual Ventures, and AMS contend that if the Commission seeks more information on the public interest, it would be sufficient to allow the parties and the public to comment in response to a pre-institution **Federal Register** notice published immediately after the filing of the complaint. Microsoft, Intellectual Ventures, and AMS are of the view that it would be unnecessary and burdensome to require the complaint and the respondents' responses to the complaint to include information on the public interest in addition to any submissions the parties might file in response to the pre-institution **Federal Register** notice.

AMS states that the Commission's recent practice of soliciting comments at the beginning of the investigation is a good one and should be made a permanent part of Section 337 procedure. AMS notes that many parties and members of the public have taken advantage of the opportunity to file such comments since the Commission began soliciting them in 2010. AMS states that ''[i]t would not be consistent with the remedial purpose of Section 337 if potential complainants were deterred from coming to the ITC due to concerns about the burdens associated with addressing public interest issues before there has been any adjudication of violation or the scope of the remedy.''

Microsoft states that requiring information on the public interest in the complaint and responses thereto would be unduly burdensome in light of the rare instances where the public interest has been a factor in deciding whether to issue relief. Microsoft states that to the extent the Commission believes amendment to its rules is necessary, the pre-institution **Federal Register** notice alone would identify to the Commission the few instances warranting early development of public interest information. Microsoft, however, urges the Commission to make clear that the Commission is not expanding the breadth of the statutory public interest factors with any amendment. It believes that open-ended and undefined submissions regarding ''competitive conditions in the United States economy'' would provide little guidance to the Commission.

According to Intellectual Ventures, the public interest information required in the complaint under the proposed rules may not be in the possession of many complainants and determining the potential public interest impact of a hypothetical remedy is a highly speculative endeavor, particularly at the outset of an investigation. Moreover, the proposed rules could place a burden upon potential complainants to conduct extensive research on subjects far outside their businesses and expertise. Intellectual Ventures believes a pleading requirement would not only burden the parties, but would run the risk of reintroducing at least the perception that the Commission is making a determination of injury as part of the determination of violation, which is in direct opposition to the Congressional mandate that there is no longer an injury requirement in Section 337 investigations. Intellectual Ventures is particularly concerned about domestic industries that are based on the exploitation of intellectual property through engineering, research and development, and licensing. Intellectual Ventures also states that ''by placing a de facto burden on complainant to deny the existence of public interest concerns—a burden which the statute does not require them to meet—this proposal may deter some complainants from coming to the ITC at all, which would be contrary to the purpose and intent of Section 337 to protect domestic industries from unfair import competition.'' While Intellectual Ventures is opposed to any change in the current rules, it states that it is better to solicit comments through the **Federal Register** during the pre-institution stage of the investigation than to require the information in the pleadings.

Although not part of the official comments, on January 19, 2011, during the Third Annual Live at the ITC—Forum on Section 337 of the Tariff Act of 1930, panelists expressed concerns that ordering a complainant to act against its own interest by listing public interest issues in the complaint is essentially unfair because the statute directs the issuance of an exclusion order unless, upon consideration of the public interest, the Commission decides not to do so. Another concern was the burden such a requirement would place on non-practicing entities (NPEs) which might not actually know what their licensees are doing with the asserted patented technology. One panelist raised the possibility that NPEs might be subject to sanctions if they could not truthfully answer the public interest questions in the complaint.

On the other hand, the ITCTLA does not object to requiring public interest information in the complaint.

Commission Response

The Commission has determined that it will not require complainants to include public interest allegations in the complaint. Instead, the Commission will obtain public interest information from the parties early in the investigation in a format different from that which was proposed in the NOPR. Specifically, instead of including public interest information in the complaint, complainants will be required to file a separate statement of public interest concurrently with the filing of the complaint. If a complainant includes information which it deems confidential in the submission, it will be required to also file a nonconfidential version concurrently with its complaint. This final rule will be designated as 210.8(b). Current rule 210.8(b) will be redesignated as 210.8(d), as discussed below.

The ITCTLA suggests that the Commission solicit even more specific information concerning the public interest. In particular, the ITCTLA suggests that the complainant identify, to the best of its knowledge, the ''like or directly competitive articles,'' and how the complainant's requested relief would affect consumers in the United States. The ITCTLA also suggests different language for some of the Commission's final rules. For instance, it suggests that the amendments be more consistent with the statutory public interest factors and proposes that a fifth provision be included that would require a statement as to how a company's requested relief would affect consumers in the United States. The ITCTLA also suggests that the comments be directed to the ''requested'' exclusion order and cease and desist order rather than to a generic exclusion order and cease and desist order.

MOFCOM suggests that the public interest considerations be expanded to include the sales of upstream and downstream products of the subject articles, and the operation condition of the importer, exporter, and retailer of the subject articles. The CCCLA suggests that the public interest factors include market conditions and the competitiveness of importers, distributors and retailers in the upstream and downstream industry related to the subject articles.

Economists Deng, Leonard, and Lopez suggest that the Commission refrain from seeking information on an exhaustive list and instead lay out general types of information that might prove fruitful. Some examples of information they deem relevant in evaluating the impact of an exclusion

order, are as follows: (1) The costs and time it would take a consumer to switch to substitute products, (2) the loss in consumer welfare due to reduction in product variety in differentiated product industries, (3) the potential for a price increase from the reduction in competition, (4) the ability of non-infringing firms to offer close substitutes and the time required to do so, (5) potential entrants, i.e., potential new suppliers of substitute goods, and (6) the potential profit lost by vertically-related firms versus the potential profit gained by competitors and competitors' vertically-related firms.

The CCIA suggests that the Commission adopt for its public interest rules the standard for obtaining a permanent injunction in a federal district court laid out by the Supreme Court in *eBay Inc* v. *MercExchange, L.L.C.,* 547 U.S. 388 (2006) (''*eBay*''). The CCIA suggested that the Commission would need to do so in order to comply with United States obligations under Article III: 4 of the GATT, specifically, a GATT decision, *United States—Section 337 of the Tariff Act of 1930* (Nov. 7, 1989).

Commission Response

The Commission has determined that complainants' statement concerning the public interest under final rule 210.8(b) should be focused as follows: (a) Explain how the articles potentially subject to the order are used in the United States; (b) identify any public health, safety, or welfare concerns relating to the requested remedial orders; (c) identify like or directly competitive articles that complainant, its licensees, or third parties make which could replace the subject articles if they were to be excluded; (d) indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the potential orders in a commercially reasonable time in the United States; and (e) state how the requested relief would impact consumers. These topics will replace those currently listed in proposed rule 210.12(a)(12). The Commission has determined that the final rules will not adopt the test for permanent injunctions articulated in *eBay*.

Several parties (Mary White, the ITCTLA, AMS, MOFCOM, and the CCCLA) state that five days is too short a time for proposed respondents and the public to respond to the pre-institution **Federal Register** notice soliciting comments. The ITCTLA suggests extending this time period to seven business days; MOFCOM suggests 10 calendar days; and AMS and the CCCLA suggest 15 calendar days. ITCTLA suggests that an additional period of seven (7) business days be allowed for responses to these early comments.

Commission Response

The Commission has determined to provide more time for public comment beyond what was proposed in the NOPR (rule 210.12(k)). Specifically, the Commission will require that public interest submissions be due eight (8) calendar days after publication of the pre-institution notice in the **Federal Register**. If any such submission includes information which the submitting entity deems confidential, it will be required to also file a nonconfidential version concurrently with its confidential submission. This requirement will appear in final rule 210.8(c)(1).

Steven Beard suggests that public comments in response to the pre-institution **Federal Register** notice should be forwarded to the parties in the adjudicative proceeding.

Commission Response

The Commission has determined that public interest comments should not be forwarded by the Commission to the complainant and proposed respondents, since the Commission's Electronic Document Information System (EDIS) is available to allow access to any comments that are filed. No amendments to the final rules will be made in this regard.

MOFCOM criticizes the ''and/or'' language of the proposed amendment to § 210.12(k), which it believes suggests that in some cases either, but not both, the public or the proposed respondents will have the right to comment on the public interest.

Commission Response

This is not the intent of the amendments, so to address this comment, final rule 210.8(c)(1) states that both proposed respondents and the public may respond to complainants' filings under 210.8(b).

The ITCTLA points out that under the proposed amendment to rule 210.13, respondents are permitted to submit a formal response to any public interest submissions made by members of the general public pursuant to proposed rules 210.12(k), but that no such opportunity exists as a matter of right for the complainant to do so. The ITCTLA proposes that Rule 210.12(a)(13) be added to afford a complainant an opportunity to file a reply to any comments received from the general public and respondents.

Commission Response

The Commission has determined that the complainant will be allowed under final rule 210.8(c)(2) to file a reply submission to responses submitted by the public and proposed respondents to the Commission's pre-institution notice. Any such replies are due within three (3) calendar days of the filings under final rule 210.8(c)(1) and are limited to five (5) pages, inclusive of attachments. If a complainant includes information that it deems confidential in the submission, it will be required to also file a nonconfidential version concurrently with its confidential submission.

Section 210.13

The NOPR proposed adding a subsection (4) to section 210.13(b) to require respondents' response to the complaint to address the public interest statements made in the complaint and any comments received from the public with respect to the public interest.

The ITCTLA proposes that the respondent be allowed to amend or supplement the public interest statement contained in its response to the complaint and notice of investigation to respond to any replies that might be filed by complainants. The ITCTLA recommends that since this submission is made early in the investigation, the respondent be permitted to supplement its public interest submission under proposed Rule 210.13(b)(4), where necessary and with good cause shown.

Commission Response

Since the Commission has determined that complainants will not be required to include public interest information in the complaint, respondents will likewise not be required to address the public interest in the response to the complaint. The Commission has, however, determined that respondents must submit a mandatory statement of public interest if the Commission has delegated the matter of public interest to the ALJ, as discussed below in conjunction with proposed amendments to rule 210.50. This provision is reflected in final rule 210.14(f).

Subpart G—Determinations and Actions Taken

Section 210.50

The NOPR further proposed to add language to section 210.50(a)(4) to provide that, after the service of the presiding ALJ's RD on remedy and bonding, the parties are instructed to submit to the Commission within thirty (30) days any information relating to the

public interest, including any updates to the information provided in the complaint and response, as required by the proposed amendments to §§ 210.12 and 210.13. Members of the public would also be permitted to submit information with respect to the public interest under the proposed rule.

The NOPR further proposed to amend section 210.50(b)(1) to provide that unless the Commission orders otherwise, an ALJ shall not take evidence on the issue of the public interest for purposes of the RD under § 210.42(a)(1)(ii). If the Commission orders the ALJ to take evidence on the public interest, the extent of the taking of discovery by the parties shall be at the discretion of the presiding ALJ.

The ITCTLA, IPO, Microsoft, and Intellectual Ventures are concerned that, by requiring public interest submissions subsequent to the issuance of the RD but prior to the issuance of the Commission's notice of review, a misperception may be created that the Commission is weighing public interest information as part of its threshold merits inquiry on review. The ITCTLA further points out that at this stage of the investigation, it is not known what, if any, portions of the final initial determination (''ID'') the Commission has taken under review. Thus, if the Commission determines not to review a final ID finding no violation, or determines to review and remand issues to the ALJ, any submissions on the public interest at this time would be irrelevant or untimely.

Commission Response

The Commission has determined to implement in its final regulations its current practice of requesting party comments on the public interest within thirty (30) days after the RD issues, under final rule 210.50(a)(4). Solicitation of these comments is not limited to cases in which the Commission has delegated the public interest issue to the ALJ. Final rule 210.50(a)(4) has been amended to clarify that the parties are requested, but not required, to file comments under this provision. Such submissions are limited to five (5) pages, inclusive of attachments. The final rule does not allow members of the public to submit similar comments. Rather, the Commission will issue a **Federal Register** notice soliciting comments from the public after an RD issues. Additionally, the Commission has determined to amend rule 210.50(a)(4) to clarify that the undesignated paragraph following current rule 210.50(a)(4) will be preserved as rule § 210.50(a)(4)(i), (ii), (iii), and (iv) in compliance with **Federal Register** requirements.

With respect to the proposed amendments to rule 210.50(b)(1), while generally supporting the Commission's efforts to develop a better record on the public interest, the ITCTLA states that it expects that the Commission will rarely refer the public interest issue to the ALJ and that the proposed rules will not change the Commission's practice substantively. The ITCTLA believes the proposed rules balance the interests of complainants, respondents, and the public by giving each a fair opportunity to present public interest issues early in the investigation and to update information at each stage of the investigation. The ITCTLA warns that delegation of the issue of public interest to the ALJ has the ''potential for a significant expansion of the scope of discovery in Section 337 investigations, particularly with respect to third-party discovery.'' The ITCTLA and Intellectual Ventures state that discovery regarding the public interest may lead to significant party and non-party costs, and the ITCTLA notes that discovery could lead to an extension of the time required to complete investigations. In this connection, the ITCTLA suggests that the Commission limit the scope of the public interest issue that it may delegate to the ALJ in a given case based on the complainant's statement of what articles are like or directly competitive. Specifically, the ITCTLA suggests that the Commission include a preamble stating that it expects ALJs to limit such discovery appropriately, with particular consideration for the interests of third parties, and to ensure that public interest discovery does not delay the investigation and is not used improperly.

Intellectual Ventures, Microsoft, and AMS state that the current rules, which solicit comments on the public interest and analysis of public interest evidence only after a final ID and RD is issued by the presiding ALJ, are adequate. Intellectual Ventures believes that consideration of the public interest as implemented in the NOPR would have a detrimental effect on Section 337 by increasing the burdens on Commission resources, particularly those of the ALJs, and on the parties. Intellectual Ventures submits that Section 337's statutory framework puts the public interest in issue only near the end of an investigation, after a violation is found and an appropriate remedy is determined. It argues that, given the infrequency with which genuine public interest concerns have been implicated in Section 337 investigations, early consideration of the factors is neither necessary nor appropriate in most investigations. It points out that consideration of the public interest at an early stage may encompass investigations where public interest considerations are non-existent, or will not have an impact by the time the Commission reaches a determination on violation, e.g., some issues could be mooted if patents are found not infringed or invalid.

Intellectual Ventures suggests that the final version of rule 210.50 provide for the Commission to delegate only the gathering of evidence to the ALJ, such that the ALJ would collect information and forward it to the Commission without analyzing or addressing the issue himself. Intellectual Ventures expresses concern that allowing the ALJ to both take evidence on the public interest and analyze that evidence would run afoul of Congress's decision, reflected in the 1988 amendments to the Trade Act, to eliminate the injury requirement in Section 337 investigations. Intellectual Ventures also notes that the costs associated with public interest discovery could potentially discourage potential complainants from making use of Section 337 proceedings particularly due to the broad nature of the public interest factors addressed in § 337(d) and (f). Intellectual Ventures expresses concern at the implication that the public will not have any input on the public interest issue during discovery, while also questioning the feasibility of having non-parties present evidence concerning the public interest during discovery. Intellectual Ventures further submits that leaving discovery on the public interest to the ALJs' discretion will lead to inconsistent practices among the ALJs, and ostensibly, inconsistent results in the analysis of public interest evidence.

The IPO supports the Commission's intent of furthering its efforts under the statute to consider the effect of any remedial relief granted in Section 337 investigations. It is concerned, however, that the proposed rule delegates a new obligation to the ALJs, who are already faced with challenging time lines. According to the IPO, delegating the collection of evidence to the ALJs places a significant, and in the vast majority of cases, a needless burden on them at a time when caseloads are growing and target dates have lengthened. It is also concerned that the new rules interject the public interest consideration into the investigation too early, creating a situation where the violation determination would be improperly

influenced by the public interest considerations.

Microsoft is concerned that the proposed amendments will unnecessarily interject ''additional (and potentially burdensome) factual, contention, and expert discovery in the name of 'public policy' '' that does not truly correspond with the purpose of the statute. It notes that the public interest has overridden a Commission order in only a few cases, and states that the application of any new rules should be correspondingly limited to the narrow instances in which public interest concerns are truly relevant. Microsoft asserts that information received at the beginning of the investigation may be out of date or otherwise irrelevant by the time any exclusion order would issue.

AMS states that, historically, the public interest rarely has been relevant in the administration of Section 337. It asserts that referring the public interest issue to the ALJ would, in most cases, be superfluous and premature, noting that a large percentage of cases settle or result in a determination of no violation. The IPO and Intellectual Ventures comment that referring the public interest issue to the ALJ will increase the instances of discovery abuse, particularly in regard to third parties. The ITCTLA also warns that the proposed rules could have the unintended consequence of discovery abuse, particularly in regard to third parties. Intellectual Ventures and Microsoft believe that the proposed rules amendments could overwhelm the Commission process at all stages, particularly by overburdening the ALJ, and lead to longer target dates for the completion of investigations.

Mary White suggests that the Commission clarify that the ALJ would not be allowed to take public interest evidence, or consider the public interest comments, unless ordered to do so by the Commission.

On the other hand, Steven Beard suggests that an ALJ should be able to take evidence on the issue of the public interest, without restrictions, in all investigations and should be mandated to address the substantive issues raised in the public comments when writing their decisions. MOFCOM also believes the ALJ should always be empowered to take evidence on and to address the public interest without reliance on a Commission order.

Commission Response

Rule 210.10(b) has been amended to indicate that the comments received during the pre-institution period—under final rules 210.8(b) and (b)—are the general basis for the Commission's determination as to whether to delegate the issue of public interest to the ALJ. Since proposed rule 210.50(b)(1) clearly states that ''[u]nless the Commission orders otherwise, an ALJ shall not take evidence on the issue of the public interest * * *[,]'' the final rule will not be amended in that respect. The amendment to rule 210.10(b), however, makes clear that, when directed to consider the public interest, the ALJ is expected to limit public interest discovery appropriately, with particular consideration for third parties, and not allow such discovery to delay the investigation or be used improperly. The Commission notes that, when the ALJ is not directed to consider the public interest, the proposed amendments do not expand scope of discovery beyond the issues bearing upon violation. Furthermore, the Commission has amended current rule 210.42(a)(1)(ii) to include § 210.42(a)(1)(ii)(C), which provides that, when ordered to take evidence on the public interest, the ALJ shall include analysis of the public interest in his RD.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the final rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission chose to publish a notice of proposed rulemaking, these regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These final rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the final rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The final rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), because it is part of an administrative action or investigation against specific individuals or entities. 44 U.S.C. 3518(c)(1)(B)(ii).

List of Subjects in 19 CFR Part 210

Administration practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

For the reasons stated in the preamble, 19 CFR part 210 is amended as set forth below:

PART 210—ADJUDICATION AND ENFORCEMENT

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

Authority: 19 U.S.C. 1333, 1335, and 1337.

■ 2. Amend § 210.8 by redesignating paragraph (b) as paragraph (d), and adding new paragraphs (b) and (c) to read as follows:

§ 210.8 Commencement of reinstitution proceedings.

* * * * *

(b) *Provide specific information regarding the public interest.* Complainant must file, concurrently with the complaint, a separate statement of public interest, not to exceed five pages, inclusive of attachments, addressing how issuance of the requested relief, i.e., a general exclusion order, a limited exclusion order, and/or a cease and desist order, in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. In particular, the submission should:

(1) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(2) Identify any public health, safety, or welfare concerns relating to the requested remedial orders;

(3) Identify like or directly competitive articles that complainant, its licensees, or third parties make

which could replace the subject articles if they were to be excluded;

(4) Indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States; and

(5) State how the requested remedial orders would impact consumers.

(c) *Publication of notice of filing.* (1) When a complaint is filed, the Secretary to the Commission will publish a notice in the **Federal Register** inviting comments from the public and proposed respondents on any public interest issues arising from the complaint and potential exclusion and/or cease and desist orders. In response to the notice, members of the public and proposed respondents may provide specific information regarding the public interest in a written submission not to exceed five pages, inclusive of attachments, to the Secretary to the Commission within eight (8) calendar days of publication of notice of the filing of a complaint. Comments that substantively address allegations made in the complaint will not be considered. Members of the public and proposed respondents may address how issuance of the requested exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. Submissions should:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make which could replace the subject articles if they were to be excluded;

(iv) Indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States; and

(v) State how the requested remedial orders would impact consumers.

(2) Complainant may file a reply to any submissions received under paragraph (c)(1) of this section not to exceed five pages, inclusive of attachments, to the Secretary to the Commission within three (3) calendar days following the filing of the submissions.

* * * * *

■ 3. Amend § 210.10 by revising paragraph (b) to read as follows:

§ 210.10 Institution of investigation.

* * * * *

(b) An investigation shall be instituted by the publication of a notice in the **Federal Register**. The notice will define the scope of the investigation and may be amended as provided in § 210.14(b) and (b). The Commission may order the administrative law judge to take evidence and to issue a recommended determination on the public interest based generally on the submissions of the parties and the public under § 210.8(b) and (c). If the Commission orders the administrative law judge to take evidence with respect to the public interest, the administrative law judge will limit public interest discovery appropriately, with particular consideration for third parties, and will ensure that such discovery will not delay the investigation or be used improperly. Public interest issues will not be within the scope of discovery unless the administrative law judge is specifically ordered by the Commission to take evidence on these issues.

* * * * *

■ 4. Amend § 210.14 by revising the section heading and adding paragraph (f) to read as follows:

§ 210.14 Amendments to pleadings and notice; supplemental submissions; counterclaims; respondent submissions on the public interest.

* * * * *

(f) *Respondent submissions on the public interest.* When the Commission has ordered the administrative law judge to take evidence with respect to the public interest under § 210.50(b)(1), respondents must submit a statement concerning the public interest, including any response to the issues raised by the complainant pursuant to § 210.8(b) and (c)(2), at the same time that their response to the complaint is due. This submission must be no longer than five pages, inclusive of attachments.

■ 5. In § 210.42, revise the heading of paragraph (a)(1)(ii) and add paragraph (a)(1)(ii)(C) to read as follows:

§ 210.42 Initial determinations.

(a)(1)(i) * * *

(ii) *Recommended determination on issues concerning permanent relief, bonding, and the public interest.* * * *

* * * * *

(C) The public interest under sections 337(d)(1) and (f)(1) in investigations where the Commission has ordered the administrative law judge under § 210.50(b)(1) to take evidence with respect to the public interest.

* * * * *

■ 6. In § 210.50, revise paragraph (a)(4) and (b)(1) to read as follows:

§ 210.50 Commission action, the public interest, and bonding by respondents.

(a) * * *

(4) Receive submissions from the parties, interested persons, and other Government agencies and departments with respect to the subject matter of paragraphs (a)(1), (a)(2), and (a)(3) of this section. After a recommended determination on remedy is issued by the presiding administrative law judge, the parties are requested to submit to the Commission, within 30 days from service of the recommended determination, any information relating to the public interest, including any updates to the information requested by §§ 210.8(b) and (c) and 210.14(f). Any submissions under this section are limited to 5 pages, inclusive of attachments.

(i) When the matter under consideration pursuant to paragraph (a)(1) of this section is whether to grant some form of permanent relief, the submissions described in paragraph (a)(4) of this section shall be filed by the deadlines specified in the Commission notice issued pursuant to § 210.46(a).

(ii) When the matter under consideration is whether to grant some form of temporary relief, such submissions shall be filed by the deadlines specified in § 210.67(b), unless the Commission orders otherwise.

(iii) Any submission from a party shall be served upon the other parties in accordance with § 210.4(g). The parties' submissions, as well as any filed by interested persons or other agencies shall be available for public inspection in the Office of the Secretary.

(iv) The Commission will consider motions for oral argument or, when necessary, a hearing with respect to the subject matter of this section, except that no hearing or oral argument will be permitted in connection with a motion for temporary relief.

(b)(1) With respect to an administrative law judge's authorization to take evidence or other information and to hear arguments from the parties and other interested persons on the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an initial determination on temporary relief, see §§ 210.61, 210.62, and 210.66(a). For purposes of the

recommended determination required by § 210.42(a)(1)(ii), an administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons on the issues of appropriate Commission action and bonding by the respondents upon order of the Commission. Unless the Commission orders otherwise, and except as provided for in paragraph (b)(2) of this section, an administrative law judge shall not take evidence on the issue of the public interest for purposes of the recommended determination under § 210.42(a)(1)(ii).

* * * * *

Issued: October 11, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–26664 Filed 10–18–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. FDA 1993–N–0259 (Formerly Docket No. 1993N–0085)]

Beverages: Bottled Water Quality Standard; Establishing an Allowable Level for di(2-ethylhexyl)phthalate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its bottled water quality standard regulations by establishing an allowable level for the chemical di(2-ethylhexyl)phthalate (DEHP). As a consequence, bottled water manufacturers are required to monitor their finished bottled water products for DEHP at least once each year under the current good manufacturing practice (CGMP) regulations for bottled water. Bottled water manufacturers are also required to monitor their source water for DEHP as often as necessary, but at least once every year unless they meet the criteria for source water monitoring exemptions under the CGMP regulations. This final rule will ensure that FDA's standards for the minimum quality of bottled water, as affected by DEHP, will be no less protective of the public health than those set by the Environmental Protection Agency (EPA) for public drinking water.

DATES: This rule is effective April 16, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Lauren Posnick Robin, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1639. Hearing-impaired or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 4, 1993 (58 FR 41612), FDA published a proposal (''the 1993 proposed rule'') to revise the bottled water quality standard regulations in 21 CFR part 103 (now 21 CFR 165.110(b)) to establish or modify the allowable levels in bottled water for 5 inorganic chemicals and 18 synthetic organic chemicals, and to maintain the existing allowable level for the inorganic chemical sulfate. As required under Section 410 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), FDA proposed these revisions in response to the publication by EPA of a final rule (57 FR 31776; July 17, 1992) that established national primary drinking water regulations (NPDWRs) consisting of maximum contaminant levels (MCLs) for the same 23 chemicals and establishing an MCL for sulfate in public drinking water under the Safe Drinking Water Act (SDWA). In a final rule published March 26, 1996 (61 FR 13258), FDA maintained its existing allowable level for sulfate and adopted the proposed allowable levels for the 5 inorganic chemicals and 17 of the synthetic organic chemicals. FDA deferred final action on the proposed allowable level of 0.006 milligrams/liter (mg/L) for the chemical DEHP, in response to a comment stating that the proposed allowable level conflicted with an existing prior sanction for this substance in § 181.27 (21 CFR 181.27).

In the **Federal Register** of April 1, 2010 (75 FR 16363), FDA announced that it was reopening the comment period for the 1993 proposed rule to seek further comment on finalizing the allowable level for DEHP in the bottled water quality standard. At the same time, FDA addressed the issue of the prior sanction for the use of DEHP under § 181.27, which resulted in deferral of final action in 1996. FDA also provided updates on the use of DEHP in bottled water bottles and lid gaskets, and on international standards for DEHP in bottled water. Finally, FDA provided information on analytical methods for measuring DEHP that were adopted by EPA after the 1993 proposed rule and sought comment on the possible inclusion of these methods in a final regulation.

II. Summary of and Response to Comments

The agency received 10 responses, each containing one or more comments, to the April 1, 2010, **Federal Register** document reopening the comment period for the 1993 proposed rule. The agency previously received 13 responses, each containing one or more comments, to the 1993 proposed rule. Some comments addressed issues that are outside the scope of this final rule (*e.g.,* monitoring requirements, other chemicals, and food labeling), and thus will not be discussed here.

Most comments supported adoption of an allowable level for DEHP. As noted previously, one comment received in response to the 1993 proposed rule stated that the proposed allowable level for DEHP conflicted with an existing prior sanction for this substance in § 181.27. This comment also stated that DEHP is routinely used as a plasticizer in gaskets, and that such gaskets are permitted for use under relevant European national regulations. FDA responded to this comment in the April 1, 2010, **Federal Register** document. Briefly, FDA stated that the prior sanction for the use of DEHP in § 181.27 does not preclude the agency from establishing an allowable level for DEHP in the bottled water quality standard under § 165.110(b). FDA also stated that it appears that DEHP currently is not used in caps or closures for bottled water in the United States (Ref. 1), and that DEHP use is not permitted under European Commission regulations for plastic caps or plastic lid gaskets in metal caps (Ref. 2). Finally, FDA stated that several international organizations have adopted standards for DEHP that are the same or similar to the proposed allowable level of 0.006 mg/L, and that the International Bottled Water Association (IBWA), a trade association representing a large segment of the U.S. bottled water industry, adopted EPA's 0.006 mg/L standard for DEHP (40 CFR 141.61(c)) in its Model Code by 1995, suggesting that U.S. manufacturers already are able to meet the proposed level (Refs. 3 and 4). FDA did not receive any comments disagreeing with FDA's conclusions.

Two comments received in response to the April 1, 2010, **Federal Register** document opposed action related to DEHP in bottled water. The first

comment stated that there was no reason to change current standards for plastic water bottles because evidence from two studies puts previous concerns to rest concerning the effects of DEHP consumption in humans. In response, FDA notes that it is establishing an allowable level for DEHP in bottled water, not changing standards for plastic bottles. Furthermore, FDA does not agree that the comment provided sufficient evidence to challenge EPA's finding that long-term, chronic exposure to DEHP above the MCL of 0.006 mg/L may have the potential to cause health effects in humans including damage to liver and testes, reproductive effects, and cancer (Ref. 5). Therefore, FDA continues to believe that it is appropriate to base its allowable level for DEHP in bottled water upon the MCL established by EPA for public drinking water.

A second comment received in response to the April 1, 2010, **Federal Register** document stated that DEHP does not leach into water in appreciable amounts and that prohibiting the use of DEHP would increase costs for consumers for beverages packaged in plastic bottles. However, this rule does not prohibit the use of DEHP; rather, it sets an allowable level for DEHP in bottled water. The allowable level for DEHP in bottled water is intended to address the potential presence of DEHP in water for any reason, not just leaching from bottles or caps. Furthermore, the comment did not provide any evidence to support or quantify its statement that DEHP does not leach into water in appreciable amounts. Finally, FDA disagrees that the regulation would increase costs for consumers. Many U.S. manufacturers already appear to be meeting the allowable level for DEHP in bottled water (Refs. 3 and 4). In fact, information from industry suggests that DEHP currently is not used in bottled water caps or bottles in the United States (Refs. 1 and 6). Therefore, FDA does not agree with the comment's assertion that the rule prohibits the use of DEHP or its assertion that the rule would increase costs for consumers for beverages packaged in plastic bottles.

In the April 1, 2010, **Federal Register** document, FDA noted that EPA had updated its methods for DEHP analysis after FDA published the 1993 proposal. FDA made available the updated methods (Refs. 7 and 8) for comment on their possible inclusion in the final regulation. FDA did not receive any comments disagreeing with adoption of the updated methods.

III. Conclusion

The agency is adopting the allowable level for DEHP in the bottled water quality standard as proposed (58 FR 41612). Therefore, FDA is establishing in § 165.110(b)(4)(iii)(C) (21 CFR 165.110(b)(4)(iii)(C)), which includes allowable levels for pesticides and other synthetic organic chemicals, an allowable level for DEHP at 0.006 mg/L.

As a consequence, in accordance with FDA's current good manufacturing practice (CGMP) regulations for bottled water (21 CFR part 129), bottled water manufacturers will be required to monitor their source water and finished bottled water products for DEHP. Bottled water manufacturers will be required to monitor their source water for DEHP as often as necessary, but at a minimum frequency of once each year (21 CFR 129.35(a)(3)), unless they meet the criteria for source water monitoring exemptions under the CGMP regulations (21 CFR 129.35(a)(4)). Bottled water manufacturers will be required to monitor their finished products for DEHP at least once a year (21 CFR 129.80(g)(2)).

With respect to analytical methods for the determination of chemical contaminants, FDA is making the following changes in § 165.110(b)(4)(iii). In the revised § 165.110(b)(4)(iii)(F) introductory text and in new § 165.110(b)(4)(iii)(F)(*21*) and (b)(4)(iii)(F)(*22*), FDA is incorporating by reference EPA-approved analytical methods for determining compliance with the quality standard for DEHP in bottled water. FDA believes that these methods are sufficient to use for determining the level of DEHP in bottled water. These methods are contained in the manual entitled ''Methods for the Determination of Organic Compounds in Drinking Water, Supplement III,'' EPA National Exposure Research Laboratory, EPA/600/R–95/131, August 1995.

Therefore, upon the effective date of this rule, any bottled water that contains DEHP at a level that exceeds the applicable allowable level will be deemed misbranded under section 403(h)(1) of the FD&C Act (21 U.S.C. 343(h)(1)) unless it bears a statement of substandard quality as provided by § 165.110(c)(3).

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Executive Order 12866: Cost Benefit Analysis

FDA has examined the impacts of this final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The agency concludes that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the costs per entity of this rule are small, the agency also concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

The Economic Impact Analysis of the 1996 final rule (61 FR 13258) revised the analysis set forth in the 1993 proposed rule (58 FR 41612) in response to comments received. Likewise, this final Economic Impact Analysis revises the analysis set forth in the 1993 proposed rule in response to comments received.

A. Need for Regulation

Section 410 of the FD&C Act (21 U.S.C. 349) [1] requires that, whenever EPA prescribes interim or revised NPDWRs under section 1412 of the Public Health Service Act (The SDWA, 42 U.S.C. 300f through 300j–9), FDA consult with EPA and either amend its regulations for bottled drinking water in § 165.110 (21 CFR 165.110) or publish in the **Federal Register** its reasons for not making such amendments. In accordance with section 410 of the FD&C Act, FDA published in the **Federal Register** of August 4, 1993 (58 FR 41612), a proposal to adopt EPA's MCL for DEHP as an allowable level in the bottled water quality standard. This action was in response to EPA's issuance of an NPDWR establishing an MCL for DEHP in public drinking water on July 17, 1992 (57 FR 31776). As described above, FDA deferred final action on the proposed allowable level for DEHP on March 26, 1996 (61 FR 13258). By finalizing the allowable level for DEHP in the bottled water quality standard, FDA is meeting the requirement in the FD&C Act to amend its regulations for bottled drinking water in response to EPA's establishment of an MCL for DEHP.

Although DEHP is not expected to be found in bottled water in levels above the standard, FDA concludes that this rule is protective of public health because it will ensure that, should current conditions change, such as new sources of water or new manufacturing practices, the level of DEHP will remain low.

B. Costs

In the 1993 proposed rule, FDA stated that a single test can be used to analyze 23 contaminants, including DEHP, with costs of up to $3,000 per sample. Comments submitted by IBWA in response to the 1993 proposed rule stated that a single test can be used for 14 contaminants, including DEHP and certain previously regulated contaminants, and that no additional testing costs would be required (Ref. 9). Although FDA is adopting new methods for DEHP analysis in this final rule (EPA Method 506, Rev. 1–1, and EPA Method 525.2, Rev. 2.0), EPA Method 525.2 tests for multiple currently regulated chemicals, including all the chemicals that were detected by the previously proposed method, EPA Method 525.1, Rev. 2.2. Since no additional testing is needed for DEHP, and since the costs of testing for DEHP have already been estimated in the 1993 proposed rule, FDA expects no additional testing costs resulting from the adoption of an allowable level for DEHP.

As discussed above, many U.S. manufacturers already appear to be meeting the allowable level (Refs. 3 and 4). Further, information from industry suggests that DEHP currently is not used in bottled water caps or bottles in the United States (Refs. 1 and 6). Thus, no reformulation costs are expected because DEHP is not expected to be found in bottled water in levels above the standard.

C. Benefits

In the Economic Impact Analysis of the 1993 proposed rule, FDA determined that, because none of the 23 contaminants including DEHP are expected to be found in bottled water above the levels of the standards, the benefits of the proposed rule were expected to be zero. Because the 23 contaminants, including DEHP, still are not expected to be found in bottled water at levels above the standards, benefits of this final rule continue to be zero. However, as stated in the Economic Impact Analysis in the 1996 final rule for the other contaminants (61 FR 13258), this rule continues to ensure that, should current conditions change, such as new sources of water or new manufacturing practices, the level of DEHP and other contaminants will remain low.

VI. Small Entity Analysis

FDA examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would lessen the economic effect of the rule on small entities.

FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the 1996 Economic Impact Analysis found that the final rule will not have a significant impact on a substantial number of small businesses.

As stated in the analysis of impacts, information from industry suggests that DEHP currently is not used in bottled water caps or bottles in the United States (Refs. 1 and 6). Furthermore, many U.S. manufacturers already appear to be meeting the allowable level (Refs. 3 and 4). Thus, no reformulation costs are expected because DEHP is not expected to be found in bottled water above the levels of the standard.

For the reasons stated above, we do not classify as costs of this final rule any voluntary expenses that some small firms may incur because they already chose to meet the new standards for DEHP set forth in this rule.

VII. Paperwork Reduction Act of 1995

FDA concludes that the provisions of this final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3220).

VIII. Federalism

FDA has analyzed this rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive Order requires agencies to ''construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.''

Section 403A of the FD&C Act (21 U.S.C. 343–1) is an express preemption provision. Section 403A(a) of the FD&C Act provides that: ''* * * no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—(1) Any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such standard of identity or that is not identical to the requirement of section 403(g) * * *.'' FDA has interpreted this provision to apply to standards of quality (21 CFR 100.1(c)(4)).

The express preemption provision of section 403A(a) of the FD&C Act does not preempt any State or local requirement respecting a statement in the labeling of food that provides for a warning concerning the safety of the food or component of the food (section 6(c)(2) of the Nutrition Labeling and Education Act of 1990, Pub. L. 101–535, 104 Stat. 2353, 2364 (1990)).

This final rule creates requirements that fall within the scope of section 403A(a) of the FD&C Act.

[1] Section 410 of the FD&C Act was amended on August 6, 1996 to add subsection (b), related to contaminants for which EPA has promulgated NPDWRs under section 1412 of the SDWA. Specifically, this provision provides that, if FDA fails to issue a standard of quality regulation for a contaminant in bottled water not later than 180 days before the effective date of a NPDWR for that contaminant, EPA's NPDWR will apply to bottled water. FDA has interpreted this provision as not applying retroactively to EPA's NPDWR for DEHP.

IX. References

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

1. Memorandum of telephone conversation to John Rost, Crown Packaging Technology, from Lauren Robin, FDA, January 5, 2010.
2. European Commission, 2007, Commission Directive 2007/19/EC of 30 March 2007 amending Directive 2002/72/EC relating to plastic materials and articles intended to come into contact with food and Council Directive 85/572/EEC laying down the list of simulants to be used for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs, *Official Journal of the European Union,* 31.3.2007, L 91/17–36.
3. IBWA, 2007, IBWA Model Code, Version October 2007, accessed online at *http://www.bottledwater.org/public/pdf/2008-code-of-practice.pdf.*
4. E-mail from Bob Hirst, IBWA, to Lauren Robin, FDA, January 5, 2010.
5. U.S. EPA, Technical factsheet on di (2-ethylhexyl) phthalate (DEHP), accessed online at *http://www.epa.gov/safewater/pdfs/factsheets/soc/tech/dehp.pdf.*
6. Joseph K. Doss, IBWA, Testimony before the Subcommittee on Oversight and Investigations of the Energy and Commerce Committee, United States House of Representatives, Hearing on Bottled Water Regulation, July 8, 2009, accessed online at *http://democrats.energycommerce.house.gov/Press_111/20090708/testimony_doss.pdf.*
7. U.S. EPA, EPA Method 506, Rev. 1.1—''Determination of phthalate and adipate esters in drinking water by liquid/liquid extraction or liquid/solid extraction and gas chromatography with photoionization detection,'' in ''Methods for the Determination of Organic Compounds in Drinking Water, Supplement III,'' EPA National Exposure Research Laboratory, EPA/600/R–95/131, August 1995, accessed online at *http://www.epa.gov/nscep/index.html.*
8. U.S. EPA, EPA Method 525.2, Rev. 2.0—''Determination of organic compounds in drinking water by liquid-solid extraction and capillary column gas chromatography/mass spectrometry,'' In ''Methods for the Determination of Organic Compounds in Drinking Water, Supplement III,'' EPA National Exposure Research Laboratory, EPA/600/R–95/131, August 1995, accessed online at *http://www.epa.gov/nscep/index.html.*
9. International Bottled Water Association, comment to FDA Docket Number 1993N–0085, October 4, 1993.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 165 is amended as follows:

PART 165—BEVERAGES

■ 1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

■ 2. In § 165.110, in the table in paragraph (b)(4)(iii)(C), alphabetically add an entry for ''Di(2-ethylhexyl)phthalate (117–81–7)''; revise paragraph (b)(4)(iii)(F) introductory text; and add new paragraphs (b)(4)(iii)(F)(*21*) and (b)(4)(iii)(F)(*22*) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(C) The allowable levels for pesticides and other synthetic organic chemicals (SOCs) are as follows:

Contaminant (CAS Reg. No.)	Concentration in milligrams per liter
* * * * *	
Di(2-ethylhexyl)phthalate (117–81–7)	0.006
* * * * *	

* * * * *

(F) Analyses to determine compliance with the requirements of paragraphs (b)(4)(iii)(B) and (b)(4)(iii)(C) of this section shall be conducted in accordance with an applicable method or applicable revisions to the methods listed in paragraphs (b)(4)(iii)(F)(*1*) through (b)(4)(iii)(F)(*22*) of this section and described, unless otherwise noted, in ''Methods for the Determination of Organic Compounds in Drinking Water,'' Office of Research and Development, EMSL, EPA/600/4–88/039, December 1988, or in ''Methods for the Determination of Organic Compounds in Drinking Water, Supplement 1,'' Office of Research and Development, EMSL, EPA/600/4–90/020, July 1990, or in ''Methods for the Determination of Organic Compounds in Drinking Water, Supplement III,'' EPA National Exposure Research Laboratory, Office of Research and Development, EPA/600/R–95/131, August 1995, including Errata, November 27, 1995. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications are available from National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. You may inspect a copy at the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, 301–827–6860 or at the National Archives and Records Administration (NARA). Hearing-impaired or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(*21*) Method 506, Rev. 1.1—''Determination of phthalate and adipate esters in drinking water by liquid/liquid extraction or liquid/solid extraction and gas chromatography with photoionization detection,'' EPA/600/R–95/131, 1995, (applicable to di(2-ethylhexyl)phthalate), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or

(*22*) Method 525.2, Rev. 2.0—''Determination of organic compounds in drinking water by liquid-solid extraction and capillary column gas chromatography/mass spectrometry,'' EPA/600/R–95/131, 1995, (applicable to di(2-ethylhexyl)phthalate), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Dated: October 11, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–26707 Filed 10–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300, 1304, 1306 and 1311

[Docket No. DEA–360]

Electronic Prescriptions for Controlled Substances Clarification

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Clarification and notification.

SUMMARY: DEA wishes to emphasize that third-party audits of software applications for Electronic Prescriptions for Controlled Substances (EPCS) must encompass all applicable requirements in our regulations, including security, and must address ''processing integrity'' as set forth in our regulations. Likewise, where questions or gaps may arise in reviewing a particular application, DEA recommends consulting federal guidelines set forth in NIST Special Publication 800–53A. DEA is also announcing the first DEA approved certification process for EPCS. Certifying organizations with a certification process approved by DEA pursuant to the regulations are posted on DEA's Web site once approved.

FOR FURTHER INFORMATION, CONTACT: Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone (202) 307–7165.

SUPPLEMENTARY INFORMATION:

Background

The Drug Enforcement Administration (DEA) is a component of the Department of Justice and is the primary agency responsible for coordinating the drug law enforcement activities of the United States. DEA also assists in the implementation of the President's National Drug Control Strategy. The diversion control program (DCP) is a strategic component of the DEA's law enforcement mission. It is primarily the DCP within DEA that implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (CSIEA) (21 U.S.C. 801–971), as amended (hereinafter, ''CSA'').[1] DEA drafts and publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1321. The CSA together with these regulations are designed to establish a closed system for controlled substances and to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of controlled substances and listed chemicals for legitimate medical, scientific, research, and industrial purposes.

The CSA and DEA's implementing regulations establish the legal requirements for possession and dispensing of controlled substances, most notably pursuant to a prescription issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. ''The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.'' 21 CFR 1306.04(a). A prescription serves both as a record of the practitioner's determination of the legitimate medical need for the drug to be dispensed, and as a record of the dispensing, providing the pharmacy with the legal justification and authority to dispense the medication prescribed by the practitioner. The prescription also provides a record of the actual dispensing of the controlled substance to the ultimate user (the patient) and, therefore, is critical to documenting that controlled substances held by a pharmacy have been dispensed legally. The maintenance by pharmacies of complete and accurate prescription records is an essential part of the overall CSA regulatory scheme established by Congress.

Electronic Prescriptions for Controlled Substances (EPCS)

Historically, where federal law required that a prescription for a controlled substance be issued in writing, that requirement could only be satisfied through the issuance of a paper prescription. Given advancements in technology and security capabilities for electronic applications, DEA recently amended its regulations to provide practitioners with the option of issuing electronic prescriptions for controlled substances (EPCS) in lieu of paper prescriptions. Efforts to develop EPCS have been underway for a number of years. DEA's Interim Final Rule for Electronic Prescriptions for Controlled Substances was published on March 31, 2010 at 75 FR 16236–16319 and became effective on June 1, 2010. While these regulations have paved the way for controlled substance prescriptions to be issued electronically, not all States have authorized electronic prescriptions for controlled substances, particularly Schedule II controlled substances which have a significant potential for abuse.

The information technology industry is currently in the process of developing and testing applications to implement the requirements set forth in the Interim Final Rule. As this process continues, DEA believes it prudent to issue the following clarifications, recommendation, and update to help ensure that the requirements of the Interim Final Rule are properly implemented. Specifically, DEA is clarifying that third-party audits must be conducted by qualified persons and must determine that an application meets all of the applicable requirements in 21 CFR part 1311 as well as other requirements referenced in Part 1311. ''Processing integrity'' must be addressed in audits of EPCS applications. DEA recommends that federal guidelines as set forth by the National Institute of Standards and Technology (NIST), including NIST Special Publication 800–53A, be consulted where questions arise. DEA has also announced an approved certification process for EPCS applications and has posted this information on its Web site. DEA notes its concern that proposed EPCS applications receive careful review prior to being used to create, sign, transmit or process controlled substance prescriptions so as to ensure the closed system for controlled substances established by the CSA. Secure and safe dispensing of controlled substances is necessary to protect the public interest and prevent diversion of controlled substances to illicit purposes. As with any violations of the CSA or DEA's implementing regulations, if diversion occurs in the EPCS environment, or if controlled substances are otherwise dispensed in violation of the EPCS regulations, those responsible may be subject to administrative and/or judicial action, to include civil injunction.

Current Issues

National Prescription Drug Abuse Epidemic

Implementation of electronic prescriptions for controlled substances is occurring at the same time the President has declared current prescription drug misuse and abuse as an epidemic constituting a major public health and public safety crisis.[2] The non-medical use of prescription drugs is on the rise in the United States. Drug induced deaths now exceed motor vehicle accident deaths in the United States.[3] According to the ''Drug Abuse Warning Network (DAWN), 2009: National Estimates of Drug-Related Emergency Department Visits,'' the

[1] The Attorney General's delegation of authority to DEA may be found at 28 CFR 0.100.

[2] ''Epidemic: Responding to America's Prescription Drug Abuse Crisis,'' Office of National Drug Control Policy, Executive Office of the President of the United States, 2011. *http://www.whitehousedrugpolicy.gov/publications/pdf/rx_abuse_plan.pdf.*

[3] National Vital Statistics Reports, Vol. 59, No. 4, March 16, 2011, *http://www.cdc.gov/nchs/data/nvsr59/nvsr59_04.pdf.*

Substance Abuse and Mental Health Services Administration (SAMHSA),[4] emergency department visits involving non-medical use of pharmaceuticals (misuse or abuse) almost doubled between 2004 and 2009 from 627,291 in 2004 to 1,244,679 visits in 2009 (a 98.4 percent increase).[5] About half of the 2009 emergency department visits related to abuse or misuse of pharmaceuticals involved painkillers and more than one-third involved drugs to treat insomnia and anxiety.[6]

The 2009 National Survey on Drug Use and Health (NSDUH)[7] estimated that 7.0 million persons used prescription-type psychotherapeutic drugs—pain relievers, anti-anxiety medications, stimulants, and sedatives—non-medically. This represents 2.8 percent of the population aged twelve or older. These estimates were 13 percent higher than those from the 2008 Survey. In 2009, 2.2 million persons aged twelve or older used pain relievers non-medically for the first time; that averages to over 6,000 new users per day. Teenagers (grades 9–12) believe that prescription drugs are easier to obtain than illegal drugs. There is a concern that young people may perceive prescription and/or over-the-counter drugs as ''safer'' than illegal drugs because of their intended, legitimate medical use.[8]

Increased Security Breaches

Cyber attacks are growing in frequency, size and complexity and are of concern as EPCS goes online. Responses by 583 U.S. businesses of all sizes to a recent independent survey conducted by the Ponemon Institute released June 22, 2011 found that 90 percent had at least one cyber security breach in the past 12 months. This survey found that the top two endpoints from which these security breaches occurred are employees' laptop computers and employee's mobile devices.[9] Numerous recent news articles describe incidents of major security breaches or hacking incidents into major U.S. private and government computer systems, including incidents involving electronic health records.[10] These incidents occur for many reasons, but access to controlled substances has not been cited as an objective because such substances have not been communicated via an electronic system. With the impending implementation of electronic prescriptions for controlled substances, DEA wishes to reiterate that adequate security of EPCS has been and continues to be a primary consideration in any electronic system used to communicate a legitimate controlled substance prescription for the purpose of dispensing to an ultimate user.

Clarifications

DEA wishes to provide the following clarifications.

Third-Party Audits of EPCS Applications

EPCS, as with paper prescriptions, requires the individual practitioner be responsible for ensuring the prescription conforms to all legal requirements and the pharmacist, acting under the authority of the DEA-registered pharmacy, has a corresponding responsibility to ensure the prescription is valid and meets all legal requirements. Review of an EPCS application must be thorough in order to provide the prescriber and pharmacist the level of assurance needed in order to use the application.

Before any application may be used for electronic prescriptions for controlled substances, it must be reviewed, tested and determined by a third party to meet all of the requirements of 21 CFR part 1311. See 21 CFR 1311.300(a). There are two alternative processes for review of EPCS applications: (1) A third-party audit conducted by a person qualified to conduct a SysTrust, WebTrust or SAS 70 audit or a Certified Information System Auditor as stated in 21 CFR 1311.300(b), which comports with the requirements of paragraphs (c) and (d) of 21 CFR 1300.300 or (2) A certification by a certifying organization whose certification process has been approved by DEA as stated in 21 CFR 1311.300(e), which certification verifies that the application meets all of the requirements of 21 CFR part 1311.

21 CFR 1311.300(c) and 21 CFR 1311.300(d) state respectively that an audit for installed applications and application service providers must, among other things, determine that the application meets all of the applicable requirements in Part 1311. This includes all of Part 1311 and references to Parts 1300, 1304 and 1306.

Some individuals may be misinterpreting 21 CFR 1311.300(c) and (d), which state that audits ''for installed applications must address processing integrity and determine that the application meets the requirements of this *part*,'' and audits ''for application service providers must address processing integrity and physical security and determine that the application meets the requirements of this *part*.'' (emphasis added). To further clarify, the Code of Federal Regulations is organized by title, chapter, part, subpart, section and paragraph. Any audit must include all of the applicable requirements for electronic prescriptions of controlled substances found in 21 CFR part 1311 and not just section 1311.300 of part 1311. Part 1311 also cross-references Parts 1300, 1304 and 1306 which establish specific requirements that must be the subject of any audit. Thorough review and testing of *all* requirements is both required by the regulations and necessary to ensure secure and effective electronic prescribing and dispensing of controlled substances in the interests of public health and safety.

''Processing Integrity'' must be addressed in audits of EPCS prescriber and pharmacy applications.

EPCS applications must address security to prevent insider threats and outsider attacks on any system. Careful review by an independent, qualified third-party of the ''processing integrity'' of any application is required to determine whether an application or application service provider has adequate protection against the range of potential security threats.

Person qualified to conduct a third-party audit.

DEA notes that 21 CFR 1311.300(b)(1) and (2) require that a third-party audit be conducted by a person qualified to conduct a SysTrust, WebTrust or SAS 70 audit or by a Certified Information System Auditor. The regulations do not require one of these types of audits, but rather that the person conducting the audit must have specified qualifications. As provided in 21 CFR 1311.300(c) and (d), any audit must address processing

[4] Behavioral Health Statistics and Quality, ''Highlights of the 2009 Drug Abuse Warning Network (DAWN) Findings on Drug-Related Emergency Department Visits,'' *The DAWN Report,* December 28, 2010.

[5] *Id.* at 4.

[6] *Id.* at 3.

[7] Substance Abuse and Mental Health Services Administration, ''Results from the 2009 National Survey on Drug Use and Health: Volume I, Summary of National Findings,'' Office of Applied Studies, 2010 (NSDUH Series H–38A, HHS Publication No. SMA 10–4856), *http://www.oas.samhsa.gov/nsduh/2k9NSDUH/2k9Results.pdf.*

[8] Partnership for a Drug-Free America and MetLife Foundation, ''2009 Parents and Teens Attitude Tracking Study Report'' March 2, 2010.

[9] *http://www.marketwire.com/printer_friendly?id=1529987; http://business.financialpost.com/2011/06/23/survey-finds-90-of-u-s-companies-hacked-in-past-year/.*

[10] For example, among others, see Wall Street Journal articles May 19 (U.N. International Atomic Energy Agency), May 27 (Lockheed Martin), June 2 (Google), June 10 (Citigroup), June 11 (Sony), 2011; Workers' Compensation California Medical Record Privacy Breach, August 23, 2011, *http://workers-compensation.blogspot.com/2011/08/major-california-medical-record-privacy.html;* New York Times article September 8, 2011 (electronic medical record breaches).

integrity and determine that the application meets the requirements of DEA's regulations. DEA is reviewing the fact that the American Institute of Certified Public Accountants has replaced SAS 70 audits referenced in 21 CFR 1311.300(b)(1) and will necessarily address this issue in the final rule on EPCS.

Recommendation

Where questions arise in reviewing a particular EPCS prescriber or pharmacy application, DEA recommends that federal guidelines as set forth by the National Institute of Standards and Technology (NIST), specifically NIST Special Publication 800–53A, be consulted. Other NIST standards and publications are incorporated by reference in the Interim Final Rule and must be complied with as stated in the Interim Final Rule.

Some of the questions surrounding interpretation of DEA's EPCS regulations as applied to specific applications are addressed by federal guidelines articulated by the National Institute of Standards and Technology in NIST Special Publication (SP) 800–53A, as revised. Federal computer systems must comply with federal guidelines as outlined in NIST SP 800–53A.[11] As NIST SP 800–53A states, the publication may be used by nongovernmental organizations on a voluntary basis. Although the Interim Final Rule does not require compliance with NIST SP 800–53A, DEA believes this publication provides useful guidance and that it is advisable for private sector entities to consult the publication when reviewing security requirements for EPCS applications. In addition, EPCS will be used on federal systems in the military, the Department of Veterans Affairs and elsewhere where such systems must comply with federal guidelines.

DEA notes that the Notice of Proposed Rulemaking (NPRM) in June 27, 2008 discussed NIST SP 800–53A and whether or not it should be the basis for security requirements. 73 FR 36746–47 (June 27, 2008). DEA did not require application of NIST SP 800–53A in the Interim Final Rule due to the perceived need for flexibility and because security would be ensured by review of ''processing integrity.'' In light of developments since that time, DEA will be revisiting this issue as it is clear that a mechanism must be established in the EPCS regulations to keep EPCS applications current with technology, particularly security requirements.

Update

All certifying organizations with a certification process approved by DEA pursuant to 21 CFR 1311.300(e) are posted on DEA's Web site once approved.

As noted above, the Interim Final Rule provides that, as an alternative to the audit requirements of 21 CFR 1311(b) through (d), an electronic prescription or pharmacy application may be verified and certified as meeting the requirements of 21 CFR Part 1311 by a certifying organization whose certification process has been approved by DEA. The preamble to the Interim Final Rule further indicated that, once a qualified certifying organization's certification process has been approved by DEA in accordance with 21 CFR 1311.300(e), such information will be posted on DEA's Web site. 75 FR 16243, March 31, 2010. On September 22, 2011, DEA approved the certification process developed by InfoGard Laboratories, Inc. and relevant information has been posted on DEA's Web site at *http://www.DEAdiversion.usdoj.gov* under electronic prescriptions.

Dated: October 7, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2011–26738 Filed 10–18–11; 8:45 am]

BILLING CODE 4410–09–P

[11] *http://csrc.nist.gov/publications/nistpubs/800-53A-rev1/sp800-53A-rev1-final.pdf.* Note that the latest version of SP800–53A should be consulted as it is regularly updated to meet technology developments.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9552]

RIN 1545–BJ24

Deduction for Qualified Film and Television Production Costs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to deductions for the cost of producing film and television productions. These temporary regulations reflect changes to the law made by the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, and affect taxpayers that produce films and television productions within the United States. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on October 18, 2011.

Applicability Dates: For dates of applicability, see § 1.181–6T.

FOR FURTHER INFORMATION CONTACT: Bernard P. Harvey, (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 to provide regulations under section 181 of the Internal Revenue Code of 1986 (Code). Section 181 permits the deduction of certain production costs by the producer of a qualified film or television production.

Section 181 was added to the Code by section 244 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (October 22, 2004), and was modified by section 403(e) of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577) (December 21, 2005). Section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Public Law 110–343 (122 Stat. 3765) (October 3, 2008) further modified section 181 for film and television productions commencing after December 31, 2007, and extended section 181 to film and television productions commencing before January 1, 2010. Section 181 was extended again to film and television productions commencing before January 1, 2012, by section 744 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312 (December 17, 2010).

On September 30, 2011, the IRS and the Treasury Department published in the **Federal Register** (TD 9551, 76 FR 60721) final regulations relating to deductions for the cost of producing film and television productions under section 181 as enacted by the American Jobs Creation Act of 2004 and modified by the Gulf Opportunity Zone Act of 2005.

Explanation of Provisions

Section 181 permits an owner of a qualified film or television production to elect to deduct production costs paid or incurred by that owner for the year the costs are paid or incurred, in lieu of capitalizing the costs and recovering them through depreciation allowances. For a qualified film or television production that commenced before January 1, 2008 (a ''pre-amendment production''), this deduction is available

only if the aggregate production costs paid or incurred by all owners do not exceed $15 million ($20 million if a significant amount of the production costs are paid or incurred in certain designated areas) for each qualified production (the ''aggregate production costs limit''). For productions commencing on or after January 1, 2008, the aggregate production costs limit does not apply; instead, the aggregate deduction under section 181 for production costs paid or incurred by all owners of a qualified film or television production is limited to $15 million ($20 million if a significant amount of the production costs are incurred in certain designated areas) for each qualified production (the ''deduction limit''). A film or television production (''production'') is a qualified film or television production if at least 75 percent of the total compensation of the production is compensation for services performed in the United States by actors, directors, producers, and other production personnel.

These temporary regulations amend § 1.181–1 to define the term ''post-amendment production'' and specify that the aggregate deduction under section 181 (rather than the amount of aggregate production costs) is subject to the dollar limits imposed under § 1.181–1(b). The temporary regulations also amend §§ 1.181–0 (table of contents) and 1.181–6 (effective date provisions).

Effective Date

These temporary regulations apply to qualified film and television productions for which principal photography or, for an animated production, in-between animation, commenced on or after October 18, 2011. An owner may choose to apply these temporary regulations to qualified film or television productions commencing on or after January 1, 2008, and before October 18, 2011.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.181–1 is amended by revising paragraphs (a)(1)(ii), (a)(6) and (b)(1)(ii) and (b)(2)(vi) to read as follows:

§ 1.181–1 Deduction for qualified film and television production costs.

(a) * * *

(1) * * *

(ii) *[Reserved]. For further guidance, see § 1.181–1T(a)(1)(ii).*

* * * * *

(6) *[Reserved]. For further guidance, see § 1.181–1T(a)(6).*

* * * * *

(b) * * *

(1) * * *

(ii) *[Reserved]. For further guidance, see § 1.181–1T(b)(1)(ii).*

* * * * *

(2) * * *

(vi) *[Reserved]. For further guidance, see § 1.181–1T(b)(2)(vi).*

* * * * *

(c) * * *

(2) *[Reserved]. For further guidance, see § 1.181–1T(c)(2).*

* * * * *

■ **Par. 3.** Section 1.181–0T is added to read as follows:

§ 1.181–0T Table of contents (temporary).

This section lists the entries for §§ 1.181–1T and 1.181–6T.

§ 1.181–1T Deduction for qualified film and television production costs (temporary).

(a) through (a)(5) [Reserved]. For further guidance, see entries for § 1.181–1(a) through (a)(5).

(6) Post-amendment production.

(a)(7) through (b)(1)(i) [Reserved]. For further guidance, see entries for § 1.181–1(a)(7) through (b)(1)(i).

(ii) Post-amendment costs.

(b)(1)(iii) through (c)(1) [Reserved]. For further guidance, see entries for § 1.181–1(b)(1)(iii) through (c)(1).

(2) Post-amendment production.

§ 1.181–6T Effective/applicability dates (temporary).

(a) In general.

(b) Application of temporary regulations to pre-effective date productions.

■ **Par. 4.** Section 1.181–1T is added to read as follows:

§ 1.181–1T Deduction for qualified film and television production costs (temporary).

(a)(1)(i) [Reserved]. For further guidance, see § 1.181–1(a)(1)(i).

(ii) This section provides rules for determining the owner of a production, the production costs (as defined in paragraph (a)(3) of this section), the maximum amount of aggregate production costs (as defined in paragraph (a)(4) of this section) that may be paid or incurred for a pre-amendment production (as defined in paragraph (a)(5) of this section) for which the owner makes an election under section 181, and the maximum amount of aggregate production costs that may be claimed as a deduction for a post-amendment production (as defined in paragraph (a)(6) of this section) for which the owner makes an election under section 181. Section 1.181–2 provides rules for making the election under section 181. Section 1.181–3 provides definitions and rules concerning qualified film and television productions. Section 1.181–4 provides special rules, including rules for recapture of the deduction. Section 1.181–5 provides examples of the application of §§ 1.181–1 through 1.181–4, while § 1.181–6 provides the effective date of §§ 1.181–1 through 1.181–5.

(2) through (5) [Reserved]. For further guidance, see § 1.181–1(a)(2) through (a)(5).

(6) *Post-amendment production.* The term *post-amendment production* means a qualified film or television production commencing on or after January 1, 2008.

(7) [Reserved]. For further guidance, see § 1.181–1(a)(7).

(b)(1)(i) [Reserved]. For further guidance, see § 1.181–1 (b)(1)(i).

(ii) *Post-amendment production.* Section 181 permits a deduction for the first $15,000,000 (or, if applicable under paragraph (b)(2) of this section,

$20,000,000) of the aggregate production costs of any post-amendment production.

(iii) [Reserved]. For further guidance, see § 1.181–1(b)(1)(iii).

(2)(i) through (v) [Reserved]. For further guidance, see § 1.181–1(b)(2)(i) through (b)(2)(v).

(vi) *Allocation.* Solely for purposes of determining whether a production qualifies for the higher production cost limit (for pre-amendment productions) or deduction limit (for post-amendment productions) provided under this paragraph (b)(2), compensation to actors (as defined in § 1.181–3(f)(1)), directors, producers, and other relevant production personnel (as defined in § 1.181–3 (f)(2)) is allocated entirely to first–unit principal photography.

(c)(1) [Reserved]. For further guidance, see § 1.181–1(c)(1).

(2) *Post-amendment production.* Amounts not allowable as a deduction under section 181 for a post-amendment production may be deducted under any other applicable provision of the Code.

■ **Par. 4.** Section 1.181–6T is added to read as follows:

§ 1.181–6T Effective/applicability dates (temporary).

(a) *In general.* (1) Except as provided in paragraph (b) of this section, § 1.181–1T applies to productions, the first day of principal photography for which occurs on or after October 18, 2011, and before the date of expiration of section 181 as provided in section 181(f). For an animated production, this paragraph (a) applies by substituting ''in-between animation'' in place of ''principal photography.'' Productions involving both animation and live-action photography may use either standard.

(2) The applicability of § 1.181–1T expires on October 17, 2014.

(b) *Application of temporary regulations to pre-effective date productions.* An owner may apply § 1.181–1T to productions, the first day of principal photography (or ''in-between'' animation) for which occurs after December 31, 2007, and before October 18, 2011, provided that the taxpayer applies all provisions in § 1.181–1T and in §§ 1.181–1 through 1.181–5 (other than provisions specific to pre-amendment productions) to the productions. If a taxpayer does not choose to apply § 1.181–1T to a production, the first day of principal photography (or ''in-between'' animation) for which occurs after December 31, 2007, and before October 18, 2011, then the taxpayer must use a reasonable method to take into account the statutory change to section 181 under section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. See § 1.181–6.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: September 19, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–26973 Filed 10–18–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0961]

RIN 1625–AA00

Safety Zone; Truman-Hobbs Alteration of the Elgin Joliet & Eastern Railroad Drawbridge, Morris, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Illinois River near Morris, Illinois. This zone is intended to restrict vessels from a portion of the Illinois River due to the Truman-Hobbs alteration of the Elgin Joliet & Eastern Railroad Drawbridge. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the removal of the Elgin Joliet & Eastern Railroad Drawbridge's old bridge piers and pier protection cells.

DATES: This rule is effective in the CFR on October 19, 2011 through 7 a.m. on November 16, 2011. This rule is effective with actual notice for purposes of enforcement beginning 7 a.m. on October 13, 2011. This rule will remain in effect until 7 a.m. on November 16, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0961 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0961 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, contact or email BM1 Adam Kraft, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Adam.D.Kraft@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 an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 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 waiting for a notice and comment period to run would be impracticable and contrary to the public interest in that it would prevent the Coast Guard from protecting the public and vessels on navigable waters from the hazards associated with the alteration of the Elgin Joliet & Eastern Railroad Drawbridge, as discussed in detail below.

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**. For the reasons discussed in the preceding paragraph and due to the Captain of the Port Sector Lake Michigan not receiving notice of the need for a safety zone, a 30-day notice period would be impracticable and contrary to the public interest.

Background and Purpose

The Truman-Hobbs alteration of the Elgin Joliet & Eastern Railroad Drawbridge, which consists of the removal of the bridges old piers and pier protection cells, will begin on October 13, 2011. This temporary safety zone is necessary to protect vessels from the hazards associated with those alteration efforts. The falling debris associated with the removal of the bridge's piers and protection cells poses a serious risk of injury to persons and property. As such, the Captain of the Port, Sector Lake Michigan, has determined that the alteration project of the Elgin Joliet & Eastern Railroad Drawbridge poses significant risks to public safety and

property and that a safety zone is necessary.

Discussion of Rule

The safety zone will encompass all U.S. navigable waters of the Illinois River in the vicinity of the Elgin Joliet & Eastern Railroad Drawbridge between Mile Marker 270.1 and Mile Marker 271.5 of the Illinois River in Morris, IL. [DATUM: NAD 83].

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

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. We conclude that this rule is not a significant regulatory action because we anticipate that it will have a minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the bridge project will be relatively small and exist for a relatively short duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor on a portion of the Illinois River between Mile Marker 270.1 and Mile Marker 271.5 at various times between 7 a.m. on October 13, 2011 and 7 a.m. on November 16, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Vessel traffic will be minimal due to the public and commercial outreach that has been made the by D8 Bridge Branch over the last several months.

In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of The Port, Sector Lake Michigan, or his or her designated representative to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

A final environmental analysis checklist and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0961 to read as follows:

§ 165.T09–0961 Safety Zone; Truman-Hobbs alteration of the Elgin Joliet & Eastern Railroad Drawbridge, Morris, Illinois.

(a) *Location.* The safety zone will encompass all U.S. navigable waters of the Illinois River in the vicinity of the Elgin Joliet & Eastern Railroad Drawbridge between Mile Marker 270.1 and Mile Marker 271.5 of the Illinois River in Morris, IL. [DATUM: NAD 83].

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 7 a.m. on October 13, 2011 until 7 a.m. on November 16, 2011. If the alteration project is completed before November 16, 2011, the Captain of the Port, Sector Lake Michigan, or his or her designated representative, may suspend the enforcement of this safety zone.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

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

(3) The ''designated representative'' of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant, petty officer, or District 8 Bridge Branch Member who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The designated representative of the Captain of the Port, Sector Lake Michigan, will be on land in the vicinity of the safety zone and will have constant communications with the involved safety vessels that will be provided by the contracting company, James McHugh Construction, and will have communications with a D8 Bridge Branch representative, who will be on scene as well.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan, or his or her designated representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

Dated: October 5, 2011.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2011–26988 Filed 10–18–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0848]

RIN 1625–AA00

Safety Zone; Mainardi/Kinsey Wedding Fireworks, Lake Erie, Lakewood, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in Lake Erie, Lakewood, OH for the Mainardi/Kinsey Wedding Fireworks. This temporary zone is intended to restrict vessels from a portion of Lake Erie during the Mainardi/Kinsey Wedding Fireworks on October 22, 2011. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a firework display.

DATES: This rule is effective from 8:30 p.m. to 9:45 p.m. on October 22, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket USCG–2011–0848 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0848 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lt. Chris F. Mercurio, Chief Of Waterway Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, e-mail *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because to do so would inhibit the Coast Guard's ability to protect the public and vessels from the hazards associated with fireworks displays on navigable waters.

Background and Purpose

Between 9 p.m. and 9:15 p.m. on October 22, 2011, a fireworks display will be held on the waters of Lake Erie near Lakewood, OH. The Captain of the Port Buffalo has determined that fireworks launched in proximity to watercraft pose a significant risk to the boating public. Such hazards include premature detonations, dangerous detonations, dangerous projectiles, and falling or burning debris that may cause death, serious bodily injury or property damage.

Discussion of Rule

Because of the aforementioned hazards, the Captain of the Port Buffalo has determined that a temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Mainardi/Kinsey wedding fireworks display. The safety zone will be in effect on October 22, 2011 from 8:30 p.m. to 9:45 p.m. The safety zone will encompass all waters of Lake Erie in Lakewood, OH within a 700 foot radius of position 41°29′34″ N and 81°49′39″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The safety zone will be enforced for a relatively short time, vessels may pass around the zone, and vessels may still pass through the zone with permission of the Captain of the Port. Thus, we conclude that this rule is not a significant regulatory action because we anticipate that during the short time this zone will be in effect, it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel or legal policy issue.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Erie in Lakewood, OH on October 22, 2011 from 8:30 p.m. until 9:45 p.m.

This rule will not have a significant economic impact on a substantial number of small entities because of the minimal amount of time in which the safety zone will be enforced. This safety zone will only be enforced for one hour and fifteen minutes in a low vessel traffic area. Plus, vessel traffic can pass safely around the zone. Before the effective period, maritime advisories will be issued, which include a Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or

impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because this rule involves the establishment of a temporary safety 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. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0848 to read as follows:

§ 165.T09–0848 Safety zone; Mainardi/Kinsey Wedding Fireworks, Lake Erie, Lakewood, OH.

(a) *Location.* The temporary safety zone will encompass all U.S. navigable waters on Lake Erie, Lakewood, OH within a 700 foot radius of position 41°29′34″ N and 81°49′39″ W (NAD 83).

(b) *Effective and Enforcement Period.* This rule will be effective and enforced from 8:30 p.m. until 9:45 p.m. on October 22, 2011.

(c) *Regulations.*

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

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

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: September 29, 2011.

S.M. Wischmann,

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

[FR Doc. 2011–26989 Filed 10–18–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0788; FRL–9480–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the State Implementation Plan (SIP) submitted by the Commonwealth of Virginia. This revision establishes Virginia's transportation conformity requirements. After they have been approved, the Commonwealth's regulations will govern transportation conformity determinations in the Commonwealth of Virginia. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on December 19, 2011 without further notice, unless EPA receives adverse written comment by November 18, 2011. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0788, 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–2011–0788, 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–2011–0788. 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: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Transportation conformity is required under section 176(c) of the CAA to ensure that Federally supported highway, transit projects, and other activities are consistent with (conform to) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment and those redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the CAA for the following transportation related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2).

Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS).

On October 17, 2006 (71 FR 61144), EPA promulgated a final rule that strengthened the 24-hour $PM_{2.5}$ NAAQS and revoked the annual PM_{10} NAAQS. As a result of this rulemaking, EPA promulgated amendments to the transportation conformity rule in order to provide regulations for implementing conformity for the revisions to the $PM_{2.5}$ and PM_{10} NAAQS and to address hot-spot analyses as a result of a remand from the Court of Appeals for the District of Columbia Circuit (March 24, 2010, 75 FR 14260).

II. Summary of SIP Revision

On June 13, 2011, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP for Transportation Conformity purposes. The SIP revision consists of amendments to the Commonwealth Regulation for Transportation Conformity (9VAC5 Chapter 151). This SIP revision addresses provisions of the EPA Conformity Rule required under 40 CFR part 93. The revision amends 9VAC5–151–40, entitled ''General,'' in order to change the date of the specific version of the provisions incorporated by reference from Code of Federal Regulations (CFR) (2008) in effect July 1, 2008 to CFR (2010) in effect July 1, 2010. The SIP revision also amends 9VAC5–151–70, entitled ''Consultation,'' in order to change conformity tests and methodologies for isolated rural nonattainment and maintenance areas as required by 40 CFR 93.109(1)(2)(iii) to as required by 40 CFR 93.109(n)(2)(iii).

EPA's review of Virginia's SIP revisions indicates that it is consistent with EPA's Conformity Rule. Virginia met the requirements under 40 CFR 51.390 to establish conformity criteria and procedures consistent with the transportation conformity regulation promulgated by EPA under 40 CFR part 93. In order to implement the federal transportation conformity requirements, Virginia's regulation must reflect the most recent rulemaking promulgated by EPA on March 24, 2010 (75 FR 14260).

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. Final Action

EPA is approving the Virginia SIP revision for transportation conformity, which was submitted on June 13, 2011. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 19, 2011 without further notice unless EPA receives adverse comment by November 18, 2011. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking.

This action to approve the Virginia Transportation Conformity Regulation may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 3, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended by revising the entries for Sections 5–151–40 and 5–151–70 to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5, Chapter 151			**Transportation Conformity**	
*	*	*	*	*
Part III			**Criteria and Procedures for Making Conformity Determinations**	
5–151–40	General	3/2/11	10/19/11 [Insert page number where the document begins].	
*	*	*	*	*
5–151–70	Consultation	3/2/11	10/19/11 [Insert page number where the document begins].	Section D.1.f. is amended.
*	*	*	*	*

* * * * *

[FR Doc. 2011–26905 Filed 10–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2011–0017; EPA–R05–OAR–2011–0106; FRL–9480–6]

Approval and Promulgation of Air Quality Implementation Plans, Ohio and Indiana; Redesignation of the Ohio and Indiana Portions Cincinnati-Hamilton Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving, under the Clean Air Act (CAA), Ohio's and Indiana's requests to redesignate their respective portions of the Cincinnati-Hamilton nonattainment area (for Ohio: Butler, Clermont, Hamilton, and Warren Counties, Ohio; for IN: a portion of Dearborn County) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). The Ohio Environmental Protection Agency (Ohio EPA) submitted its request on December 9, 2010, and the Indiana

Department of Environmental Management (IDEM) submitted its request on January 25, 2011. Kentucky's request to redesignate its portion of the Cincinnati-Hamilton area, submitted to EPA on January 27, 2011, will be addressed in a separate rulemaking action. EPA's approvals here involve several additional related actions. EPA has determined that the entire Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard. EPA is approving, as revisions to the Ohio and Indiana State Implementation Plans (SIPs), the states' plans for maintaining the 1997 annual $PM_{2.5}$ NAAQS through 2021 in the area. EPA is approving the 2005 emissions inventories for the Ohio and Indiana portions of the Cincinnati-Hamilton area as meeting the comprehensive emissions inventory requirement of the CAA. Finally, EPA finds adequate and is approving Ohio and Indiana's Nitrogen Oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2021 for the Cincinnati-Hamilton area.

DATES: This direct final rule will be effective December 19, 2011, unless EPA receives adverse comments by November 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0106 (Indiana) or EPA–R05–OAR–2011–0017 (Ohio) by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Aburano.Douglas@epa.gov.*
- *Fax:* (312) 408–2279.
- *Mail:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Doug Aburano, Control Strategies Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th Floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2011–0106, EPA–R05–OAR–2011–0017. 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 email. 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 email 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 and viruses. For additional instructions on submitting comments, go to section I 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. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What actions is EPA taking?
II. What is the background for these actions?
III. What are the criteria for redesignation to attainment?
IV. What is EPA's analysis of the States' requests?
A. Attainment Determination and Redesignation
B. Adequacy of Ohio and Indiana's MVEBs
C. 2005 Comprehensive Emissions Inventory
V. Summary of Actions
VI. Statutory and Executive Order Reviews

I. What actions is EPA taking?

EPA has previously determined that the entire Cincinnati-Hamilton area is attaining the 1997 annual $PM_{2.5}$ standard and that the Ohio and Indiana portions of the area have met the requirements for redesignation under section 107(d)(3)(E) of the CAA through a final determination made on September 29, 2011. EPA is thus approving the requests from the states of Ohio and Indiana to change the legal designation of their portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. This action does not address the Kentucky portion of the Cincinnati-Hamilton area. EPA is also taking several additional actions related to Ohio and Indiana's $PM_{2.5}$ redesignation requests, as discussed below.

EPA is approving Indiana's and Ohio's $PM_{2.5}$ maintenance plans for the Cincinnati-Hamilton area as revisions to the Ohio and Indiana SIP (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plans are designed to keep the Cincinnati-Hamilton area in attainment of the 1997 annual $PM_{2.5}$ NAAQS through 2021.

EPA is approving 2005 emissions inventories for primary $PM_{2.5}$,[1] NO_X, and sulfur dioxide (SO_2),[2] documented in Ohio and Indiana's $PM_{2.5}$ redesignation request supplemental submittal. These emissions inventories satisfy the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory.

Finally, EPA finds adequate and is approving Ohio's and Indiana's 2015

[1] Fine particulates directly emitted by sources and not formed in a secondary manner through chemical reactions or other processes in the atmosphere.

[2] NO_X and SO_2 are precursors for fine particulates through chemical reactions and other related processes in the atmosphere.

and 2021 primary $PM_{2.5}$ and NO_X MVEBs for the Cincinnati-Hamilton area. These MVEBs will be used in future transportation conformity analyses for the area. Further discussion of the basis for these actions is provided below.

II. What is the background for these actions?

The first air quality standards for $PM_{2.5}$ were promulgated on July 18, 1997, at 62 FR 38652. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter (μg/m³) of ambient air, based on a three-year average of the annual mean $PM_{2.5}$ concentrations at each monitoring site. In the same rulemaking, EPA promulgated a 24-hour $PM_{2.5}$ standard at 65 μg/m³, based on a three-year average of the annual 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitoring site.

On January 5, 2005, at 70 FR 944, EPA published air quality area designations for the 1997 annual $PM_{2.5}$ standard based on air quality data for calendar years 2001–2003. In that rulemaking, EPA designated the Cincinnati-Hamilton, area as nonattainment (for Ohio: Butler, Clermont, Hamilton, and Warren Counties, Ohio; for IN: a portion of Dearborn County, and for Kentucky: Boone, Campbell, and Kenton Counties) for the 1997 annual $PM_{2.5}$ standard.

On October 17, 2006, at 71 FR 61144, EPA retained the annual $PM_{2.5}$ standard at 15 μg/m³ (2006 annual $PM_{2.5}$ standard), but revised the 24-hour standard to 35 μg/m³, based again on the three-year average of the annual 98th percentile of the 24-hour $PM_{2.5}$ concentrations. In response to legal challenges to the 2006 annual $PM_{2.5}$ standard, the U.S. Court of Appeals for District of Columbia Circuit (DC Circuit) remanded this standard to EPA for further consideration. See *American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (DC Cir. 2009). However, given that the 1997 and 2006 annual $PM_{2.5}$ standards are essentially identical, attainment of the 1997 annual $PM_{2.5}$ standard would also indicate attainment of the remanded 2006 annual standard. Since the Cincinnati-Hamilton area is designated as nonattainment for the 1997 annual $PM_{2.5}$ standard, today's proposed action addresses redesignation to attainment only for this standard.

Fine particulate pollution can be emitted directly from a source (primary $PM_{2.5}$) or formed secondarily through chemical reactions in the atmosphere involving precursor pollutants emitted from a variety of sources. Sulfates are a type of secondary particulate formed from SO_2 emissions from power plants and industrial facilities. Nitrates, another common type of secondary particulate, are formed from combustion emissions of NO_X from power plants, mobile sources, and other combustion sources.

III. What are the criteria for redesignation to attainment?

The CAA sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable SIP, Federal emission control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA; and, (5) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

IV. What is EPA's analysis of the States' requests?

A. Attainment Determination and Redesignation

EPA has determined that the entire Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard and that the Ohio and Indiana portions of the area have met all other applicable redesignation criteria under CAA section 107(d)(3)(E). The basis for EPA's approvals of the redesignation requests is as follows:

1. The Area Has Attained the 1997 Annual $PM_{2.5}$ NAAQS (Section 107(d)(3)(E)(i))

On June 3, 2011, EPA proposed to determine that the entire Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ NAAQS (76 FR 32110). No adverse comments were received and EPA's Region 4 and Region 5 Regional Administrators signed the final determination of attainment for the Cincinnati-Hamilton area on August 18, 2011 and September 12, 2011, respectively and published in the **Federal Register** on September 29, 2011. Relevant discussion of the monitored concentrations and sites can be found in the notices for the proposed and final determinations that are referenced above. EPA's September 29, 2011 final determination that the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard fulfills the requirement set forth in CAA section 107(d)(3)(E)(i).

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Ohio and Indiana have met all currently applicable SIP requirements for purposes of redesignation of the Ohio and Indiana portions of the Cincinnati-Hamilton area under section 110 of the CAA (general SIP requirements). We are also finding that the Ohio and Indiana SIPs meet all SIP requirements currently applicable for purposes of redesignation under part D of title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the emissions inventory under section 172(c)(3), we have approved all applicable requirements of the Ohio and Indiana SIPs for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is approving Ohio and Indiana's 2005 emissions inventories as meeting the section 172(c)(3) comprehensive emissions inventory requirement.

In making these determinations, we have ascertained which SIP requirements are applicable for purposes of redesignation, and have determined that there are SIP measures meeting those requirements and that they are fully approved under section 110(k) of the CAA.

a. Ohio and Indiana Have Met All Applicable Requirements for Purposes of Redesignation of Their Portions of the Area Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a state must have been adopted by the state after reasonable public notice and hearing, and, among other things, must: include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor

ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, New Source Review (NSR) permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. EPA believes that the requirements linked with a particular nonattainment area's designation are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements that are linked with a particular area's designation are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996, and 62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio and Indiana's SIPs and have concluded that they meet the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of Ohio and Indiana's SIPs addressing section 110 requirements (including provisions addressing particulate matter, at 40 CFR 52.770 and 40 CFR 52.1870, respectively).

On December 7, 2007, September 9, 2008, March 23, 2011, and April 7, 2011, Indiana made submittals addressing ''infrastructure SIP'' elements required by section 110(a)(2) of the CAA. EPA approved elements of Indiana's submittals on July 13, 2011, at 76 FR 41075.

On December 5, 2007, and September 4, 2009, Ohio made submittals addressing ''infrastructure SIP'' elements required under CAA section 110(a)(2). EPA proposed approval of the December 5, 2007, submittal on April 28, 2011, at 76 FR 23757 and published final approval on July 13, 2011, at 76 FR 41075. EPA disapproved the element of the September 4, 2009, submittal that addresses section 110(a)(2)(D)(i) on July 20, 2011, at 76 FR 43175, but has not taken rulemaking action on the remainder of the submittal.

The remaining parts of the infrastructure SIPs required by section 110(a)(2) are not relevant to this redesignation, and are statewide requirements that are not linked to the $PM_{2.5}$ nonattainment status of the Cincinnati-Hamilton area. Therefore, EPA believes that these SIP elements are not applicable requirements for purposes of review of the state's $PM_{2.5}$ redesignation request.

ii. Part D Requirements

EPA has determined that, upon approval of the base year emissions inventories discussed in section IV.C. of this rulemaking, the Ohio and Indiana SIPs will meet the SIP requirements for the Cincinnati-Hamilton area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas.

Subpart 1—Section 172 Requirements.

For purposes of evaluating these redesignation requests, the applicable section 172 SIP requirements for the Ohio and Indiana portions of the Cincinnati-Hamilton area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable and to provide for attainment of the primary NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. (40 CFR 51.1004(c)).

The Reasonable Further Progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Cincinnati-Hamilton area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. (General Preamble, 57 FR 13564). *See also* 40 CFR 51.918. In addition, because the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. Ohio and Indiana submitted 2005 base year emissions inventories along with their redesignation requests. As discussed below in section IV.C., EPA is approving the 2005 base year inventories as meeting the section 172(c)(3) emissions inventory requirement for the Cincinnati-Hamilton area.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Ohio's current NSR program on January 10, 2003 (68 FR 1366). EPA approved Indiana's current NSR program on October 7, 1994 (59 FR 51108). Nonetheless, since PSD requirements will apply after redesignation, the area need not have a fully-approved NSR

program for purposes of redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Indiana has demonstrated that the Indianapolis area will be able to maintain the standard without part D NSR in effect; therefore, the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Indianapolis area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio and Indiana SIPs meet the requirements of section 110(a)(2) applicable for purposes of redesignation.

Subpart 1—Section 176(c)(4)(D) Conformity SIP Requirements.

The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity).

Section 176(c) of the CAA was amended by provisions contained in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005 (Public Law 109–59). Among the changes Congress made to this section of the CAA were streamlined requirements for state transportation conformity SIPs. State transportation conformity regulations must be consistent with Federal conformity regulations and address three specific requirements related to consultation, enforcement, and enforceability.

EPA believes that it is reasonable to interpret the transportation conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the transportation conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the transportation conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. *See* also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

Ohio and Indiana both have approved transportation conformity SIPs (72 FR 20945 (Ohio) and 75 FR 50708 (Indiana)). Ohio and Indiana are in the process of updating their approved transportation conformity SIPs, and EPA will review these when they are submitted.

b. The Cincinnati-Hamilton Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

Upon final approval of Ohio and Indiana's comprehensive 2005 emissions inventories, EPA will have fully approved the Ohio and Indiana SIP for the Cincinnati-Hamilton area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*See* page 3 of the September 4, 1992, memorandum from John Calcagni, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,''; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. *See* 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio and Indiana have adopted and submitted, and EPA has fully approved, provisions addressing various required SIP elements under particulate matter standards. In this action, EPA is approving Ohio and Indiana's 2005 base year emissions inventory for the Cincinnati-Hamilton area as meeting the requirement of section 172(c)(3) of the CAA.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIPs and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Ohio and Indiana have demonstrated that the observed air quality improvement in the Cincinnati-Hamilton area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIPs, Federal measures, and other state-adopted measures.

In making this demonstration, Ohio and Indiana have calculated the change in emissions between 2005, one of the years used to designate the Cincinnati-Hamilton area as nonattainment, and 2008, one of the years the Cincinnati-Hamilton area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Cincinnati-Hamilton area and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. Federal Emission Control Measures

Reductions in fine particle precursor emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control and fuel requirements result in lower NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, NO_X emissions will be reduced by 77 percent from new passenger cars (light-duty vehicles), 86 percent from new light duty trucks, minivans, and sports utility vehicles and, 69 to 95 percent from new larger sports utility vehicles, vans, and heavier trucks. EPA expects fleet wide average NO_X emissions to decline as new vehicles replace older vehicles each year. The Tier 2 standards included the

requirement to reduce the sulfur content of gasoline to 30 parts per million (ppm) by January 2006 primarily to improve the durability and effectiveness of vehicle emission control technology so that new vehicles could comply with these more stringent NO_X emissions standards.

The 2007 *Heavy-Duty Highway Rule.* EPA issued this rule in December 2000. This rule took effect in 2007. It reduced fine particle and NO_X emissions from heavy-duty highway engines and included requirements to reduce the sulfur content of diesel fuel used by highway vehicles to 15 ppm beginning in mid-2006 in order to avoid damage to the advanced PM and NO_X controls that are necessary to comply with stringent emissions standards. The total program is estimated to achieve a 90 percent reduction in direct $PM_{2.5}$ emissions and a 95 percent reduction in NO_X emissions for these new engines using low sulfur diesel, compared to existing engines using higher sulfur content diesel.

Nonroad Diesel Rule. In May 2004 EPA promulgated a new rule for large nonroad diesel engines, such as those used construction, agriculture, and mining equipment, to be phased in between 2008 and 2014. The rule establishes stringent emissions standards for NO_X and PM for these types of equipment and establishes limits for the sulfur content of the diesel fuel that they use. The requirement to reduce sulfur levels in the nonroad diesel fuel by as much 99 percent allows advanced emission-control systems to be used for the first time on the engines used in these types of equipment. The combined engine and fuel rules will reduce NO_X and PM emissions from large nonroad diesel engines by over 90 percent, compared to current nonroad engines using higher sulfur content diesel. This rule achieved some emission reductions by 2008 and was fully implemented by 2010.

Control Measures in Upwind Areas

Given the significance of sulfates and nitrates in the Cincinnati-Hamilton area, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

Clean Air Interstate Rule (CAIR). EPA proposed CAIR on January 30, 2004, at 69 FR 4566, promulgated CAIR on May 12, 2005, at 70 FR 25162, and promulgated associated Federal Implementation Plans (FIPs) on April 28, 2006, at 71 FR 25328, in order to reduce SO_2 and NO_X emissions and improve air quality in many areas across the Eastern United States. However, on July 11, 2008, the United States Court of Appeals for the District of Columbia Circuit (DC Circuit or Court) issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety (*North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. 2008)). EPA petitioned for a rehearing, and the Court issued an order remanding CAIR and the CAIR FIPs to EPA without vacatur (*North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008)). The Court, thereby, left CAIR in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaced it with a rule consistent with the Court's opinion (*id.* at 1178). The Court directed EPA to ''remedy CAIR's flaws'' consistent with the July 11, 2008, opinion, but declined to impose a schedule on EPA for completing this action (*id*).

On August 8, 2011, at 76 FR 48208, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to address interstate transport of emissions and resulting secondary air pollutants and to replace CAIR. CAIR, among other things, required NO_X and SO_2 emission reductions that contributed to the air quality improvement in the Cincinnati-Hamilton nonattainment area. CAIR emission reduction requirements limit emissions through 2011; CSAPR requires similar or greater emission reductions in the relevant areas in 2012 and beyond. CSAPR requires substantial reductions of SO_2 and NO_X emissions from Electric Generating Units (EGUs or power plants) across most of Eastern United States, with implementation beginning on January 1, 2012. In particular, this rule requires reduction of these emissions to levels well below the levels that led to attainment of the 1997 annual $PM_{2.5}$ standard in the Cincinnati-Hamilton nonattainment area. Because the emission reduction requirements of CAIR are enforceable through the 2011 control period, and because CSAPR has now been promulgated to address the requirements previously addressed by CAIR and gets similar or greater reductions in the relevant areas in 2012 and beyond, EPA has determined that the EGU emission reductions that helped lead to attainment in the Cincinnati-Hamilton area can now be considered permanent and enforceable and that the requirement of CAA section 107(d)(3)(E)(iii) has now been met.

b. Emission Reductions

Ohio and Indiana developed emissions inventories for NO_X, direct $PM_{2.5}$, and SO_2 for 2005, one of the years used to designate the areas as nonattainment, and 2008, one of the years the Cincinnati-Hamilton area monitored attainment of the standard.

EGU SO_2 and NO_X emissions were derived from EPA's Clean Air Market's acid rain database. These emissions reflect Ohio and Indiana's NO_X emission budgets resulting from EPA's NO_X SIP call. The 2008 emissions from EGUs reflect Ohio and Indiana's emission caps under CAIR. All other point source emissions were obtained from Ohio and Indiana's source facility emissions reporting.

Area source emissions for the Cincinnati-Hamilton area for 2005 were taken from Ohio and Indiana's 2005 periodic emissions inventories.[3] These 2005 area source emission estimates were extrapolated to 2008. Source growth factors were supplied by the Lake Michigan Air Directors Consortium (LADCO).

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 National Emissions Inventory (NEI). Contractors were employed by LADCO to estimate emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOVES2010a, in conjunction with transportation model results developed by the Ohio-Kentucky-Indiana Regional Council of Governments (OKI).

All emissions estimates discussed below were documented in the submittals and Appendices of Ohio and Indiana's redesignation request submittal from January 25, 2011, and December 9, 2010, respectively. For these data and additional emissions inventory data, the reader is referred to EPA's digital docket for this rule, *http://www.regulations.gov*, for docket numbers EPA–R05–OAR–2011–0106 (Indiana) or EPA–R05–OAR–2011–0017 (Ohio), which include digital copies of Ohio and Indiana's submittals.

[3] Periodic emission inventories are derived by States every three years and reported to the EPA. These periodic emission inventories are required by the Federal Consolidated Emissions Reporting Rule, codified at 40 CFR Subpart A. EPA revised these and other emission reporting requirements in a final rule published on December 17, 2008, at 73 FR 76539.

Emissions data for the entire Cincinnati-Hamilton area (OH-IN-KY) are shown in Tables 1 through 4 below.

TABLE 1—COMPARISON OF 2005 AND 2008 NO_X EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE CINCINNATI-HAMILTON AREA (OH-IN-KY)

Sector	NO_X		
	2005	2008	Net change 2005–2008
Point (Non-EGU)	10,371.70	9,790.50	−581.20
EGU	55,930.44	46,853.89	−9,076.55
Area	7,810.74	7,966.67	155.93
Nonroad	12,480.57	10,561.92	−1,918.65
On-road	71,919.89	64,471.22	−7,448.67
Total	158,513.34	139,644.20	−18,869.14

TABLE 2—COMPARISON OF 2005 AND 2008 DIRECT $PM_{2.5}$ EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE CINCINNATI-HAMILTON AREA (OH-IN-KY)

Sector	Direct $PM_{2.5}$		
	2005	2008	Net change 2005–2008
Point (Non-EGU)	1,352.79	1,458.52	105.73
EGU	2,062.91	1,633.15	−429.76
Area	1,828.55	1,864.80	36.25
Nonroad	4,469.27	3,807.04	−662.23
On-road	2,810.30	2,679.85	−130.45
Total	12,523.79	11,443.36	−1080.46

TABLE 3—COMPARISON OF 2005 AND 2008 SO_2 EMISSION TOTALS BY SOURCE SECTOR (TPY) FOR THE CINCINNATI-HAMILTON AREA (OH-IN-KY)

Sector	SO_2		
	2005	2008	Net change 2005–2008
Point (Non-EGU)	15,532.09	13,483.92	−2,048.17
EGU	218,395.56	98,334.17	−150,061.39
Area	3494.39	3520.77	26.38
Nonroad	1,057.16	416.87	−640.29
On-road	392.00	277.59	−114.41
Total	238,871.20	116,033.32	−152,837.88

Table 1 shows that the entire Cincinnati-Hamilton area reduced NO_X emissions by 18,869.14 tpy between 2005 and 2008. Table 2 shows that the Cincinnati-Hamilton area reduced direct $PM_{2.5}$ emissions by 1,080.46 tpy between 2005 and 2008. Table 3 shows that the Cincinnati-Hamilton area reduced SO_2 emissions by 152,837.88 tpy between 2005 and 2008.

Because $PM_{2.5}$ concentrations in the Cincinnati-Hamilton area are significantly impacted by the transport of sulfates and nitrates, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants. Table 4, below, presents statewide EGU emissions data compiled by EPA's Clean Air Markets Division for the years 2002 and 2008. Emissions for 2008 reflect implementation of CAIR.

TABLE 4—COMPARISON OF 2002 AND 2008 STATEWIDE EGU NO_X AND SO_2 EMISSIONS (TPY) FOR STATES IMPACTING THE CINCINNATI-HAMILTON AREA

State	NO_X			SO_2		
	2002	2008	Net change 2002–2008	2002	2008	Net change 2002–2008
Alabama	161,559	112,625	−48,934	448,248	357,546	−90,702
Illinois	174,247	119,930	−54,317	353,699	257,357	−96,342
Indiana	281,146	190,092	−91,054	778,868	565,459	−213,409

TABLE 4—COMPARISON OF 2002 AND 2008 STATEWIDE EGU NO_X AND SO_2 EMISSIONS (TPY) FOR STATES IMPACTING THE CINCINNATI-HAMILTON AREA—Continued

State	NO_X			SO_2		
	2002	2008	Net change 2002–2008	2002	2008	Net change 2002–2008
Kentucky	198,599	157,903	−40,696	482,653	344,356	−138,297
Michigan	132,623	107,624	−25,000	342,999	326,501	−16,498
Missouri	139,799	88,742	−51,057	235,532	258,269	22,737
Ohio	370,497	235,049	−135,448	1,132,069	709,444	−422,625
Pennsylvania	200,909	183,658	−17,251	889,766	831,915	−57,851
Tennessee	155,996	85,641	−70,356	336,995	208,069	−128,926
West Virginia	225,371	99,484	−125,887	507,110	301,574	−205,536
Wisconsin	88,970	47,794	−41,175	191,257	129,694	−61,563
Total	2,129,716	1,428,541	−701,175	5,699,195	4,290,184	−1,409,011

Table 4 shows that states impacting the Cincinnati-Hamilton area reduced NO_X and SO_2 emissions from EGUs by 701,175 tons per year (tpy) and 1,409,011 tpy, respectively, between 2002 and 2008.

Based on the information summarized above, Ohio and Indiana have adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. Ohio and Indiana Have Fully Approved Maintenance Plans Pursuant to Section 175A of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with Ohio and Indiana's requests to redesignate the Cincinnati-Hamilton nonattainment area to attainment status, Ohio and Indiana have submitted SIP revisions to provide for maintenance of the 1997 annual $PM_{2.5}$ NAAQS in the area through 2021.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future annual $PM_{2.5}$ violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum states that a maintenance plan should address the following items: The attainment emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The states developed emissions inventories for NO_X, direct $PM_{2.5}$, and SO_2 for 2008, one of the years used to demonstrate monitored attainment of the 1997 annual $PM_{2.5}$ standard, as described in section IV.A.3.b., above. The attainment level of emissions is summarized in Tables 1 through 4, above.

c. Demonstration of Maintenance

Along with the redesignation request, the two states submitted revisions to their $PM_{2.5}$ SIPs to include maintenance plans for the Cincinnati-Hamilton area, as required by section 175A of the CAA. These demonstrations show maintenance of the annual $PM_{2.5}$ standard through 2021 by showing that current and future emissions of NO_X, directly emitted $PM_{2.5}$ and SO_2 for the area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio and Indiana are using emissions inventory projections for the years 2015, and 2021 to demonstrate maintenance. The projected emissions were estimated by Ohio and Indiana, with assistance from LADCO, and the local Metropolitan Planning Organization (MPO), OKI using the MOVES2010a model. Emissions data are shown in Table 5, below.

TABLE 5—COMPARISON OF 2008, 2015, AND 2021 NO_X, DIRECT $PM_{2.5}$, AND SO_2 EMISSION TOTALS (TPY) FOR THE CINCINNATI-HAMILTON AREA

	2008	2015	2021	Net change (2008–2021)
$PM_{2.5}$	8,904.64	8,634.55	8,202.63	−702.01
NO_X	148,706.15	105,712.02	78,819.13	−69,887.02
SO_2	117,016.14	112,250.26	88,510.27	−28,505.87

Table 5 shows that the NO_X emissions in the Cincinnati-Hamilton area are 69.887.02 tpy less in 2021, the outermost year of the maintenance plan, than in attainment year 2008. Direct $PM_{2.5}$ emissions are 702.01 tpy lower in

2021 than in 2008, and SO_2 emissions are 28,505.87 tpy lower in 2021 than in 2008.

Because the $PM_{2.5}$ concentrations in the Cincinnati-Hamilton area are significantly impacted by the transport of sulfates and nitrates, the area's air quality is strongly affected by regulation of SO_2 and NO_X emissions from power plants. Table 6, below, presents statewide EGU emissions data compiled for 2008 and 2014 and beyond. Emissions for 2008 reflect implementation of CAIR and an attainment year, while 2014 emissions reflect budgets established in the CSAPR.

TABLE 6—COMPARISON OF 2008 AND 2014 AND BEYOND STATEWIDE EGU NO_X AND SO_2 EMISSIONS (TPY) FOR STATES IMPACTING THE CINCINNATI-HAMILTON AREA

State	NO_X			SO_2		
	2008	2014 and beyond	Net change 2008–2014	2008	2014 and beyond	Net change 2008–2014
Alabama	112,625	69,192	−43,433	357,547	173,566	−183,981
Illinois	119,930	49,162	−70,767	257,357	132,647	−124,710
Indiana	190,092	110,740	−79,352	565,459	195,046	−370,413
Kentucky	157,903	76,088	−81,815	344,356	116,927	−227,429
Michigan	107,624	60,907	−46,717	326,501	162,632	−163,869
Missouri	88,742	52,103	−36,639	258,269	186,899	−71,370
Ohio	235,049	89,753	−145,296	709,444	178,975	−530,469
Pennsylvania	183,658	118,981	−64,676	831,915	125,545	−706,370
Tennessee	85,641	20,512	−65,129	208,069	64,721	−143,348
West Virginia	99,484	53,975	−45,509	301,574	84,344	−217,230
Wisconsin	47,794	33,537	−14,257	129,694	50,137	−79,557
Total	1,428,541	734,951	−693,590	4,290,185	1,471,439	−2,818,746

Table 6 shows that NO_X emissions from EGUs are projected to decrease by 693,590 tpy from 2008 to 2014 and beyond in states impacting the Cincinnati-Hamilton area. Over that same time period, SO_2 emissions from EGUs are projected to decrease by 2,818,746 in states impacting the Cincinnati-Hamilton area.

Based on the information summarized above, Ohio and Indiana have adequately demonstrated maintenance of the $PM_{2.5}$ standard in this area for a period extending in excess of ten years from the date that EPA is completing rulemaking on the state's redesignation request.

d. Monitoring Network

Ohio currently operates nine monitors for purposes of determining attainment with the annual $PM_{2.5}$ standard in the Cincinnati-Hamilton area. Kentucky currently operates one monitor for the area. Currently, Indiana operates no monitors for the Cincinnati-Hamilton area since the state makes up only a small portion of the non-attainment area, and EPA has determined that the monitors maintained by both Ohio and Kentucky constitute an adequate monitoring network. Ohio has committed to continue to operate and maintain its monitors and will consult with EPA prior to making any changes to the existing monitoring network. Ohio remains obligated to continue to quality-assure monitoring data in accordance with 40 CFR part 58 and enter all data into EPA's Air Quality System (AQS) database in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the annual $PM_{2.5}$ NAAQS in the Cincinnati-Hamilton area depends, in part, on the state's efforts toward tracking indicators of continued attainment during the maintenance period. Ohio and Indiana's plan for verifying continued attainment of the annual $PM_{2.5}$ standard in the Cincinnati-Hamilton area consists of continued ambient $PM_{2.5}$ monitoring in accordance with the requirements of 40 CFR part 58. The two states will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (codified at 40 CFR 51 Subpart A) to track future levels of emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. *See* section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio and Indiana have adopted contingency plans for the Cincinnati-Hamilton area to address possible future annual $PM_{2.5}$ air quality problems.

Under Indiana's plan, if a violation of the 1997 annual $PM_{2.5}$ standard occurs, Indiana will implement an ''Action Level Response''. Unless the violation is due to an atypical unfavorable meteorological condition, exceptional event, malfunction or noncompliance with a permit condition or rule requirement, Indiana will adopt and implement one or more of its contingency measures. Indiana has provided clarification that the state considers the term ''an atypical unfavorable meteorological condition'' to mean an exceptional event as determined by EPA. EPA agrees with and relies upon this clarification in approving Indiana's contingency measures provisions. (See docket EPA–R05–OAR–2011–0106 for clarification communications).

If a violation occurs, it will trigger an Action Level Response; that is, Indiana will adopt and implement one or more

control measures from its list of candidate measures within 18 months from the end of the year in which monitored air quality triggering the response occurs. Indiana's candidate contingency measures include the following:

i. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

ii. NO_X or SO_2 controls on new minor sources;

iii. Wood stove change out program;

iv. Idle restrictions; and

v. Broader geographic applicability of existing measures.

Ohio's contingency measures include a Warning Level Response and an Action Level Response. An initial Warning Level Response is triggered when the average weighted annual mean for one year exceeds 15.5 $\mu g/m^3$. In that case, a study will be conducted to determine if the emissions trends show increases; if action is necessary to reverse emissions increases, Ohio will follow the same procedures for control selection and implementation as for an Action Level Response.

The Action Level Response will be prompted by any one of the following: A Warning Level Response study that shows emissions increases, a weighted annual mean over a two-year average that exceeds the standard, or a violation of the standard. If an Action Level Response is triggered, Ohio will adopt and implement appropriate control measures within 18 months from the end of the year in which monitored air quality triggering a response occurs.

Ohio's candidate contingency measures include the following:

i. ICI Boilers—SO_2 and NO_X controls;

ii. Process heaters;

iii. EGUS;

iv. Internal combustion engines;

v. Combustion turbines;

vi. Other sources > 100 TPY;

vii. Fleet vehicles;

viii. Concrete manufacturers and;

ix. Aggregate processing plants.

Ohio and Indiana further commit to conduct ongoing review of their data, and if monitored concentrations or emissions are trending upward, Ohio and Indiana commit to take appropriate steps to avoid a violation if possible. Ohio and Indiana commit to continue implementing SIP requirements upon and after redesignation.

EPA believes that both Ohio and Indiana's contingency plans, as well as the commitment to continue implementing any SIP requirements, satisfy the pertinent requirements of section 175A(d).

g. Provisions for Future Updates of the Annual $PM_{2.5}$ Maintenance Plan

As required by section 175A(b) of the CAA, Ohio and Indiana have each committed to submit to the EPA an updated maintenance plan eight years after redesignation of the Cincinnati-Hamilton area to attainment of the 1997 annual $PM_{2.5}$ standard to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A of the CAA, Ohio and Indiana have committed to retain the control measures contained in the SIP prior to redesignation, or submit to EPA, as a SIP revision, any changes to its rules or emission limits applicable to SO_2, NO_X or direct $PM_{2.5}$ sources as required for maintenance of the annual $PM_{2.5}$ standard in the Cincinnati-Hamilton area.

EPA has concluded that the maintenance plans adequately address the requisite five basic components: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Thus EPA is fully approving the maintenance plan SIP revisions submitted by Ohio and Indiana for the Cincinnati-Hamilton area as meeting the requirements of section 175A of the CAA.

B. Adequacy of Ohio and Indiana's MVEBs

1. How are MVEBs developed and what are the MVEBs for the Cincinnati-Hamilton area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and maintenance plans for $PM_{2.5}$ nonattainment areas and for areas seeking redesignations to attainment of the $PM_{2.5}$ standard. These emission control strategy SIP revisions (*e.g.,* RFP and attainment demonstration SIP revisions) and maintenance plans create MVEBs based on on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from on-road transportation sources. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment, RFP or maintenance, as applicable.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan and could also be established for an interim year or years. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, new transportation plans and transportation improvement programs (TIPs) must be evaluated to determine if they conform to the purpose of the area's SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or any required interim milestone. If a transportation plan or TIP does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find adequate and/or approve the MVEBs for use in determining transportation conformity before the MVEBs can be used. Once EPA affirmatively approves and/or finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs must be used by state and Federal agencies in determining whether proposed transportation plans and TIPs conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4). Additionally, to approve a motor vehicle emissions budget EPA must complete a thorough review of the SIP, in this case the $PM_{2.5}$ maintenance plans, and conclude that the SIP will achieve its overall purpose, in this case providing for maintenance of the 1997 annual $PM_{2.5}$ standard in the Indiana and Ohio portions of the Cincinnati area.

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) EPA taking action on the MVEB. The process for determining the adequacy of submitted SIP MVEBs is codified at 40 CFR 93.118.

The maintenance plans submitted by Ohio and Indiana for the Cincinnati-Hamilton area contain new primary $PM_{2.5}$ and NO_X MVEBs for the area for the years 2015 and 2021. The motor vehicle emissions budgets were calculated using MOVES2010(a). After the adequacy finding and approval of the budgets become effective, the

budgets will have to be used in future conformity determinations and regional emissions analyses prepared by the OKI, will have to be based on the use of MOVES2010a or the most recent version of MOVES required to be used in transportation conformity determinations.[4] The states have determined the 2015 MVEBs for the combined Ohio and Indiana portions of Cincinnati-Hamilton area to be 1,678.60 tpy for primary $PM_{2.5}$ and 35,723.83 tpy for NO_X. Ohio and Indiana have determined the 2021 MVEBs for their combined portions of the Cincinnati-Hamilton area to be 1,241.19 tpy for primary $PM_{2.5}$ and 21,747.71 tpy for NO_X. These MVEBs exceed the on-road mobile source primary $PM_{2.5}$ and NO_X emissions projected by the states for 2015 and 2021. Ohio and Indiana have decided to include ''safety margins'' as provided for in 40 CFR 93.124(a) (described below) of 79.93 tpy and 112.84 tpy for primary $PM_{2.5}$ and 4,659.63 tpy and 2,836.65 tpy for NO_X in the 2015 and 2021 MVEBs, respectively, to provide for on-road mobile source growth. Ohio and Indiana did not provide emission budgets for SO_2, VOCs, and ammonia because it concluded, consistent with EPA's presumptions regarding these precursors, that emissions of these precursors from on-road motor vehicles are not significant contributors to the area's $PM_{2.5}$ air quality problem.

In the Ohio and Indiana portions of the Cincinnati-Hamilton area, the motor vehicle budgets including the safety margins and motor vehicle emission projections for both NO_X and $PM_{2.5}$ are lower than the levels in the attainment year.

EPA has reviewed the submitted budgets for 2015 and 2021 including the added safety margins using the conformity rule's adequacy criteria found at 40 CFR 93.118(e)(4) and the conformity rule's requirements for safety margins found at 40 CFR 93.124(a). EPA has also completed a thorough review of the maintenance plan for the Ohio and Indiana portions of the Cincinnati-Hamilton area. Based on the results of this review of the budgets and the maintenance plans EPA is approving the 2015 and 2021 direct $PM_{2.5}$ and NO_X budgets including the requested safety margins for the Ohio and Indiana portions of the Cincinnati-Hamilton area. Additionally, EPA, through this rulemaking, has found the submitted budgets to be adequate for use to determine transportation conformity in the Indiana and Ohio portions of the area, because EPA has determined that the area can maintain the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period with on-road mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations made on or after the effective date of this direct final rulemaking (40 CFR 93.118(f)(iii)). Additionally, transportation conformity determinations made after the effective date of this notice must be based on regional emissions analyses using MOVES2010a or a more recent version of MOVES that has been approved for use in conformity determinations.[5]

2. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As shown in Table 5, the combination of the Ohio and Indiana portions of the Cincinnati-Hamilton area is projected to have safety margins for NO_X and direct $PM_{2.5}$ of 42,994.13 tpy and 270.09 tpy in 2015, and 69,887.02 tpy and 702.01 tpy for NO_X and $PM_{2.5}$ in 2021 (the difference between the attainment year, 2008, emissions and the projected years of 2015 and 2021 emissions for all sources in the Cincinnati-Hamilton area). Even if emissions exceeded expectations by the full level of the safety margin, the area would still demonstrate maintenance since emission levels would equal those in the attainment year.

The transportation conformity rule allows areas to allocate all or a portion of a ''safety margin'' to the area's motor vehicle emissions budgets (40 CFR 92.124(a)). The MVEBs requested by Ohio and Indiana contain NO_X safety margins for mobile sources in 2015 and 2021 and $PM_{2.5}$ safety margins for mobile sources in 2015 and 2021 are much smaller than the allowable safety margins reflected in the total emissions for the Cincinnati-Hamilton area. The state is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the state is requesting MVEBs that exceed the projected on-road mobile source emissions for 2015 and 2021 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the overall $PM_{2.5}$ maintenance demonstration.

Therefore, EPA believes that the requested budgets, including the requested portion of the safety margins, provide for a quantity of mobile source emissions that would be expected to maintain the $PM_{2.5}$ standard. Once allocated to mobile sources, these portions of the safety margins will not be available for use by other sources.

3. What action is EPA taking on the submitted motor vehicle emissions budgets?

EPA, through this rulemaking, has found adequate and is approving the MVEBs for use to determine transportation conformity in the Ohio and Indiana portions of the Cincinnati-Hamilton area, because EPA has determined that the area can maintain attainment of the 1997 annual $PM_{2.5}$ NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs including the requested safety margins. These budgets must be used in conformity determinations made on or after the effective date of this direct final rulemaking, December 19, 2011. (40 CFR 93.118(f)(iii)) Additionally, the determinations made after the effective date of this notice must be based on regional emissions analyses using MOVES2010a or a more recent version of MOVES that has been approved for use in conformity determinations.[6]

C. 2005 Comprehensive Emissions Inventory

As discussed above in section IV.A.2.a.ii., section 172(c)(3) of the CAA requires areas to submit a comprehensive emissions inventory. Ohio and Indiana submitted 2005 base year emissions inventories that meet this requirement. Emissions contained in the submittals cover the general source categories of point sources, area sources, on-road mobile sources, and nonroad mobile sources.

For the point source sector, EGU SO_2 and NO_X emissions were derived from

[4] EPA described the circumstances under which an area would be required to use MOVES in transportation conformity determinations in its March 2, 2010, **Federal Register** notice officially releasing MOVES2010 for use in SIPs and transportation conformity determinations. (75 FR 9413)

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EPA's Clean Air Market's database. All other point source emissions were obtained from Ohio and Indiana's source facility emissions reporting.

Area source emissions were extrapolated from Ohio and Indiana's 2005 periodic emissions inventories. Source growth factors were supplied by LADCO.

Nonroad mobile source emissions were extrapolated from nonroad mobile source emissions reported in EPA's 2005 NEI. LADCO estimated emissions for commercial marine vessels and railroads.

On-road mobile source emissions were calculated using EPA's mobile source emission factor model, MOVES2010a, in conjunction with roadway network traffic information prepared by OKI.

All emissions discussed in Table 1 were documented in the submittal and the Appendices of Ohio and Indiana's redesignation request submittals. EPA has reviewed Ohio and Indiana's documentation of the emissions inventory techniques and data sources used for the derivation of the 2005 emissions estimates and has found that Ohio and Indiana have thoroughly documented the derivation of these emissions inventories. The submittals for both the Ohio and Indiana state that the 2005 emissions inventories are currently the most complete emissions inventories for $PM_{2.5}$ and $PM_{2.5}$ precursors in the Cincinnati-Hamilton area. Based upon EPA's review, we conclude that the 2005 emissions inventories areas complete and accurate as possible given the input data available to the states.

V. Summary of Actions

EPA has previously made the determination that the Cincinnati-Hamilton area has attained the 1997 annual $PM_{2.5}$ standard. EPA is determining that the area continues to attain the standard and that the Ohio and Indiana portions of the area meet the requirements for redesignation to attainment of that standard under section 107(d)(3)(E) of the CAA. EPA is thus approving the requests from Ohio and Indiana to change the legal designation of their portions of the Cincinnati-Hamilton area from nonattainment to attainment for the 1997 annual $PM_{2.5}$ NAAQS. EPA is approving Ohio and Indiana's 1997 annual $PM_{2.5}$ maintenance plans for the Cincinnati-Hamilton area as revisions to the respective SIPs because the plans meet the requirements of section 175A of the CAA. EPA is approving the 2005 emissions inventories for primary $PM_{2.5}$, NO_X, and SO_2, documented in Indiana's and Ohio's December 9, 2010, and January 25, 2011, submittals as satisfying the requirement in section 172(c)(3) of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2021 primary $PM_{2.5}$ and NO_X MVEBs submitted from each state for the Ohio and Indiana portions of the Cincinnati-Hamilton area. These MVEBs will be used in future transportation conformity analyses for the area after the effective date for the adequacy finding and approval.

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than

file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw these direct final rules and address the comment in the proposed rulemaking. These actions may not be challenged later in proceedings to enforce their requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 7, 2011.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR Parts 52 and 81 are 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 P—Indiana

■ 2. Section 52.776 is amended by adding paragraphs (v)(3) and (w)(3) to read as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(v) * * *

(3) The Cincinnati-Hamilton nonattainment area (Dearborn County), as submitted on December 9, 2010. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Cincinnati-Hamilton area of 1,678.60 tpy for primary $PM_{2.5}$ and 35,723.83 tpy for NO_X and 2021 motor vehicle emissions budgets of 1,241.19 tpy for primary $PM_{2.5}$ and 21,747.71 tpy for NO_X.

(w) * * *

(3) Indiana's 2005 NOx, directly emitted $PM_{2.5}$, and SO_2 emissions inventory satisfies the emission inventory requirements of section 172(c)(3) of the Clean Air Act for the Cincinnati-Hamilton area.

Subpart KK—Ohio

■ 3. Section 52.1880 is amended by adding paragraphs (p) and (q) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(p) Approval—The 1997 annual $PM_{2.5}$ maintenance plans for the following areas have been approved:

(1) The Cincinnati-Hamilton nonattainment area (Butler, Clermont, Hamilton, and Warren Counties), as submitted on January 25, 2011. The maintenance plan establishes 2015 motor vehicle emissions budgets for the Cincinnati-Hamilton area of 1,678.60 tpy for primary $PM_{2.5}$ and 35,723.83 tpy for NO_X and 2021 motor vehicle emissions budgets of 1,241.19 tpy for primary $PM_{2.5}$ and 21,747.71 tpy for NO_X.

(2) [Reserved]

(q) Approval—The 1997 annual $PM_{2.5}$ comprehensive emissions inventories for the following areas have been approved:

(1) Ohio's 2005 NOx, directly emitted $PM_{2.5}$, and SO_2 emissions inventory satisfies the emission inventory requirements of section 172(c)(3) for the Cincinnati-Hamilton area.

(2) [Reserved]

PART 81—[AMENDED]

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. Section 81.315 is amended by revising the entry for Cincinnati-Hamilton, IN in the table entitled ''Indiana PM2.5 (Annual NAAQS)'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA $PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
* * * * *	*	*
Cincinnati-Hamilton, IN: Dearborn County	December 19, 2011	Attainment.
* * * * *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

■ 6. Section 81.336 is amended by revising the entry for Cincinnati-Hamilton, OH in the table entitled ''Ohio $PM_{2.5}$ (Annual NAAQS)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO $PM_{2.5}$

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
* * * * *	*	*
Cincinnati-Hamilton, Ohio:		
Butler County.		
Clermont County.		
Hamilton County.		

OHIO $PM_{2.5}$—Continued

[Annual NAAQS]

Designated area	Designation [a]	
	Date [1]	Type
Warren County	December 19, 2011	Attainment.
* * * *	* *	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.

* * * * *

[FR Doc. 2011–26887 Filed 10–18–11; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 76, No. 202
Wednesday, October 19, 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

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AH86

Sugar Program; Feedstock Flexibility Program for Bioenergy Producers

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes regulations with respect to general sugar inventory disposition and the establishment of a new Feedstock Flexibility Program (FFP) that requires the Secretary to purchase sugar to produce bioenergy as a means to avoid forfeitures of sugar loan collateral under the sugar loan program. These regulations are as required by the Food Security and Rural Investment Act of 2002 (the 2002 Farm Bill), as amended by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill).

DATES: We will consider comments that we receive by December 19, 2011.

ADDRESSES: Interested persons are invited to submit comments on this proposed rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 690–1480.
- *Mail:* Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, USDA, FSA, Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250–0516.
- *Hand Delivery or Courier:* USDA FSA Economic Policy and Analysis Staff, Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250–0516.

FOR FURTHER INFORMATION CONTACT: Barbara Fecso, phone: (202) 720–4146; fax: (202) 690–1480. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

CCC proposes to establish new regulations for the sugar inventory disposition program and FFP for bioenergy producers mandated by Title IX of the 2008 Farm Bill (Pub. L. 110–246).

Sugar Program

The sugar program is designed to support the price of sugar above a legislatively specified threshold that has been established by successive Farm Bills. In adding FFP as a new element of the sugar program, it is helpful to understand certain aspects of the existing program and how certain components would relate to FFP. In the sugar program, the level of price support is determined by the sugar loan program. Sugar loans from CCC can be satisfied by repaying the loan or by giving CCC title to the loan collateral, also known as a ''forfeiture'' of collateral. The sugar program is required, to the maximum extent possible, to operate at no cost to the Federal government by avoiding forfeitures to CCC. To avoid forfeitures, the sugar program limits the domestic sugar supply through a program of marketing allocations and tariff-rate quotas, thereby usually resulting in higher domestic sugar prices than the floor created by the sugar loan program.

Sugar Inventory Disposition

CCC proposes new general sugar inventory disposition regulations that are required by the 2008 amendments to 7 U.S.C. 8110. The 2008 amendments restrict the methods CCC may use to dispose of its sugar inventory in non-emergency situations. The purpose of the restrictions is to ensure that disposed inventory only goes to non-food uses (for example, bioenergy production) and does not disrupt the market for sugar for human consumption. If there is an emergency shortage of sugar for human consumption, the Secretary can dispose of the inventory to fill that shortage.

CCC proposes to add a new subpart E on General Disposition of CCC Inventory to 7 CFR 1435 to implement the 2008 amendments. Subpart E would apply to sugar in inventory that CCC acquired by means other than FFP, such as sugar obtained from forfeited loan collateral.

General Disposition of CCC Inventory (Proposed New Subpart E)

Section 9001 of the 2008 Farm Bill amends section 9010 of the 2002 Farm Bill establishing the methods CCC may use to manage inventory acquired by forfeiture or other authorities. Unless CCC has determined that there is an emergency shortage of sugar in the domestic market caused by war, flood, hurricane, other natural disaster, or similar event, CCC can only dispose of its sugar inventory using outlets that do not increase the net supply of sugar available for human consumption in the United States.

The 2008 amendments specifically list methods of disposition as sales under FFP (proposed new Subpart G), the Processor Payment-In-Kind Program (Subpart F in the current regulations), and buybacks of Certificates of Quota Eligibility (identified in the 2008 amendments as certificates of quota entry) issued by the Office of the U.S. Trade Representative, as set forth in 15 CFR part 2011. The 2008 amendments do not limit CCC's ability to dispose of its sugar for nonfood use (or uses that do not increase the supply of sugar for human consumption) under any authority. This is a change from the 2002 Farm Bill (Pub. L. 107–171) as originally enacted and the regulations implementing the 2002 Farm Bill, which allowed CCC to dispose of surplus sugar into the domestic market, including the market for human consumption. Therefore, we are proposing new regulations to specify how CCC would dispose of sugar inventory. The existing Payment in Kind program, specified in subpart F, is one authority CCC uses to dispose of inventory. This proposed rule would not change subpart F.

New subpart E would include general provisions for disposition of inventory that is not acquired through FFP. For example, subpart E would apply to disposition of sugar acquired through forfeiture of sugar loan collateral. Subpart E would specify the options CCC would use to dispose of inventory

in both normal and emergency shortage situations.

The 2008 amendments to section 9010 of the 2002 Farm Bill also specify the methods CCC may use to manage inventory acquired by forfeiture under the sugar loan program or other authorities. Unless, as specified in the 2008 Farm Bill, CCC has determined that ''there is an emergency shortage of sugar for human consumption in the United States market that is caused by a war, flood, hurricane, or other natural disaster, or other similar event,'' CCC can only dispose of its sugar inventory by methods that do not increase the net supply of sugar available for human consumption in the United States. There should not be much inventory subject to this provision because the main sugar surplus management strategy in the recently amended statute is the removal of sugar surpluses through CCC sugar purchases and disposal through conversion to bioenergy.

CCC can sell sugar for human consumption if an emergency shortage condition exists, and the event is caused by a war, flood, hurricane, or other natural disaster, or other similar event. By including the universe of causes—manmade, natural, and ''other similar event,'' CCC has great discretion in determining the cause triggering an emergency shortage. Therefore, the only practical limitation on CCC's ability to sell sugar for human consumption depends on what constitutes the ''existence of an emergency shortage.'' This concept is important because CCC is required under the sugar marketing allotment program and Harmonized Tariff Schedule to ensure an adequate supply of sugar for domestic consumption. Additionally, the sugar tariff-rate quota management provisions of the 2008 amendments require USDA to increase sugar supplies if an emergency shortage exists.

CCC is requesting comment from the public on establishing a definition of an emergency shortage. Webster's Dictionary defines an emergency as a sudden or unexpected occurrence demanding prompt action. Some recent examples of unexpected manmade or natural occurrences that reduced domestic refined sugar supplies are the late sugar beet crop of 2005, Hurricane Katrina, and the Imperial refinery explosion in Savannah, Georgia in February 2008. CCC determined that the delayed beet crop and Katrina resulted in sudden shortages that could not be resolved by redistributing available domestic supplies and took immediate action to increase supply. However, with respect to the February 2008 refinery explosion, CCC delayed action until the following August when it contemplated the threat of a refined shortage, in recognition that shortages are most likely to occur in the August–September period when domestic sugar stocks are at their yearly lowest point. The law directs USDA to take action to increase supplies when an emergency shortage ''exists,'' not when it is ''contemplated.'' CCC could define an emergency shortage as a supply failure affecting sugar deliveries and disrupting the ongoing operations of sugar product manufacturers, *i.e.,* defaults or force majeure on contracts affecting 10 percent of average monthly deliveries. Alternatively, CCC could determine an emergency shortage exists when sugar prices spike a certain percentage, *i.e.,* 50 percent above the loan level, or 10 cents above the loan level. Alternatively, CCC could also leave the term undefined so as to maintain maximum flexibility in meeting the needs of the domestic sugar market.

Feedstock Flexibility Program (Proposed New Subpart G)

Section 9001 of the 2008 Farm Bill amends section 9010 of the 2002 Farm Bill to require CCC to implement FFP to control the domestic sugar supply and avoid forfeitures. Under this program, CCC is required to buy surplus sugar as needed to avoid forfeitures of sugar loan collateral and sell that surplus sugar to bioenergy producers. Bioenergy, as defined by section 9001 of the 2008 amendments, means fuel grade ethanol and other biofuel. The 2008 amendments require the Secretary to annually notify eligible bioenergy sugar sellers and producers of the quantity of sugar to be made available for purchase and sale in the crop year following the date of that notification. The 2008 amendments also require quarterly revised estimates and notification.

CCC proposes to add a new subpart G to establish general provisions for operating FFP. Through FFP, CCC would buy and sell sugar for bioenergy production, based on predictions of sugar surplus conditions months into the future, a process that involves unavoidable uncertainty and risk. CCC proposes general provisions that are intended to provide flexibility in program administration. CCC requests comments on alternative methods to administer the program while meeting the requirements of the 2008 amendments.

FFP will be administered through contracts for the purchase and sale of sugar, and products that yield sugar, when CCC determines that sugar loan collateral is likely to be forfeited under the sugar loan program. The contracts will include the specific terms and conditions associated with each purchase and sale. CCC expects to amend its contract terms through time as it learns how to most effectively facilitate the diversion of sugar to ethanol and other bioenergy production.

Surplus Determination

As required by the 2008 amendments, each year CCC will estimate the likelihood of sugar forfeitures by September 1, for the following fiscal year, and announce the quantity of sugar to be purchased and sold for bioenergy production. In addition, CCC will make quarterly announcements of revised estimates. Quarterly revised estimates will be important because the USDA annual estimate reported on September 1 for the following fiscal year's sugar market will potentially be subject to significant error due to uncertainties in making the estimate. The sugarcane and sugar beet harvest for making sugar in the following fiscal year does not normally begin until after September 1 of the prior year. Very little is known about the condition of the crop on September 1, when USDA is required by the 2008 amendments to make its annual estimate of sugar surplus. The harvest for sugar in Mexico begins in December; therefore, the uncertainties are aggravated by the effect of Mexican imports on the U.S. sugar market. Another major source of potential error is the fact that the current fiscal year is not over by September 1. Any changes to the current year automatically alter the current year's ending stocks, and the next year's beginning stocks and supply. CCC's purchase and sale plans would be affected by the large degree of uncertainty in USDA's sugar market projections on September 1.

CCC requests comments on how CCC should calculate a sugar market surplus, particularly for the estimate by September 1, when uncertainties are greatest. For example, CCC could calculate the surplus by comparing the World Agricultural Supply and Demand Estimate (WASDE) ending stocks to the ending stocks for an adequately supplied market. In the past, an ending stock of 14.5 percent of expected annual use was considered to predict adequate supply for the following year. Alternatively, CCC could compare WASDE stocks to the stock level expected to result in forfeitures and declare any projected stocks above these amounts to be surplus. However, this method is inadequate for determining surplus by type of sugar, raw versus refined, because the WASDE is an amalgamation of both sugars. Certainly,

current WASDE tight ending stocks-to-use ratios do not reflect the current raw sugar surplus.

There are two possible types of errors with surplus determination: (1) Over-estimating the surplus and buying and selling sugar for bioenergy that results in market shortages later in the year or (2) under-estimating the surplus resulting in excess supply later in the year. The consequences of these two types of errors are different. Sugar used to make bioenergy cannot be recovered to be marketed for human consumption if needed later; however, sugar not sold early in the year can later be sold for bioenergy production. The first type of risk, that of over-estimating the surplus, has more serious consequences and costs than the second type. CCC proposes to reduce the over-estimation risk by staggering purchases of sugar for bioenergy purchases, rather than making one purchase for the entire year. CCC plans to be more conservative in purchasing sugar for bioenergy early in the year than later in the year, when market factors are better known. CCC would calculate the surplus for the whole year as required by the 2008 amendments, but then only tender a percentage of the estimated surplus for bid immediately. The percentage could change with each quarterly revised estimate. CCC would not retract accepted bids.

CCC requests comments on appropriate methods to estimate the likelihood of forfeitures and to determine the quantity of sugar to be purchased in each quarter. How should CCC calculate the annual sugar market surplus and update that estimate? Should a minimum percentage of the expected surplus be tendered for bid each quarter, and should that minimum be set in the regulations?

Eligible Sugar

CCC is required to purchase raw, refined, or in-process sugar for FFP that would otherwise have been marketed for human consumption in the United States or could otherwise have been used for the extraction of sugar marketed for human consumption. The 2008 amendments define all these forms of sugar as eligible commodities for FFP. For example, in-process sugar products such as beet thick juice or cane syrup are eligible. Since the program objective is to reduce forfeitures of CCC sugar loan collateral, CCC proposes that the in-process sugar products would be evaluated in terms of refined crystalline sugar yield in determining CCC's unit purchase price. For example, if processing the thick juice would yield 70 percent sugar for human consumption, then CCC would only consider 70 percent of the sugar in the thick juice in evaluating the per unit price. Likewise, raw sugar would be evaluated in terms of its refined equivalent to determine a sales price per unit. This reduction in price is not required by the 2008 amendments, but it is consistent with the 2008 amendments' goal of buying sugar for FFP to manage the market for sugar for human consumption. CCC requests comments on and proposed alternatives to this provision.

CCC proposes that for FFP, it will only purchase sugar products that are eligible to be placed under loan with the federal sugar loan program. Sugar eligible to be placed under loan must be processed in the United States from domestically-grown sugarcane, sugar beets, in-process sugars, or molasses. As an alternative, CCC could allow FFP to purchase sugar products from all sources, including imported sugar and sugar products from eligible domestic sellers. Forfeitures are expected to occur when the total sugar supply for human consumption is greater than the level that can support domestic sugar prices above the price support loan proceeds. That surplus could be caused in part by Mexican imports or by sugar made domestically from non-domestic sources. CCC requests comments on whether eligible sugar for FFP should be limited to sugar located within the United States and derived from domestically produced sugarcane or sugar beets.

Eligible Sugar Sellers and Buyers

The 2008 amendments require that the entity selling sugar to CCC be located in the United States and that eligible buyers be bioenergy producers. The 2008 amendments define eligible sellers as entities located in the United States, but do not require that eligible buyers be located in the United States. CCC proposes to limit eligible buyers to those bioenergy producers who will use the purchased sugar to produce bioenergy in their facilities in United States. This restriction is intended to ensure that the increase in energy supplies from the program will benefit the American public paying for FFP. CCC requests comments on whether to include bioenergy producers located outside the United States as eligible buyers.

Competitive Procedures

CCC proposes to announce offers (also referred to as tenders) to the public outlining the terms and conditions of the sugar purchase and sale contracts. CCC also proposes to negotiate contracts directly with sellers or buyers if CCC determines that such negotiation will result in either reduced likelihood of forfeited sugar compared to alternative means or reduced costs of removing sugar from the market, which will reduce the likelihood of sugar forfeited to CCC. CCC proposes to try several contracting strategies to discover the most efficient and cost-effective strategy to subsidize the production of bioenergy with surplus sugar, given the restrictions specified in the 2002 Farm Bill. CCC requests comments on alternative contracting strategies and on whether those strategies should be specified in the regulation.

CCC is required by the 2008 amendments to store the sugar for no more than 30 days after CCC purchases the sugar. Realistically, this means that the purchasing bioenergy producer must be identified before CCC purchases surplus sugar. CCC does not propose specifically how it would do that, although CCC proposes to specify that the buyer must take delivery of the sugar within 30 days of purchase. CCC could identify (pre-qualify) bioenergy producers willing to take sugar or sugar products under specific terms (price, amount, type of sugar, *etc.*). Alternatively, CCC could require the sugar seller to identify the purchasing bioenergy producer and incorporate a contract of sale between CCC and the bioenergy producer specifying terms, including price, in their offer to sell sugar to CCC. CCC proposes to use both these strategies and evaluate which is more effective. CCC requests comments on alternative strategies.

The 2008 amendments prohibit, to the maximum extent possible, CCC from paying storage fees under FFP. Therefore, as a condition of bid acceptance into FFP, CCC would not pay any storage fees.

Sugar To Be Used for Bioenergy Production

CCC expects that the selling price for sugar, with the restriction that it only be used for making bioenergy, will be considerably below the market price for sugar that can be used for human consumption. This price differential could create an incentive for FFP sugar to leak into the domestic human consumption market. Therefore, CCC will monitor the contracts to ensure that the FFP sugar is only being used for bioenergy production. CCC proposes to include an audit clause in the contracts to purchase sugar for bioenergy production. The auditors would view the records upon request, as specified in the contract, to verify that sugar

purchased for bioenergy production was only used for bioenergy production.

In addition to auditing records, CCC would send an auditor to the bioenergy factory purchasing surplus sugar under FFP to verify that the quantity purchased is physically entering the factory as an input in accordance with the contract. Examination could be performed for every event or by random checks. In any case, substantial liquidated damages, to be determined, could be imposed for willfully furnishing false information to CCC. CCC requests comment on the auditing or monitoring methods that should be used. For example:

- Are there alternative processes that CCC should use to ensure that the FFP sugar is not sold for human consumption?
- What kinds of documentation, audits, and monitoring would be appropriate?
- Should the methods of proof be specified in the rule, or in the contract between CCC and the bioenergy producer?

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' 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 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) initially designated this proposed rule as economically significant under Executive Order 12866 and, therefore, OMB reviewed this proposed rule. Due to increases in sugar prices since the initial designation the current cost benefit analysis shows the annual regulatory impact to be less than the threshold of $100 million, therefore the rule is a significant regulatory action, but is no longer considered an economically significant regulatory action. A summary of the cost-benefit analysis of this rule is provided below and is available at *http://www.regulations.gov* and from the contact listed above.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Summary of Costs and Benefits

FFP, along with the impact of higher sugar loan rates than in the 2002 Farm Bill, is expected to cost an average of $8.7 million per year for the next 10 years. Because of uncertainty about future sugar markets and trade flows, the $8.7 million average annual cost of FFP is the composite of two scenarios which differ in their assumptions about the Mexican sugar market. The first scenario (with a 75 percent probability) assumes that Mexican sugarcane acreage does not increase and that high fructose corn syrup (HFCS) use in Mexico continues to be strong (but not as strong as in the second scenario), resulting in no FFP costs. The second scenario (with a 25 percent likelihood) assumes larger Mexican sugarcane acreage (partly due to higher U.S. sugar loan rates under the 2008 Farm Bill) and lower Mexican sugar demand compared to the first scenario. With the resulting larger sugar shipments to the U.S., and lower U.S. sugar prices, this second scenario results in FFP activation and FFP costs.

These additional costs are due to two factors. First, the higher U.S. sugar loan rates under the 2008 Farm Bill may encourage increased Mexican sugarcane acreage, as described in the second scenario above, and also mean that if surplus sugar is purchased to prevent forfeitures, the price at which it must be purchased is higher than previously. Second, the returns to the CCC associated with selling sugar for ethanol, if FFP is activated, are significantly lower than if sales could be made for human consumption (a prior mechanism for disposal of sugar inventory that was used but is no longer authorized). Increased sugar program loan rates account for $35.4 million and restricted CCC disposal options for surplus sugar account for $26.1 million of the total $61.5 million increase in over what disposal of excess sugar inventory would cost if the 2002 Farm Bill were still in effect.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, the Agency has determined that there will not be a significant economic impact on a substantial number of small entities. The entities that would be affected by this rule are sugar producers and sugar bioenergy producers. The sugar producers are not small businesses according to the North American Industry Classification System and the U.S. Small Business Administration. There are currently no commercial bioenergy producers in the United States who use sugar as a feedstock. The bioenergy producers in the United States who use other commodities as a feedstock and might be expected to purchase sugar as a feedstock in the future are not small businesses.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and Farm Service Agency (FSA) regulations for compliance with NEPA (7 CFR part 799). The changes to the sugar program required by Title IX of the 2008 amendments identified in this proposed rule are considered non-discretionary. Therefore, FSA has determined that NEPA does not apply to this proposed rule and no environmental assessment or environmental impact statement will be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial

action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule will not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This proposed rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The policies in this rule do not have Tribal implications that preempt Tribal law.

Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) for State, local, and Tribal government or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The information collection for FFP is currently approved under OMB control number 0560–0177. We anticipate that fewer than 10 sugar producers will participate in the bioenergy program in the next three years. Therefore, there are no changes to the current information collection as approved by OMB.

E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements, Sugar.

For the reasons discussed above, FSA proposes to amend 7 CFR part 1435 as follows:

PART 1435—SUGAR PROGRAM

1. Revise the authority citation for part 1435 to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj, 7272, and 8110; 15 U.S.C. 714b and 714c.

2. Add subpart E to read as follows:

Subpart E—Disposition of CCC Inventory

Sec.
1435.400 General statement.
1435.401 CCC sugar inventory disposition.

Subpart E—Disposition of CCC Inventory

§ 1435.400 General statement.

(a) This subpart will be applicable in the event that an eligible commodity is owned and held in CCC inventory and not acquired through the Feedstock Flexibility Program as set forth in subpart G of this part.

(b) An eligible commodity is raw, refined, or in-process sugar that is eligible to be marketed in the United States for human consumption or to be used for the extraction of sugar for human consumption.

§ 1435.401 CCC sugar inventory disposition.

(a) CCC will dispose of inventory in the following manner, if CCC has not determined there is an emergency shortage of sugar for human consumption in the domestic market:

(1) By sale to bioenergy producers under the Feedstock Flexibility Program as set forth in subpart G of this part,

(2) By transfer to sugarcane and sugar beet processors under the Processor Sugar Payment-In-Kind Program as set forth in subpart F of this part,

(3) Buyback of certificates of quota eligibility, or

(4) Using any other authority for the disposition of CCC-owned sugar that does not increase the net quantity of sugar available for human consumption in the United States.

(b) CCC may use any authority for the disposition of CCC-owned sugar, if CCC has determined there is an emergency shortage of sugar for human consumption in the domestic market caused by war, flood, hurricane, or other natural disaster, or similar event, as determined by CCC.

3. Add subpart G to read as follows:

Subpart G—Feedstock Flexibility Program

Sec.
1435.600 General statement.
1435.601 Sugar surplus determination and public announcement.
1435.602 Eligible commodity to be purchased by CCC.
1435.603 Eligible sugar seller.
1435.604 Eligible sugar buyer.
1435.605 Competitive procedures.
1435.606 Miscellaneous.
1435.607 Appeals.

Subpart G—Feedstock Flexibility Program

§ 1435.600 General statement.

(a) This subpart will be applicable to any sugar seller located in the United States and any bioenergy producer located in the United States who contracts with CCC to sell or purchase surplus sugar, which may be sold in the United States for the production of bioenergy as set forth in this subpart or other purposes as set forth in subpart E of this part, when CCC determines that such action will reduce forfeitures of sugar pledged as collateral for CCC sugar loans.

(b) [Reserved]

§ 1435.601 Sugar surplus determination and public announcement.

(a) The Secretary will estimate the quantity of sugar likely to be forfeited to CCC in the following fiscal year by September 1.

(b) Not later than the January 1, April 1, and July 1 of the fiscal year, the Secretary will re-estimate the quantity of sugar likely to be forfeited to CCC in the fiscal year.

(c) The Secretary will announce by press release for the above dates a purchase and sale strategy, which includes the quantity and timing of the sugar to be purchased and sold to bioenergy producers, and that reflects the estimate of sugar likely to be forfeited to CCC and the uncertainty surrounding the estimate.

§ 1435.602 Eligible commodity to be purchased by CCC.

(a) CCC will only purchase raw sugar, refined sugar, or in-process sugar that is eligible to be used as collateral in the federal Sugar Loan Program.

(1) Sugar may not have been processed from imported sugarcane,

sugar beets, in-process sugars, or molasses; and

(2) Sugar must have been processed in the United States.

(b) Sugar or in-process sugar purchased directly from any domestic sugar beet and sugarcane processor that made the sugar or in-process sugar must be credited against its sugar marketing allocation to be eligible for purchase under this program.

(c) CCC will purchase sugar located in the United States.

(d) CCC will only purchase an eligible commodity if the purchased commodity would reduce the likelihood of forfeitures of CCC sugar loans, as determined by CCC.

(e) CCC will evaluate an offer to sell an eligible commodity to CCC based upon CCC's estimate of the reduction in refined sugar supply available for human consumption due to the purchase. For example, if processing the thick juice would yield 70 percent sugar for human consumption, then CCC will only consider 70 percent of the sugar in the thick juice in evaluating the per unit sales price.

§ 1435.603 Eligible sugar seller.

(a) To be considered an eligible sugar seller, the sugar seller must be located in the United States.

(b) [Reserved]

§ 1435.604 Eligible sugar buyer.

(a) To be considered an eligible sugar buyer, the bioenergy producer must produce bioenergy products, including fuel grade ethanol or other biofuels.

(b) The bioenergy producer and its production facilities that use CCC sugar or in-process sugar must be located in the United States.

§ 1435.605 Competitive procedures.

(a) CCC will generally submit tenders for bids, before entering into contracts with any eligible sugar seller and buyer that minimize CCC net outlays.

(b) CCC may, at times, negotiate contracts directly with sellers or buyers, if CCC determines that such negotiation will result in either reduced likelihood of forfeited sugar under the CCC sugar loan program or reduced costs of removing sugar from the market, which will reduce the likelihood of sugar forfeited to CCC.

§ 1435.606 Miscellaneous.

(a) As a sugar buyer, the bioenergy producer must take possession of the sugar or in-process sugar no more than 30 days from the date of CCC's purchase.

(b) CCC, to the maximum extent practicable, will not pay storage fees for sugar or in-process sugar purchased under this program.

(c) Each bioenergy producer that purchases sugar through FFP must provide proof to CCC that the sugar has been used in the bioenergy factory for the production of bioenergy.

§ 1435.607 Appeals.

(a) The administrative appeal regulations of parts 11 and 780 of this title apply to this part.

(b) [Reserved]

Signed at Washington, DC, on October 13, 2011.

Bruce Nelson,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2011–26974 Filed 10–18–11; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0068; Directorate Identifier 2010–NE–05–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede two existing airworthiness directives (ADs) that apply to General Electric Company (GE) CF6–45 and CF6–50 series turbofan engines with certain low-pressure turbine (LPT) rotor stage 3 disks installed. The existing ADs currently require inspections of high pressure turbine (HPT) and LPT rotors, engine checks, and surveys. Since we issued those ADs, GE has determined that the low-cycle fatigue (LCF) lives of the LPT rotor stage 3 disks affected by those ADs are below the current published engine manual life limits and has introduced a new LPT rotor stage 3 disk part number. This proposed AD would establish a new lower life limit for the LPT rotor stage 3 disks. We are proposing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: We must receive comments on this proposed AD by December 5, 2011.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, *phone:* 513–552–3272; *e-mail: geae.aoc@ge.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7735; *fax:* 781–238–7199; *e-mail: tomasz.rakowski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2010–0068; Directorate Identifier 2010–NE–05–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On January 14, 2011, we issued AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011), for GE CF6–45 and CF6–50 series turbofan engines with certain LPT rotor stage 3 disks installed. That AD requires initial and repetitive HPT rotor stage 1 and stage 2 blade inspections for wear and damage, including excessive airfoil material loss, and initial and repetitive exhaust gas temperature (EGT) system checks (inspections). That AD also requires a one-time ultrasonic inspection (UI) of the LPT rotor stage 3 disk forward spacer arm, fluorescent penetrant inspection (FPI) of the LPT rotor stage 3 disk under certain conditions, and removal of cracked disks from service before further flight. That AD also requires initial and repetitive engine core vibration surveys and reporting to the FAA any crack findings, disks that fail the UI, and engines that fail the engine core vibration survey. That AD resulted from reports received of additional causes of HPT rotor imbalance not addressed in AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010), and from two additional LPT rotor stage 3 disk events since the original AD 2010–06–15, Amendment 39–16240 (75 FR 12661, March 17, 2010) was issued.

On August 15, 2011, we issued AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011) to require performing an FPI of the LPT rotor stage 3 disk forward spacer arm at every shop visit when the LPT module assembly is separated from the engine. That AD resulted from seven reports of uncontained failures of LPT rotor stage 3 disks and eight reports of cracked LPT rotor stage 3 disks found during shop visit inspections.

We issued those ADs to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011), GE has determined that the LCF lives of the LPT rotor stage 3 disks affected by that AD were below the current published manual life limits, and has introduced a new LPT rotor stage 3 disk part number. Moreover, we no longer require the reporting of inspection findings to the FAA.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2011–02–07 Amendment 39–16580 (76 FR 6323, February 4, 2011), and AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011), except that reporting to the FAA would no longer be required and there would be an optional LPT rotor stage 3 disk removal after a failed HPT blade borescope inspection or a failed engine core vibration survey. This proposed AD would also establish a new lower life limit for the LPT rotor stage 3 disk part numbers listed in Table 1 of the proposed AD, and would require removing these disks from service at times determined by a drawdown plan.

Costs of Compliance

We estimate that this proposed AD would affect 387 CF6–45 and CF6–50 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 8 work-hours to perform the HPT blade inspection, 6 work-hours to perform a vibration survey, 4 work-hours to perform an ultrasonic inspection, 2 work-hours to perform an EGT resistance check, 1 work-hour to perform an EGT thermocouple inspection, and 7 work-hours to clean and perform an FPI of the LPT rotor stage 3 disk for each engine. The average labor rate is $85 per work-hour. The cost estimate for the work just described was covered in the two ADs we are proposing to supersede. For this proposed AD, we estimate that a replacement LPT rotor stage 3 disk prorated part cost is $75,000. Based on these figures, we estimate the total cost of this proposed AD to U.S. operators to be $29,025,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) and AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011), and adding the following new AD:

General Electric Company: Docket No. FAA–2010–0068; Directorate Identifier 2010–NE–05–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by December 5, 2011.

(b) Affected ADs

This AD supersedes AD 2011–02–07, Amendment 39–16580 and AD 2011–18–01, Amendment 39–16783.

(c) Applicability

This AD applies to General Electric Company (GE) CF6–45A, CF6–45A2, CF6–50A, CF6–50C, CF6–50CA, CF6–50C1, CF6–50C2, CF6–50C2B, CF6–50C2D, CF6–50E, CF6–50E1, CF6–50E2, and CF6–50–E2D turbofan engines, including engines marked on the engine data plate as CF6–50C2–F and CF6–50C2–R, with any of the low-pressure turbine (LPT) rotor stage 3 disk part numbers listed in Table 1 of this AD installed.

TABLE 1—APPLICABLE LPT ROTOR STAGE 3 DISK PART NUMBERS

9061M23P06	9061M23P07	9061M23P08	9061M23P09	9224M75P01
9061M23P10	1473M90P01	1473M90P02	1473M90P03	1473M90P04
9061M23P12	9061M23P14	9061M23P15	9061M23P16	1479M75P01
1479M75P02	1479M75P03	1479M75P04	1479M75P05	1479M75P06
1479M75P07	1479M75P08	1479M75P09	1479M75P11	1479M75P13
1479M75P14	N/A	N/A	N/A	N/A

(d) Unsafe Condition

This AD was prompted by the determination that a new lower life limit for the LPT rotor stage 3 disks listed in Table 1 of this AD is necessary. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

(e) Compliance

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

(f) Borescope Inspections of HPT Rotor Stage 1 and Stage 2 Blades

For the borescope inspections required by paragraphs (f)(1), (f)(2), and (f)(3) of this AD, inspect the blades from the forward and aft directions. Inspect all areas of the blade airfoil. Your inspection must include blade leading and trailing edges, and their convex and concave airfoil surfaces. Inspect for signs of impact, cracking, burning, damage, or distress.

(1) Perform an initial borescope inspection of the HPT rotor stage 1 and stage 2 blades, within 10 cycles after the effective date of this AD.

(2) Thereafter, repeat the borescope inspection of the HPT rotor stage 1 and stage 2 blades within every 75 cycles-since-last-inspection (CSLI).

(3) Borescope-inspect the HPT rotor stage 1 and stage 2 blades within the cycle limits after the engine has experienced any of the events specified in Table 2 of this AD.

(4) Remove any engine from service before further flight if the engine fails any of the borescope inspections required by this AD.

TABLE 2—CONDITIONAL BORESCOPE INSPECTION CRITERIA

If the engine has experienced:	Then borescope-inspect:
(i) An exhaust gas temperature (EGT) above redline.	Within 10 cycles.
(ii) A shift in the smoothed EGT trending data that exceeds 18 °F (10 °C), but is less than or equal to 36 °F (20 °C).	Within 10 cycles.
(iii) A shift in the smoothed EGT trending data that exceeds 36 °F (20 °C).	Before further flight.
(iv) Two consecutive raw EGT trend data points that exceed 18 °F (10 °C) above the smoothed average, but is less than or equal to 36 °F (20 °C).	Within 10 cycles.
(v) Two consecutive raw EGT trend data points that exceed 36 °F (20 °C) above the smoothed average.	Before further flight.

(g) Actions Required for Engines With Damaged HPT Rotor Blades

For those engines that fail any borescope inspection requirements of this AD, before returning the engine to service:

(1) Remove the LPT rotor stage 3 disk from service; or

(2) Perform a fluorescent-penetrant inspection (FPI) of the inner diameter surface forward cone body (forward spacer arm) of the LPT rotor stage 3 disk as specified in paragraphs (l)(1)(i) through (l)(1)(iii) of this AD.

(h) EGT Thermocouple Probe Inspections

(1) Inspect the EGT thermocouple probe for damage within 50 cycles after the effective date of this AD or before accumulating 750 CSLI, whichever occurs later.

(2) Thereafter, re-inspect the EGT thermocouple probe for damage within every 750 CSLI.

(3) If any EGT thermocouple probe shows wear through the thermocouple guide sleeve, remove and replace the EGT thermocouple probe before further flight, and ensure the turbine mid-frame liner does not contact the EGT thermocouple probe.

(i) EGT System Resistance Check Inspections

(1) Perform an EGT system resistance check within 50 cycles from the effective date of this AD or before accumulating 750 cycles-since-the-last-resistance check on the EGT system, whichever occurs later.

(2) Thereafter, repeat the EGT system resistance check within every 750 cycles-since-the-last-resistance check.

(3) Remove and replace, or repair any EGT system component that fails the resistance system check before further flight.

(j) Ultrasonic Inspection (UI) of the LPT Rotor Stage 3 Disk Forward Spacer Arm

Within 75 cycles after the effective date of this AD, perform a UI of the forward cone body (forward spacer arm) of the LPT rotor stage 3 disk. Use paragraphs E. through K. of Appendix A of GE Service Bulletin (SB) No. CF6–50–SB 72–1312, Revision 1, dated October 18, 2010, to do the UI.

(k) Engine Core Vibration Survey

(1) Within 75 cycles after the effective date of this AD, perform an initial engine core vibration survey.

(2) Use about a one-minute acceleration and a one-minute deceleration of the engine between ground idle and 84% N2 (about 8,250 rpm) to perform the engine core vibration survey.

(3) Use a spectral/trim balance analyzer or equivalent to measure the N2 rotor vibration.

(4) If the vibration level is above 5 mils Double Amplitude then, before further flight, remove the engine from service.

(5) For those engines that fail any engine core vibration survey requirements of this AD, then before returning the engine to service:

(i) Remove the LPT rotor stage 3 disk from service; or

(ii) Perform an FPI of the inner diameter surface forward cone body (forward spacer arm) of the LPT rotor stage 3 disk as specified in paragraphs (l)(1)(i) through (l)(1)(iii) of this AD.

(6) Thereafter, within every 350 cycles-since-the-last-engine core vibration survey, perform the engine core vibration survey as required in paragraphs (k)(1) through (k)(5) of this AD.

(7) If the engine has experienced any vibration reported by maintenance or flight crew that is suspected to be caused by the engine core (N2), perform the engine core vibration survey as required in paragraphs (k)(1) through (k)(5) of this AD within 10 cycles after the report.

(l) Initial and Repetitive FPI of LPT Rotor Stage 3 Disks

(1) At the next shop visit after the effective date of this AD:

(i) Clean the LPT rotor stage 3 disk forward spacer arm, including the use of a wet-abrasive blast to eliminate residual or background fluorescence.

(ii) Perform an FPI of the LPT rotor stage 3 disk forward spacer arm for cracks and for a band of fluorescence. Include all areas of the disk forward spacer arm and the inner diameter surface forward cone body (forward spacer arm) of the LPT rotor stage 3 disk.

(iii) Remove the disk from service before further flight if a crack or a band of fluorescence is present.

(2) Thereafter, clean and perform an FPI of the LPT rotor stage 3 disk forward spacer arm, as specified in paragraphs (l)(1)(i) through (l)(1)(iii) of this AD, at each engine shop visit that occurs after 1,000 cycles-since-the last FPI of the LPT rotor stage 3 disk forward spacer arm.

(m) Removal of LPT Rotor Stage 3 Disks

Remove LPT rotor stage 3 disks listed in Table 1 from service as follows:

(1) For disks that have fewer than 3,200 flight cycles since new (CSN) on the effective date of this AD, remove the disk from service before exceeding 6,200 CSN.

(2) For disks that have 3,200 CSN or more on the effective date of this AD, do the following:

(i) If the engine has a shop visit before the disk exceeds 6,200 CSN, remove the disk from service before exceeding 6,200 CSN.

(ii) If the engine does not have a shop visit before the disk exceeds 6,200 CSN, remove the disk from service at the next shop visit after 6,200 CSN, not to exceed 3,000 cycles from the effective date of this AD.

(n) Installation Prohibition

(1) After the effective date of this AD, do not install or reinstall in any engine any LPT rotor stage 3 disk that exceeds the new life limit of 6,200 CSN.

(2) Remove from service any LPT rotor stage 3 disk that is installed or re-installed after the effective date of this AD, before the disk exceeds the new life limit of 6,200 CSN.

(o) Definitions

(1) For the purposes of this AD, an EGT above redline is a confirmed over-temperature indication that is not a result of EGT system error.

(2) For the purposes of this AD, a shift in the smoothed EGT trending data is a shift in a rolling average of EGT readings that can be confirmed by a corresponding shift in the trending of fuel flow or fan speed/core speed (N1/N2) relationship. You can find further guidance about evaluating EGT trend data in GE Company Service Rep Tip 373 ''Guidelines For Parameter Trend Monitoring.''

(3) For the purposes of this AD, an engine shop visit is the induction of an engine into the shop after the effective date of this AD, where the separation of a major engine flange occurs; except the following maintenance actions, or any combination, are not considered engine shop visits:

(i) Introduction of an engine into a shop solely for removal of the compressor top or bottom case for airfoil maintenance or variable stator vane bushing replacement.

(ii) Introduction of an engine into a shop solely for removal or replacement of the stage 1 fan disk.

(iii) Introduction of an engine into a shop solely for replacement of the turbine rear frame.

(iv) Introduction of an engine into a shop solely for replacement of the accessory gearbox or transfer gearbox, or both.

(v) Introduction of an engine into a shop solely for replacement of the fan forward case.

(p) Previous Credit

(1) A borescope inspection performed before the effective date of this AD using AD 2010–06–15, Amendment 39–16240 (75 FR 12661, March 17, 2010) or AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010) or AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) within the last 75 cycles, satisfies the initial borescope inspection requirement in paragraph (f)(1) of this AD.

(2) A UI performed before the effective date of this AD using AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) or GE SB No. CF6–50–SB 72–1312, dated August 9, 2010 or GE SB No. CF6–50–SB 72–1312 Revision 1, dated October 18, 2010, satisfies the inspection requirement in paragraph (j) of this AD.

(3) An engine core vibration survey performed before the effective date of this AD using AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011) or GE SB No. CF6–50–SB 72–1313, dated August 9, 2010 or GE SB No. CF6–50–SB 72–1313 Revision 1, dated October 18, 2010, within the last 350 cycles, satisfies the initial survey requirement in paragraphs (k)(1) through (k)(5) of this AD.

(4) An FPI of the LPT rotor stage 3 disk forward spacer arm performed before the effective date of this AD using AD 2011–18–01, Amendment 39–16783 (75 FR 3, 52213, August 22, 2011), within the last 1,000 flight cycles of the LPT rotor stage 3 disk, satisfies the initial inspection requirements in paragraphs (l)(1)(i) through (l)(1)(iii) of this AD.

(q) Alternative Methods of Compliance (AMOCs)

(1) AMOCs previously approved for AD 2010–06–15, Amendment 39–16240 (75 FR 12661, March 17, 2010) are not approved for this AD. However, AMOCs previously approved for AD 2010–12–10, Amendment 39–16331 (75 FR 32649, June 9, 2010), AD 2011–02–07, Amendment 39–16580 (76 FR 6323, February 4, 2011), or AD 2011–18–01, Amendment 39–16783 (76 FR 52213, August 22, 2011) are approved for this AD.

(2) The Manager, Engine Certification Office, may approve alternative methods of compliance for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(r) Related Information

(1) For more information about this AD, contact Tomasz Rakowski, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7735; *fax:* 781–238–7199; *e-mail: tomasz.rakowski@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, *phone:* 513–552–3272; *e-mail: geae.aoc@ge.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on October 13, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–27006 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1090; Directorate Identifier 2011–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

One case of the inability to open the airstair door while on ground was reported in service. The airstair door seal did not deflate, preventing the airstair door from opening. It was found that the existing airstair door pneumatic shut-off valve control logic prevents the airstair door seal from

deflating due to a single Input/Output Module failure under certain conditions. The inability to open the airstair door could impede evacuation in the event of an emergency.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 5, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1090; Directorate Identifier 2011–NM–138–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–15, dated June 20, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> One case of the inability to open the airstair door while on ground was reported in service. The airstair door seal did not deflate, preventing the airstair door from opening. It was found that the existing airstair door pneumatic shut-off valve control logic prevents the airstair door seal from deflating due to a single Input/Output Module failure under certain conditions. The inability to open the airstair door could impede evacuation in the event of an emergency.
>
> This [Canadian] directive mandates the wiring changes [ModSum 4–126513, Seal System Shut Off Valve Control Logic Change] to prevent the above-mentioned failure conditions.

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

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 84–52–69, Revision C, dated June 28, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 81 products of U.S. registry. We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $82,620, or $1,020 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for

safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2011–1090; Directorate Identifier 2011–NM–138–AD.

Comments Due Date

(a) We must receive comments by December 5, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4361 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 52: Doors.

Reason

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

One case of the inability to open the airstair door while on ground was reported in service. The airstair door seal did not deflate, preventing the airstair door from opening. It was found that the existing airstair door pneumatic shut-off valve control logic prevents the airstair door seal from deflating due to a single Input/Output Module failure under certain conditions. The inability to open the airstair door could impede evacuation in the event of an emergency.

* * * * *

Compliance

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

Actions

(g) Within 6,000 flight hours after the effective date of this AD: Incorporate ModSum 4–126513, Seal System Shut Off Valve Control Logic Change, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–52–69, Revision C, dated June 28, 2011.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions accomplished before the effective date of this AD according to Bombardier Service Bulletin 84–52–69, dated January 28, 2011; Revision A, dated April 26, 2011; or Revision B, dated May 9, 2011; are considered acceptable for compliance with the corresponding actions specified in paragraph (g) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2011–15, dated June 20, 2011; and Bombardier Service Bulletin 84–52–69, Revision C, dated June 28, 2011; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27009 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1088; Directorate Identifier 2011–NM–099–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Several operators have reported difficulties in opening the airstair door. Investigation revealed that the airstair door gearbox drain paths were blocked by sealant, causing water to accumulate and freeze in the gearbox assembly. An airstair door that is unable to be opened could hinder evacuation in the event of an emergency.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 5, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1088; Directorate Identifier 2011–NM–099–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–06, dated April 26, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several operators have reported difficulties in opening the airstair door. Investigation revealed that the airstair door gearbox drain paths were blocked by sealant, causing water to accumulate and freeze in the gearbox assembly. An airstair door that is unable to be opened could hinder evacuation in the event of an emergency.
>
> This [Canadian] directive mandates a one-time [general visual] inspection [for sealant blockages] and [remove any] sealant interfering with the airstair gearbox drain paths.

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

Relevant Service Information

Bombardier, Inc. has issued Service Bulletin 84–53–48, dated December 2, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 83 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $14,110, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 3 work-hours and require parts costing $0, for a cost of $255 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a

substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2011–1088; Directorate Identifier 2011–NM–099–AD.

Comments Due Date

(a) We must receive comments by December 5, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4161 through 4296 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 53: Fuselage.

Reason

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

Several operators have reported difficulties in opening the airstair door. Investigation revealed that the airstair door gearbox drain paths were blocked by sealant, causing water to accumulate and freeze in the gearbox assembly. An airstair door that is unable to be opened could hinder evacuation in the event of an emergency.

* * * * *

Compliance

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

Actions

(g) Within 600 flight hours after the effective date of this AD, do a general visual inspection of the structure and gearbox drain paths for blockages by sealant, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–53–48, dated December 2, 2010. If any blockages are found, before further flight, remove blockages in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–53–48, dated December 2, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(i) Refer to MCAI Transport Canada Civil Aviation (TCCA) Airworthiness Directive CF–2011–06, dated April 26, 2011; and Bombardier Service Bulletin 84–53–48, dated December 2, 2010; for related information.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27023 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1069; Directorate Identifier 2011–NM–025–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc. Model 45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require revising the maintenance program to include new or more restrictive life-limits and inspections. This proposed AD was prompted by changes to the Airworthiness Limitations Section (ALS) of the maintenance manual, which adds life-limits, revises life-limits, or adds inspections not previously identified. We are proposing this AD to limit exposure of flight critical components to corrosion, cracking, or failure due to life-limits, which if not corrected, could result in loss of roll control, fatigue cracking, or loss of structural components.

DATES: We must receive comments on this proposed AD by December 5, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; phone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com*; Internet

http://www.bombardier.com. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; *phone:* 316–946–4116; *fax:* 316–946–4107; *e-mail: William.E.Griffith@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1069; Directorate Identifier 2011–NM–025–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have reviewed the design approval holder's changes to the ALS of the maintenance manual, which adds life-limits, revises life-limits, or adds inspections not previously identified. These changes resulted from the design holder's analysis, testing, and in-service history of certain components. We are proposing this AD to limit exposure of flight critical components to corrosion, cracking, or failure due to life-limits, which if not corrected, could result in loss of roll control, fatigue cracking, or loss of structural components. The corrective action is revising the maintenance program.

Relevant Service Information

We reviewed Chapter 04, Airworthiness Limitations, of the Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; and Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011. This service information describes component and system checks and replacements and includes new or revised life-limits and new inspections.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 336 of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Change ALS in maintenance manual	1 work-hour × $85 per hour = $85	$0	$85	$28,560

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Learjet Inc.: Docket No. FAA–2011–1069; Directorate Identifier 2011–NM–025–AD.

Comments Due Date

(a) We must receive comments by December 5, 2011.

Affected ADs

(b) None

Applicability

(c) This AD applies to all Learjet Inc. Model 45 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these actions, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (i) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529–1A.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 05: Periodic Inspections.

Unsafe Condition

(e) This AD was prompted by changes to the Airworthiness Limitations Section (ALS) of the maintenance manual (MM), which adds life-limits, revises life-limits, or adds inspections not previously identified. We are issuing this AD to limit exposure of flight critical components to corrosion, cracking, or failure due to life-limits, which if not corrected, could result in loss of roll control, fatigue cracking, or loss of structural components.

Compliance

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

Maintenance Program Revision

(g) Within 90 days after the effective date of this AD, revise the maintenance program by incorporating the applicable inspection reference number (IRN) tasks identified in table 1 of this AD as specified in Chapter 04, Airworthiness Limitations, of the Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable. The initial task compliance time is within 90 days after the effective date of this AD, or the applicable initial compliance time specified in Table 1 of this AD, whichever is later.

Note 2: IRN # R2710041 shown in table 1 of this AD is identified as IRN # N2710041 in prior revisions of Bombardier Learjet 45 Maintenance Manual MM–104; and Bombardier Learjet 40 Maintenance Manual MM–105.

TABLE 1—IRN TASK REVISION

Model—	IRN #—	Initial compliance time—	Chapter 04 of these documents—
Model 40, 45	R2710041	Within 10 years after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 10 years after the most recent replacement, whichever occurs later.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	Q5510091	Within 600 flight hours after the most recent inspection done in accordance with IRN # Q5510091.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	Q5530011	Before the accumulation of 9,600 total flight hours.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	P3220007	Within 48 months after the most recent inspection done in accordance with IRN # P3220007.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	P3220146	Before the accumulation of 4,800 total landings.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 40, 45	N3220012, N3220023, N3220035, N3220036, and N3220037.	Before the accumulation of 10,000 total landings on the component.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.

TABLE 1—IRN TASK REVISION—Continued

Model—	IRN #—	Initial compliance time—	Chapter 04 of these documents—
Model 40, 45	N3220103, N3220104, N3220105, and N3220106.	Before the accumulation of 17,000 total landings on the component.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011; or Bombardier Learjet 40 Maintenance Manual MM–105, Revision 21, dated January 10, 2011; as applicable.
Model 45	N5710147, N5710171, and N5710173 ..	Before the accumulation of 6,500 total flight hours.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011.
Model 45	N5710175	Before the accumulation of 6,900 total flight hours.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011.
Model 45	N5710177	Before the accumulation of 7,000 total flight hours.	Bombardier Learjet 45 Maintenance Manual MM–104, Revision 53, dated January 10, 2011.

No Alternative Intervals

(h) After accomplishing the revisions required by paragraphs (g) of this AD, no alternative IRN task or IRN task interval may be used unless the IRN task or IRN task interval is approved as an AMOC in accordance with the procedures specified in paragraph (i)(1) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) For more information about this AD, contact William Griffith, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; *phone:* 316–946–4116; *fax:* 316–946–4107; *e-mail: William.E.Griffith@faa.gov.*

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

Issued in Renton, Washington, on October 5, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27010 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1087; Directorate Identifier 2011–NM–032–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede two existing ADs. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Following in-service experience, analyses of the failure to follow procedure or heed existing cockpit cues were conducted to assess the consequences of mismanagement of thrust levers during landing.

The investigation results identified the need for improvements in the identification of throttle mis-positioning and so providing further opportunity for the flight crew to identify an incorrect thrust lever configuration and to correct this. * * * In addition, the analysis of the thrust lever management issue shows two categories of scenarios that could lead to thrust asymmetry during landing with controllability and deceleration consequences [.]

* * * * *

These thrust asymmetry conditions, if not corrected, could result in loss of control of the aeroplane during landing.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 5, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; *e-mail: account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1087; Directorate Identifier 2011–NM–032–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On October 23, 1997, we issued AD 97–22–13, Amendment 39–10185 (62 FR 58891, October 31, 1997) (which corresponds to Direction Générale de l'Aviation Civile (DGAC) AD 96–079–079(B), dated April 10, 1996, and which supersedes FAA AD 94–20–02, Amendment 39–9030 (59 FR 48563, September 22, 1994)); and on May 10, 2002, we issued AD 2002–10–06, Amendment 39–12752 (67 FR 35425, May 20, 2002) (which corresponds to DGAC AD 2000–320–147(B), dated July 26, 2000). AD 97–22–13 required a limitations section revision to the airplane flight manual and the installation of a new flight warning computer (FWC). AD 2002–10–06 required the replacement of the FWC.

Since we issued AD 97–22–13, Amendment 39–10185 (62 FR 58891, October 31, 1997) and AD 2002–10–06, Amendment 39–12752 (67 FR 35425, May 20, 2002), we have determined in consultation with the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, that additional actions are necessary to address the unsafe condition. EASA has issued EASA Airworthiness Directive 2011–0001, dated January 10, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Following in-service experience, analyses of the failure to follow procedure or heed existing cockpit cues were conducted to assess the consequences of mismanagement of thrust levers during landing.
>
> The investigation results identified the need for improvements in the identification of throttle mis-positioning and so providing further opportunity for the flight crew to identify an incorrect thrust lever configuration and to correct this. For the A320 family of aeroplanes this being IDLE or REVERSE, which is necessary to enable ground spoiler (G/S) extension and auto-brake (A/BRK) functions. In addition, the analysis of the thrust lever management issue shows two categories of scenarios that could lead to thrust asymmetry during landing with controllability and deceleration consequences:
>
> —One thrust lever kept in forward thrust when the other is put in IDLE or REVERSE. This has been seen in cases of dispatch with one thrust reverser inoperative; and
>
> —One thrust lever moved in forward position after landing, usually when bringing the thrust lever back from REVERSE to IDLE.
>
> These thrust asymmetry conditions, if not corrected, could result in loss of control of the aeroplane during landing.
>
> This [EASA] AD supersedes DGAC France AD 94–211–059(B) R2 and 96–079–079(B) [which corresponds to FAA AD 97–22–13 (62 FR 58891, October 31, 1997], mandating Aircraft Flight Manual Temporary Revision reference 9.99.99/20 and the installation of FWC P/N 350E017248685 (H1D2) as terminating action for both ADs.
>
> This [EASA] AD retains the requirements of DGAC France AD 2000–320–147(B) [which corresponds to FAA AD 2002–10–06 (67 FR 35425, May 20, 2002)], which is also superseded, which required the installation of FWC P/N 350E017271616 (H1E2).
>
> For the reasons described above, this [EASA] AD requires the replacement of both FWC units with minimum FWC P/N 350E053020909 (H2F5) units, introducing ''Enhanced RETARD'' logic.

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

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A320–31–1106, Revision 05, dated September 21, 2000; Service Bulletin A320–31–1141, Revision 04, dated February 14, 2002; Service Bulletin A320–31–1334, Revision 04, including Appendix 01, dated September 12, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 729 products of U.S. registry.

The actions that are required by AD 2002–10–06 Amendment 39–12752 (67 FR 35425, May 20, 2002) and retained in this proposed AD take about 7 work-hours per product, at an average labor rate of $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, the estimated cost of the currently required actions is $595 per product.

We estimate that it would take about 4 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $247,860, or $340 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–10185 (62 FR 58891, October 31, 1997) and Amendment 39–12752, (67 FR 35425, May 20, 2002) and adding the following new AD:

Airbus: Docket No. FAA–2011–1087; Directorate Identifier 2011–NM–032–AD.

Comments Due Date

(a) We must receive comments by December 5, 2011.

Affected ADs

(b) This AD supersedes AD 97–22–13, Amendment 39–10185 (62 FR 58891, October 31, 1997); and AD 2002–10–06, Amendment 39–12752 (67 FR 35425, May 20, 2002).

Applicability

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all serial numbers; if equipped with a flight warning computer (FWC) with a part number (P/N) listed in table 1 of this AD.

TABLE 1—LIST OF FWC PART NUMBERS AFFECTED BY THIS AD

FWC Part No.
350E017238484 (H1D1)
350E016187171 (C5)
350E017248685 (H1D2)
350E017251414 (H1E1)
350E017271616 (H1E2)
350E018291818 (H1E3CJ)
350E018301919 (H1E3P)
350E018312020 (H1E3Q)
350E053020202 (H2E2)
350E053020303 (H2E3)
350E053020404 (H2E4)
350E053020606 (H2F2)
350E053020707 (H2F3)
350E053021010 (H2F3P)
350E053020808 (H2F4)

Subject

(d) Air Transport Association (ATA) of America Code 31: Indicating and Recording Systems.

Reason

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

Following in-service experience, analyses of the failure to follow procedure or heed existing cockpit cues were conducted to assess the consequences of mismanagement of thrust levers during landing.

The investigation results identified the need for improvements in the identification of throttle mis-positioning and so providing further opportunity for the flight crew to identify an incorrect thrust lever configuration and to correct this. * * * In addition, the analysis of the thrust lever management issue shows two categories of scenarios that could lead to thrust asymmetry during landing with controllability and deceleration consequences:

* * * * *

These thrust asymmetry conditions, if not corrected, could result in loss of control of the aeroplane during landing.

* * * * *

Compliance

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

Restatement of Requirements of AD 2002–10–06, Amendment 39–12752 (67 FR 35425, May 20, 2002), With New Optional Method of Compliance

Modification

(g) For Model A319, A320, and A321 series airplanes without Airbus modification 26017: Within 18 months after June 24, 2002 (the effective date of AD 2002–10–06, Amendment 39–12752 (67 FR 35425, May 20, 2002)), replace the flight warning computers (FWCs) in accordance with Airbus Service Bulletin A320–31–1106, Revision 04, dated December 21, 1999; or Revision 05, dated September 21, 2000.

Note 1: FWC replacement accomplished prior to June 24, 2002, in accordance with Airbus Service Bulletin A320–31–1106, dated January 3, 1997; Revision 01, dated April 16, 1997; Revision 02, dated January 20, 1998; or Revision 03, dated July 9, 1999; is acceptable for compliance with the requirements of paragraph (g) of this AD.

Optional Method of Compliance

(h) Installation of a FWC standard in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–31–1141, Revision 04, dated February 14, 2002, is an acceptable method of compliance with the replacement required by paragraph (g) of this AD.

New Requirements of This AD

Flight Warning Computer Replacement

(i) Within 48 months after the effective date of this AD: Replace both FWC units with FWC part number 350E053020909, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–31–1334, Revision 04, including Appendix 01, dated September 12, 2011.

Credit for Actions Accomplished in Accordance With Previous Service Information

(j) For all airplanes, except for Model A319 series airplanes on which modifications 28238, 28162, and 28342 have been incorporated, replacing both FWCs in accordance with Airbus Service Bulletin A320–31–1334, dated July 30, 2009; Revision 01, dated December 14, 2009; or Revision 02, dated September 13, 2010; or Revision 03, dated March 15, 2011; before the effective date of this AD is acceptable for compliance with the corresponding replacement required by paragraph (i) of this AD.

(k) Replacing both FWCs in accordance with Airbus Service Bulletin A320–31–1141, dated March 6, 2000; Revision 01, dated May 25, 2000; Revision 02, dated January 22, 2001; or Revision 03, dated June 12, 2001; before the effective date of this AD is acceptable for compliance with the corresponding installation specified in paragraph (h) of this AD.

Parts Installation

(l) As of the effective date of this AD, and after accomplishing the actions in paragraph (i) of this AD, no person may install a FWC with a P/N listed in table 1 of this AD on any airplane.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–2141; fax 425–227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(n) Refer to MCAI EASA Airworthiness Directive 2011–0001, dated January 10, 2011; Airbus Service Bulletin A320–31–1106, Revision 04, dated December 21, 1999; Airbus Mandatory Service Bulletin A320–31–1106, Revision 05, dated September 21, 2000; Airbus Service Bulletin A320–31–1141, Revision 04, dated February 14, 2002; and Airbus Service Bulletin A320–31–1334, Revision 04, including Appendix 01, dated September 12, 2011; for related information.

Issued in Renton, Washington, on October 11, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27026 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1089; Directorate Identifier 2011–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model BD–100–1A10 (Challenger 300) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

During a routine inspection, deformation was found at the neck of the pressure regulator body on the oxygen Cylinder and Regulator Assemblies (CRA) of a BD–700–1A11 aeroplane.

An investigation by the vendor * * * revealed that the deformation was attributed to two (2) batches of raw material that did not meet the required tensile strength. This may cause elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder and in the case of cabin depressurization, oxygen not being available when required.

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by December 5, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1089; Directorate Identifier 2011–NM–110–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will

consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2011–09, dated May 13, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During a routine inspection, deformation was found at the neck of the pressure regulator body on the oxygen Cylinder and Regulator Assemblies (CRA) of a BD–700–1A11 aeroplane.

An investigation by the vendor, Avox Systems Inc., revealed that the deformation was attributed to two (2) batches of raw material that did not meet the required tensile strength. This may cause elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder and in the case of cabin depressurization, oxygen not being available when required.

Although there have been no reported failures to date on any Model BD–100–1A10 aeroplanes, oxygen pressure regulators, Part Numbers (P/N) 806370–06 and 806370–14 could be part of the affected batches.

This [Canadian] directive mandates [an inspection to determine if a certain oxygen CRA is installed and] the replacement of oxygen CRAs containing pressure regulators that do not meet the required material properties.

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

Relevant Service Information

Bombardier has issued Service Bulletin 100–35–05, Revision 02, dated January 31, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 79 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $20,145, or $255 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2011–1089; Directorate Identifier 2011–NM–110–AD.

Comments Due Date

(a) We must receive comments by December 5, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes, certificated in any category, serial numbers 20003 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Reason

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

During a routine inspection, deformation was found at the neck of the pressure regulator body on the oxygen Cylinder and Regulator Assemblies (CRA) of a BD–700–1A11 aeroplane.

An investigation by the vendor * * * revealed that the deformation was attributed to two (2) batches of raw material that did not meet the required tensile strength. This may cause elongation of the pressure regulator neck, which could result in rupture of the oxygen cylinder and in the case of cabin depressurization, oxygen not being available when required.

* * * * *

Compliance

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

Actions

(g) For airplanes having serial numbers 20003 through 20291 inclusive: Within 750 flight hours after the effective date of this AD, do an inspection of oxygen pressure regulators having P/N 806370–06 or 806370–14, to determine the serial number, in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of Bombardier Service Bulletin 100–35–05, Revision 02, dated January 31, 2011.

(1) If the serial number of the oxygen pressure regulator is listed in Table 2 of the Accomplishment Instructions of Bombardier Service Bulletin 100–35–05, Revision 02, dated January 31, 2011, replace the affected oxygen CRA, in accordance with paragraph 2.C. of the Accomplishment Instructions of Bombardier Service Bulletin 100–35–05, Revision 02, dated January 31, 2011.

(2) If the serial number of the oxygen pressure regulator is not listed in Table 2 of the Accomplishment Instructions of Bombardier Service Bulletin 100–35–05, Revision 02, dated January 31, 2011, no further action is required by this paragraph.

Parts Installation

(h) For all airplanes: As of the effective date of this AD, no person may install an oxygen pressure regulator (P/N 806370–06 or 806370–14) having any serial number listed in Table 2 of Bombardier Service Bulletin 100–35–05, Revision 02, dated January 31, 2011, on any airplane, unless a suffix ''-A'' is beside the serial number.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

The MCAI applicability specifies only airplanes having certain serial numbers and prohibits installation of the affected part on those airplanes. Because the affected part could be rotated onto any of the Model BD–100–1A10 (Challenger 300) airplanes, this AD applies to serial numbers 20003 and subsequent. This difference has been coordinated with Transport Canada Civil Aviation (TCCA).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2011–09, dated May 13, 2011; and Bombardier Service Bulletin 100–35–05, Revision 02, dated January 31, 2011; for related information.

Issued in Renton, Washington, on October 11, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–27011 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

[Docket No. FAA–2011–0763; Notice No. 11–05]

RIN 2120–AJ91

Pilot Loading of Navigation and Terrain Awareness Database Updates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the maintenance regulations by removing from the preventive maintenance category the task of updating databases used in self-contained, front-panel or pedestal-mounted navigation equipment. This change would allow pilots who operate certificated aircraft to update the specified databases and eliminate the requirement for certificated mechanics or repair stations to perform the update. The effect of this revision would be to ensure that pilots using specified navigation equipment have the most current and accurate navigational data and thereby increase aviation safety.

DATES: Send comments on or before December 19, 2011.

ADDRESSES: Send comments identified by docket number [Docket No. FAA–2011–0763; Notice No. 11–05] using any of the following methods:

- *Federal eRulemaking 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 or 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 9 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 dockets, 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 19477–78), 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 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: For technical questions about this rulemaking action, contact Chris Parfitt, Flight Standards Service, Aircraft Maintenance Division—Avionics Maintenance Branch, AFS–360, Federal

Aviation Administration, 950 L'Enfant Plaza, SW., Washington, DC 20024; telephone (202) 385–6398; facsimile (202) 385–6474; e-mail *chris.parfitt@faa.gov.*

For legal questions about this action, contact Viola Pando, Office of the Chief Counsel, Regulations Division—Policy and Adjudication Branch, AGC–210, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 493–5293; e-mail *viola.pando@faa.gov.*

SUPPLEMENTARY INFORMATION: See the ''Additional Information'' section for information on how to comment on this proposal and how the FAA will handle comments received. The ''Additional Information'' section also contains more information about the docket, privacy, and handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, § 44701(a)(1), section 44703 (a)(D), and section 44711(a)(2). In section 44701(a)(1), the FAA is charged with prescribing regulations and minimum standards in the interest of safety for and the manner of servicing of aircraft appliances. In section 44703(a)(D), the FAA is charged with specifying the capacity in which the holder of a certificate may serve as an airman with respect to an aircraft. Section 44711(a)(2) prohibits any person from serving in any capacity as an airman with respect to a civil aircraft, aircraft appliance used, or intended for use, in air commerce—without an airman certificate authorizing the airman to serve in the capacity for which the certificate was issued. This regulation is within the scope of the cited authority.

I. Overview of the Proposed Rule

This rulemaking would allow pilots of all certificated aircraft equipped with self-contained, front-panel or pedestal-mounted navigational systems (''Nav-Systems'') to update the database. Currently, only pilots of aircraft operated under part 91 (general aviation) are allowed to perform the update. Nav-Systems provide many services for pilots, including navigational information for which accuracy of data is critical to the safe operation of an aircraft. Accuracy of navigational data is achieved by maintaining current data, which is ensured by performing database updates that are typically required every 28 days.

Under the current regulations, except general aviation aircraft, updates to Nav-System databases must be performed by certificated mechanics and repair stations (''qualified personnel''). Consequently, if the database were to expire when the aircraft is not accessible to qualified personnel, the aircraft would have to be operated with an expired database, rerouted to the nearest repair station, or have a certificated mechanic transported to the aircraft to perform the update. Each of these options increase the workload for pilots and air traffic control (ATC), as well as increase the likelihood for data errors caused by pilots during manual input of data. These options also present increased operational costs.

Changes to Nav-System design have made updating databases a simple procedure that any pilot can perform. The FAA established the requirement to have qualified personnel update Nav-System databases to address the complexity of older systems, for which a person needed training and specialized equipment and access to installed equipment to perform the update. Updating newer Nav-Systems is now a simple procedure that does not require special training or specialized equipment. Consequently, the safety concerns that existed when the current regulations were promulgated are no longer valid. We are therefore proposing to end the requirement for qualified personnel to perform database updates because the requirement no longer serves the purpose for which it was established.

If adopted, this rulemaking would reduce workloads for pilots and ATC and reduce compliance-related operational costs. However, it also may have a negative economic impact on certificated mechanics and repair stations that currently perform required updates for affected operations. Aircraft operated under part 121 are less likely to be affected because they are not generally equipped with the Nav-Systems affected by this rulemaking, and they would therefore continue to require the services of qualified personnel.

The FAA has preliminarily determined there would be minimal costs imposed by the proposed rule. In practice, the rule would simply allow the pilot to upload the current database rather than transporting a certificated mechanic to the aircraft, or flying the aircraft to a repair station. Benefits from this proposed rulemaking would include reduced workloads for pilots and ATC, as discussed below in the Background section. This proposed rulemaking would also reduce the potential for error in navigational data. In addition, the proposed rulemaking would foster practices that will contribute to the success of the Next Generation (NexGen) modernization of the National Aerospace System (NAS) as it is implemented, resulting in an overall increase in aviation safety.

II. Background

A. Statement of the Problem

Currently, § 43.3(g) and Appendix A, paragraph (c)(32) require that updates to databases for Nav-Systems installed on aircraft operated under parts 121, 125, 129, 133, 135, and 137 (''certificated operations'') must be performed by qualified personnel. Nav-Systems affected by this rulemaking could be easily updated using a simple procedure that pilots can perform without special training or specialized equipment. The requirement for qualified personnel to perform the update is therefore no longer necessary to ensure the update has been performed properly.

A large percentage of aircraft used in certificated operations are equipped with fully integrated Nav-Systems that rely on data stored in ATC navigational databases. Data stored in a database serve various navigational functions. Those functions include providing coordinates for fixed points in the airspace or on the ground that are used for basic en route navigation, complex departure and arrival navigation, fuel planning, and precise vertical navigation. This data is updated by uploading a current database to the Nav-System, which can be done by inserting a data storage disc into a slot on a front-instrument panel or pedestal-mounted Nav-System, similar to inserting a memory card into a digital camera. Updates of navigation databases are typically required every 28 days.

The regulatory requirement that allows only authorized mechanics and repair stations (hereafter referred to as ''qualified personnel'') to upload the most current data imposes a burden on the system in terms of workloads and demands on the National Airspace System (NAS). If the database expires when the aircraft is at a location where qualified personnel are not available to perform the update, the operator must: (1) Operate the aircraft with an expired database under the minimum

equipment list (MEL) procedures, (2) reroute the aircraft to an authorized repair station, or (3) transport an authorized mechanic to the aircraft's location. The aircraft also can be flown with an expired navigational database under Minimum Equipment List (MEL) procedures, but doing so imposes more duties on the flightcrew and ATC. Each of these options presents safety concerns and increased operational costs.

In addition, each of these options is problematic because they can increase the flightcrew's and ATC's workload when controlling the affected aircraft. Further, they are costly to the operator. This is particularly true for operations in remote areas. If the operator decides to move the aircraft to a repair station, the increased workload associated with rerouting the aircraft, for both flightcrew and ATC, requires planning an alternative flight route. Similarly, if the decision is to transport qualified personnel to the aircraft, the operator must locate personnel and schedule a flight to the aircraft. If the decision is to operate the aircraft with an expired database, in accordance with applicable regulations and operations specifications, among other tasks, the flightcrew must: (1) Verify fixes before dispatch, (2) verify navigational aid status and suitability for the flight route, and (3) advise ATC that published area navigational (RNAV) procedures, RNAV standard instrument departures, and RNAV airways cannot be used.

RNAV terminal procedures authorizations and some RNAV route authorizations require a current navigational database. Those authorizations typically are denied to anyone operating with an expired database. This is significant because use of RNAV routes and procedures provide a safer, more efficient National Airspace System (NAS).

Changes to the flightcrew's preflight procedures and to ATC duties add to already heavy workloads. ATC's workload is increased because it must assign alternate terminal RNAV procedures and other services to the affected flightcrew. In both cases, the rate of error can be increased either by pilot input of inaccurate data during verification, or by errors in ATC assignments which may occur during redirection of the flight. Both types of error have the potential to compromise aviation safety.

The FAA is committed to increasing aviation safety and creating a more efficient NAS. To that end the FAA has targeted innovative navigational solutions that rely on Nav-Systems, which in turn are dependent on accurate and current databases. For instance, Required Navigation Performance (RNP), an important program for enhancing safety through establishing a high degree of precision air navigation, allows for more efficient use of the airspace. In addition, RNP assists in developing constant angle descent approaches, which increase safety during approach and landing. RNP operations rely on equipment and systems that depend on updateable databases for operational accuracy.

The increasing use of Nav-Systems and the criticality of maintaining current databases for RNP operations under NexGen require that the two work seamlessly and impose no greater burden on the NAS than necessary.

We have tentatively determined that the burdens attendant to compliance with current regulatory requirements for qualified personnel to perform database updates may no longer be justified. Developments in navigational system technology have made it possible for pilots to perform updates properly without special training or equipment. Therefore, a safety-related reason may no longer exist for continuing to require that mechanics and repair stations perform updates for modern Nav-Systems. Absent the safety concerns related to the complexity of updating an older navigational system that served as the impetus for the current requirements, there may no longer be reason to prohibit pilots from performing updates.

B. History

Before 1996, the regulations categorized the task of updating any navigational system database as maintenance because these systems were large, complex, and installed on large transport category aircraft. The FAA required that qualified personnel perform the updates because doing so required special training and specialized equipment. By 1996, a second type of Nav-System was developed that was small, self-contained, and easily accessible. The newer Nav-System was targeted for use on general aviation aircraft because unlike older navigational systems, the new Nav-Systems introduced simple updating procedures that enabled any pilot to update a database without special training or equipment. The FAA addressed this improvement by amending the regulations.

In 1996, the FAA amended § 43.3 and Appendix A of Title 14, Code of Federal Regulations, part 43 (61 FR 19501, May 1, 1996). Among other actions, the amendment allowed owners and operators of general aviation aircraft to update easily updateable Nav-System databases. However, while the amendment allowed GA pilots to perform updates to Nav-Systems, it prohibited pilots of aircraft operated under parts 121, 129, and 135 from updating databases on the older navigational systems. For these operations, the task of updating databases was categorized as maintenance.

Unlike the older systems, the FAA allowed pilots of smaller general aviation aircraft to perform updates to Nav-System databases because the systems were not similar to those installed on aircraft operated under parts 121, 129, and 135. Newer Nav-Systems were self-contained, easily accessible and updated, compact devices. Conversely, navigational systems installed on aircraft operating under parts 121, 129, and 135 were more complex. Those Nav-Systems were frequently composed of two hardware components. One was a central data storage/processing unit (CPU), which was installed in a location remote from the second piece of hardware. The other was the Control Display Unit (CDU), which was installed in the cockpit. Updating the more complex systems requires that qualified personnel use specialized equipment to upload the new data into the CPU.

Since then, the number of newer self-contained Nav-Systems installed on most non-transport category aircraft has increased. Updating a Nav-System database is as simple as inserting a memory card into a digital camera, with automatic verification to the pilot that the update has been successful occurring via display of the update's revision number on the CDU.

III. Discussion of the Proposal

The FAA proposes to amend § 43.3 to allow pilots of aircraft operated under parts 121, 125, 133, 135, and 137 (''certificated operations'') to update Nav-System databases. The task of updating a Nav-System is currently categorized as preventive maintenance under part 43, Appendix A, paragraph (c)(32). As such, § 43.3, which prescribes who may perform maintenance, requires that it be performed by a certificated mechanic or repair station unless that preventive maintenance, as specifically enumerated in Appendix A, ''may be performed by the holder of a pilot certificate issued under part 61 on an aircraft owned or operated by that pilot which is not used under part 121, 129, or 135 * * *'' (emphasis added).

This proposal would extend authorization for pilots on all

certificated operations to perform Nav-System database updates. The FAA has determined that the ease of successfully updating modern Nav-Systems remains the same regardless of the regulatory part under which the aircraft is operated.

We are proposing to remove paragraph (c)(32) from part 43, Appendix A, which will remove from the preventive maintenance category the task of updating ''* * * self-contained front-instrument panel and pedestal-mounted air traffic control (ATC) navigational software databases (excluding those of automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME)), provided no disassembly of the unit is required and pertinent instructions are provided.'' The effect of removing paragraph (c)(32) will be to allow pilots to update Nav-System databases.

Note that the regulatory text refers to the newer systems targeted by this rulemaking as navigational systems. For purposes of discussion, in this preamble, we have used the term ''navigational system'' to refer to older systems, and ''Nav-System'' to refer to the newer systems targeted by this rulemaking.

The FAA has considered two alternatives to this proposed rulemaking. One alternative was to continue to require that qualified personnel perform updates to Nav-System databases installed on certificated operations. The FAA has tentatively rejected this alternative for three reasons. First, the original reasons for creating the requirement appear to have been invalidated by technology. Second, eliminating the existing requirements for qualified personnel to perform the update will reduce pilot and ATC workloads and reduce the likelihood that pilots will input inaccurate data into the Nav-System. The cumulative effect of reduced workloads and elimination of data errors ultimately would improve aviation safety. Third, the costs imposed on operators to ensure compliance with the existing requirements may no longer be justified now that special training and equipment is not required, and safety would not be compromised by allowing pilots to perform the update.

The second alternative considered was continuing to use the exemption process as need is demonstrated by operators to enable pilots of aircraft not operated under part 91 to update Nav-System databases. However, this approach would not reduce the numerous petitions for exemption submitted for aircraft operations conducted under parts 121, 129, and 135, which would force the FAA to continue processing an excessive number of exemptions with a limited workforce, thus requiring the agency use valuable manpower for administrative purposes. Finally, the cumulative effect of granting large numbers of petitions for exemption from the same regulation for the same reason(s) would be the equivalent of rulemaking by exemption.

For the reasons cited above, the FAA has determined that amending the regulations to allow pilots on any certificated aircraft equipped with a specified Nav-System to update databases would improve aviation safety, would be economically beneficial to operators, and would enable the FAA to use manpower in areas of greater need.

IV. Regulatory Notices and Analyses

Paperwork Reduction Act

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

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditure by state, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures, (4) would not have a significant economic impact on a substantial number of small entities, (5) would not create unnecessary obstacles to the foreign commerce of the United States, and (6) would not impose an unfunded mandate on state, local, or Tribal governments, or on the private sector by exceeding the threshold identified above.

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

The proposed rule would reduce costs to certificated operators by allowing their pilots to update databases for self-contained navigation systems installed either in the front panel or pedestal-mounted in the cockpit. Allowing pilots to perform the updates would occasionally save the operator the expense of either a positioning flight to a repair station or transporting a certificated mechanic to the aircraft to perform the database update.

The FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and this proposed rule is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Total Estimated Benefits and Costs of This Final Rule

There would be two general benefits from this proposed rule. The primary benefit would be that affected aircraft operators would no longer operate aircraft without the most current navigational data. As previously discussed, the use of Nav-Systems improves safety by providing the pilot with accurate navigational information, by increasing access to airports under less than optimal flight conditions, by increasing workforce efficiency and by encouraging a more efficient use of the navigable airspace system. Nav-System database software is updated every 28 days, a recurring task that cannot always be accomplished within the prescribed timeframe due to the unavailability of qualified personnel. Increasing airspace congestion as well as the increasing number of non-Part 91 aircraft that are equipped with Nav-Systems magnifies the importance for Nav-Systems to be operating with the most current data. Further, the FAA knows of no accidents or incidents attributable to pilot error when part 91 pilots updated navigational database software.

The second benefit would be potential cost savings. Allowing pilots to update Nav-System databases for aircraft used on certificated operations would eliminate costs associated with positioning flights to a repair station or transporting a certificated mechanic to the aircraft. Estimates from an industry source indicate that the cost of a single positioning flight could range between $1,000 and $2,500 and that, depending upon the circumstances, the cost to transport a certified mechanic to an aircraft are similar. The FAA does not have an estimate of the number of times an aircraft with an expiring database would require one of these actions to occur. As such, the FAA cannot estimate a total potential cost-savings from this proposed rule because the annual savings would depend upon how often these aircraft encounter expired database conditions and whether the aircraft is flown to a repair station or whether a mechanic is transported to the aircraft.

The FAA requests comments on the number of positioning flights conducted annually for the purpose of updating a database and the average cost of such a flight, or, alternatively, the costs of transporting mechanics to the aircraft. Further, for those situations where the aircraft is operated with an expired database, an estimate of pilot time expended manually checking database information for accuracy.

This proposed rule is cost-relieving because an operator would be able to choose a pilot or a mechanic to upload data into navigational systems, whereas today, only a certificated mechanic or a repair station can perform the upload.

Who is potentially affected by this rule?

This proposed rule would affect all operators of certificated aircraft equipped with self-contained, front-instrument panel or pedestal-mounted navigational equipment. Large transport category airplanes generally operated under Part 121 and manufactured by Boeing, Airbus, McDonnell-Douglas, Bombardier, and Embraer are equipped with larger and more sophisticated navigational systems that would not be affected by the proposed rulemaking. Based on a preliminary review, the FAA has determined that there are no aircraft currently operated under parts 121 and 129 that are equipped with the Nav-Systems targeted by this rulemaking. We request comments on this determination.

The avionics equipment for many smaller aircraft used in part 135 operations are in self-contained, front-instrument panel or pedestal-mounted units. However, this is optional equipment, and older aircraft may not have it. Many of these aircraft are operated under part 91, and pilots operating under part 91 are currently allowed to upload these software updates in these aircraft.

Assumptions and Sources of Information

The primary sources of information were a part 135 operator that would be affected by the proposed rule and an aircraft electronics association representative.

Costs of This Proposed Rule

The FAA has preliminarily determined that there would be minimal costs imposed by the proposed rule because it would simply allow a pilot to upload the current Nav-System database that currently must be performed by a certificated mechanic or in a repair station. Thus, instead of having to call out a certificated mechanic or repair station, or even fly the aircraft to a certificated mechanic or repair station, the pilot could perform the update before the next flight. Time spent by the pilot uploading the current database software and completing the required records would be part of the pilot's flight duty time for which the pilot would not receive additional compensation.

Although the pilot would need to complete the paperwork demonstrating that the update had been performed, without the rule change, a certificated mechanic or repair station would still be required to complete the same paperwork.

However, the FAA anticipates that the majority of these updates would continue to be completed by a certificated mechanic or repair station as part of the standard maintenance that the aircraft would undergo.

Benefits of This Proposed Rule

The Nav-System databases must be updated every 28 days. For certain part 135 operators, there may be situations when the aircraft is being operated in remote areas and may not be scheduled to return to the home base for several days. Under those circumstances and the current rule, the part 135 operator would either have to make a positioning flight to the home base or to a repair station or transport a certificated mechanic to the aircraft. Estimates from an industry source indicate that the cost of a single positioning flight could range between $1,000 and $2,500 and that, depending upon the circumstances, the cost to transport a certified mechanic to an aircraft are similar.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

determination, and the reasoning should be clear.

The net effect of this proposed rule would be to provide regulatory cost relief. As this proposed rule would reduce costs for small entities, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

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

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by state, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $140.8 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II do not apply to this proposal.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) of the Order and involves no extraordinary circumstances.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disc or Compact Disc Read-Only Memory (CD–ROM), mark the outside of the disc or CD–ROM, and identify electronically within the disc or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects in 14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend part 43 of Title 14, Code of Federal Regulations, as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

2. Amend § 43.3 by adding paragraph (k) to read as follows:

§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

* * * * *

(k) The holder of a pilot certificate issued under part 61 of this chapter may perform updating of self-contained, front-instrument panel-mounted and pedestal-mounted air traffic control (ATC) navigational system databases (excluding those of automatic flight control systems, transponders, and microwave frequency distance measuring equipment (DME), and any updates that affect system operating software) provided—

(1) No disassembly of the unit is required;

(2) The pilot has written procedures available to perform and evaluate the accomplishment of the task; and

(3) The database is contained in a field-loadable configuration and imaged on a medium, such as a Compact Disc Read-Only Memory (CD–ROM), Synchronous Dynamic Random-Access Memory (SDRAM), or other non-volatile memory that contains database files that are non-corruptible upon loading, and where integrity of the load can be assured and verified by the pilot upon completing the loading sequences.

(4) Records of when such database uploads have occurred, the revision number of the software, and who performed the upload must be maintained.

(5) The data to be uploaded must not contain system operating software revisions.

Appendix A to Part 43 [Amended]

3. Amend Appendix A to part 43 by removing paragraph (c)(32).

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

John W. McGraw,

Deputy Director, Flights Standards Service.

[FR Doc. 2011–27036 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2011–0078]

16 CFR Chapter II

Review of Commission's Regulations; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Request for comments and information.

SUMMARY: Consumer Product Safety Commission (''CPSC'' or ''we'') staff is considering the appropriate process and substance of a plan to review existing CPSC regulations. CPSC has conducted reviews of rules in the past and intends to build on that experience to develop a plan of review that also satisfies recent direction from President Obama, set forth in Executive Order 13579, ''Regulation and Independent Regulatory Agencies'' (76 FR 41587 (July 14, 2011)), which states that independent regulatory agencies should follow certain key principles when developing new regulations and should review existing significant regulations. To that end, Executive Order 13579 (''E.O. 13579'') emphasizes the importance of retrospective analysis of rules and the need to develop a plan under which the agency will conduct periodic reviews of existing regulations. We invite comments on the issues discussed in this document to help us formulate a plan that builds on our past review efforts while incorporating the principles outlined in E.O. 13579.

DATES: Comments must be submitted by December 19, 2011.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0078, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing and marked as confidential.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert J. Howell, Deputy Executive Director for Safety Operations, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7621; e-mail *rhowell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Previous Review Programs

1. The Systematic Review Program (2004 to 2007)

In 2004, CPSC began a program to review existing regulations. This review resulted from an initiative by the Office of Management and Budget (''OMB''), the Program Assessment Rating Tool (''PART''), which was intended to provide a consistent approach to rating programs across the federal government. OMB recommended that the CPSC develop a plan to systematically review its regulations to ensure consistency among them in accomplishing program goals. In fiscal year (FY) 2004, we conducted a pilot review program as the initial step in implementing that recommendation. The notice announcing the pilot program appeared in the **Federal Register** on January 28, 2004 (69 FR 4095), and we continued the program for several years thereafter (see 70 FR 18338 (April 11, 2005); 71 FR 32882 (June 7, 2006); 72 FR 40265 (July 24, 2007)).

The rule review focused on determining whether the CPSC's regulations were:

- Consistent with CPSC's program goals;
- Consistent with other CPSC regulations;
- Current with respect to technology, economic, or market conditions, and other mandatory or voluntary standards; and

• Subject to revision to reduce regulatory burdens, particularly burdens on small entities.

See 69 FR 4096. When choosing which rules to review, the CPSC decided to exclude from review any rules that it considered nonsubstantive (*i.e.,* those with requirements that were: administrative or procedural; exemptions; labeling; test methods; or definitions).

The CPSC used the following criteria to select rules for the 2004 pilot program: (1) The rule had been in effect at least 10 years; (2) at least one of the rules selected for review had multiple requirements; (3) the rules addressed different hazard areas to ensure the review process was not overly burdensome to any one internal discipline; and (4) the rules were issued under different statutes. Once the rules were chosen, CPSC staff reviewed the rule to look for: Inconsistencies within the rule or with other CPSC rules; references to, or use of, obsolete standards, technology, procedures, or requirements that were no longer needed; and the potential to streamline requirements of the rule. Following that analysis, CPSC staff prepared a memo for the Commission's consideration, discussing these issues and noted areas where changes to the rule were needed. This approach was followed for the review program in 2004 through 2007.

The rules reviewed in the 2004 pilot included the safety standard for walk-behind mowers; requirements for electrically operated toys; the standard for the flammability of vinyl plastic film; and the child-resistant packaging requirements for aspirin and methyl salicylate. 69 FR 4095 (Jan. 28, 2004). In FY 2005, the CPSC reviewed the safety standard for cigarette lighters and multipurpose lighters; the requirements for bicycles; the standards for surface flammability of carpets and rugs; and the regulations requiring child-resistant packaging for oral subscription drugs subject to the Comprehensive Drug Abuse Prevention and Control Act. 70 FR 18338 (April 11, 2005). In FY 2006, the CPSC reviewed the safety standard for matchbooks; the requirements for toy rattles; and the requirements for baby bouncers, walker-jumpers, or baby walkers. 71 FR 32882 (June 7, 2006). In FY 2007, the CPSC reviewed the ban of unstable refuse bins and the requirements for pacifiers. 72 FR 40265 (July 24, 2007).

In 2008, the enactment of the Consumer Product Safety Improvement Act of 2008 (Pub. L. 110–314) required us to assign resources to implement the new law. Consequently, we have not pursued additional systematic rule reviews since 2007.

2. Periodic Review Under the Regulatory Flexibility Act

In addition to the Systematic Review Program discussed in the previous section, the CPSC conducts reviews of rules in accordance with the Regulatory Flexibility Act (''RFA''). The RFA directs agencies to publish in the **Federal Register**, a ''plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 610(c). The plan must ''provide for the review of all such agency rules existing on the effective date of [the RFA] within ten years'' of that date and for the review of such rules adopted after the RFA's effective date within 10 years of the publication of such rules. (The RFA took effect on January 1, 1981.)

The review is to ''determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities.'' The review must consider:

• The continued need for the rule;

• The nature of complaints or comments concerning the rule received from the public;

• The complexity of the rule;

• The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with state and local governmental rules; and

• The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Furthermore, each year, an agency must publish in the **Federal Register** a list of the rules that have a significant economic impact on a substantial number of small entities. The list must include a brief description of each rule and the need for and legal basis of such rule, and public comment upon the rule must be invited.

We published both our plan for review under the RFA and the list of rules in the **Federal Register** on August 14, 1981 (46 FR 45621). The plan contemplated a two-part review process: (a) a review of CPSC regulations that were in existence on the effective date of the RFA (January 1, 1981), and (b) a second review process for regulations issued after January 1, 1981. The plan provided that the first part of the review process (for rules issued before January 1, 1981) would run from 1981 to 1987, and the second part of the process (for regulations issued after that date) would run from 1986 through 1991. In general, the plan stated that we would invite comments from all interested parties on our regulations, review the comments, and consider staff recommendations for appropriate administrative action for those regulations that have a significant economic impact on a substantial number of small entities. The plan further indicated that Commission action based on the recommendations would be consistent with the objectives of the statute(s) under which the regulations were issued.

The CPSC reviewed the rules it had issued before the RFA took effect in 1981 and found that none of them had a significant economic impact on a substantial number of small entities. After the RFA took effect, the CPSC reviewed the potential impact on small entities whenever it issued a proposed and final rule. Few of the CPSC's rules had a significant economic impact on a substantial number of small entities when they were issued. Therefore, few of CPSC's rules warrant section 610 reviews.

3. Retrospective Analysis of Existing Regulations Under Executive Orders 13563 and 13579

On January 18, 2011, President Barack Obama issued Executive Order (''E.O.'') 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821 (January 21, 2011)), which articulated certain principles of regulation and directed agencies to take certain actions to promote those principles, including a retrospective analysis of existing significant regulations. ''Agency,'' as defined in E.O 13563, does not include independent agencies.

On July 11, 2011, the President issued E.O. 13579, which applies to independent agencies such as the CPSC. Section 2 of E.O. 13579 states: ''To facilitate the periodic review of existing significant regulations, independent regulatory agencies should consider how best to promote retrospective analysis of rules.'' Further, E.O. 13579 directs that within 120 days, each independent regulatory agency should (consistent with law and reflecting the agency's resources and regulatory priorities and processes) develop and provide to the public a plan for periodic review of existing significant rules. The retrospective analysis is to identify significant rules that ''may be outmoded, ineffective, insufficient, or excessively burdensome.'' The agency is to ''modify, streamline, expand, or

repeal'' identified rules in accordance with what it learns through the review process.

Both Executive Orders call for review of ''significant regulations.'' Neither order defines that term. However, E.O. 13563 supplements E.O. 12866, ''Regulatory Planning and Review.'' Although E.O. 12866 does not define ''significant regulation,'' it does define ''significant regulatory action'' as, among other things, ''any regulatory action that is likely to result in a rule that may: Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' [1] 58 FR 51375, 51378 (October 4, 1993). The CPSC has issued few rules that would be considered ''significant'' under this criterion.

On July 22, 2011, OMB issued a memorandum providing guidance concerning E.O. 13579. This OMB memorandum states that the aim behind the retrospective review plans called for in E.O. 13579 is ''to create a defined method and schedule for identifying certain significant rules that are obsolete, unnecessary, redundant, unjustified, excessively burdensome, or counterproductive,'' but that ''such review should also consider strengthening, complementing, or modernizing rules where necessary or appropriate—including, if relevant, undertaking new rulemaking.'' The OMB memorandum identifies certain types of rules that would be good candidates for review, such as rules that ''new technologies or unanticipated circumstances have overtaken'' or that impose significant reporting or paperwork burdens.''

The OMB memorandum recognizes that each agency should set its own priorities for review in its plan, ''tailored to its specific mission, resources, organizational structure, and rulemaking history and volume.'' The memorandum notes some topics that all plans might address, including:

- Public participation: Solicit the public's views, preferably before the agency develops its plan;
- Prioritization: Specify factors that will be considered in choosing rules for review and include an initial list of candidate rules for review over the next two years;
- Analysis of costs and benefits and potential savings: Such analysis could be useful to identify rules where reforms could have the greatest potential for significant impact;
- Structure and staff: Responsibility for review should be vested with a high-level agency official and the plan should consider how to maintain sufficient independence from the offices that write and implement rules; and
- Coordination with other forms of review: Coordinate with other programs in place to review existing rules (e.g., review under the RFA).

B. Proceeding With Retrospective Review of Existing CPSC Rules

In accordance with E.O. 13579, the CPSC is proceeding with review of existing CPSC rules. Chairman Inez Tenenbaum directed agency staff to reinvigorate the CPSC's voluntary review process for existing rules. (See the Chairman's statement posted on the CPSC's Web site on July 11, 2011 (*http://www.cpsc.gov/pr/regreform07112011.html*).)

With this notice, we are seeking public comments and information to help us develop a plan for review of existing rules that will be appropriate to the agency, be consistent with (and not duplicate) previous and ongoing reviews, and fulfill the spirit of E.O. 13579. We intend for the CPSC's review to be broader than the reviews contemplated by the RFA and the Executive Orders because we are not limiting our evaluation to only regulations that have a significant economic impact on a substantial number of small entities, nor are we limiting it to significant regulations, as defined in E.O. 12866.

We invite comments on any aspects of the review discussed in this document and particularly concerning the following issues:

1. Selection of Rules for Review

a. Criteria

- What criteria should we use to select candidate rules for review?
- Should we use any of the criteria that were used to select rules for the 2004 pilot project for CPSC's Systematic Rule Review Program (these were: The rule has been in effect at least 10 years; at least one of the rules selected for review has multiple requirements; the rules address different hazard areas; and the rules were issued under different statutes)?
- How should we identify rules that may be obsolete, unnecessary, redundant, unjustified, excessively burdensome, or counterproductive? Are there specific rules that commenters can identify?
- How should we identify rules that may be in need of strengthening, complementing, modernizing, or, if relevant, undertaking new rulemaking?
- How should we identify rules that may have been overtaken by new technologies or unanticipated circumstances, or that impose significant reporting or paperwork burdens? Are there specific rules that commenters can identify?

b. Possible Exclusions

- Should the review exclude rules that were excluded under the CPSC's Systematic Rule Review Program (rules that are administrative or procedural; exemptions; labeling; test methods; or definitions)?
- Are there other categories of rules that should be excluded?

2. Process of Review

a. Timing

- How should we determine the number of rules to be reviewed, and possibly revised, each year and at what intervals?
- How should the number of rules reviewed, and possibly revised, each year be prioritized against other agency work?
- Should different rules be reviewed at different intervals? Please explain.
- Should the schedule for review be similar to that under section 610 of the RFA (*i.e.,* a rule should be reviewed after it has been in effect for 10 years?)

b. Public Participation

- How should we involve the public in the review?
- Should comments be requested for each rule reviewed?
- Should we hold public meetings concerning the selection of rules for review?
- Should there be public meetings related to each rule as it is reviewed?

c. Coordination

- How can we coordinate our review with reviews required by section 610 of the RFA and with reviews envisioned by E.O. 13579?
- How can we coordinate better with other agencies and with other jurisdictions (such as states, other countries, and international bodies) to harmonize regulatory requirements and eliminate redundant or inconsistent regulations?

[1] The additional criteria under E.O. 12866 that could make a regulatory action ''significant'' are: ''create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.'' 58 FR 51378. These are not likely to come into play in the CPSC's review of existing rules.

• How can we modify, streamline, or expand our regulatory review process?

d. Prioritization

• How should we prioritize rules that are to be reviewed (*e.g.,* chronologically; based on rules where the greatest impact could be made from potential changes; rules with potential to have greatest savings in costs or paperwork/reporting burdens; rules with most potential for changes to enhance safety)?

3. Substance of Review

• Should the review include any or all of the considerations in RFA reviews (i.e., continued need for the rule; nature of complaints or comments concerning the rule; complexity of the rule; extent of overlap or conflicts with other federal (and possibly state and local) rules; and length of time since the rule has been evaluated; or extent of change in technology, economic conditions, or other factors)?

• Should we conduct cost-benefit analyses with every rule we review or only for significant rules as anticipated by the Executive Orders? Please explain your reasoning. Do commenters have suggestions for how we might develop our analysis of costs and benefits for rules under consideration for retrospective review?

Dated: October 12, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–26820 Filed 10–18–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 316

[Docket No. FDA–2011–N–0583]

RIN 0910–AG72

Orphan Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the 1992 Orphan Drug Regulations issued to implement the Orphan Drug Act. These amendments are intended to clarify regulatory provisions and make minor improvements to address issues that have arisen since those regulations were issued.

DATES: Submit either electronic or written comments on the proposed rule by January 17, 2012. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by November 18, 2011 (see the ''Paperwork Reduction Act of 1995'' section of this document).

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0583 and/or RIN number 0910–AG72, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

• *Fax:* 301–827–6870.

• *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0583 and Regulatory Information Number (RIN) 0910–AG72 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Erica K. McNeilly, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5271, Silver Spring, MD 20993, 301–796–8660.

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IX. Request for Comments

I. Background

Since the publication of the Orphan Drug Regulations in the **Federal Register** of December 29, 1992 (57 FR 62076), FDA has reviewed over 3,350 requests for orphan-drug designation of drugs for rare diseases and conditions. Based on these experiences, FDA believes it is useful to clarify certain regulatory language in the current orphan drug regulations and to propose areas of minor improvement. These amendments are intended to assist sponsors who are seeking and who have obtained orphan-drug designation of their drugs, as well as FDA in administering the orphan drug program. These amendments are consistent with the Orphan Drug Act (Pub. L. 97–414) and continue to provide incentives for the development of potentially promising orphan drugs that otherwise would not be developed for rare diseases and conditions.

The specific issues addressed in this proposal include: (1) Demonstration of an appropriate ''orphan subset'' of persons with a particular disease or condition that otherwise affects 200,000 or more persons in the United States, for the purpose of designating a drug for use in that subset; (2) eligibility for

orphan-drug designation of a drug that is otherwise the same drug for the same orphan indication as a previously approved drug; (3) eligibility for multiple orphan-drug exclusive approvals when a designated orphan drug is separately approved for use in different subsets of the rare disease or condition; (4) requirement for demonstrating clinical superiority for the purpose of orphan-drug exclusive approval; (5) requirement for submitting the name of the drug in an orphan-drug designation request; (6) required drug description and scientific rationale in a designation request; (7) required information in a designation request relating to the sponsor's interest in the drug; (8) timing of a request for orphan-drug designation; (9) responding to a deficiency letter from FDA on an orphan-drug designation request; (10) FDA publication of information regarding designated orphan drugs; (11) FDA recognition of orphan-drug exclusive approval; (12) miscellaneous terminology changes; and (13) an address change.

II. Description of the Proposed Changes

A. Demonstration of an ''Orphan Subset'' of a Disease or Condition

As set forth in part 316 (21 CFR part 316), a sponsor may request orphan-drug designation of a drug for use in persons with a rare disease or condition or, in some special circumstances, a subset of persons with a disease or condition that may not otherwise be rare (hereinafter, a ''non-rare'' disease or condition). With respect to the latter, § 316.20(b)(6) stipulates that when a drug is to be developed for only a subset of persons with a particular disease or condition, the sponsor must provide ''a demonstration that the subset is medically plausible.'' This concept has been the subject of some confusion, and FDA has received requests for further clarification.

The term ''medically plausible'' subset used in § 316.20(b)(6) refers to a regulatory concept specific to the orphan drug regulations. The applicability of this regulatory concept is explained in section II.B of the preamble to the notice of proposed rule making (NPRM) entitled ''Orphan Drug Regulations'' published in the **Federal Register** of January 29, 1991 (56 FR 3338 at 3339). Because the term ''medically plausible'' has not been further clarified through regulations or guidance, it has been misinterpreted to mean any medically recognizable or any clinically distinguishable subset of persons with a particular disease or condition. Inappropriate application of the concept of a ''medically plausible'' subset could result in the creation of subsets of non-rare diseases or conditions that are artificially narrow. This result would be inconsistent with the purpose of the Orphan Drug Act.

For example, some requests for orphan-drug designation have been for use of a drug in a subset of persons with a particular pathohistologic grade or clinical stage of a specific malignancy, but without a plausible argument why the drug could not be used to safely treat all persons with the malignancy, regardless of disease grade or stage. Another example of misinterpretation of the term ''medically plausible'' has been its application to a select group of persons with a disease or condition who are eligible to enroll in a clinical trial to support a specific indication for use of a drug when there is no scientific reason to preclude investigational use of the drug in other persons with the disease or condition. Patients who meet inclusion and exclusion criteria for a trial do not automatically qualify as a ''medically plausible'' subset because it could be medically appropriate to evaluate the same drug for use in the remaining persons with the same disease or condition. Similarly, a sponsor's intention to use or study a drug in a certain limited group of persons with a non-rare disease or condition does not necessarily qualify that group as a ''medically plausible'' subset.

Any of the interpretations described in the previous paragraphs would permit a non-rare disease or condition to be artificially subdivided into smaller groups for the purpose of establishing subsets that are under the prevalence limit for orphan-drug designation. FDA does not believe that such an approach serves the intent of the Orphan Drug Act, because it would permit the creation of artificial ''orphan'' populations. Designation of drugs for use in such artificial ''orphan'' populations could encourage sponsors to study and seek approval for the use of a drug in the narrowest patient group possible, in order to avail themselves of the orphan-drug incentives, including tax benefits and orphan-drug exclusive approval. In addition, use of such artificial orphan populations to obtain orphan designation and its related benefits could divert resources away from research and development of drugs for true orphan diseases and conditions.

To limit the confusion arising from the use of the term ''medically plausible,'' FDA proposes to remove the term ''medically plausible'' in § 316.20(b)(6) and instead provide a description of how an appropriate subset may be identified for the purpose of orphan-drug designation (''orphan subset''). The process for identifying an orphan subset remains the same as has been used by FDA for identifying a medically plausible subset under the regulations currently in effect.

For a subset of persons with a non-rare disease or condition to be considered an orphan subset for the purpose of orphan-drug designation, the subset cannot be arbitrarily chosen simply to reduce the prevalence numbers to qualify a drug to treat that population as an orphan drug. One way for a sponsor to demonstrate that the proposed subset rests on a non-arbitrary foundation is to show that there is a reasonable scientific or medical rationale for limiting the investigation and potential use of the drug to only the subset of interest. When a sponsor has established that the selected population constitutes a non-arbitrary subset, *e.g.,* by describing the scientific or medical basis for limiting the potential use of the drug to that population and demonstrating that such scientific or medical basis is reasonable, the target population is an acceptable orphan subset of persons with the particular disease or condition for the drug of interest.

For example, it might not be appropriate to treat all persons with a non-rare disease or condition with a drug that is highly toxic; however, those patients who are refractory to, or intolerant of, other less toxic drugs might be reasonable candidates for treatment with the drug. Therefore, those patients who are refractory to, or intolerant of, other less toxic drugs may be considered an appropriate orphan subset for purposes of orphan-drug designation of the highly toxic drug. In addition, other inherent properties of a drug, such as its pharmacologic or biopharmaceutical characteristics, may provide a reasonable basis upon which to identify a subset of patients to whom it would be appropriate to limit treatment and who thus would qualify as an orphan subset of a non-rare disease or condition. Likewise, characteristics of the drug that have been demonstrated through previous clinical experiences may be used to identify an appropriate orphan subset. Examples of such characteristics include:

- *Pharmacological Property:* The mechanism of action is a common principle for limiting the investigation and use of a drug to a subset of patients. For example, it is reasonable to expect that use of a monoclonal antibody directed against a specific surface antigen would be restricted to treatment

of subtypes of tumors that possess that specific antigen, and not subtypes of tumors that lack the antigen.

• *Previous Clinical Experience:* Information on the drug's activity available from completed trials or published in clinical literature may be used to establish an orphan subset. If, for example, relevant data show that the drug has no significant activity in the remaining subset of patients with high-grade tumors, then patients with low-grade tumors may constitute an orphan subset.

FDA recommends that the following practical questions be asked when assessing whether a subset of a non-rare disease or condition is an appropriate orphan subset:

• Is the intended subset artificially restricted in any way with respect to the use of the drug to treat the disease or condition?

• Given that the drug may potentially benefit this particular subset of persons, is there a reasonable scientific or medical basis for believing that the drug would also potentially benefit the remaining population with the non-rare disease or condition or a larger subset of that population? If not, why not?

These questions serve to test whether a subset of patients with a disease or condition that otherwise affects 200,000 or more persons in the United States can be considered an appropriate orphan subset for the purpose of orphan-drug designation.[1]

B. Eligibility for Orphan-Drug Designation of a Drug That Was Previously Approved for the Orphan Indication

According to §§ 316.20(a) and 316.25(a)(3), a sponsor of a subsequent drug that is otherwise the same drug as an already approved orphan drug may seek and obtain orphan-drug designation of its drug for the same rare disease or condition, provided that it can present a plausible hypothesis that the subsequent drug may be clinically superior to the approved orphan drug. In the absence of a clinical superiority hypothesis, the Agency does not interpret the orphan-drug regulations to permit orphan designation of a drug that is otherwise the same as a drug that is already approved for the orphan use, either where the approved drug received orphan-drug exclusive approval (even after such drug's exclusivity period has run out) or where the approved drug was not previously designated as an orphan drug and thus did not receive orphan exclusive approval. If the same drug has already been approved for the orphan disease or condition, with or without orphan exclusivity, designation would be inappropriate because it would be inconsistent with the primary purpose of the Orphan Drug Act, which is to provide incentives to develop promising drugs for rare diseases or conditions that would not otherwise be developed and approved. Furthermore, permitting orphan-drug designation of a drug that is already approved for the orphan indication could permit inappropriate ''evergreening'' of exclusive approval periods. For example, a sponsor might obtain approval and 5-year new chemical entity exclusivity as described in § 314.108 (21 CFR 314.108) for a drug product and then, once that 5-year exclusivity period is expiring, seek orphan-drug designation and exclusive approval for a drug that is the same as the drug (*e.g.,* in a new dosage form) for the same indication that was previously approved. This outcome would be inconsistent with the provisions of the Orphan Drug Act, which provide that exclusive approval for a drug for an orphan disease or condition runs for 7 years from the date of approval of the application for the drug (21 U.S.C. 360cc(a)).

Accordingly, FDA proposes to delete the word ''orphan'' in the phrase ''approved orphan drug'' in §§ 316.3(b)(3), 316.20(a), and 316.20(b)(5), to clarify that these provisions would be applicable to a drug that is otherwise the same drug as *any* previously approved drug for the same orphan disease or condition, regardless of whether such drug was designated as an orphan drug. FDA proposes that the text of § 316.25(a)(3) be revised. FDA is not changing its position that, as described in the NPRM preamble (56 FR 3338), section II.E, paragraph 8, ''even a drug considered the 'same' drug structurally could become a 'different' drug * * * by showing clinical superiority.'' In section II.I, comment 77, of the preamble to the final rule, ''Orphan Drug Regulations'' (57 FR 62076 at 62084), FDA reiterated that it would ''designate a structurally identical subsequent drug as an orphan drug, even in the face of a holder's exclusive marketing rights, if the subsequent sponsor advances a plausible basis on which to conclude that its product may be proven 'clinically superior.' '' FDA believes that permitting a sponsor to receive orphan-drug designation of a potentially clinically superior drug that is otherwise the same drug as an already approved drug promotes development of potentially superior drugs to the benefit of persons with rare diseases or conditions.

C. Eligibility for Multiple Orphan-Drug Exclusive Approvals

When FDA designates an orphan drug, it generally designates the drug for use by all persons with the rare disease or condition and expects that a sponsor will seek approval of the drug for all persons with the rare disease or condition designated. The uses for which a drug will be approved, however, are those for which there is adequate data and information to support approval, and may be limited to subsets of patients with the orphan disease or condition. As new data emerge, FDA may approve the drug for use in additional subsets of the disease or condition for which the drug was designated.

The scope of orphan exclusive approval for a designated drug is limited to the approved indication or use, even if the underlying orphan designation is broader. If the sponsor who originally obtained orphan exclusive approval of the drug for only a subset of the orphan disease or condition for which the drug was designated subsequently obtains approval of the drug for one or more additional subsets of that orphan disease or condition, FDA will recognize orphan-drug exclusive approval, as appropriate, for those additional subsets from the date of such additional marketing approval(s). Before obtaining such additional marketing approval(s), the sponsor in this instance would not need to have obtained additional orphan designation for the additional subset(s) of the orphan disease or condition.

If, before approval of the drug for any subset of the disease or condition for which it was designated, a subsequent sponsor also obtained designation for the same orphan disease or condition, each sponsor may be eligible for orphan-drug exclusive approval for the respective subset(s) for which each first obtains marketing approval. For example, if the first sponsor receives approval for one subset of the orphan disease or condition and the subsequent sponsor receives approval for a different subset, FDA will recognize orphan-drug exclusive approval for each sponsor's drug, as appropriate, from the date of each drug's marketing approval.

[1] In this proposed rule, FDA is not proposing to change the current regulatory provisions allowing sponsors to obtain orphan-drug designation for a drug intended for a disease or condition affecting 200,000 or more people, or for a vaccine, diagnostic drug, or preventive drug to be administered to 200,000 or more people per year, if there is no reasonable expectation that research and drug development costs can be recovered by sales of the drug in the United States (§§ 316.20(b)(8)(ii) and 316.21(c)).

After approval of the drug for one or more subsets of the orphan disease or condition, a subsequent sponsor may, without submitting a plausible hypothesis of clinical superiority, seek designation of the drug for the subset(s) of the orphan disease or condition for which the drug has not yet been approved. FDA may designate the drug for use in the remaining subset(s) without requiring a postulation of clinical superiority. To obtain such a designation, however, the sponsor must demonstrate that, at the time of its designation request, the entire population with the orphan disease or condition, not just the remaining subset(s) of the population, is under the prevalence limit, unless the sponsor can demonstrate that the remaining subset(s) is an orphan subset in accordance with § 316.20(b)(6).

This approach would permit multiple orphan-drug exclusive approvals for multiple subsets of the same underlying orphan disease or condition. For example, a drug could be designated for the treatment of T-cell non-Hodgkin's lymphoma (assuming that, at the time of designation, the drug's sponsor otherwise met all the other statutory and regulatory requirements for obtaining an orphan designation). However, the data submitted may only support approval of the treatment of cutaneous manifestations in patients with cutaneous T-cell lymphoma. Subsequently, on the basis of additional data, the same drug could be approved for other subsets of T-cell non-Hodgkin's lymphomas, such as anaplastic large cell lymphoma or angioimmunoblastic T-cell lymphoma. If the same sponsor, or a different sponsor with orphan designation, obtained approval for the use of the drug in one or more of the remaining subsets of T-cell non-Hodgkin's lymphomas, that sponsor would be eligible for orphan-drug exclusive approval for the use of the drug in those subsets from the date of approval of the drug for use in those subsets. Accordingly, FDA proposes to add provisions to § 316.31.

FDA believes that this proposal is consistent with the purpose of the Orphan Drug Act because it provides an important incentive for one or more sponsors to develop, or to continue to develop, a potentially promising drug for use in all persons affected by a rare disease or condition, rather than in just a subset of that orphan population, even after the drug has been approved for a different subset of the population with the disease or condition.

This provision is applicable only in situations where the underlying disease or condition for which the drug was designated is an orphan disease or condition at the time designation is requested.

D. Demonstration of Clinical Superiority

FDA believes that granting orphan-drug designation to a subsequent drug that is otherwise the same as a previously approved drug for the same orphan disease or indication on the basis of hypothetical plausibility of clinical superiority is the best tool for giving effect to the intent of Congress to provide incentives for sponsors to develop potentially safer and more effective orphan drugs. It is possible, however, that a sponsor that has obtained designation of its drug on the basis of a hypothesis that the drug will be clinically superior will be unable, upon submission of the marketing application, to demonstrate that the drug is clinically superior to the previously approved drug. In that case, if the already approved drug has remaining exclusive approval, the subsequent drug would not itself be eligible for approval, because it is the same drug as the drug with exclusive approval. If the approved drug does not have exclusive approval, the subsequent drug may be approved, but would not itself be eligible for orphan-drug exclusive approval.

As described in § 316.3(b)(3)(i) and (b)(3)(ii), a drug that is otherwise the same drug as a previously approved drug, and for which a clear showing of greater effectiveness or greater safety has not been made, may still be considered clinically superior within the meaning of § 316.3(b)(3)(iii) if it makes a major contribution to patient care. FDA believes that such clinical superiority is meaningful only when the subsequent drug provides safety or effectiveness comparable to the approved drug. For example, to claim that a drug makes a major contribution to patient care through a new formulation or a different route of administration, the sponsor must also address whether the change renders the drug less safe or less effective than the approved drug. For these reasons, FDA proposes that § 316.3(b)(3)(iii) be revised.

E. Name of the Drug

As provided in § 316.20(b)(2), requests for orphan designation must include the generic and trade name, if any, of the drug. For some products, however, neither a generic, nor trade name may be available, for example, for some large and complicated biological products or for any molecule for which the sponsor has not yet obtained a trade name. FDA is proposing to revise § 316.20(b)(2) so that, if neither such name is available, requests for designation include a chemical name or a meaningful descriptive name (*i.e.,* one that would be meaningful to the public if published). By providing such information in the request for designation, sponsors would help ensure that the name that FDA ultimately publishes under § 316.28 upon designation of the product is accurate and meaningful.

F. Required Drug Description and Scientific Rationale in a Request for Orphan-Drug Designation

FDA needs adequate information on the drug to conduct the review of a request for orphan-drug designation. The identity of the active moiety or principal molecular structural features is of particular importance because such information is critical in determining whether various drugs are the same within the meaning of § 316.3(b)(13). FDA notes that a number of sponsors have omitted such information in their designation requests. Without such information, FDA cannot determine whether the drug is the same as one already approved and so cannot render a decision on the request.

FDA further notes that some sponsors have included in their designation requests only theories, unsupported by data, as to why the drug may be used in a particular disease or condition, which does not constitute an adequate scientific rationale for the use of the drug for the rare disease or condition. Other sponsors, by contrast, have included all available data about a drug, rather than just the data pertinent to demonstrating a scientific rationale to establish a medically plausible basis for the use of the drug for the rare disease or condition. Among the data pertinent to a request that should be included are in vitro data, preclinical efficacy data of the drug from studies conducted in a relevant animal model for the human disease or condition, and clinical data from use of the drug in the rare disease or condition. Animal toxicology studies are generally not relevant to a request for orphan-drug designation. To ensure that an adequate drug description and scientific rationale are provided in a request, along with the necessary supporting data (whether positive, negative, or inconclusive), FDA proposes to revise § 316.20(b)(4).

G. Removal of Requirement To Submit Statement as to Whether Sponsor Submitting the Request Is the Real Party in Interest

FDA regulations at § 316.20(b)(9) currently require that requests for

orphan-drug designations include a statement as to whether the sponsor submitting the request is the real party in interest of the development and the intended or actual production and sales of the product. FDA is proposing to remove this requirement because it has proven to be of marginal if any utility in applications, has caused confusion for sponsors, and has had the effect of discouraging agents of sponsors (*e.g.,* a sponsor's lawyer) from submitting requests on the sponsor's behalf. Accordingly, FDA proposes to remove § 316.20(b)(9).

H. Timing of Request for Orphan-Drug Designation

FDA regulations at § 316.23(a) state that a sponsor may request orphan-drug designation at any time in the drug development process prior to the submission of a marketing application for the drug product for the orphan indication. FDA is aware that this language has been the subject of different interpretations by sponsors. To clarify the requirements regarding the timing of a designation request, FDA proposes to revise § 316.23(a) to indicate that a sponsor may request orphan-drug designation at any time in its drug development process prior to the time that sponsor submits a marketing application for the drug for the rare disease or condition. This is intended to clarify that a sponsor may not submit an orphan-drug designation request after it has submitted a marketing application for the drug for that use. This revision is also intended to clarify that submission by a sponsor of a marketing application for the drug for the orphan indication does not prevent another sponsor from submitting a request for orphan designation of the same drug for the same orphan use. Permitting designation of the subsequent drug in this situation, where there is no certainty that the previous marketing application will be approved promptly, if at all, would be consistent with the purpose of the Orphan Drug Act to provide incentives to develop and obtain approval for promising drugs for rare diseases or conditions. Once any sponsor's marketing application for the orphan indication has been approved, with or without orphan exclusive approval, another sponsor may not obtain orphan-drug designation for the same drug and the same orphan indication or use for which the approval was granted absent a plausible hypothesis of clinical superiority.

I. Responding to a Deficiency Letter From FDA on an Orphan-Drug Designation Request

FDA regulations are currently silent on when sponsors must respond to a deficiency letter from FDA on an orphan-drug designation request. FDA sends such deficiency letters when a request lacks necessary information or contains inaccurate information, for example, a miscalculated prevalence estimate. FDA has observed that some sponsors respond promptly to such deficiency letters, providing the requested information, whereas other sponsors may take several years or more to respond without sending any interim communication to FDA. In FDA's experience, when a period of several years or more elapses between the sponsor's initial request and the sponsor's deficiency response, the very basis for the orphan request may no longer hold in some circumstances. One example is if the initial request lacks an accurate prevalence estimate and the sponsor takes several years or more to submit a revised prevalence estimate keyed to the time of submission of the initial request, several years prior. In some circumstances, the actual prevalence for the disease or condition in question may have grown in the intervening years to exceed the prevalence limit of under 200,000. Because orphan designation eligibility in terms of prevalence is evaluated at the time of the submission of the request (see § 316.21(b)), the drug may be granted orphan-drug designation despite this prevalence increase, without any justification that there is no reasonable expectation of cost recovery (see §§ 316.20(b)(8)(ii) and 316.21(c)). FDA believes that such designations may be inconsistent with the purpose of the Orphan Drug Act, to provide incentives for the development of drugs for ''rare diseases or conditions'' as defined in section 526 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360bb).

To address this issue, FDA is proposing to require that sponsors respond to a deficiency letter within 1 year after issuance of the letter, unless within that timeframe the sponsor requests in writing an extension of time to respond. Such a request would specify both the reason(s) for the requested extension and the length of time of the requested extension. FDA will grant all reasonable requests for an extension. In some cases, FDA may grant a repeat request for an extension if, before expiration of the deadline as originally extended, the sponsor submits a new extension request, stating both the reason(s) for the request and the requested length of time of the extension.

In the event the sponsor fails to respond to the deficiency letter or to request an extension of time within a year, FDA may consider the designation request voluntarily withdrawn at the conclusion of the 1-year period, unless notified sooner by the sponsor that the request is withdrawn. FDA encourages sponsors to notify the Agency as soon as possible after receipt of a deficiency letter in the event the sponsor decides not to pursue the designation request. Should FDA deny a request for an extension of time, FDA may likewise consider the designation request voluntarily withdrawn and will so notify the sponsor in writing.

In FDA's experience, some deficiencies may be less suitable to extension requests than others. For example, FDA generally expects that deficiencies involving an inaccurate or incomplete prevalence estimate will be readily addressed within 1 year. Other types of deficiencies, however, may take longer to address. For example, deficiencies involving the scientific or medical rationale supporting a designation request for only a subset of persons with a particular disease or condition may require sponsors to conduct research and develop additional data, which may take several years or more. For the latter types of deficiencies, FDA generally anticipates granting extension requests to allow sponsors to develop necessary supporting data and information.

To implement this policy, FDA proposes to add new language to § 316.24(a). FDA proposes to change the title of this section to, ''Deficiency letters and granting orphan-drug designation.'' The existing paragraphs (a) and (b) would be redesignated (b) and (c), respectively.

J. Publication of Orphan-Drug Designations

Section 316.28 requires that FDA publish a monthly updated list of designated drugs in addition to placing on file at the FDA Division of Dockets Management an annual cumulative list of all designated drugs. FDA currently makes available a cumulative list of all designated drugs to date and a cumulative list of designated drugs in the current year on its Web site at *http://www.fda.gov/orphan/.* These lists are updated monthly.

To identify a drug in these lists and in the docket, FDA publishes its generic name and trade name, if any. If neither name is available, FDA publishes the chemical name or a meaningful

descriptive name of the drug (*i.e.,* a name that would be meaningful to the public). Internal business codes or other similar identifiers do not suffice for publication purposes, because they do not provide meaningful notice to the public of a designation. The Orphan Drug Act requires that notice respecting designation of a drug be made available to the public (section 526(c) of the FD&C Act). Ensuring that notice is meaningful, such that patients, health care providers, sponsors, and other stakeholders can identify which drug has been designated as an orphan drug, accords with both the language and the purpose of this statutory provision.[2] FDA proposes to revise § 316.28 to reflect FDA's existing publication practices.

The presence of a drug on the list of designated drugs does not necessarily mean the sponsor is actively developing the drug for the orphan disease or indication. Holders of orphan-drug designations are required by § 316.30 to submit an annual progress report on their designated drugs. It has been the Agency's experience that a number of holders of orphan-drug designations have failed to submit annual reports as required for the designated drug, and some have terminated their orphan-drug development program without notifying FDA. The Agency is considering ways to make available to the public information about the status of development for designated orphan drugs, including whether to provide information to the public on whether a sponsor has submitted the required annual reports. Although the failure of a sponsor to submit an annual report does not necessarily signal that the sponsor has ceased development of the orphan drug, this information could nevertheless prove useful to patients, medical practitioners, and the drug development community, who may wish to obtain additional information regarding the status of drug development from the sponsor of the designated drug.

Whether FDA will need to consider making additional information about designated drugs available through, for example, publishing the status of annual report submissions will depend in part on the effect of recent and pending changes in the availability of information about clinical trials of drugs. It is possible that expansion of the public availability of clinical trial information under section 801 of the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) will provide the public additional useful information on whether trials of a designated drug are being undertaken for the orphan indication. The information derived from this clinical trials database may be as useful, or even more useful, to patients and other interested parties as would information on whether a sponsor had submitted an annual report as required.

We are seeking comment on whether it would be useful for the Agency to make public information about whether the sponsor of a designated drug has submitted annual reports as required under § 316.30. The Agency does not contemplate disclosing the contents of the annual report, only whether such annual report has been submitted.

K. FDA Recognition of Orphan-Drug Exclusive Approval

Under existing Agency practice, FDA does not recognize orphan-drug exclusive approval if the drug is otherwise the same drug as one already approved and the sponsor fails to substantiate, in the application for marketing approval, the hypothesis of clinical superiority over the previously approved drug that formed the basis for designation. To clarify existing practice, FDA proposes to add new language to § 316.34(c).

L. Miscellaneous Terminology Changes

FDA proposes to revise the following terms throughout part 316 for the sake of precision and internal consistency, so that each term is used consistently throughout this part: ''drug product'' versus ''drug,'' and ''indication'' and ''indicated'' versus ''designation,'' ''use,'' ''developed,'' and ''disease or condition.''

M. Address Change

FDA proposes to update the address in § 316.4 to ''Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5271, Silver Spring, MD 20993.''

III. Environmental Impact

FDA has determined under 21 CFR 25.30(h) and 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Legal Authority

FDA is proposing this rule under the authority granted it by the Orphan Drug Act (Pub. L. 97–414). In enacting the Orphan Drug Act, Congress required FDA to issue regulations for the implementation of sections 525 and 526 of the FD&C Act (21 U.S.C. 360aa and 360bb), relating to written FDA recommendations on studies required for approval of marketing applications of orphan drugs and for the designation of eligible drugs as orphan drugs. In the **Federal Register** of December 29, 1992 (57 FR 62076) (1992 final rule), FDA issued a final rule for the implementation of these sections as well as for the implementation of sections 527 and 528 of the FD&C Act (21 U.S.C. 360cc and 360dd), relating to exclusive marketing for orphan drugs and the encouragement of sponsors to make orphan drugs available for treatment on an ''open protocol'' basis before the drug has been approved for general marketing. Any final rule based on this proposed rule would clarify regulatory provisions in the 1992 final rule and make minor improvements to address issues that have arisen since that rule took effect.

A final rule based on this proposal would further the main purpose of the Orphan Drug Act to provide incentives to develop promising drugs for rare diseases or conditions that would otherwise not be developed and approved. It would do so in several ways: By enhancing clarity for sponsors in seeking orphan-drug designations and orphan-drug exclusive marketing approval; by providing an important incentive for one or more sponsors to develop, or to continue to develop, a potentially promising drug for use in all persons affected by a rare disease or condition, rather than in just a subset of that orphan population, even after the drug has been approved for a different subset of the population with the disease or condition; and by helping ensure that the orphan designation request, at the time it is granted, is consistent with the purpose of the Orphan Drug Act despite a lapse of time between the date of submission of the initial request and a sponsor's response to a deficiency letter from FDA.

An additional source of authority for this proposed rule is section 701 of the FD&C Act (21 U.S.C. 371). Under this section, FDA is authorized to issue regulations for the efficient enforcement of the FD&C Act. Any final rule based on this proposed rule would help the efficient enforcement of the Orphan Drug Act provisions by enhancing clarity and certainty in FDA's

[2] In enacting and later amending the Orphan Drug Act, Congress emphasized the importance of effective public dissemination of orphan designation and the need for certainty about an orphan drug's potential for exclusivity (see H.R. Rep. No. 97–840, at 9 (1982), and H.R. Rep. No. 100–473, at 5–6 (1987)).

administration of the orphan drug program.

V. Proposed Implementation Plan

FDA proposes that these regulatory changes, where applicable, would become effective 30 days after the date of publication of the final rule. The final rule would apply only to original orphan-designation requests submitted on or after the effective date of the final rule. It would not apply to the following: (1) Amendments submitted on or after the effective date regarding previously submitted designation requests, or (2) responses to deficiency letters submitted on or after the effective date regarding previously submitted requests. As proposed here, the final rule would have no effect on the scope of or eligibility for orphan-drug exclusive approval because it merely clarifies existing FDA practice.

VI. Executive Order 13132: Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given in the *Description* section of this document an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 and other forms of information technology, when appropriate.

Title: Orphan Drug Regulations.

Description: FDA is proposing to amend its regulations on orphan-drug designation requests to clarify policy and make minor improvements. The proposed revisions are intended to assist sponsors who are seeking and who have obtained orphan-drug designations, as well as FDA in its administration of the orphan drug program.

One proposed revision is a requirement that sponsors include in requests a chemical or meaningful descriptive name of the drug, if neither a trade name nor a generic name is available. By providing such information in the request for designation, sponsors would help ensure that the name that FDA ultimately publishes under § 316.28 upon designation of the product is accurate and meaningful to the public. Because sponsors are already required to include a description of the drug in requests for designation, the proposed requirement to include a chemical or meaningful descriptive name is not expected to require much additional time or effort from sponsors.

Based on historical data concerning the number of designation requests for which neither a trade name nor a generic name for the drug is available, FDA expects that about 20 requests per year would be affected by this requirement. FDA estimates that it will take approximately 0.2 hours, or 12 minutes, for sponsors to submit this information. This estimate reflects both the length of time likely required to submit the chemical name of the drug (less than 0.2 hours) and the length of time likely required to submit a meaningful descriptive name if a chemical name is not readily available (more than 0.2 hours).

Another proposed revision is a requirement that sponsors respond to deficiency letters from FDA on designation requests within 1 year of issuance of the deficiency letter, unless within that timeframe the sponsor requests in writing an extension of time to respond. FDA will grant all reasonable requests for an extension. In the event the sponsor fails to respond to the deficiency or request an extension of time to respond within the 1-year timeframe, FDA may consider the designation request voluntarily withdrawn.

FDA believes this proposal is necessary to ensure that designation requests do not become ''stale'' by the time they are granted, such that the basis for the initial request may no longer hold. Granting such designations despite a lapse of years and change in factual circumstances concerning the disease or condition in question may not serve the primary purpose of the Orphan Drug Act to provide incentives for the development of drug products for ''rare diseases or conditions'' as defined in section 526 of the FD&C Act.

Based on historical data concerning the number of deficiency letters that FDA has sent and the number of sponsors who have taken longer than a year to respond, FDA estimates that it will receive approximately 10 written requests each year for an extension of time to respond. This number is likely an overestimate, because it is based on historical data in the absence of any regulatory deadline for sponsors to respond; FDA believes that at least some of the sponsors who have taken longer than a year to respond have been capable of responding earlier, but did not do so because they did not need to. FDA estimates that it will take approximately 2 hours to prepare and submit each extension request, including time to develop and articulate a rationale for the requested extension and to obtain internal approval of the request before submission to FDA.

Description of Respondents: Persons and businesses, including small businesses and manufacturers.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Average Burden per Response	Total Hours
316.20(b)(2)	20	1	20	0.2 (12 minutes)	4
316.24(a)	10	1	10	2	20
Total Burden Hours					24

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Except with respect to the proposed revisions addressed in table 1 of this document, the revisions in this proposed rule clarify existing regulatory language and do not constitute a substantive or material modification to the approved collections of information in current part 316 (Cf. 5 CFR 1320.5(g)). The collections of information in current part 316 have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), under OMB control number 0910–0167.

To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *FAX:* 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the title ''Orphan Drug Regulations.''

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule primarily clarifies current practice and any costs would be very small, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

A. Background

Our experience with orphan-drug designation requests over many years has led us to conclude that sponsors are confused by some portions of the current regulatory language. The Agency receives dozens of requests for orphan-drug designation each year that are deficient in some way that would prevent designation. We observe the same types of deficiencies suggesting some problematic areas in our regulations.

Of the 324 requests for orphan-drug designation we received in 2010, 124 were denied or placed in abeyance so that the sponsor could submit additional material to respond to the deficiencies. Of these, 79 were deficient because they did not identify an appropriate ''medically plausible subset'' of a population with a non-rare disease or condition. That nearly a quarter of the designation requests were deficient in the subset analysis, and that problems with population subsets constituted over half of the deficiencies, highlights the need to clarify existing regulatory language regarding subsets.

The confusion about regulatory language is not limited to issues regarding population subsets. Many designation requests are deficient because the submitted drug description is not adequate to establish whether the drug is the same as one that has already been approved. There are continuing problems with requests for drugs that are in fact the same as drugs already approved but lack necessary information regarding clinical superiority. Other requests lack the data to support the scientific rationale for the use of the drug in a rare disease or condition. Addressing these deficiencies and resolving sponsor inquiries consumes sponsor and FDA resources and extends the orphan-drug designation process. The process would be less costly to sponsors and FDA if sponsors had an authoritative source of information about basic program requirements.

Basic program requirements are part of Federal regulation; clarifying regulatory language to reduce costly confusion would have to be done through rulemaking at the Federal level. This proposed rule would clarify regulatory language to reduce sponsor and FDA costs and streamline the orphan-drug designation process.

B. Benefits and Costs of the Proposed Rule

This proposed rule would reduce costs to sponsors who might otherwise submit deficient orphan-drug designation requests or face additional costs to determine program requirements. It would benefit sponsors and promote public health by clarifying requirements for sponsors who would otherwise be discouraged from submitting designation requests when their drug is in fact eligible for orphan-drug designation. The proposed rule would also reduce costs to FDA of responding to sponsor inquiries and

deficient designation requests. There would be small costs associated with the requirement that sponsors either respond to deficiency letters within a year or obtain an extension of time to respond. The proposed rule has several elements, which we address in the order presented earlier in this document.

We propose to clarify what population or disease subsets may be eligible for orphan-drug designation (§ 316.20(b)(6)). This action merely clarifies longstanding policy but should reduce uncertainty about the requirements for orphan-drug designation and result in fewer requests that cannot be designated. With the improved information about requirements for establishing population subsets, some sponsors may realize that their drug is not eligible for orphan designation and they would save the cost they would have otherwise incurred submitting a request. FDA has recently estimated a burden of 150 hours to complete a designation request (76 FR 3910 at 3911, January 21, 2011). At a benefit-adjusted hourly wage of about $46 for a regulatory affairs official, sponsors who do not submit a request that cannot be granted would avoid $6,900 in labor costs.[3] Under this proposed rule, other sponsors would avoid the cost they would have otherwise incurred addressing the subset deficiency. We do not have a precise estimate of the time required to respond to a deficiency letter; using 40 hours as a rough estimate implies $1,840 in avoided labor costs. We do not possess a reliable estimate for the number of avoided deficiency letters, but assuming FDA receives 79 subset-deficient requests each year and one-half would not occur with the clarified regulatory language, sponsors would avoid $72,680 in additional labor costs. FDA would also avoid costs from responding to these requests.

It is longstanding FDA policy that a designation request for a drug that is otherwise the same as a drug previously approved for the same disease or condition must include a plausible hypothesis of clinical superiority, regardless of whether the already approved drug was designated as an orphan. FDA continues to receive requests that cannot be designated because this policy is not explicit in current regulation. This proposed rule would make this policy explicit, reducing costs to sponsors and FDA by reducing the number of deficient orphan-drug designation requests.

FDA's longstanding practice has been that if a drug is approved for only a subset of patients with a rare disease or condition, FDA may grant orphan-drug designation and orphan-drug exclusive approval for use of the drug in one or more of the remaining subsets of patients with the rare disease or condition. Current § 316.31 does not explicitly mention subsets, which could deter confused sponsors from pursuing designation for use of the drug in remaining subsets for which the drug has not yet been approved. Clarifying this provision would not change Agency policy but would benefit sponsors and public health by reducing the risk of a sponsor failing to pursue designation when it would otherwise do so.

We propose to clarify the definition of clinical superiority to make explicit that a drug shown to be clinically superior to an approved drug for making a major contribution to patient care would also have to be demonstrated to provide safety and effectiveness comparable to the approved drug (§ 316.3(b)(3)(iii)). This revision is consistent with longstanding policy and would impose no new costs. Benefits from a minor clarification to a requirement that applies only under unusual circumstances would be too small to reliably estimate.

We propose to modify and clarify our requirements for the drug name. Current regulations require the sponsor to submit the generic and trade name of the drug, but do not specify how to name a drug for which there is no generic name or trade name. In the past, sponsors have provided FDA with their internal business codes, which are meaningless to the general public. We propose to require that a drug that has neither a generic nor a trade name be identified according to its chemical name or a meaningful descriptive name (*i.e.,* one that would be meaningful to the public if published). Descriptive names are readily accessible to the sponsor and could be included in a designation request as easily as an internal business code and any costs would be too small to meaningfully quantify.

We propose to clarify our requirements for the drug description and for the data to support a drug's scientific rationale in an orphan-drug designation request. Some requests for orphan-drug designation cannot be acted upon because the drug descriptions are not adequate to determine whether the drug in the submission is the same as a previously approved drug. This proposed rule would clarify the required drug description in § 316.20(b)(4), reducing the frequency of deficient requests. Some requests lack the data to support a scientific rationale, while others include substantial additional data not needed to obtain designation. In both situations, sponsors incur costs that could be avoided with clearer requirements. We do not know the frequency of these data problems nor do we know the costs associated with them, but this proposal would reduce sponsor and FDA costs.

We propose to eliminate § 316.20(b)(9), which requires that the sponsor submitting the request state whether it is the real party in interest of the development and the intended or actual production and sales of the product. This provision merely obtains information from the sponsor; it does not provide a basis to disqualify any entity from pursuing orphan-drug designation. There is no known use for the information and it is our understanding that this provision may be discouraging sponsors from using agents to submit requests on their behalf, potentially increasing the cost to obtain orphan-drug designation. We do not possess a reliable estimate for this cost. Eliminating this provision would clarify our longstanding policy to accept submissions from agents, which may reduce sponsor costs. Halting the collection of information for which there is no known purpose would not negatively impact public health.

We propose to clarify the requirement regarding the timing of orphan-drug designation requests (§ 316.23(a)). A sponsor may not submit an orphan-drug designation request after it has submitted a marketing application for the drug for that use. It is not clear in the current regulatory language that one sponsor's marketing application would not prevent a different sponsor from submitting a request for orphan designation for the same drug for the same orphan use and that this subsequent sponsor would not have to submit a plausible hypothesis of clinical superiority. Clarifying current policy would benefit sponsors and public health by reducing the likelihood of a confused sponsor failing to seek orphan-drug designation for an eligible product.

We propose a 1-year time limit for sponsors to respond to deficiency letters or obtain a time extension (§ 316.24(a)). Based on our experience with the time required to address particular submission deficiencies and the observed variation in time for sponsors to respond, some submission requests

[3] 2010 National Industry-Specific Occupational Employment and Wage Estimates, U.S. Department of Labor Statistics, last modified May 17, 2011 (*http://www.bls.gov/oes/current/naics4_325400.htm*); mean compliance officer wage rate of $35.28 for pharmaceutical and medicine manufacturing (NAICS 325400) plus a 30-percent increase for benefits.

do not appear to be part of an active effort to obtain orphan-drug designation. We know of no public health benefit from open inactive designation requests. We do not know if they exist because sponsors gain nothing from the cost of formally withdrawing a request or because there may be a strategic advantage to an inactive request for designation. Current regulations do not impose time limits on sponsors replying to FDA deficiency letters and we have no mechanism to encourage sponsors to continue to actively pursue designation. Sponsors who would otherwise respond to a deficiency letter within 1 year would be unaffected by this proposal. Sponsors actively pursuing designation but needing more than 1 year to respond to a deficiency letter would be expected to submit a time extension request to FDA. We assume approval for all extension requests from sponsors actively pursuing orphan-drug designation and estimate a request would require 2 hours of time from a regulatory affairs specialist. At a benefit-adjusted hourly wage of $46, the cost to submit an extension request is $92. Based on our experience with deficiency letters and the frequency of responses requiring more than 1 year, we estimate 10 requests for additional time each year. The estimated annual cost of this provision is $920. We assume sponsors not actively pursuing designation would not obtain extensions and their requests would be considered to be withdrawn 1 year after the deficiency letter. We do not possess a reliable estimate of the number of designation requests that would be withdrawn under this proposal. Withdrawing inactive designation requests would improve information about potential future orphan drugs, which would be beneficial to potential sponsors and to the general public. There is at least a potential for a cost to some sponsors, as we cannot rule out the possibility of some small advantage to holding an inactive designation request. Nevertheless, we estimate the cost of a withdrawal in this case to be very small and to be extremely small relative to the benefits of improved public information and the streamlined orphan-drug designation process.

According to longstanding policy, FDA does not recognize orphan-drug exclusive approval when the sponsor of a drug that is otherwise the same as a drug already approved fails to demonstrate clinical superiority in its marketing application. We propose to make this policy explicit by adding proposed § 316.34(c). This clarification applies to a rare set of circumstances and benefits would be too small to reliably estimate.

We do not possess a single bottom line estimate for the total monetized benefit of this proposed rule. Avoiding half of the designation requests that are deficient because of problems establishing population subsets would save sponsors an estimated $73,000 annually. Subset problems account for more than half of all deficiencies, so we estimate the other clarifications to reduce deficient requests would reduce sponsor costs by an additional amount less than $73,000. The total estimated cost of this proposed rule is an annual $920, attributable to the submission of requests for additional time to respond to deficiency letters.

C. Small Business Analysis

This proposed rule would apply to the sponsors of orphan-drug designation requests. According to the Table of Small Business Size Standards, the U.S. Small Business Administration (SBA) considers pharmaceutical preparation manufacturing entities (NAICS 325412) with 750 or fewer employees and biological product (except diagnostic) manufacturing entities (NAICS 325414) with 500 or fewer employees to be small.[4] According to the 2007 Economic Census, annual shipments for the 284 establishments in NAICS 325412 with 0 to 4 employees are $240 million, which is $840,000 per establishment. Total annual shipments for the 250 establishments in NAICS 325414 with 0 to 49 employees (the smallest group with value of shipment data) are $720 million, which is $2.9 million per establishment.

Most of the provisions of this proposed rule would clarify regulatory language consistent with current practice, imposing no new costs. The proposal to create a 1-year time limit to respond to FDA deficiency letters would result in estimated costs of $92 per extension request. Costs from the withdrawal of inactive submissions would be too small to reliably quantify. A common threshold for determining a significant impact is 1 percent of annual shipments. Because the estimated cost of this proposed rule would be approximately 1/100 of 1 percent of annual shipments for the smallest affected establishments, we conclude this proposed rule, if finalized, would not constitute a significant impact on a substantial number of small entities.

[4] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes,'' November 5, 2010, *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.*

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. As noted previously in this document, if you have comments on specific provisions of the proposed regulation, we request that you identify these provisions in your comments. In addition, if you have concerns that would be addressed by alternative text for the regulation, we request that you provide this alternative text in your comments. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 316

Administrative practice and procedure, Drugs, Investigations, Medical research, Orphan drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 316 is proposed to be amended as follows:

PART 316—ORPHAN DRUGS

1. The authority citation for 21 CFR part 316 continues to read as follows:

Authority: 21 U.S.C. 360aa, 360bb, 360cc, 360dd, 371.

2. Section 316.1 is amended by revising paragraphs (a)(1)(iii) and (a)(2) to read as follows:

§ 316.1 Scope of this part.

(a) * * *

(1) * * *

(iii) Requests for gaining exclusive approval for a drug for a rare disease or condition.

(2) Allowing a sponsor to provide an investigational drug under a treatment protocol to patients who need the drug for treatment of a rare disease or condition.

* * * * *

3. Section 316.3 is amended by revising paragraphs (b)(3) introductory text, (b)(3)(i), (b)(3)(iii), and (b)(12) to read as follows:

§ 316.3 Definitions.

* * * * *

(b) * * *

(3) *Clinically superior* means that a drug is shown to provide a significant therapeutic advantage over and above

that provided by an approved drug (that is otherwise the same drug) in one or more of the following ways:

(i) Greater effectiveness than an approved drug (as assessed by effect on a clinically meaningful endpoint in adequate and well controlled clinical trials). Generally, this would represent the same kind of evidence needed to support a comparative effectiveness claim for two different drugs; in most cases, direct comparative clinical trials would be necessary; or

* * * * *

(iii) In unusual cases, where neither greater safety nor greater effectiveness has been shown, a demonstration that the drug provides safety and effectiveness comparable to the approved drug and otherwise makes a major contribution to patient care.

* * * * *

(12) *Orphan-drug exclusive approval* or *exclusive approval* means that, effective on the date of FDA approval as stated in the approval letter of a marketing application for a sponsor of a designated orphan drug, no approval will be given to a subsequent sponsor of the same drug for the same use for 7 years, except as otherwise provided by law or in this part.

* * * * *

4. Section 316.4 is revised to read as follows:

§ 316.4 Address for submissions.

All correspondence and requests for FDA action pursuant to the provisions of this rule should be addressed as follows: Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5271, Silver Spring, MD 20993.

5. Section 316.20 is amended by revising paragraphs (a), (b)(2) through (b)(6), and by removing paragraph (b)(9), to read as follows:

§ 316.20 Content and format of a request for orphan-drug designation.

(a) A sponsor that submits a request for orphan-drug designation of a drug for a specified rare disease or condition shall submit each request in the form and containing the information required in paragraph (b) of this section. A sponsor may request orphan-drug designation of a previously unapproved drug, or of a new use for an already marketed drug. In addition, a sponsor of a drug that is otherwise the same drug as an already approved drug may seek and obtain orphan-drug designation for the subsequent drug for the same rare disease or condition if it can present a plausible hypothesis that its drug may be clinically superior to the first drug. More than one sponsor may receive orphan-drug designation of the same drug for the same rare disease or condition, but each sponsor seeking orphan-drug designation must file a complete request for designation as provided in paragraph (b) of this section.

(b) * * *

(2) The name and address of the sponsor; the name of the sponsor's primary contact person and/or resident agent including title, address, and telephone number; the generic and trade name, if any, of the drug, or, if neither is available, the chemical name or a meaningful descriptive name of the drug; and the name and address of the source of the drug if it is not manufactured by the sponsor.

(3) A description of the rare disease or condition for which the drug is being or will be investigated, the proposed use of the drug, and the reasons why such therapy is needed.

(4) A description of the drug, to include the identity of the active moiety if it is a drug composed of small molecules, or of the principal molecular structural features if it is composed of macromolecules; its physical and chemical properties, if these characteristics can be determined; and a discussion of the scientific rationale to establish a medically plausible basis for the use of the drug for the rare disease or condition, including all data from in vitro laboratory studies, preclinical efficacy studies conducted in an animal model for the human disease or condition, and clinical investigations of the drug in the rare disease or condition that are available to the sponsor, whether positive, negative, or inconclusive. Animal toxicology studies are generally not relevant to a request for orphan-drug designation. Copies of pertinent unpublished and published papers are also required.

(5) Where the sponsor of a drug that is otherwise the same drug as an already approved drug seeks orphan-drug designation for the subsequent drug for the same rare disease or condition, an explanation of why the proposed variation may be clinically superior to the first drug.

(6) Where a drug is under development for only a subset of persons with a particular disease or condition that otherwise affects 200,000 or more people, a demonstration that, due to one or more properties of the drug, the remaining persons with such disease or condition would not be appropriate candidates for use of the drug.

* * * * *

6. Section 316.21 is amended by revising paragraph (a)(1) and the introductory text of paragraph (b) to read as follows:

§ 316.21 Verification of orphan-drug status.

(a) * * *

(1) Documentation as described in paragraph (b) of this section that the number of people affected by the disease or condition for which the drug is to be developed is fewer than 200,000 persons; or

* * * * *

(b) For the purpose of documenting that the number of people affected by the disease or condition for which the drug is to be developed is less than 200,000 persons, ''prevalence'' is defined as the number of persons in the United States who have been diagnosed as having the disease or condition at the time of the submission of the request for orphan-drug designation. To document the number of persons in the United States who have the disease or condition for which the drug is to be developed, the sponsor shall submit to FDA evidence showing:

* * * * *

7. Section 316.23 is revised to read as follows:

§ 316.23 Timing of requests for orphan-drug designation; designation of already approved drugs.

(a) A sponsor may request orphan-drug designation at any time in its drug development process prior to the time that sponsor submits a marketing application for the drug for the same rare disease or condition.

(b) A sponsor may request orphan-drug designation of an already approved drug for an unapproved use without regard to whether the prior marketing approval was for a rare disease or condition.

8. Section 316.24 is amended by revising the section heading; redesignating paragraphs (a) and (b) as (b) and (c), respectively; and adding a new paragraph (a), to read as follows:

§ 316.24 Deficiency letters and granting orphan-drug designation.

(a) FDA will send a deficiency letter to the sponsor if the request for orphan-drug designation lacks information required under §§ 316.20 and 316.21, or contains inaccurate or incomplete information. FDA may consider a designation request voluntarily withdrawn if the sponsor fails to respond to the deficiency letter within 1 year of issuance of the deficiency letter, unless within that same timeframe the sponsor requests in

writing an extension of time to respond. This request must include the reason(s) for the requested extension and the length of time of the requested extension. FDA will grant all reasonable requests for an extension. In the event FDA denies a request for an extension of time, FDA may consider the designation request voluntarily withdrawn and, if so, will notify the sponsor in writing.

* * * * *

9. Section 316.25 is amended by revising paragraphs (a)(1)(ii) and (a)(3) to read as follows:

§ 316.25 Refusal to grant orphan-drug designation.

(a) * * *

(1) * * *

(ii) Where the drug is intended for prevention, diagnosis, or treatment of a disease or condition affecting 200,000 or more people in the United States, the sponsor has failed to demonstrate that there is no reasonable expectation that development and production costs will be recovered from sales of the drug for such disease or condition in the United States. A sponsor's failure to comply with § 316.21 shall constitute a failure to make the demonstration required in this paragraph.

* * * * *

(3) The drug is otherwise the same drug as an already approved drug for the same rare disease or condition and the sponsor has not submitted a medically plausible hypothesis for the possible clinical superiority of the subsequent drug.

* * * * *

10. Section 316.26 is revised to read as follows:

§ 316.26 Amendment to orphan-drug designation.

(a) At any time prior to approval of a marketing application for a designated orphan drug, the sponsor holding designation may apply for an amendment to the designated use if the proposed change is due to new and unexpected findings in research on the drug, information arising from FDA recommendations, or unforeseen developments in treatment or diagnosis of the disease or condition.

(b) FDA will grant the amendment if it finds that the initial designation request was made in good faith and that the amendment is intended to conform the orphan-drug designation to the results of unanticipated research findings, to unforeseen developments in the treatment or diagnosis of the disease or condition, or to changes based on FDA recommendations, and that, as of the date of the submission of the amendment request, the amendment would not result in exceeding the prevalence or cost recovery thresholds in § 316.21(a)(1) or (a)(2) upon which the drug was originally designated.

11. Section 316.28 is revised to read as follows:

§ 316.28 Publication of orphan-drug designations.

Each month FDA will update a publicly available cumulative list of all drugs designated as orphan drugs. This list will be made available on the Agency's Internet site. In addition, a cumulative, annually updated list of all designated drugs will be placed on file at the FDA Division of Dockets Management. These lists will contain the following information:

(a) The name and address of the sponsor;

(b) The generic name and trade name, if any, or, if neither is available, the chemical name or a meaningful descriptive name of the drug;

(c) The date of the granting of orphan-drug designation; and

(d) The designated use in the rare disease or condition.

12. Section 316.31 is amended by revising paragraph (a) introductory text, by redesignating paragraph (b) as paragraph (c), and by adding new paragraph (b) to read as follows:

§ 316.31 Scope of orphan-drug exclusive approval.

(a) After approval of a sponsor's marketing application for a designated orphan drug for use in the rare disease or condition, or a subset thereof, concerning which orphan-drug designation was granted, FDA will not approve another sponsor's marketing application for the same drug for the same use before the expiration of 7 years from the date of such approval as stated in the approval letter from FDA, except that such a marketing application can be approved sooner if, and at such time as, any of the following occurs:

* * * * *

(b) Orphan-drug exclusive approval protects only the approved indication or use of a designated drug. If such approved indication or use is limited to a particular subset of persons with a rare disease or condition, FDA may later approve the drug for use in one or more additional subsets and, if the sponsor who obtains approval in the additional subset(s) has orphan-drug designation for the drug, FDA will recognize a new orphan-drug exclusive approval for the use in the new subset(s) of persons with the rare disease or condition from the date of approval of the drug for use in the new subset(s).

* * * * *

13. Section 316.34 is amended by adding paragraph (c) as follows:

§ 316.34 FDA recognition of exclusive approval.

* * * * *

(c) If a drug is otherwise the same drug as a previously approved drug, FDA will not recognize orphan-drug exclusive approval if the sponsor fails to substantiate, at the time of marketing approval, the hypothesis of clinical superiority over the previously approved drug that formed the basis for designation.

Dated: October 13, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27037 Filed 10–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–146297–09]

RIN 1545–BJ23

Deduction for Qualified Film and Television Production Costs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulation.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to deductions for the costs of producing film and television productions. Those temporary regulations reflect changes to the law made by the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, and affect taxpayers that produce films and television productions within the United States. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by January 17, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–146297–09), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–146297–

09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–146297–09).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bernard P. Harvey, (202) 622–4930; concerning submissions and to request a hearing, *Richard.A.Hurst@irscounsel.treas.gov,* (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 181 was added to the Code by section 244 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (October 22, 2004), and was modified by section 403(e) of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577) (December 21, 2005). Section 502 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Public Law 110–343 (122 Stat. 3765) (October 3, 2008) further modified section 181 for film and television productions commencing after December 31, 2007, and extended section 181 to film and television productions commencing before January 1, 2010. Section 181 was extended again to film and television productions commencing before January 1, 2012, by section 744 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312 (December 17, 2010).

Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) to add regulations under section 181 of the Internal Revenue Code. The temporary regulations provide rules specific to film and television productions commencing on or after January 1, 2008, to reflect the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Bernard P. Harvey, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.181–0 is added as follows:

§ 1.181–0 Table of contents.

[The text of this proposed amendment to § 1.181–0 is the same as the text of § 1.181–0T published elsewhere in this issue of the **Federal Register**.]

Par . 3. Section 1.181–1 is amended by adding paragraphs (a)(1)(ii), (a)(6), (b)(1)(ii), (b)(2)(vi) and (c)(2) to read as follows:

§ 1.181–1 Deduction for qualified film and television production costs.

(a) * * * (1) * * *

(ii) [The text of this proposed amendment to § 1.181–1(a)(1)(ii) is the same as the text for § 1.181–1T(a)(1)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(6) [The text of this proposed amendment to § 1.181–1(a)(6) is the same as the text for § 1.181–1T(a)(6) published elsewhere in this issue of the **Federal Register**].

* * * * *

(b) * * * (1) * * *

(ii) [The text of this proposed amendment to § 1.181–1(b)(1)(ii) is the same as the text for § 1.181T(b)(1)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(2)* * *

(vi) [The text of this proposed amendment to § 1.181–1(b)(2)(vi) is the same as the text for § 1.181–1T(b)(2)(vi) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) * * *

(2) [The text of this proposed amendment to § 1.181–1(c)(2) is the same as the text for § 1.181–1T(c)(2) published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–26972 Filed 10–18–11; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0017; EPA–R05–OAR–2011–0106; FRL–9480–7]

Approval and Promulgation of Air Quality Implementation Plans; Ohio and Indiana; Redesignation of the Cincinnati-Hamilton Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Ohio's and Indiana's requests to redesignate their respective portions of the Cincinnati-Hamilton OH-IN-KY nonattainment area (for Ohio: Butler, Clermont, Hamilton, and Warren Counties, Ohio; for IN: a portion of

Dearborn County) to attainment for the 1997 annual National Ambient Air Quality Standard (NAAQS or standard) for fine particulate matter ($PM_{2.5}$). The Ohio Environmental Protection Agency (Ohio EPA) submitted its request on December 9, 2010, and the Indiana Department of Environmental Management (IDEM) submitted its request on January 25, 2011. Kentucky's request to redesignate its portion of the Cincinnati-Hamilton area, submitted to EPA to on January 27, 2011, will be addressed in a separate rulemaking action. EPA's proposal here involves several additional related actions. EPA has previously determined that the entire Cincinnati-Hamilton (OH-IN-KY) area has attained the 1997 annual $PM_{2.5}$ standard. EPA is proposing to approve, as revisions to the Ohio and Indiana State Implementation Plans (SIPs), the States' plans for maintaining the 1997 annual $PM_{2.5}$ NAAQS through 2021 in the area. EPA is proposing to approve the 2005 emissions inventories for the Ohio and Indiana portions of the Cincinnati-Hamilton area as meeting the comprehensive emissions inventory requirement of the Clean Air Act (CAA). Finally, EPA finds adequate and is proposing to approve Ohio and Indiana's Nitrogen Oxides (NO_X) and $PM_{2.5}$ Motor Vehicle Emission Budgets (MVEBs) for 2015 and 2021 for the Cincinnati-Hamilton area.

DATES: Comments must be received on or before November 18, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0017 (Ohio); EPA–R05–OAR–2011–0106 (Indiana), by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: Aburano.Douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Doug Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the determination of attainment, redesignation, and SIP as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: October 7, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–26890 Filed 10–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0788; FRL–9480–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Transportation Conformity Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. The SIP revision amends existing regulation 9VAC5 Chapter 151 in order to incorporate federal revisions to transportation conformity requirements. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 18, 2011

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0788, 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–2011–0788, 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–2011–0788. 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: Gregory Becoat, (215) 814–2036, or by e-mail at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

For further information, please see the information provided in the direct final action, with the same title, ''Approval and Promulgation of Air Quality Implementation Plans; Virginia; Transportation Conformity Regulations,'' that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: October 3, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–26904 Filed 10–18–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 03–109 and 11–42; DA 11–1593]

Inquiry Into Disbursement Process for the Universal Service Fund Low Income Program

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau (WCB) seeks comment on a proposal for disbursing Universal Service Fund low income support to eligible telecommunications carriers (ETCs) based upon claims for reimbursement of actual support payments made, instead of projected claims for support. Payment based on actual support payments would replace the current administrative process, under which the Universal Service Administrative Company (USAC) reimburses ETCs for low income support each month based on USAC's projection of payments and on a ''true-up'' calculated using an ETC's actual support payments. Among other things, we are seeking comment on a proposal that, if adopted, would require that the FCC Form 497 be filed monthly.

DATES: Comments are due on or before November 18, 2011. Reply comments are due on or before December 5, 2011. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before December 19, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 03–109 and 11–42, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) *by e-mail: FCC504@fcc.gov* or *phone:* (202) 418–0530 or TTY: (202) 418–0432.
- In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kimberly Scardino, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400 or TTY (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman, Office of Managing Director, 202–418–0214.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice, WC Docket Nos. 11–42 and 03–109; DA 11–1593, issued September 23, 2011. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available via ECFS (*http://www.fcc.gov/cgb/ecfs/*).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All comments are to reference WC Docket Nos. 11–42 and 03–109. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS) or (2) by filing paper copies. *See Electronic Filing of Documents in*

Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

—All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

—Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

—U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

• *Additional copies:* One copy of each filing must be sent to each of the following:

—The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fff@bcpiweb.com*.

—Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–A452, Washington, DC 20554; *e-mail: Charles.Tyler@fcc.gov*.

• *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

• Filings and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, *telephone:* (202) 488–5300, *fax:* (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due December 19, 2011.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0819.

Title: Lifeline Assistance (Lifeline) Connection Assistance (Link-Up) Reporting Worksheet and Instructions (47 CFR 54.400–54.417).

Form Number: FCC Form 497

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit (Eligible Telecommunications Carriers (ETCs)).

Number of Respondents and Responses: Approximately 251,400 respondents; 280,450 responses.

Estimated Time per Response: 5 hrs per month.

Frequency of Response: Monthly, quarterly, annually and on occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 4(i), 201–205, 214, 254, and 403.

Total Annual Burden: 61,386 hours.

Total Annual Costs: N/A.

Privacy Act Impact Assessment: The changes proposed in the *2011 Disbursement Process PN* (requiring monthly rather than optional monthly/quarterly filing of Form 497), do not affect individuals or households, and thus have no impact under the Privacy Act. However, other portions of information collection 3060–0819 affects individuals or households, and thus, there are impacts under the Privacy Act. As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Commission is creating a system of records notice (SORN) to cover those aspects of this information collection that impact individuals or households. In addition, the Commission is preparing a Privacy Impact Assessment (PIA) as required by OMB Memorandum M–03–22.

Nature and Extent of Confidentiality: This proposed revision does not address information of a confidential nature.

Needs and Uses: The information collected via FCC Form 497 (Lifeline and Link Up Worksheet) provides the Commission with the necessary information to administer the Lifeline/Link-Up programs, and determine the amount of support entities seeking funding are eligible to receive. Currently, the FCC Form 497 may be filed either monthly or quarterly. The Commission is proposing to revise the currently approved collection 3060–0819 reporting requirement, requiring ETCs to file the FCC Form 497 monthly.

Synopsis of Proposed Administrative Rule

I. Introduction

1. The Wireline Competition Bureau (WCB) seeks comment on a proposal for disbursing Universal Service Fund (USF) low income support to eligible telecommunications carriers (ETCs) based upon claims for reimbursement of actual support payments made, instead of projected claims for support. Payment

based on actual support payments could replace the current administrative process, under which USAC reimburses ETCs for low income support each month based on USAC's projection of payments and on a ''true-up'' calculated using an ETC's actual support payments.

On May 13, 2011 the Commission's Office of the Managing Director (OMD) directed USAC to propose an administrative process for disbursing USF low income support to ETCs based on verified claims for reimbursement. USAC submitted its proposal on August 9, 2011, the text of which is located at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1003/DA–11–1593A1.pdf.*

II. Comment Sought on Proposal

2. To facilitate a smooth transition to a revised payment process, we seek public comment on USAC's proposed plan to pay low income support reimbursement based solely on actual support payments, including the following issues:

3. *Filing Deadline.* USAC proposes to establish a monthly due date by which ETCs must submit their FCC Form 497 in order to receive a payment at the end of the following month. Carriers that do not file FCC Form 497 by the monthly deadline in a given month would not receive a payment in the following month. USAC would process an FCC Form 497 received after the monthly deadline during the following month, and would make a disbursement based on that support claim in the subsequent month. We seek comment on monthly filing deadline and on the process for disbursing payment to ETCs that miss a monthly deadline.

4. *Quarterly Filing.* Under USAC's proposal, carriers would be allowed to continue to file quarterly, but those that do so would no longer be paid monthly. Instead, for the month following the month the forms are filed, ETCs filing on a quarterly basis would receive one payment for all three months filed. We seek comment on the adequacy of quarterly reimbursements.

5. *Deadline for New Support and Filing Revisions.* Currently, USAC maintains an administrative window of fifteen months for filing original or revised support claims. Specifically, after the end of each calendar year (closed calendar year), carriers have fifteen months to file original claims or to revise support claims for the closed calendar year. After the fifteen-month window, ETCs may not file revised or original support claims for any portion of the closed calendar year. Under USAC's proposed plan, new support claims and upward revisions would only be permitted to be filed within an administrative window of six months. We seek comment on whether this new filing window provides ETCs sufficient time to file revisions. Commenters proposing a longer filing window should provide a detailed explanation of why the proposed six-month period would be insufficient.

6. *True-Up before Transition to New Disbursement Process.* Most ETCs currently receive payments based on projections. Under USAC's proposed plan, in order to transition to paying on actual support claims, USAC would true-up all payments against projections for each ETC. ETCs currently paid based on projections will likely receive little or no support for the month in which the program transitions to payments against actual claims. The example at Table 2 of Appendix A illustrates how the transition month would affect a typical carrier's support payment. We seek comment on the proposed true-up process for the transition month, and whether USAC's proposed early transition option provides ETCs with sufficient time to transition from projected to actual claims. Commenters with alternative proposals should provide examples of how such proposals would work.

7. *Payment of Negative Balance as a Result of Transition True-Up.* A carrier may incur a negative disbursement as a result of the true-up process during the transition month. Under USAC's proposed plan, in the event the negative amount exceeds the carrier's next monthly payment, USAC would invoice the carrier for the full amount of the negative balance. We seek comment on this approach to the settlement of negative balances.

8. *Transition Date and Early Transition Option.* If adopted, the new disbursement process would contain a transition date by which all carriers would receive support based on claims for actual, rather than projected, support. We seek comment on what date would be appropriate for the transition, including details to support any dates proposed. Additionally, under USAC's proposed plan, ETCs could elect to transition to the new disbursement process prior to the transition deadline. For example, a carrier that claims low income program support in multiple study areas may wish to transition its study areas at different times in order to phase-in payment on actual support claims, rather than have all of its study areas transition at the same time. We seek comment on this early transition option. Commenters with alternative proposals should provide examples of how such proposals would work.

9. *Implementation and Outreach.* OMD requested that USAC's proposal include an implementation and outreach component, which USAC includes in its proposal. We seek comment on whether the key components of USAC's outreach plan are sufficient to notify and educate ETCs on USAC's new process for paying on actual claims.

10. *Codifying USAC's Procedures.* We invite comments on all aspects of the proposal located at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db1003/DA-11-1593A1.pdf.* Without limitation, we seek comment on whether USAC's requirements for ETCs' seeking and recovering reimbursement for Lifeline and Link Up should be codified in Commission rules, or should be adopted as an administrative procedure, posted on USAC's Web site. Section 553(b)(3)(A) of the Administrative Procedure Act (APA) states that notice and comment requirements do not apply to ''interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(3)(A). The proposed revised disbursement schedule is a non-substantive change to the administrative aspects of the low income program, and is therefore exempt from the notice-and-comment procedures of section 553 of the APA. After reviewing comments, OMD and WCB will determine what further steps are needed to adopt a new process.

11. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Trent Harkrader,

Division Chief, Wireline Competition Bureau.

[FR Doc. 2011–26940 Filed 10–18–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211 and 252

RIN 0750–AG83

Defense Federal Acquisition Regulation Supplement: Reporting of Government-Furnished Property (DFARS Case 2012–D001)

AGENCIES: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule and notice of public meeting.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and expand reporting requirements for Government-furnished property to include items uniquely and non-uniquely identified and clarify policy for contractor access to Government supply sources.

DATES: *Public Meeting:* DoD is hosting a public meeting to discuss the proposed rule on November 17, 2011, at 1 p.m. EST.

Submission of Comments: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 19, 2011, to be considered in the formation of the final rule.

ADDRESSES: *Public Meeting:* The public meeting will be held in the Defense Acquisition Regulations Council (DARC) Conference Room, 241 18th Street South, Suite 200A, Arlington, VA 22202–3409.

Submission of Comments: You may submit comments, identified by DFARS Case 2012–D001, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2012–D001'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2012–D001.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2012–D001'' on your attached document.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2012–D001 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, telephone 703–602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule under DFARS Case 2009–D043 at 75 FR 80426 on December 22, 2010. The due date for public comments under DFARS Case 2009–D043 was extended from February 22, 2011, to April 8, 2011, by 76 FR 9527 on February 18, 2011. DoD has closed that case into this new case, DFARS Case 2012–D001, but will address the comments received in response to that case in this **Federal Register** notice for DFARS Case 2012–D001. This proposed rule would require contractors to report serially managed Government-furnished property to the DoD Item Unique Identification (IUID) Registry. Current DFARS policy requires contractors to report to the DoD IUID Registry property that is classified as equipment, special tooling, and special test equipment items valued at $5,000 or more, and items valued at less than $5,000 when required in accordance with contract terms and conditions. This proposed rule would also rename and revise the clause at DFARS 252.211–7007, Reporting of Government-Furnished Equipment in the IUID Registry, accordingly, and make the clause applicable to commercial-item procurements. DFARS clause 252.251–7000, Ordering from Government Supply Sources, is also proposed for revision to require electronic receipts of property obtained from a Government supply source.

Public Meeting Registration: Individuals wishing to attend the public meeting should register least one week in advance to ensure adequate room accommodations and to facilitate admittance into the meeting. Registrants will be given priority if room constraints require limits on attendance. Attendees are encouraged to arrive at least 15 minutes early. To register, please go to—*http://www.acq.osd.mil/dpap/dars/government_furnished_property.html* and submit the following information:

(1) Company or organization name.

(2) Full names of persons attending.

(3) Identity if desiring to speak (limit to a 10-minute presentation per company or organization).

(4) Last four digits of social security number for each person attending (non-Federal employees only).

Send questions about registration or the submission of comments to the e-mail address at the Web site previously identified. Please cite ''Public meeting, DFARS Case 2012–D001'' in the subject line of the e-mail.

Attendees should bring a valid picture ID for in-processing. From the entrance to Suite 200A, they will be directed to the DARC Conference Room. If an attendee's name is not on the list provided in advance of the meeting, the attendee will still be allowed into the meeting, if seating is available.

Special Accommodations: The public meeting site is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Meredith Murphy, telephone 703–602–1302, at least 10 working days prior to the meeting.

Presentations: If you wish to make a presentation, please submit a copy of your presentation to the Web site identified in this section or to facsimile 703–602–0350, no later than November 3, 2011. Please cite ''Public Meeting, DFARS Case 2012–D001'' in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. If you intend to have your presentation considered as a public comment for the formation of a final rule, the presentation must be submitted separately as a written comment as instructed below.

II. Discussion and Analysis of the Public Comments

Comments were received from five respondents in response to the proposed rule under DFARS case 2009–D043. DoD reviewed the public comments in the formation of the proposed rule. This notice also addresses comments received at the public meeting held on March 18, 2011. Members of industry, DoD, and other Government agencies attended the public meeting. The following concerns were discussed at the public meeting:

The attendees' primary issues concerned the potential systems changes that they think may be necessary to accommodate the requirements of the rule; the perceived lack of DoD business rules associated with the Government-furnished property reporting requirements; and a

lack of sufficient information, in general, on the system requirements associated with the GFP module of DoD's IUID Registry.

Based on the public comments received and the concerns discussed at the public meeting, the following clarifications to the DFARS are included in this proposed rule:

- Reporting of supply condition codes is required only for the reporting of reparables.
- Contractor reporting of Government-furnished property may occur as transactions occur or as otherwise stated in the contractor's property management procedure.
- Material released to work in process need not be reported.
- Unless tracked as an individual item, material shall be reported to the registry in the same unit of pack, *e.g.,* original manufacturer's package, box, or container, as it was received or otherwise acquired.
- Residual material that is not serially managed, *e.g.,* contractor inventory in partially opened original manufacturer's package, box, or containers, need not be reported, but should be disposed of in accordance with contract terms and conditions.

A discussion of the specific comments and the changes made as a result of those comments are provided herein. The comments were grouped into five categories by subject matter so that they could be addressed consistently. Comments on compliance with the Executive orders on Regulatory Planning and Review and Improving Regulation and Regulatory Review, the analysis of the Regulatory Flexibility Act, and the Paperwork Reduction Act are addressed in those sections of this notice.

A. Reporting

1. Reporting of All Government-Furnished Property

Comment: One respondent indicated that eliminating the $5,000 floor for property reporting would add hundreds of thousands of items to reporting requirements. Referencing paragraph (b)(2) of the clause at DFARS 252.211–7007 (''All GFP without an existing UII assigned shall be reported to the GFP Hub''), the respondent recommended deleting this language or at least clarifying it by stating ''All accountable GFP'' because the proposed rule would have the effect of requiring reporting of ''materials, consumables, etc.''

Response: The goal of this rule is to establish enterprisewide visibility of Government property. While there may be some few additional property items subject to reporting, the intent of the rule is to move away from strict reporting by dollar value alone and toward reporting designed to increase traceability. The result would standardize and simplify reporting overall. The rule draws clear distinctions between types of tracking requirements, *i.e.,* property items are either individually tracked or are otherwise managed in bulk. In this proposed rule, DoD has clarified the reporting requirement and added definitions to eliminate confusion.

2. Reporting of Material Released to Manufacturing Engineering

Comment: A respondent expressed concern that the reutilization of equipment might be negatively impacted by use of the clause at DFARS 252.211–7007. The respondent stated that, if the reporting requirements become too cumbersome, they will serve as a disincentive to contractors to request excess property out of the Plant Clearance Automated Reutilization and Reporting System (PCARSS) or from other excess lists.

Response: DoD does not anticipate the outcome described by the respondent. Further, the reutilization requirements are currently in the existing contract clause.

3. Reporting of Material to the Registry in Same Unit of Pack as Acquired

Comment: One respondent said it did not know whether the proposed definitions in paragraph (a) of the clause at 252.211–7007 meant installing items in higher assemblies or how it should handle Government-furnished property that is assembled with contractor-acquired property and subsequently delivered or placed back in inventory until needed. The respondent also stated that it concurred with the management of all items at the end item.

Response: DoD has not proposed new policy regarding installation of Government property or contractor-acquired property into higher assemblies. The additional definitions included in the proposed rule clarify that there is no policy change.

4. Reporting of Non-Serially Managed Residual Material

Comment: One respondent recommended that consumables, expendables, and sunk costs should be considered, defined, and a determination made as to what is included or excluded from this rule.

Response: The proposed rule draws clear distinctions among the requirements for tracking items — property items are either individually tracked, *i.e.,* serially managed, or otherwise managed in bulk, *i.e.,* non-serially managed. Paragraph (g)(2) of the clause 252.211–7007 addresses serially managed consumed or expended items and paragraph (h) addresses non-serially managed residual material.

5. Reporting of Supply Condition Codes Only for Reparables

Comment: One respondent stated that contractors need to understand how reporting of supply condition codes is going to be required and who will be the authoritative source for condition coding. The respondent asked if this information could be found on Government shipping documents, and, if not, what business rule would be applied if the supply condition code was not supplied. The respondent pointed out that the definitions of the various supply condition codes are already listed in 245.606–5 and recommended that the definitions be deleted from the clause at 252.211–7007. The same respondent asked that the DFARS include ''Condition Code (S),'' applicable to the property management process and required for PCARSS processing. In addition, the respondent recommended changing the definition of ''unit of issue'' to ''unit of measure,'' in order to be consistent with FAR 52.245–1.

Response: DoD has added a reference to Appendix 2 of DoD 4000.25–2, Military Standard Transaction Reporting and Accounting Procedures manual, along with a hyperlink to the URL. It is not necessary to add condition code ''S.'' Such codes are needed only for reparable items; this is not a change from current practice. The proposed rule has been revised to make that clear. DoD has revised the definition of ''unit of issue'' to add ''unit of measure.''

6. Frequency of Reporting

Comment: The reporting requirements in the clause at DFARS 252.211–7007 are, according to one respondent, transactionally based and would require a daily upload to the GFP Hub. The respondent offered several alternatives to daily updates and noted that requiring daily updates would not take into account current approved practices.

Response: The frequency of reporting should be consistent with a contractor's property management procedures; DoD has not proposed creating differences from current reporting requirements in the clause at DFARS 252.211–7007. The proposed rule under 2009–D043 did not require contractors to provide daily uploads, and this proposed rule makes it clear that reporting requirements are based on transactions as they occur.

There is no requirement to report Government-furnished material consumed under receipt-and-issue processes, issued to the floor, or otherwise consumed.

7. Disclaimer

Comment: One respondent asked whether contractors could include a disclaimer that protects them once data is submitted and which would relieve the contractor of responsibility in the event of manipulation or theft.

Response: No disclaimer is needed. Agencies are required to ensure the authentication and confidentiality of data commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to, or modification of, the information (see FAR 4.502(c)). The data submissions that would be required if the proposed rule is implemented do not differ in context from those now submitted by contractors under the clauses at 252.211–7007, Reporting of Government-Furnished Equipment in the DoD Item Unique Identification (IUID) Registry, and 252.245–7002, Reporting Loss of Government Property, or electronic invoicing through wide area workflow.

8. Marking Requirements

Comment: DFARS 211.274–6(c)(2) reads: ''Require the contractor to mark major end items under the terms and conditions of the contract.'' One respondent stated that this paragraph is redundant to DFARS 211.274–6(c)(1) and should be deleted. The respondent also requested DoD to ''(c)larify that these items are already marked and in the IUID Registry and that this effort is to acknowledge receipt * * *'' and so state.

Response: Subsection 211.274–6 is entitled ''Contract clauses,'' and it contains only clause prescriptions. 211.274–6(c) prescribes the use of the clause at 252.211–7008, ''Use of Government-Assigned Serial Numbers,'' which is not the subject of this proposed rule. Therefore, the respondent's comment is out of scope.

B. Property Tracking Systems

Comment: One respondent submitted multiple comments on the introduction of the ''GFP Hub'' at DFARS 252.211–7007(a) and expressed concern that it was premature because of the lack of experience with it in industry and its unproven benefits. Similar issues were raised by a second respondent at the public meeting. The respondents asked that clear business rules be developed for the GFP Hub before it becomes a requirement for contractor use. The respondents thought that the introduction of the GFP Hub would require the reporting of additional data fields and material that was irrelevant to operation and financial reporting and that the requirement for receipt notification of MILSTRIP items at 252.211–7007 was a new requirement. In addition, the first respondent suggested that including hyperlinks in regulations was improper without regulatory review. A respondent also noted that the U.S. Army is moving to establish the Defense Property Accountability System (DPAS) as its property accounting system of record, and the Army requires GFP to be recorded in DPAS as well.

Response: The Department of the Army has decided to use DPAS as its accountable property system of record. DoD's goal is to remedy Government Accountability Office (GAO)-identified gaps in enterprisewide visibility. The data provided, if the proposed rule is implemented, will establish enterprisewide visibility of DoD items and will be available to users in the logistics, financial, and property accountability arenas. This visibility will facilitate reutilization and preclude the simultaneous acquisition and disposal of needed items. The data currently generated in non-standardized reports at the program level does not have DoD enterprisewide visibility, which is the basic objective of the proposed rule. It is not DoD's intention to apply the final rule on this matter to existing programs; thus, it will not require duplicate records.

Further, consistent with DoD policy, the activity furnishing the property, not the contractor, would normally ensure that the items to be furnished are entered into the registry. Each DoD component is responsible for populating the DoD IUID Registry in order to capture Unique Item Identifiers (UIIs) and their pedigree data (reference DoDI 8320.4). A final rule would provide for electronic receipt notification, which is consistent with ASTM standard E2605–08, Standard Practice for Receiving Property, and which the respondent's member companies have supported.

In this proposed rule, the use of the term ''GFP Hub'' has been eliminated, and DoD has clarified that the IUID Registry contains a GFP module that is an essential element of the IUID Registry for items of Government property that do not have a UID assigned. Contractors already report Government-furnished property to the IUID Registry. Therefore, separate interfaces with the IUID Registry will not be needed. DoD fielded changes to Wide Area Workflow on July 10, 2011. Changes to the IUID Registry were made on July 24, 2011. These new functionalities have been made available to industry so that it might gain experience with the capabilities and provide input on future enhancements. Further, DoD has provided industry with copies of the business rules associated with this proposed rule.

The proposed rule will not result in duplicate or triplicate reporting. Moreover, Government-furnished property data assembled at the contract level and reported via a Contract Data Requirements List (CDRL) would not provide DoD with enterprisewide visibility of items, which is a focus of the proposed rule. The requirements of the proposed rule would enable the eventual elimination of the Commercial Asset Visibility (CAV) system—a client server system, with several hundred iterations, each requiring its own unique property reporting methodology. Elimination of the CAV system will result in significant cost savings for both DoD and industry.

Several important clarifications have been made in this proposed rule. Specifically, reporting requirements for non-serially managed items are different from those for serially managed items; property items are either individually tracked, *i.e.,* serially managed, or otherwise managed in bulk, *i.e.,* non-serially managed. Non-serially managed material should be reported to the IUID Registry in the same unit of pack, *e.g.,* box, container, as acquired. Reporting supply condition codes is required solely for reparables. Material released to work in progress need not be reported. (See paragraphs (f) through (h) of the clause at 252.211–7007, Reporting of Government-Furnished Property.) Also, contractors will be required to report Government property only as transactions occur or as otherwise established in the contractor's own property management procedures. (See paragraph (i) of the clause at 252.211–7007, Reporting of Government-Furnished Property.) Dollar thresholds are not appropriate because they create needless variation. For example, controlled and sensitive items cannot be managed by dollar thresholds.

With regard to use of hyperlinks in the regulations, hyperlinks are used judiciously and where their use makes sense.

C. Costs

Comment: A respondent indicated that ''(t)he Government should keep in mind that fixed-price contracts that require this level of detailed part management will require equitable adjustments to comply.''

Response: The Government does not intend to incorporate the property management rules in this proposed rule into existing contracts. Therefore, there should be no equitable adjustments associated with the application of these amended rules into the DFARS.

Comment: One respondent indicated a need for more information so that contractors understand what to identify as acquisition cost on items received. The same respondent requested a definition for ''full cost'' as that term is used in the definition of IUID Registry at 252.211–7007(a).

Response: The unit acquisition cost for Government-furnished property items is the value assigned by the Government in accordance with FAR 45.201. Establishing these types of costs is not a contractor responsibility. The term ''full cost,'' in the context of the definition of the ''IUID Registry'' in the proposed rule, refers to the Government's unit acquisition cost, defined under 252.211–7003.

Comment: One respondent recommended adding a Contract Data Requirements List (CDRL) to contracts for material position reports because of the affordability issues associated with this requirement. The respondent commented that this might be driven by the elimination of the DD 1662 and that contractors would need to double staff for duplicate recordkeeping and reconciling systems. Another respondent noted that paragraph 2–8 of Army Regulation (AR) 710–2, dated March 28, 2008, establishes recording of items with a unit cost over $5,000. The respondent stated that requiring contractors to tag all items under $5,000 will increase resources and costs required to record property formally at this lower threshold.

Response: The proposed rule is not driven by the elimination of the DD form 1662. The Government is not requiring contractors to develop or maintain two databases. Further, data assembled at the contract level via a CDRL would not provide the Department with enterprisewide information, a major objective of this proposed rule. With regard to the second comment, DoD requires reporting based on the level of traceability, not the dollar value. This requirement has been clarified in this proposed rule.

D. Limitation to Cost-Reimbursement Contracts or Line Items

Comment: One respondent asked why use of the clause at 252.211–7003, when usage is based on the delivery of contractor-acquired property, is limited to cost reimbursement contracts (211.274–6(a)(1)(ii).

Response: The clause prescription is limited to cost-reimbursement contracts or cost-reimbursement line items that may result in the delivery of contractor-acquired property because the concept of contractor-acquired property does not apply to other types of contracts.

E. Editorial Comments

Eight editorial changes were suggested. The editorial changes have been accommodated in the proposed rule.

III. 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.

Comment: One respondent expressed the opinion that the proposed rule under DFARS case 2009–D043 did not meet the intent and criteria of the Executive orders on regulatory planning and review.

Response: E.O. 12866, Regulatory Planning and Review (of September 30, 1993, as amended by E.O. 13258 of February 26, 2002, and E.O. 13422, of January 18, 2007) was followed on January 18, 2011, by the new E.O. 13563, Improving Regulation and regulatory Review. These E.O.s require that the regulatory system must promote economic growth and competitiveness, allow for public participation, promote predictability, and ensure that regulations are easy to understand. Regulations should impose the least burden consistent with obtaining regulatory objectives and agencies must determine that the benefits justify the costs. The proposed rule published under DFARS case 2009–D043, was reviewed by the Office of Information and Regulatory Affairs prior to publication as are all rules published in the **Federal Register.** The Office of Information and Regulatory Affairs found the proposed rule to be in compliance with these Executive Orders and cleared the rule for publication.

IV. Regulatory Flexibility Act

An initial regulatory flexibility analysis was prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

The objective of this proposed rule is to improve the accountability and control of DoD assets. This rule proposes to amend the DFARS to revise and expand reporting requirements for Government-furnished property (GFP) to include GFP that is both uniquely and non-uniquely identified and clarifies policy for contractor access to Government supply sources.

The clause at DFARS 252.211–7007, Reporting of Government-Furnished Property, requires contractors to identify and report GFP with existing unique-item identification to the DoD IUID Registry; and all GFP without an existing unique-item identification is required to be reported to the GFP module within the IUID Registry.

DoD is unable to estimate the number of small entities to which this rule applies, and no responses were received from small entities to DoD's request for comments. However, ten comments were received from an industry association and are summarized and addressed in the following paragraphs.

Comment: One respondent expressed concern that significant additional costs would be associated with the changes proposed. The respondent was concerned that reporting to the IUID Registry would require contractors to double count Government property already accounted for in other ways, resulting in duplicate recordkeeping requirements. New costs of compliance should probably be doubled, stated the respondent.

Response: Property items reported to the IUID Registry will have enterprise-wide visibility, which enhances DoD's ability to reutilize items. As the IUID Registry becomes available, other property accountability requirements will be rescinded, a goal strongly endorsed by the Government Accountability Office (GAO) and DoDI 5000.64 and ASTM E53 2279 (both of which were cited by the respondent).

The data provided if the proposed rule is implemented will establish enterprisewide visibility of DoD property and will be available to users in the logistics, financial, and property accountability arenas. This visibility contributes to the warfighter in a variety of ways, such as facilitating reutilization and precluding the simultaneous

acquisition and disposal of needed items.

V. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) applies because the rule imposes information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35. The information collection requirements under the proposed rule were formerly approved by the Office of Management and Budget under clearance number 0704–0246, DFARS part 245, Government Property. The requirements of this proposed rule will have only a marginal impact, and they are not expected to change the overall burden hours (45,980 hours) approved under clearance number 0704–0246. The rule proposes to remove the mandatory $5,000 unit acquisition cost dollar threshold for reporting. This will not significantly impact items valued at less than $5,000 in unit acquisition cost as they were also previously required to be reported if they were serially managed, mission essential, sensitive, or controlled inventory. While this rule proposes to add reporting of Government-furnished material and reparables, this additional requirement would be offset by the potential for eventual elimination of DoD's Commercial Asset Visibility (CAV) system. As background, the CAV system is a client-server software application used at Government and commercial repair sites to monitor and track the progress of repair components through the repair process. There are presently over 900 separate applications of CAV, all of which can be eliminated, given the new reporting constructs contained within this proposed rule. This would result in greater efficiency and considerable cost savings to both Government and industry.

Eight comments were received on the paperwork burden proposed by the proposed rule under DFARS case 2009–D043. They are summarized and addressed in the following paragraphs.

Comment: One respondent said that it was not evident what additional paperwork will be required.

Response: DoD anticipates that there will not be any added paperwork. The currently required paperwork (OMB Clearance Number 0704–0246) will be modified, *i.e.,* revised, but will not increase or decrease in total amount from the current requirement, so that the reporting required for DoD complies with the revised reporting requirements under the current FAR Government-property regulations. Further, property reporting required by the current DFARS clause at 252.211–7007, and property reporting that would be required under this proposed rule, are Web-enabled and electronic in nature.

Comment: There were several questions about details of the reporting required in the IUID registry.

Response: DoD anticipates that these questions will be overcome by events as industry becomes familiar with the IUID updates that became available on July 24, 2011.

Comment: Two respondents expressed concern that elimination of the $5,000 threshold had the potential to result in substantial additional reporting, with each contracting officer setting his or her own rules and thresholds for individual contracts.

Response: DoD's goal is to eliminate the establishment of reporting requirements by an individual contracting officer or program manager and establish the IUID Registry as the standard. This would greatly increase consistency and allay the respondents' concerns.

List of Subjects in 48 CFR Parts 211 and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 211 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

2. Amend section 211.274–2 by revising paragraph (b)(2)(ii) to read as follows:

211.274–2 Policy for unique item identification.

* * * * *

(b) * * *

(2) * * *

(ii) The DoD Unique Identification Policy Office must receive a copy of the determination and findings required by paragraph (b)(2)(i) of this subsection. Send the copy in accordance with the procedures at PGI 211.274–2(b).

3. Revise section 211.274–4 to read as follows:

211.274–4 Policy for reporting of Government-furnished property.

(a) It is DoD policy that all Government-furnished property be recorded in the DoD Item Unique Identification (IUID) Registry, as defined in the clause at 252.211–7007, Reporting of Government-Furnished Property.

(b) The following items are not required to be reported:

(1) Contractor-acquired property, as defined in FAR part 45, that will not be delivered to, or accepted by, the Government (see PGI 245.402–71).

(2) Property under any statutory leasing authority.

(3) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments.

(4) Intellectual property or software.

(5) Real property.

(6) Material released for work in process.

4. Amend section 211.274–6 by revising paragraphs (a)(1)(ii) and (b) to read as follows:

211.274–6 Contract clauses.

(a)(1) * * *

(ii) Are cost-reimbursement contracts that may result in the delivery of contractor-acquired property (see requirements at PGI 245.402–71).

* * * * *

(b) Use the clause at 252.211–7007, Reporting of Government-Furnished Property, in solicitations and contracts that contain the clause at—

(1) FAR 52.245–1, Government Property; or

(2) FAR 52.245–2, Government Property Installation Operation Services.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Revise section 252.211–7007 to read as follows:

252.211–7007 Reporting of Government-Furnished Property.

As prescribed in 211.274–6(b), use the following clause:

Reporting of Government-Furnished Property. ([Date])

(a) *Definitions.* As used in this clause—

Commercial and Government entity (CAGE) code means—

(i) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or

(ii) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an ''NCAGE code.''

Government-furnished property (GFP) means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. Government-

furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government property also includes contractor-acquired property if the Contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

Item means a single hardware article or a single unit formed by a grouping of subassemblies, components, or constituent parts.

IUID Registry means the DoD data repository that receives input from both industry and Government sources and provides storage of, and access to, data that identifies and describes tangible Government personal property. The IUID Registry is—

(i) The authoritative source of Government unit acquisition cost for items with unique item identification (see DFARS 252.211–7003) that were acquired after January 1, 2004;

(ii) The master data source for Government-furnished property; and

(iii) An authoritative source for establishing the acquisition cost of end-item equipment.

National stock number (NSN) means a 13-digit stock number used to identify items of supply. It consists of a 4-digit Federal Supply Code and a 9-digit National Item Identification Number.

Nomenclature means—

(i) The combination of a Government-assigned type designation and an approved item name;

(ii) Names assigned to kinds and groups of products; or

(iii) Formal designations assigned to products by customer or supplier (such as model number or model type, design differentiation, or specific design series or configuration).

Part or identifying number (PIN) means the identifier assigned by the original design activity, or by the controlling nationally recognized standard, that uniquely identifies (relative to that design activity) a specific item.

Reparable means an item, typically in unserviceable condition, furnished to the Contractor for maintenance, repair, modification, or overhaul.

Serially managed item means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

Special test equipment means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, or equipment items used for general testing purposes, or property that with relatively minor expense can be made suitable for general purpose use.

Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items, including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

Supply condition code means a classification of materiel in terms of readiness for issue and use or to identify action underway to change the status of materiel (see *http://www2.dla.mil/j-/dlmso/eLibrary/Manuals/dlalmso_pubs.asp*).

Unique item identifier (UII) means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes, in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII, as defined in the clause at 252.211–7003(a), or a DoD recognized unique identification equivalent.

Unit acquisition cost means—

(i) For Government-furnished equipment, the dollar value assigned by the Government and assigned in the contract; and

(ii) For Contractor-acquired property, the cost derived from the Contractor's records that reflect consistently applied generally accepted accounting principles.

Unit of issue or *unit of measure* means the physical measurement of count or quantity (such as each, dozen, gallon, or kilogram) in which an item is procured, stored, and released.

(b) *Requirement for reporting of Government-furnished property (GFP) to the DoD Item Unique Identification (IUID) Registry.* Except as provided in paragraph (c) of this clause, the Contractor shall report Government-furnished property to the DoD IUID Registry.

(c) *Exceptions.* Paragraph (b) of this clause does not apply to—

(1) Contractor-acquired property that has not been delivered to, and accepted by, the Government;

(2) Property under any statutory leasing authority;

(3) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(4) Intellectual property or software;

(5) Real property; or

(6) Material released for work in process.

(d) When required by contract terms and conditions, the Contractor shall assign a UII to each item of GFP, including those items previously reported to the IUID Registry. Upon UII assignment and reporting, the Contractor shall update the property record in the IUID Registry.

(e) *Procedures for establishing UIIs.* To permit reporting of virtual UIIs to the DoD IUID Registry, the Contractor's property management system shall enable the following data elements in addition to those required by paragraph (f)(1)(iii)(A) of the clause at FAR 52.245–1:

(1) Parent UII.

(2) Category code, if applicable (''ST'' for special tooling, ''STE'' for special test equipment).

(3) Appropriate supply condition code, required only for reporting of reparables, per Appendix 2 of DoD 4000.25–2–M, Military Standard Transaction Reporting and Accounting Procedures (MILSTRAP) Manual (see *http://www2.dla.mil/j-6/dlmso/eLibrary/Manuals/dlalmso_pubs.asp*).

(4) Commercial and Government Entity (CAGE) code on the accountable contract.

(5) Mark record.

(i) Bagged or tagged code (for items too small to individually tag or mark).

(ii) Contents (the type of information recorded on the item, *e.g.,* item internal control number).

(iii) Effective date (date the mark is applied).

(iv) Added or removed code/flag.

(v) Marker code (designates which code is used in the marker identifier, *e.g.,* D = CAGE, UN = DUNS, LD = DODAAC).

(vi) Marker identifier, *e.g.,* Contractor's CAGE code or DUNS number.

(vii) Medium code; how the data is recorded, *e.g.,* barcode, contact memory button.

(viii) Value, *e.g.,* actual text or data string that is recorded in its human-readable form.

(ix) Set (used to group marks when multiple sets exist.

(f) *Procedures for reporting of Government-furnished property to the IUID Registry.* Except as provided in paragraph (c) of this clause, the Contractor shall establish and report to the IUID Registry the information required by FAR clause 52.245–1, paragraphs (e) and (f)(1)(iii), in accordance with the data submission procedures at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html.* Unless tracked as an individual item, material shall be reported to the registry in the same unit of pack, *e.g.,* original manufacturer's package, box, or container, as it was received or otherwise acquired.

(g) *Procedures for updating the DoD IUID Registry.* The Contractor shall update the DoD IUID Registry at *https://www.bpn.gov/iuid* for changes in status, mark, custody, condition code (for reparables only), or disposition of items that are—

(1) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;

(2) Serially managed items, consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Government property administrator, including reasonable inventory adjustments;

(3) Disposed of; or

(4) Transferred to a follow-on or other contract.

(h) The Contractor need not report non-serially managed residual material, *i.e.,* Contractor inventory in partially opened

original manufacturer's package, box, or containers, but should dispose of such material in accordance with contract terms and conditions.

(i) The Contractor shall make updates as transactions occur or as otherwise stated in the Contractor's property management procedure.

(End of clause)

6. Amend section 252.251–7000 by removing the clause date ''(NOV 2004)'' and adding in its place ''(DATE)'', revising introductory text of paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (e) and (f), and adding new paragraph (d) to read as follows:

252.251–7000 Ordering from Government supply sources.

* * * * *

(c) When placing orders for Government stock on a reimbursable basis, the Contractor shall—

* * * * *

(d) When placing orders for Government stock on a non-reimbursable basis, the Contractor shall—

(1) Comply with the requirements of the Contracting Officer's authorization.

(2) When using electronic transactions to submit requisitions on a non-reimbursable basis only, place orders by authorizing contract number using the Defense Logistics Management System (DLMS) Supplement to Federal Implementation Convention 511R, Requisition; and acknowledge receipts by authorizing contract number using the DLMS Supplement 527R, Receipt, Inquiry, Response and Material Receipt Acknowledgement.

* * * * *

[FR Doc. 2011–27062 Filed 10–18–11; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register

Vol. 76, No. 202

Wednesday, October 19, 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.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

Time: Tuesday, October 25, 2011, 8:45 a.m. to 12 p.m.

Place: African Development Foundation, Conference Room, 1400 I Street, NW., Suite 1000, Washington, DC 20005.

Date: Tuesday, October 25, 2011.

Status:

1. Open session, Tuesday, October 25, 2011, *8:45 a.m. to 12 p.m.;* and
2. Closed session, Tuesday, October 25, 2011, *12 p.m. to 1 p.m.*

Due to security requirements and limited seating, all individuals wishing to attend the open session of the meeting must notify Sarah Conway at (202) 233–8811 or *sconway@usadf.gov* of your request to attend by 5 p.m. on October 21, 2011.

Lloyd O. Pierson,

President & CEO, USADF.

[FR Doc. 2011–27061 Filed 10–18–11; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Agricultural Policy Advisory Committee and the Agricultural Technical Advisory Committees for Trade; Nominations

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for nominations.

SUMMARY: On June 9, 2011 the Secretary of Agriculture (Secretary), and the United States Trade Representative (USTR), renewed the charters of the Agricultural Policy Advisory Committee (APAC) and the six Agricultural Technical Advisory Committees (ATACs) for Trade for a 4-year term to expire on June 9, 2015. The APAC provides advice on the operation of various existing U.S. trade agreements and on negotiating objectives for new trade agreements, as well as other matters arising from the administration of U.S. trade policy. The ATACs provide advice and information regarding trade issues that affect both domestic and foreign production in the commodities of the respective sector, drawing upon the technical competence and experience of the members. Some appointments were made to these committees on September 8, 2011. The Foreign Agricultural Service (FAS) seeks to add additional members in order to begin to stagger membership terms and is requesting nominations for persons to serve on these seven committees.

DATES: Appointments will be made periodically as appropriate to establish staggered terms. For that reason, nominations will be accepted on an ongoing basis.

ADDRESSES: All nomination materials should be mailed in a single, complete package and sent to: Thomas J. Vilsack, Secretary, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250, Attn: APAC/ATACs.

FOR FURTHER INFORMATION CONTACT: The Office of Agreements and Scientific Affairs may be reached by telephone at (202) 720–6219; with inquiries directed to Bob Spitzer or Steffon Brown: or by fax at (202) 720–0340. E-mail may be sent to *Bob.Spitzer@fas.usda.gov* or *Steffon.Brown@fas.usda.gov.* Mail may be addressed to the Office of Agreements and Scientific Affairs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1040, 1400 Independence Ave., SW., Washington, DC 20250–1001.

SUPPLEMENTARY INFORMATION:

Introduction

The APAC and the ATACs are authorized by sections 135(c)(1) and (2) of the Trade Act of 1974, as amended (Pub. L. 93–618, 19 U.S.C. 2155). The purpose of these committees is to advise the Secretary and USTR concerning agricultural trade issues and policy. The committees are intended to ensure that representative elements of the private sector have an opportunity to express their views to the U.S. Government. On June 9, 2011, the Secretary and USTR renewed the charters of the APAC and the following six ATACs:

- Animals and Animal Products;
- Fruits and Vegetables;
- Grains, Feed, Oilseeds and Planting Seeds;
- Processed Foods;
- Sweeteners and Sweetener Products; and,
- Tobacco, Cotton and Peanuts.

Background

In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and negotiation objectives adequately reflect U.S. commercial and economic interests.

As provided for in the law and the USDA charter, the APAC has the following responsibilities: (A) The Committee will advise, consult with, and make recommendations to the Secretary and USTR concerning the trade policy of the United States and the matters arising in the administration of such policy; (B) The Committee will provide information and advice regarding the following: negotiating objectives and bargaining positions of the United States before the United States enters into trade agreements, the operation of any trade agreement once entered into, and matters arising in connection with the administration of the trade policy of the United States. It will keep abreast of the ongoing work of the technical-level committees (ATACs); (C) The Committee will furnish such other advisory opinions and reports as the Secretary and USTR deem necessary.

As provided for in the law and the USDA charters, the ATACs have the following responsibilities: (A) The Committees will advise, consult with, and make recommendations to the Secretary and USTR on matters that are of mutual concern to the United States and to its consumers, producers, processors, and traders of commodities of their respective sectors in connection with the trade policy activities undertaken by the United States. (B) The Committees will provide advice and information regarding trade issues that affect both domestic and foreign production and trade concerning commodities in their respective sectors. The Committees will furnish advisory opinions and reports regarding trade policy as requested by the Secretary and USTR, or their designees.

General Committee Information

Each committee has a chairperson, who is elected from the membership of that committee. Committees meet as needed, and all committee meetings are held in Washington, DC or by telephone conference. Committee meetings may be closed if USTR determines that a committee will be discussing issues that justify closing a meeting or portions of a meeting, in accordance with 19 U.S.C. 2155(f). Throughout the year, members are requested to review sensitive trade policy information and provide comments regarding trade negotiations. In addition to their other advisory responsibilities, at the conclusion of negotiations of any trade agreement, all committees are required to provide a report on each agreement to the President, Congress, and USTR.

Committee Membership Information

All committee members are appointed by, and serve at the discretion of the Secretary and the USTR. Committee appointments are typically for a period of approximately 4 years, but the Secretary and USTR may renew an appointment for an additional term. All committee members must be a U.S. citizen and must represent a U.S. entity with an interest in agricultural trade, and must not be registered with the Department of Justice under the Foreign Agents Registration Act.

Committee members must not be federally-registered lobbyists. To attend most meetings, committee members must have a current security clearance. New members will be guided in how to apply for a security clearance and their appointment will be contingent on successful completion of the investigation. Committee members serve without compensation and are not reimbursed for their travel expenses. No person may serve on more than one USDA advisory committee at the same time unless a specific exception is granted by the USDA Committee Management Officer. No entity may have more than one representative on any single trade advisory committee.

Nominations and Appointment of Members

Nominations for APAC and ATAC membership are open to individuals representing U.S. entities with an interest in agricultural trade without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. Equal opportunity practices in accordance with the U.S. Government policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Members should have expertise and knowledge of agricultural trade as it relates to policy and commodity specific issues. Members will normally come from entities with an interest in agriculture, and will serve as Representatives, presenting the views and interests of U.S. entities that have interests in the subject matters of the committee. However, should a member be appointed primarily for his or her expertise, and not solely as a representative of an interest group, he or she shall be designated as a Special Government Employee. Special government employees (SGEs) are subject to ethics laws if they are appointed because of their personal knowledge, background, or expertise. USDA will assist SGEs in disclosing their financial interest and will provide ethics training on an annual basis. Appointments are made of individuals only and are not transferrable. No person, company, producer, farm organization, trade association, or other entity has a right to membership on a committee. In making appointments, every effort will be made to maintain balanced representation on the committees with representation from producers, farm and commodity organizations, processors, traders, and consumers. Geographical balance on each committee will also be sought.

Nominations: Nominating a person to serve on any of the committees requires submission of a current resume for the nominee and the following form: AD–755 (Advisory Committee Membership Background Information, OMB Number 0505–0001), available on the Internet at: *http://www.fas.usda.gov/itp/apac-atacs/advisorycommittees.asp.* A cover letter should also be submitted indicating the specific committee for which the individual is being nominated, why the nominee wants to be a committee member, his or her qualifications for membership, and how the submitter learned about this call for nominations. The cover letter should also include the statements required below related to Federally Registered Lobbyists and Foreign Firms. Forms may also be requested by sending an e-mail to *Steffon.Brown@fas.usda.gov,* or by phone at (202) 720–6219.

Federally Registered Lobbyists: In order to be considered for advisory committee membership, nominees should submit an affirmative statement that the applicant is not a federally registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as an advisory committee member should they become a federally registered lobbyist.

Foreign Firms: If the nominee is to represent an entity or corporation with ten percent or greater non-U.S. ownership, the nominee must state the extent to which the organization or interest to be represented by the nominee is owned by non-U.S. citizens, organizations, or interests and demonstrate at the time of nomination that this ownership interest does not constitute control and will not adversely affect his or her ability to serve as an advisor on the U.S. agriculture advisory committee for trade.

Dated: October 12, 2011.

Suzanne E Heinen,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2011–26975 Filed 10–18–11; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Availability of Draft Environmental Impact Statement, Rosemont Copper Project on the Coronado National Forest, Nogales Ranger District, Pima County, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA 43 U.S.C. 4321 *et seq.*) and the President's Council on Environmental Quality regulations, the Coronado National Forest announces the availability of a Draft Environmental Impact Statement (DEIS) for public review. The DEIS discloses the potential environmental impacts of the construction, operation and concurrent reclamation, and closure of an open-pit copper mine in Pima County, Arizona.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting addresses and other options for submitting comments.

FOR FURTHER INFORMATION CONTACT: Coronado National Forest, 300 W. Congress St., Tucson, AZ 85701, or by telephone at (520) 388–8300.

SUPPLEMENTARY INFORMATION: The Coronado National Forest announces

the availability of and public comment period for the Rosemont Copper Project DEIS, which documents and publicly discloses the environmental effects of proposed construction, operation and concurrent reclamation, and closure of an open-pit mine on National Forest System land. The proposed mining project would be located on 995 acres of private land and 3,670 acres of National Forest System land about 30 miles southeast of Tucson, Arizona, within Townships 18 and 19, Ranges 15 and 16, Gila and Salt River Meridian, Pima County, Arizona. Copper, molybdenum, silver, and some gold would be produced.

The Forest Service plans a 90-day public comment period, which begins with the Environmental Protection Agency's publication of a Notice of Availability in the **Federal Register**. A number of public meetings are planned. Several options for submitting comments are available.

Requirements for commenting, including appeal procedures, may be found at 36 Code of Federal Regulations Part 215. Comments received regarding this DEIS are considered part of the administrative record for the NEPA review. Within this context, a commenter's personally identifiable information, such as name and contact information, may be released to a third-party upon request under the Freedom of Information Act. Comments submitted anonymously, without a name and contact information, will be accepted and considered; however, anonymous comments will not provide the commenter with standing to appeal a subsequent decision under 36 Code of Federal Regulations Part 215.6(a)(3).

Comments on the DEIS should be as specific as possible. It is also helpful if comments refer to pages and/or chapters of the DEIS. Comments may address either the adequacy of specific analyses in the DEIS or the merits of the alternatives formulated and discussed in the document or both (refer to CEQ regulations at 40 CFR 1503.3). Concerns about predictive methodologies would be best addressed by alternative methodology and an explanation of why this methodology is preferable. General comments and subjective expressions of advocacy or opposition to the project or alternative are not as useful unless they are substantiated by a link to a relevant issue.

Written and oral comments on the DEIS may be submitted during public meetings planned to be held by the Forest Service as noted below. For questions concerning special meeting needs or to request a sign language interpreter, please contact the Coronado National Forest at (520) 388–8300-voice or (520) 388–8403–TTY, dial 711 from a TTY relay for service, or e-mail *mailroom_r3_coronado@fs.fed.us* prior to the meeting.

1. October 22, 2011, 1 p.m. to 5 p.m., Desert Diamond Conference Center, 1100 W. Pima Mine Road, Sahuarita, AZ 85629.

2. November 5, 2011, 1 p.m. to 5 p.m., Elgin Elementary School, 23 Elgin Road, Elgin, AZ 85611 (tentative).

3. November 12, 2011, 1 p.m. to 5 p.m., Palo Verde High School, 1302 S. Avenida Vega, Tucson, AZ 85710.

4. November 19, 2011, 1 p.m. to 5 p.m., Empire High School, 10701 E. Mary Ann Cleveland Way, Tucson, AZ 85747.

5. December 7, 2011, 5:30 p.m. to 8 p.m., Benson High School, 360 S. Patagonia Street, Benson, AZ 85602.

6. January 7, 2012, 1 p.m. to 5 p.m., Desert Diamond Conference Center, 1100 W. Pima Mine Road, Sahuarita, AZ 85629.

The Rosemont Copper Project Draft Environmental Impact Statement will be available for review at *http://www.RosemontEIS.us.* Written comments on the DEIS are best submitted electronically by accessing *http://www.RosemontEIS.us* and following the link to ''Commenting on the DEIS''. Written comments may also be mailed to Rosemont Comments, P.O. Box 4207, Logan, UT 84323. Comments may also be submitted by facsimile to (435) 750–8799 and by electronic mail (e-mail) to *CoronadoNF@RosemontEIS.us.* The subject line of facsimiles and e-mail should include the words ''Rosemont Copper Project EIS.'' Brief oral comments can be made toll free by calling (888) 654–6646. Copies of the DEIS will also be available for public review at the following locations:

* Nogales Ranger District: 303 Old Tucson Road, Nogales, AZ and
* Coronado National Forest Supervisor's Office: 300 W. Congress St., 6th Floor, Tucson, AZ.

Authorization: National Environmental Policy Act of 1969 as amended (42 U.S.C. 4321–4346); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); U.S. Department of Agriculture NEPA Policies and Procedures (7 CFR part 1b); Forest Service NEPA Compliance Regulations (36 CFR 220); Forest Service Notice, Comment, and Appeal Procedures Regulations (36 CFR 215). Certified to be a true copy of the original.

Dated: October 13, 2011.

Jim Upchurch,

Forest Supervisor.

[FR Doc. 2011–27028 Filed 10–18–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 111007614–1611–01]

Annual Wholesale Trade Survey

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Determination.

SUMMARY: The U.S. Department of Commerce's Bureau of the Census (Census Bureau) publishes this notice to announce that the Director of the Census Bureau has determined the need to conduct the 2011 Annual Wholesale Trade Survey (AWTS). The AWTS covers employer firms with establishments located in the United States and classified in the Wholesale Trade sector as defined by the 2007 North American Industry Classification System (NAICS). Through this survey, the Census Bureau will collect data covering annual sales, e-commerce sales, purchases, total operating expenses, year-end inventories held both inside and outside the United States, commissions, total operating revenue, and gross selling value, for three components of wholesale activity: wholesale distributors; manufacturers' sales branches and offices; and agents, brokers, and electronic markets. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs, such as economic and market analysis, company performance, and forecasting future demand.

ADDRESSES: The Census Bureau will provide report forms to businesses included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: John Miller, Service Sector Statistics Division, at (301) 763–2758 or by e-mail at *john.p.miller@census.gov.*

SUPPLEMENTARY INFORMATION: Sections 182, 224, and 225 of Title 13 of the United States Code authorize the Census Bureau to take surveys that are necessary to produce current data on the subjects covered by the major censuses. As part of this authorization, the Census Bureau conducts the AWTS to provide

continuing and timely national statistical data on wholesale trade activity for the period between economic censuses. The AWTS covers employer firms with establishments located in the United States and classified in the Wholesale Trade sector as defined by the 2007 NAICS. The 2011 AWTS will collect data for three components of wholesale activity: Wholesale distributors; manufacturers' sales branches and offices; and agents, brokers, and electronic markets. For wholesale distributors, the Census Bureau will collect data covering sales, e-commerce sales, year-end inventories held inside and outside the United States, purchases, and total operating expenses. For manufacturers' sales branches and offices, the Census Bureau will collect data covering annual sales, e-commerce sales, year-end inventories held inside and outside the United States and total operating expenses. For agents, brokers, and electronic markets, the Census Bureau will collect data covering commissions, total operating revenue, gross selling value, and total operating expenses. The Census Bureau has determined that the conduct of this survey is necessary as these data are not available publicly on a timely basis from non-governmental or other government sources.

A new sample of firms will be selected for the 2011 AWTS. It is expected that approximately 60–70% of the companies that are asked to report will be doing so for the first time (and, consequently, 60–70% of the old sample will no longer be asked to report). In order to link estimates from the new and prior samples, we will be asking companies to provide data for 2011 and 2010. The 2012 AWTS and subsequent years will request one year of data until a new sample is once again introduced.

Firms were selected for the AWTS survey using a stratified random sample based on industry groupings and annual sales size. We will provide report forms to the firms covered by this survey in January 2012 and will require their responses within 30 days after receipt. Firms' responses to the AWTS are required by law (Title 13 U.S.C. Sections 182, 224, and 225). The sample of firms selected will provide, with measurable reliability, statistics on annual sales, e-commerce sales, purchases, total operating expenses, year-end inventories held both inside and outside the Unites States, commissions, total operating revenue, and gross selling value, for 2011.

The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs, such as economic and market analysis, company performance, and forecasting future demand.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. 3501–3521, OMB approved the AWTS under OMB control number 0607–0195.

Based upon the foregoing, I have directed that the annual survey be conducted for the purpose of collecting these data.

Dated: October 12, 2011.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2011–27059 Filed 10–18–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on November 2 and 3, 2011, 9 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, November 2

Public Session

1. Welcome and Introductions.
2. Working Group Reports.
3. Industry Presentation: Autonomous Vehicle.
4. Industry Presentation: Technology Export Controls.
5. Industry Presentation: Security as a Service.
6. New Business.

Thursday, November 3

Closed Session

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov*, no later than October 27, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 8, 2011, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: October 13, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–27013 Filed 10–18–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory

Committee (TRANSTAC) will meet on November 3, 2011, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, l4th Street between Pennsylvania & Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

1. Welcome and Introductions.
2. Status Reports of Working Groups.
3. Public Comments/Proposals.
4. Closing Comments.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than October 27, 2011.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials to Yvette Springer.

For more information contact Ms. Springer on (202) 482–2813.

Dated: October 13, 2011.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2011–27017 Filed 10–18–11; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective Date: October 19, 2011.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China for the period January 23, 2009, through October 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010). On July 15, 2011, we extended the due date for the completion of the preliminary results of review by 85 days. *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 41759 (July 15, 2011). The preliminary results of the review are currently due no later than October 26, 2011.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because of the complexity of issues involving the selection of surrogate country and surrogate values and because of the extensions we have granted at the request of various parties during the course of the review to submit information to the record. Therefore, we are extending the time period for issuing the preliminary results of this review by 35 days until November 30, 2011.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 12, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–27081 Filed 10–18–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective Date: October 19, 2011.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

In response to a request of an interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate from the Republic of Korea. The period of review is February 1, 2010, through January 31, 2011. *See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review,* 76 FR 17825 (March 31, 2011). The preliminary results of the review are currently due no later than October 31, 2011.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because of the complexity of the issues concerning the respondent's cost information. Therefore, we are extending the time period for issuing the preliminary results of this review by 70 days until January 9, 2012.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 12, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–27084 Filed 10–18–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 19, 2011.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or George McMahon AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5973 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2011, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Italy.[1] Pursuant to requests from interested parties, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to the following companies for the period July 1, 2010, through June 30, 2011:

Botticelli Mediterraneo S.a.r.l.2 (''Botticelli''), Fiamma Vesuviana S.r.L. (''Fiamma''), Industria Alimentare Filiberto Bianconi 1947 S.p.A. (''Filiberto''), Labor S.r.L. (''Labor''), PAM. S.p.A. and its affiliate, Liguori Pastificio dal 1820 SpA (''PAM''), P.A.P. SNC Di Pazienza G.B. & C. (''P.A.P.''), Premiato Pastificio Afeltra S.r.L. (''Afeltra''), Pasta Lensi S.r.l. (''Lensi''), Pastaficio Zaffiri (''Zaffiri''), Pastificio Attilio Mastromauro-Pasta Granoro S.R.L. (''Granoro''),[2] Pastificio Di Martino Gaetano & F.lli SpA (''Di Martino''), Pastificio Fratelli Cellino, S.r.l. (''Fratelli''), Pastificio Lucio Garofalo S.p.A. (''Garofalo''), Pastificio Riscossa F.lli Mastromauro S.p.A. (''Riscossa''), Rummo S.p.A. Molino e Pastificio (''Rummo''), Rustichella d'Abruzzo S.p.A. (''Rustichella'') and Industria Alimentare Colavita, S.p.A. (''Indalco'').[3]

On September 13, 2011, the Department announced its intention to select mandatory respondents based on U.S. Customs and Border Protection (''CBP'') data.[4] On October 3, 2011, the Department selected Garofalo and Rummo as mandatory respondents.[5] On October 11, 2011, Garofalo withdrew its request for a review.

Partial Rescission of the 2010–2011 Administrative Review

Pursuant to 19 CFR § 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The instant review was initiated on August 31, 2011. *See Initiation Notices.* Garofalo withdrew its request for a review on October 11, 2011, within the 90-day deadline. No other party requested an administrative review of this particular company. Therefore, in accordance with 19 CFR § 351.213(d)(1), and consistent with our practice, we are rescinding this review of the antidumping duty order on certain pasta from Italy, in part, with respect to Garofalo.[6] The instant review will continue with respect to Botticelli, Fiamma, Filiberto, Labor, PAM., P.A.P., Afeltra, Lensi, Zaffiri, Granoro, Di Martino, Fratelli, Riscossa, Rummo, Rustichella, and Indalco.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For the company for which this review is rescinded, Garofalo, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period July 1, 2010, through June 30, 2011, in accordance with 19 CFR 351.212(c)(1)(i).

The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609 (July 1, 2011).

[2] The Department notes that, ''{o}n August 31, 2010, the Department deferred the 7/1/2009–6/30/2010 administrative review for Pastificio Attilio Mastromauro-Pasta Granoro S.R.L. for one year (75 FR 53274). We are now initiating this review one year later along with the 7/1/2010–6/30/2011 administrative review.'' *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404, 53408 (August 26, 2011) (*First Initiation Notice*).

[3] *See First Initiation Notice* and *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 61076 (October 3, 2011) (collectively, ''*Initiation Notices*'').

[4] *See* Memorandum from Christopher Hargett to Melissa Skinner titled ''Customs and Border Protection Data for Selection of Respondents for Individual Review,'' dated September 13, 2011.

[5] *See* Memorandum from Christopher Hargett to Melissa Skinner titled ''Selection of Respondents for Individual Review,'' dated October 3, 2011.

[6] *See, e.g., Certain Lined Paper Products From India: Notice of Partial Rescission of Antidumping Duty Administrative Review and Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 21781 (May 11, 2009); *see also Carbon Steel Butt-Weld Pipe Fittings from Thailand: Rescission of Antidumping Duty Administrative Review,* 74 FR 7218 (February 13, 2009).

777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 12, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–27066 Filed 10–18–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results and Termination, in Part, of the Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 30, 2011, the Department of Commerce (''Department'') published the *Preliminary Results* [1] of a changed circumstances review (''CCR'') of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China (''PRC'') pursuant to section 751(b) of the Tariff Act of 1930, as amended (''Act''), and 19 CFR 351.216(d). We gave interested parties an opportunity to comment on the *Preliminary Results* and, based upon our analysis of the comments and information received, we affirm our successor-in-interest finding from the *Preliminary Results.*

DATES: *Effective Date:* October 19, 2011.

FOR FURTHER INFORMATION CONTACT: Alan Ray, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5403.

SUPPLEMENTARY INFORMATION:

Case History

On July 12 and 19, 2011, interested parties submitted case and rebuttal briefs, respectively. On July 20, 2011, Respondents' [2] counsel submitted a letter in which they stated that they no longer represent Hebei Jikai Industrial Group Co., Ltd. (''Hebei Jikai'') in this review. On July 25, 2011, the Department held a.

Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order. Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'''). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in Memorandum to Ronald K. Lorentzen from Christian Marsh, Diamond Sawblades and Parts Thereof From the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Changed Circumstances Review, dated October 4, 2011 (''I & D Memo''). A list of the issues which parties raised, and to which we responded in the I & D Memo, is attached to this notice as an Appendix. The I & D Memo is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 7046, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

Termination of CCR Based Upon Petitioner's [3] Request

In its August 13, 2010, and August 20, 2010, submissions, Petitioner requested that the Department initiate a CCR and find that Hebei Husqvarna JV is a successor-in-interest to Electrolux Construction Products (Xiamen) Co. Ltd. (''Electrolux''), Husqvarna Holding AB, or is an altogether new entity. In the *Preliminary Results,* we stated our preliminary intent to terminate the review based on Petitioner's request because a finding that Hebei Husqvarna JV is the successor-in-interest to Electrolux, Husqvarna Holding AB, or an altogether new entity, would result in a continuation of the status quo in terms of cash deposit requirements. Furthermore, no company other than Hebei Jikai is entitled to use Hebei Jikai's rate unless the Department finds that entity to be Hebei Jikai's successor-in-interest. Therefore, the Department is terminating this review under the request submitted by Petitioner, as the completion of the review based upon its request would not result in any possible change with respect to Hebei Husqvarna JV's appropriate antidumping duty cash deposit rate.[4]

Successor-in-Interest Determination Based Upon Respondents' Request

In making a successor-in-interest determination, the Department typically examines several factors including, but

[1] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results and Preliminary Intent To Terminate, in Part, Antidumping Duty Changed Circumstances Review and Extension of Time Limit for Final Results,* 76 FR 38357 (June 30, 2011).

[2] Hebei Husqvarna-Jikai Diamond Tools Co., Ltd. (''Hebei Husqvarna JV''), Husqvarna Construction Products North America (''HCPNA''), and Husqvarna Holding AB (collectively ''Respondents''), which also included, until July 20, 2011, Hebei Jikai Industrial Group Co., Ltd. (''Hebei Jikai''). On July 20, 2011, counsel for Respondents submitted a letter stating that they no longer were representing Hebei Jikai in this review.

[3] The Diamond Sawblade Manufacturers Coalition (''DSMC'' or ''Petitioner'').

[4] *See* I & D Memo at page 2.

not limited to: (1) Management, (2) production facilities, (3) supplier relationships, and (4) customer base.[5] While no single factor or combination of these factors will necessarily be dispositive, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor.[6] Respondents responded to the Department's request for information with respect to management, production facilities, and Hebei Husqvarna JV's suppliers and customers. The Department requested information regarding Hebei Jikai's quantity and value of subject merchandise that it had sold to its largest customers, as well as the percentage of inputs accounted for by its largest suppliers. Respondents did not provide this information to the Department.[7] The Department's analysis is summarized below; a complete discussion of the information received and the Department's analysis is included in the I & D Memo.

Final Results

On September 14, 2006, Husqvarna Holding AB and Hebei Jikai agreed to form a joint venture company, Hebei Husqvarna JV, in China to produce and sell diamond tools, including diamond sawblades.[8] Based on the totality of the evidence on the record surrounding the formation of the joint venture and the subsequent restructuring described in the memorandum accompanying the *Preliminary Results,* and in accordance with 19 CFR 351.221(c)(3)(i), we continue to determine that Hebei Husqvarna JV is not the successor-in-interest to Hebei Jikai, but is instead a new entity.[9]

With respect to the factors that the Department typically examines, we find that the management and board of directors that had been in place at Hebei Jikai have significantly changed, though this change occurred about four years after the formation of the joint venture[10] As for production facilities of Hebei Husqvarna JV, they are substantially the same as those of Hebei Jikai.[11] With respect to supplier relationships and customer base, because Respondent provided incomplete information regarding changes in customers and suppliers, we cannot conclude that for those two factors Hebei Husqvarna JV is materially the same as Hebei Jikai.We note that even with the limited information regarding Hebei Jikai's customers on the record, there appears to have been a significant change in the customer base.[12]

The Department disagrees with Petitioner's request to apply adverse facts available (''AFA''), given Respondents' inability to provide the Department with information regarding Hebei Jikai's customers and suppliers.[13] Specifically, the Department finds that Respondents' omission does not provide a sufficient basis to apply AFA.[14]

We further determine that the Department was correct in the time period it examined when considering changes in management.[15] Also, the Department agrees with Respondents that Hebei Husqvarna JV should not be assigned the PRC-wide rate of 164.09 percent solely under the assumption that the Department has policy concerns regarding large companies acquiring smaller companies for purposes of lowering a cash deposit rate. Petitioner has submitted no evidence to support its claim that Respondents created the JV so as to buy a lower cash deposit rate.[16] Finally, we find that the Court's holding in *Marine Harvest*[17] does not preclude the Department from finding that Hebei Husqvarna JV is not the successor-in-interest to Hebei Jikai. These issues are discussed in detail in the I & D Memo accompanying this notice.

Therefore, in considering the totality of the evidence on the record, the Department determines that Hebei Husqvarna JV is not the successor-in-interest to Hebei Jikai. Based on our determination, Hebei Husqvarna JV remains subject to the PRC-wide antidumping duty cash deposit rate of 164.09 percent with respect to the subject merchandise. Finally, we note that the 48.5 percent rate that Hebei Jikai received in the less-than-fair-value investigation continues to apply only to subject merchandise that was both produced and exported by Hebei Jikai and would not be applicable to merchandise produced by Hebei Husqvarna JV and exported by Hebei Jikai.

Instruction to U.S. Customs and Border Protection

The Department will instruct U.S. Customs and Border Protection to collect cash deposits on entries of subject merchandise produced or exported by Hebei Husqvarna JV at the PRC-wide rate of 164.09 percent.

Notification

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: October 12, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—Issues & Decision Memorandum

General Issues

COMMENT I: TERMINATION OF PETITIONER'S REVIEW REQUEST

COMMENT II: WHETHER TO AFFIRM THE *PRELIMINARY RESULT*

A. Appropriate Time Period To Examine

B. Policy Concerns Regarding Large Companies Acquiring Smaller Companies

C. Analysis of the Four Factors

D. Hebei Husqvarna JV Must Be the Successor-in-Interest to Hebei Jikai

[FR Doc. 2011–27087 Filed 10–18–11; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 75 FR 12726 (March 17, 2010) and accompanying Issues and Decision Memorandum at Comment 7.

[6] *See Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

[7] *See* Respondent's April 4, 2011, submission.

[8] *See* Respondent's September 13, 2010, submission at page 7.

[9] *See* Memorandum to James C. Doyle, Office Director, through Matthew Renkey, Acting Program Manager, from Alan Ray, Case Analyst, ''Diamond Sawblades and Parts Thereof From the People's Republic of China: Successor-in-Interest Analysis,'' dated June 24, 2011.

[10] *See id.* at pages 3–4 and 6–7.

[11] *See id.* at page 6.

[12] *See id.* at pages 6–7.

[13] *See* I & D Memo at pages 6 and 7.

[14] *See id.* at pages 6–7.

[15] *See id.* at pages 3 and 6–7.

[16] *See id.* at pages 4–5.

[17] *See Marine Harvest (Chile) S.A.* v. *United States,* 244 F.Supp.2d 1364, 1379 (CIT 2002).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Welded Carbon Steel Pipe and Tube From Turkey: Final Results of Expedited Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 1, 2011, the Department of Commerce (the Department) initiated a sunset review of the countervailing duty order (CVD) on welded carbon steel pipe and tube from Turkey pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* October 19, 2011.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–4793.

SUPPLEMENTAL INFORMATION:

Background

The CVD order on welded carbon steel pipe and tube from Turkey was published in the **Federal Register** on March 7, 1986. *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey,* 51 FR 7984 (March 7, 1986). On July 1, 2011, the Department initiated the third sunset review of this CVD order pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 38613 (July 1, 2011). The Department received a notice of intent to participate on behalf of the following domestic interested parties: Allied Tube and Conduit, TMK IPSCO Tubulars, Leavitt Tube Company, Northwest Pipe Company, Western Tube and Conduit, JMC Steel Group, and United States Steel Corporation (US Steel) (collectively, domestic interested parties) within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product.

On July 5, 2011, we received a request from the Government of the Republic of Turkey (GOT) for an extension of time to file a substantive response to the notice of initiation. On July 12, 2011, we extended the deadline for the submission of substantive responses until August 10, 2011, for all interested parties to this review. On August 10, 2011, we received complete substantive responses from the domestic interested parties and the GOT. On August 17, 2011, we received rebuttal comments filed on behalf of US Steel.[1]

The Department did not receive any substantive responses from Turkish producers or exporters of the merchandise covered by this order. Based on the fact that a government's response alone, normally, is not sufficient for a full sunset review in which the order was not done on an aggregate basis, we determined to conduct an expedited (120-day) sunset review of this order. *See* section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). This approach is consistent with Department's practice. *See, e.g., Certain Pasta From Turkey: Final Results of Expedited Five-Year (''Sunset'') Review of the Countervailing Duty Order,* 72 FR 5269 (February 5, 2007), and *Certain Carbon Steel Products From Sweden: Final Results of Expedited Sunset Review of Countervailing Duty Order,* 65 FR 18304 (April 7, 2000).

The Department did not conduct a hearing because a hearing was not requested.

Scope of the Order

The products covered by the order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in this 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 concurrently with this notice, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy if the order was revoked, the net countervailable subsidy likely to prevail, and the nature of the subsidy. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

As a result of this review, the Department determines that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/Exporter	Net countervailable subsidy rate (percent)
Bant Boru	3.01
Borusan Group	0.79
ERBOSAN	3.01
Yucel Boru Group	0.95
All Others	3.01

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 terms of an APO is a sanctionable violation.

We are issuing and publishing the final results of this review in accordance with sections 751(c), 752, and 777(i) of the Act.

[1] The Department granted a two-day extension for the filing of rebuttal briefs. *See* Memorandum to the File regarding Extension of Time (August 15, 2011).

Dated: October 11, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–27080 Filed 10–18–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA770

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Friday, November 4, 2011 at 9 a.m.

ADDRESSES: The meeting will be held at the Embassy Suites Airport Hotel, 900 Bartram Avenue, Philadelphia, PA 19153; *telephone:* (215) 365–4500; *fax:* (215) 365–4803.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop goals and objectives for Amendment 6 to the Monkfish Fishery Management Plan, in which the New England and Mid-Atlantic Councils are considering the inclusion of catch shares management in the range of alternatives. The Committee, Advisory Panel and Plan Development Team (PDT) have discussed a range of issues and problems in the fishery that could be addressed in Amendment 6 and the PDT will provide a more formal problem statement at this meeting. The Committee's goals and objectives recommendations will be considered at the November meeting of the New England Council.

The Committee may also hold a closed session at the end of the meeting to discuss Advisory Panel matters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 14, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–26995 Filed 10–18–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, November 1, 2011, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia, 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Due to internal DoD difficulties, beyond the control of the Department of Defense Wage Committee or its Designated Federal Officer, the Committee was unable to process the **Federal Register** notice for its November 1, 2011 meeting as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: October 13, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–26952 Filed 10–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, November 15, 2011, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit

material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: October 13, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–26953 Filed 10–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meeting of the Department of Defense Wage Committee will be held.

DATES: Tuesday, November 29, 2011, at 10 a.m.

ADDRESSES: 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia, 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: October 13, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–26957 Filed 10–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Defense Information Systems Agency, Department of Defense.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Information Systems Agency (DISA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance scores to the Director, DISA.

DATES: *Effective Date:* October 15, 2011.

FOR FURTHER INFORMATION CONTACT: Rebecca Polansky, DISA SES Program Manager, Defense Information Systems Agency, Fort Meade, Maryland, (301) 225–1261.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Defense Information Systems Agency PRB:

Rear Admiral David G. Simpson, USN;
John J. Penkoske;
Larry K. Huffman;
Rebecca S. Harris.

Executives listed will serve a one-year renewable term, effective October 15, 2011.

Dated: October 14, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–26998 Filed 10–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Defense Federal Acquisition Regulation Supplement; Ownership of Offeror

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: DoD is hosting a public meeting to establish an initial dialogue with industry and Government agencies about developing a method by which offerors, if owned or controlled by another business entity, can identify to DoD the Commercial and Government Entity (CAGE) code and legal name of that business entity.

DATES: *Public Meeting:* November 15, 2011, from 1 p.m. to 3 p.m. EST.

Submission of Comments: Comments on this topic should be submitted in writing to the address shown below on or before December 9, 2011.

ADDRESSES: *Public Meeting:* The public meeting will be held at General Services Administration (GSA), Central Office Auditorium, 1800 F Street, NW., Washington DC, 20405. The GSA Auditorium is located on the main floor of the building.

Submission of Comments: You may submit written comments, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by selecting ''Notice'' under the heading ''Select Document Type'' and entering search terms from this notice under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with this notice. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Ownership of Offeror'' on your attached document.
- *E-mail: dfars@osd.mil.* Include ''Ownership of Offeror'' in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Julian Thrash, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION: DoD will provide a brief overview of emerging policy issues potentially affecting the collection of this information. DoD solicits input from the public regarding methods to consistently, uniquely, and easily identify corporate ownership of DoD contractors in support of implementation of business tools that require identification of supplier

relationships to facilitate better buying decisions. In order for these business tools to be useful, and to promote the procurement efficiencies required for better buying decisions, DoD requires the ability to understand the corporate structure and affiliations of its suppliers. DoD is seeking industry insight on ''best practices'' and how such a process may affect future offerors. In particular, DoD invites discussion at the public meeting and public comment on the following:

(1) Means of identifying whether or not a particular DoD contractor is owned or controlled by another business entity.

(2) Would it be meaningful, from the private sector perspective, to characterize an ''immediate owner,'' as the business entity, which has the most direct and proximate ownership or control of the offeror? If not, then please suggest an alternative characterization.

(3) Would it be meaningful, from the private sector perspective, to characterize the ''highest-level owner'' as a business entity, which owns or controls the one or more business entities that own or control the offeror? If not, then please suggest an alternative characterization.

(4) Would it be meaningful, from the private sector perspective, to characterize an ''owner'' as a business entity, other than the offeror that owns or controls the offeror, or that owns or controls other business entities that own or control the offeror? An owner could then be either an immediate owner or a highest-level owner. If not meaningful, then please suggest an alternative characterization.

(5) One potential approach is for the offeror to provide with its offer the immediate owner Commercial and Government Entity (CAGE) code along with the legal name, and the highest-level owner CAGE code along with the legal name (if a higher-level entity exists). If this process is considered burdensome, what are the potential ways to mitigate such burden?

(6) Are there additional factors that should be considered to accurately capture such a business environment? If so, please explain.

Registration: Individuals wishing to attend the public meeting should register by November 1, 2011, to ensure adequate room accommodations and to create an attendee list for secure entry to the GSA building for anyone who is not a Federal Government employee with a Government badge. Interested parties may register by at this Web site, *http://www.acq.osd.mil/dpap/dars/ownership_of_offeror.html,* by providing the following information:

(1) Company or organization name;

(2) Names and e-mail addresses of persons attending;

(3) Last four digits of social security number for each attendee (non-Federal employees only); and

(4) Identify presenter if desiring to speak (limited to a 10-minute presentation per company or organization).

Attendees are encouraged to arrive at least 30 minutes early to ensure they are processed through security in a timely fashion. Prior registrants will be given priority if room constraints require limits on attendance.

Special Accommodations: The public meeting location is physically accessible to persons with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Julian E. Thrash, telephone 703–602–0310, at least 10 working days prior to the meeting date.

Presentations: For individuals who would like to present a short oral presentation not-to-exceed 10 minutes at the meeting, please advise when registering so appropriate arrangements can be made for scheduling purposes. If the presenter intends to share a handout to accompany an oral statement, please submit documents to *dfars@osd.mil* for posting no later than November 8, 2011, so that other attendees may download prior to the meeting. When submitting briefing information, provide presenter's name, organization affiliation, telephone number, and e-mail address on the cover page.

Correspondence and Comments: Please cite ''Public Meeting, Ownership of Offeror'' in all correspondence related to this public meeting. The submitted presentations will be the only record of the public meeting. To have a presentation considered as a public comment, the presentation, or pertinent excerpts, must be submitted separately as a written comment as instructed in the above paragraph titled, ''Submission of Comments.'' Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2011–27070 Filed 10–18–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before November 18, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 13, 2011.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Implementation and Support Unit

Type of Review: Extension.

Title of Collection: Race to the Top Program Review Protocols.

OMB Control Number: 1894–0011

Agency Form Number(s): N/A.

Frequency of Responses: Monthly; Semi-Annually.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 12.

Total Estimated Annual Burden Hours: 888.

Abstract

The American Recovery and Reinvestment Act of 2009 provides $4.3 billion for the Race to the Top Fund (referred to in the statute as the State Incentive Grant Fund). This is a competitive grant program. The purpose of the program is to encourage and reward States that are creating the conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and implementing ambitious plans in four core education reform areas: (a) Adopting internationally-benchmarked standards and assessments that prepare students for success in college and the workplace; (b) building data systems that measure student success and inform teachers and principals in how they can improve their practices; (c) increasing teacher effectiveness and achieving equity in teacher distribution; and (d) turning around our lowest-achieving schools.

The U.S. Department of Education (the Department) will collect this data from the 12 Race to the Top grantee states to inform its review of grantee implementation, outcomes, oversight, and accountability. The Department will use these forms to inform on-site visits, ''stocktake'' meetings with Implementation and Support Unit leadership at the Department, and annual reports for individual grantees and the grant program as a whole.

In order to allow for a comprehensive program review of the Race to the Top grantees, we are requesting a three-year clearance with this form.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://www.edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4666. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–26927 Filed 10–18–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EERE–2006–BC–0132]

RIN 1904–AC42

Building Energy Standards Program: Final Determination Regarding Energy Efficiency Improvements in the Energy Standard for Buildings, Except Low-Rise Residential Buildings, ANSI/ASHRAE/IESNA Standard 90.1–2010

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

ACTION: Notice of final determination.

SUMMARY: The Department of Energy (DOE or Department) has determined that the 2010 edition of the *Energy Standard for Buildings, Except Low-Rise Residential Buildings,* American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Illuminating Engineering Society of North America (IESNA) Standard 90.1–2010, (Standard 90.1–2010 or the 2010 edition) would achieve greater energy efficiency in buildings subject to the code, than the 2007 edition (Standard 90.1–2007 or the 2007 edition). Also, DOE has determined that the quantitative analysis of the energy consumption of buildings built to Standard 90.1–2010, as compared with buildings built to Standard 90.1–2007, indicates national source energy savings of approximately 18.2 percent of commercial building energy consumption. Additionally, DOE has determined site energy savings are estimated to be approximately 18.5 percent. Upon publication of this affirmative final determination, States are required to certify that they have reviewed the provisions of their commercial building code regarding energy efficiency, and as necessary, updated their code to meet or exceed Standard 90.1–2010. Additionally, this notice provides guidance to States on Certifications, and Requests for Extensions of Deadlines for Certification Statements.

DATES: Certification statements by the States must be provided by October 18, 2013.

ADDRESSES: Certification Statements must be addressed to the Buildings Technologies Program-Building Energy Codes Program Manager, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Michael Erbesfeld, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 287–1874, *e-mail: michael.erbesfeld@ee.doe.gov.* For legal issues contact Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0669, *e-mail: kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
- A. Statutory Requirements
- B. Background
- 1. Publication of Standard 90.1–2010
- 2. Preliminary Determination
- 3. Public Comments Regarding the Preliminary Determination

II. Summary of the Comparative Analysis
- A. Qualitative Analysis
- 1. Discussion of Detailed Textual Analysis
- 2. Results of Detailed Textual Analysis
- B. Quantitative Analysis
- 1. Discussion of Whole Building Energy Analysis
- 2. Results of Whole Building Energy Analysis
- C. Final Determination Statement

III. Filing Certification Statements With DOE
- A. Review and Update
- B. Certification
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IV. Regulatory Analysis
- A. Review Under Executive Order 12866
- B. Review Under the Regulatory Flexibility Act
- C. Review Under the National Environmental Policy Act of 1969
- D. Review Under Executive Order 13132, ''Federalism''
- E. Review Under the Unfunded Mandates Reform Act of 1995
- F. Review Under the Treasury and General Government Appropriations Act of 1999
- G. Review Under the Treasury and General Government Appropriations Act of 2001
- H. Review Under Executive Order 13211
- I. Review Under Executive Order 13175

I. Introduction

A. Statutory Requirements

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements for the

Building Energy Efficiency Standards Program. (42 U.S.C. 6831 *et seq.*) Section 304(b), as amended, of ECPA provides that whenever the ANSI/ASHRAE/IESNA Standard 90.1–1989 (Standard 90.1–1989 or 1989 edition), or any successor to that code, is revised, the Secretary must make a determination, not later than 12 months after such revision, whether the revised code would improve energy efficiency in commercial buildings and must publish notice of such determination in the **Federal Register**. (42 U.S.C. 6833 (b)(2)(A)) The Secretary may determine that the revision of Standard 90.1–1989 or any successor thereof, improves the level of energy efficiency in commercial buildings. If so, then not later than two years after the date of the publication of such affirmative determination, each State is required to certify that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency with respect to the revised or successor code. (42 U.S.C. 6833(b)(2)(B)(i)) The State must include in its certification a demonstration that the provisions of its commercial building code, regarding energy efficiency, meet or exceed the revised standard. (42 U.S.C. 6833(b)(2)(B)(i))

If the Secretary makes a determination that the revised standard will not improve energy efficiency in commercial buildings, State commercial codes must meet or exceed the last revised standard for which the Secretary has made a positive determination. (42 U.S.C. 6833(b)(2)(B)(ii)). On July 20, 2011, the DOE published a determination in the **Federal Register** updating the reference code to Standard 90.1–2007. See 76 FR 43287 (July 20, 2011).

ECPA also requires the Secretary to permit extensions of the deadlines for the State certification if a State can demonstrate that it has made a good faith effort to comply with the requirements of section 304(c) of ECPA and that it has made significant progress in doing so. (42 U.S.C. 6833(c))

B. Background

1. Publication of Standard 90.1–2010

ASHRAE and the IESNA approved the publication of the 2010 edition of *Energy Standard for Buildings Except Low-rise Residential Buildings,* in October 2010.

The Standard was developed under ANSI-approved consensus standard procedures. Standard 90.1 is under continuous maintenance by a Standing Standard Project Committee (SSPC) for which the ASHRAE Standard Committee has established a documented program for regular publication of addenda or revisions, including procedures for timely, documented, consensus action on requests for change to any part of the standard. ANSI approves addenda prior to their publication by ASHRAE and IESNA and prior to their inclusion in a new version of Standard 90.1. ANSI approved the final addendum for inclusion in Standard 90.1–2010 on July 24, 2010. Appeals were made to several addenda and the results of the appeals process were not final until October 15, 2010. The 2010 edition was published on October 28, 2010.

2. Preliminary Determination

In arriving at a preliminary determination, DOE first reviewed all significant changes between the 2010 edition and the 2007 edition. Standard 90.1 is complex and covers a broad spectrum of the energy related components and systems in buildings ranging from simple storage buildings to complex hospitals and laboratories. The size of buildings addressed range from those smaller than single family homes to the largest buildings in the world. The approach to development of the standard used in the 2010 edition was not changed from that used for the 2007 edition, with no changes to the scope or the way components are defined. DOE preliminarily determined that because no significant changes were made to the structure, scope, or component definitions of Standard 90.1–2007, a similar methodology used for the analysis of Standard 90.1–2007 could be utilized for the analysis of Standard 90.1–2010, consisting of a qualitative comparison of the textual changes to requirements in Standard 90.1–2010 from Standard 90.1–2007, and a quantitative estimate of the energy savings developed from whole building simulations of a standard set of buildings constructed to both Standards over a range of U.S. climates. DOE used an extension of the procedure used for the Standard 90.1–2007 determination for the quantitative estimate of energy savings. The extension was that additional building types were added to the analysis. DOE used the same simulation tool and data for weighing the results by building type and climate as used for the 90.1–2007 determination.

A detailed discussion of the analysis methodology, which was subject to public comment in 2010 and 2011, can be found in the Notice of Preliminary Determination for Standard 90.1–2007 and in the Notice of Preliminary Determination for Standard 90.1–2010. 75 FR 54117 (Sept. 3, 2010) and 76 FR 43299 (July 20, 2011) respectively.

3. Public Comments Regarding the Preliminary Determination

DOE accepted public comments on the preliminary determination for Standard 90.1–2010 until August 19, 2011. DOE received submissions from a total of six different entities.

The Edison Electric Institute (EEI) submitted a written comment (Docket No. EERE–2010–BT–DET–0050–0002, pgs. 1–3) supporting the preliminary determination while stating the following four issues: (1) DOE should only use the results from its site energy analysis and its energy cost analysis to make its final determination, and not report the source energy analysis results in the final determination, (2) the energy savings, or at least a portion of the estimated energy savings, from addenda that include new federal energy efficiency standards or provide updates to energy efficiency standards should be incorporated into the final determination analysis, (3) EEI would request that the information about the impact of addendum ''bu'' be included in the final determination notice, and (4) in terms of primary energy associated with electricity, the value in this notice is overstated and that DOE should use a more realistic ratio for electricity in its estimates.

In regards to EEI's first comment, the Department still believes that despite the fact that the source energy analysis results are estimates, it is important to the discussion of global resources and environmental issues to report them. Source energy (or primary energy) addresses the energy needed to deliver energy to the building in addition to the energy used at the building and thus provides a more complete view of the total energy expenditure used by a building than site energy. However, DOE realizes that site energy is the energy that typically appears on utility bills and that is seen by the consumer. DOE also realizes that it is energy cost (as shown on energy bills) to which many consumers react. It is for this reason that DOE provides all three metrics—site energy, source energy, and energy cost—in its determinations.

EEI's second comment is in reference to the fact that the Department does not include the impact from new or updated federal energy efficiency standards in its determination of energy savings. For the quantitative analysis performed for the 90.1–2010 preliminary determination (*http://www.energycodes.gov/status/documents/QuantitativeAnalysisReport901-2010Determination.pdf*), DOE

incorporated only addenda that modified the prescriptive requirements of the Standard. New or updated federal efficiency standards are not independent requirements of the standard, but rather reflections of Federal manufacturing requirements. In specific circumstances, particularly with regard to requirements for certain heating, ventilation, and air conditioning (HVAC) equipment, addenda to Standard 90.1–2010 reflect changes to national manufacturing standards previously developed by DOE or enacted independently through Federal legislation. The energy savings that are attributable to these national manufacturing standards would accrue no matter what version of Standard 90.1 is considered and regardless of whether they are reflected in the text of the Standards, therefore DOE has not incorporated these as changes contributing to energy savings for the purpose of the Determination.

EEI's third comment requests that information regarding the impact of addendum ''bu'' be included in the final determination. Addendum ''bu'' added equipment efficiency requirements for mechanical equipment serving computer rooms, however none of the prototype building models that DOE uses in its simulations have data centers and therefore the quantifiable impact of this addendum was not captured. DOE does note that the impact of addendum ''bu'' is captured in the qualitative, or text comparison analysis, where addendum ''bu'' is listed as a major positive and noted as a new efficiency requirement. When the prototype building models used in this determination were developed by DOE and later reviewed by ASHRAE, no data center models were included because at that point Standard 90.1 did not include efficiency requirements related to data centers. DOE did not add data centers to the prototype building models for this determination because the quantitative impact of this addendum would not change the fact that this is a positive final determination of energy savings. DOE is considering adding data centers to the prototype building models for future determinations.

EEI's final comment suggests that DOE use a more realistic electricity ratio for determining primary energy associated with electricity production by crediting renewable energy production on the primary side of generation and on the on-site/delivered side of electricity consumption. The Department has chosen to be consistent within their energy analyses by using Energy Information Administration's (EIA) data and conversion factors solely and by choosing not to mix and match conversion factors. DOE recognizes that these conversion factors are estimates and that some types of utility energy inputs do not have known conversion factors and other inputs have multiple generally accepted conversion factors. The Department has chosen not to subtract primary renewable energy from the delivered electricity losses value because renewable energy generated as primary energy is still subject to losses in the delivery process to the site. Also, DOE has chosen not to add on-site generated renewable energy to the delivered electricity value when determining the electricity ratio because on-site generated renewable energy is not subject to the losses that are incurred when delivering primary energy from the plant to the site. Therefore the delivered electricity and delivered electricity loss values used in the preliminary determination are the same values used in this final determination and yield the electricity ratio of 3.2, explained on page 31–32 of this notice, for converting how much primary (source) electricity is required per unit of site required electricity.

The Gas Technology Institute (GTI) submitted a written comment (Docket No. EERE–2010–BT–DET–0050–0005, pg. 1) stating that it supports the analysis and states that until ASHRAE 90.1 addresses issues related to full fuel-cycle energy metrics and a single baseline building budget, the DOE preliminary determination is incomplete and misleading.

The Department's preliminary determination does estimate source energy metrics, and DOE has not chosen to use a single baseline building budget because there are a multitude of building types with far different operating requirements and accompanying energy needs. A single baseline building budget would penalize certain building types while aiding other building types depending on how far away their respective baseline budgets were from a single average baseline budget.

DOE also notes that while DOE has recently issued a notice of proposed policy (NOPP) related to full-fuel-cycle analysis for appliance and equipment standards (76 FR 51281, Docket No. EERE–2010–BT–NOA–0028, ''Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Statement of Policy for Adopting Full-Fuel-Cycle Analyses Into Energy Conservation Standards Program''), this policy was not proposed for application to building energy codes and standards such as Standard 90.1. This policy was a direct offshoot of the National Academy of Sciences report discussed in conjunction with the comment below from Laclede Gas Company. DOE notes that GTI's comment takes issue with standard 90.1. DOE's role in determinations is to compare the latest version of Standard 90.1 with the previous version and to determine if the latest version improves the level of energy efficiency in commercial buildings over the previous version. While DOE is a participant in the Standard 90.1 development process, DOE does not control the content of Standard 90.1.

The American Gas Association submitted a written comment (Docket No. EERE–2010–BT–DET–0050–0004, pg. 1) stating that the performance requirements for commercial electric storage water heaters greater then 12kW appear to be less stringent than the current federal minimum efficiency requirements for this class of water heaters.

DOE acknowledges the discrepancy between Federal standards for commercial electric storage water heaters and the requirements for this equipment in Standard 90.1–2010. For the purposes of this determination the performance requirements for commercial electric storage water heaters greater than 12kW in ASHRAE 90.1–2010 are not applicable as this determination is only concerned with whether the 90.1–2010 version improves the level of energy efficiency in commercial buildings compared to the 2007 version of 90.1, and the performance requirements of this equipment did not change from the 2007 to 2010 version.

The Laclede Gas Company submitted a written comment (Docket No. EERE–2010–BT–DET–0050–0007, pgs. 1–5) stating the following three issues: (1) Laclede contends there is a conflict of interest because DOE evaluates new versions of the ASHRAE 90.1 through its Pacific Northwest National Lab (PNNL), the staff of which participate in ASHRAE committees; (2) Laclede objects ''to the site-based energy efficiency metric because it does not fulfill the 'scientific integrity' objectives as ordered by the *Presidential Scientific Integrity Memorandum of March 9, 2009*''; and (3) Laclede is concerned that ''DOE has limited its 'Statement of Policy' for implementing the National Academy of Sciences (NAS) conclusions to the minimum efficiency standards of appliances. Laclede contends that the NAS conclusions should also apply to building efficiency standards.''

In response to Laclede's first issue, DOE acknowledges that staff members at

PNNL participate in ASHRAE. However, the determination analyses were reviewed by DOE management.

In response to Laclede's second issue, DOE believes that its determination on Standard 90.1–2010 has indeed followed the requirements of the Presidential Memorandum on Scientific Integrity. DOE has subjected the scientific and technological information it considered in this determination to well-established scientific processes and DOE made available to the public the scientific and technological findings and conclusions considered or relied on in this final determination by way of the preliminary determination and public comment period. DOE provides all three metrics—site energy, source energy, and energy cost—in its determinations. DOE does not mandate energy efficiency standards which give electric resistance heat an efficiency advantage over natural gas. DOE's role in determinations is to compare the latest version of Standard 90.1 with the previous version and to determine if the latest version improves the level of energy efficiency in commercial buildings over the previous version.

In response to Laclede's third issue, DOE interprets the phrase ''NAS conclusions'' to refer to the National Academy of Sciences (NAS) report entitled ''Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy-Efficiency Standards—Letter Report (2009) (available at *http://books.nap.edu/openbook.php?record_id=12670&page=1*). DOE has not limited its ''Statement of Policy'' because this NAS report is for the application to ''building appliances'' where DOE has statutory authority to set building appliance standards, and does not apply to determinations of energy efficiency for building energy codes. Today's determination is based on a review of the work of ASHRAE, as required by statute, and does not establish the efficiency standards of the ASHRAE code.

The Building Codes Assistance Project (BCAP) submitted a written comment (Docket No. EERE–2010–BT–DET–0050–0003, pgs. 1–2) supporting the DOE's determination and suggests that DOE follow up with the States after publication of the Final Determination as well as making public which States comply with the statutory requirements to submit certification letters within two years of publication.

DOE does list the States that have filed certifications and those that have or have not adopted new codes on the DOE Energy Efficiency and Renewable Energy Web site at *http://www.energycodes.gov/states/*. Once a State has adopted a new commercial code, DOE typically provides software, training, and support for the new code as long as the new code is based on the national model codes (in this case, ASHRAE Standard 90.1).

The Natural Resources Defense Council (NRDC) submitted a written comment (Docket No. EERE–2010–BT–DET–0050–0006, pgs. 1–2) agreeing with and supporting the Department's preliminary determination that ASHRAE Standard 90.1–2010 saves energy compared to ASHRAE 90.1–2007 and urges the Department to finalize this determination.

II. Summary of the Comparative Analysis

DOE carried out both a detailed qualitative analysis and a broad quantitative analysis of the differences between the requirements and the stringencies in the 2007 and the 2010 editions.

A. Qualitative Analysis

1. Discussion of Detailed Textual Analysis

DOE performed a detailed analysis of the differences between the textual requirements and stringencies of the 2007 and 2010 editions in the scope of the standard, the building envelope requirements, the building lighting and power requirements, and the building mechanical equipment requirements.

The emphasis of DOE's detailed requirement and stringency analysis was on looking at the specific changes that ASHRAE made in going from Standard 90.1–2007 to Standard 90.1–2010. ASHRAE publishes changes to their standards as addenda to the preceding standard and then bundles all the addenda together to form the next edition. ASHRAE processed 109 addenda to Standard 90.1–2007 to create Standard 90.1–2010. Each of these addenda was evaluated by DOE in preparing this final determination. No changes were made to the final detailed textual analysis from the preliminary detailed textual analysis.

In addition, each standard has multiple ways to demonstrate compliance, including a prescriptive set of requirements by section of the standard, various tradeoff approaches within those same sections, and a whole building performance method (Energy Cost Budget or ECB). For each addendum DOE identified whether it applies to the prescriptive requirements, or one of the tradeoff paths provided for in the envelope, lighting, or mechanical sections, or the ECB whole building performance path. For each addendum DOE identified the impact on the stringency for that path to compliance.

Overall, DOE found that that the vast majority of changes made to Standard 90.1–2007 to create Standard 90.1–2010 were positive or neutral (in the context of energy efficiency). Positive changes greatly outweighed the negative energy efficiency changes. Specifically, of the 109 total changes:

56 were considered positive;

47 were considered neutral;

6 were considered negative.

The 56 positive changes greatly overwhelm the 6 negative changes in terms of a simple numerical comparison. In addition, the 6 negative changes were considered to be ''minor negatives'', with 19 of the positive changes being considered ''major positive'' and an additional 37 positive changes being considered ''minor positive''. Not only do the positive changes outweigh the negative changes in raw numbers, but also in terms of the estimated impact.

2. Results of Detailed Textual Analysis

Table 1 presents the results of DOE's addendum-by-addendum analysis of Standard 90.1–2010. Table 6 is a reformatted and slightly modified version of a table in the preliminary qualitative analysis. The complete preliminary qualitative analysis may be found on the DOE codes Web site at *http://www.energycodes.gov/status/determinations_com.stm.*

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
1	A	6. Heating, Ventilating, and Air Conditioning.	Remove closed cooling tower requirements from 6.8.1G.	0 (clarifies that requirements do not apply to closed cooling towers).

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS—Continued

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
2	B	6. Heating, Ventilating, and Air Conditioning.	Revises exception a to section 6.5.2.3 to allow for codes other than ASHRAE 62.1 to dictate minimum ventilation rates.	Minor—(allows larger minimum ventilation rates if required by other codes).
3	C	6. Heating, Ventilating, and Air Conditioning.	Adds vivarium to list of spaces that require specific humidity levels to satisfy process needs.	Minor—(allows exception to dehumidification controls for vivariums).
4	D	3. Definitions, Abbreviations, and Acronyms; 5. Building Envelope; 9. Lighting.	Adds exceptions for Solar Heat Gain Coefficient (SHGC) and Visible Transmittance (VT) requirements for skylights; adds requirement for including visible light transmittance test results with construction documents; adds information on determining daylit area under skylights, automatic daylighting controls (with exceptions), and submittal requirements.	Major + (requires daylighting controls under skylights and commissioning of daylighting controls).
5	E	6. Heating, Ventilating, and Air Conditioning.	Changes exhaust air energy recovery requirements and harmonizes requirements in simplified section 6.3.2 with requirements in the 6.5 prescriptive path.	Major + (increased use of heat recovery).
6	F	5. Building Envelope	Requires high albedo roofs in hot climates	Major + (requires cool roofs in hot climates)
7	G	3. Definitions, Abbreviations, and Acronyms; 5. Building Envelope.	Updates building envelope criteria for metal buildings.	Minor + (increases envelope requirements for metal buildings).
8	H	6. Heating, Ventilating, and Air Conditioning.	Adds another exception to Section 6.5.2.1 Limitation of Simultaneous Heating and Cooling. The exception addresses apparent conflict between standards and allows users to achieve comfort, meet the code, and save energy.	Minor + (allows another exception that saves energy in some applications).
9	I	9. Lighting	Applies a four-zone lighting power density approach to exterior lighting requirements. Deletes the 5% additional power allowance in 9.4.5 and replaces it with a base wattage allowance per site. Defines the four zones and applies the appropriate requirements.	Major + (lowers illuminance requirements in certain zones).
10	J	6. Heating, Ventilating, and Air Conditioning; 12. Normative References; Appendix E. Informative References.	Updates the mechanical test procedures references in the standard. The changes also modify a reference in Table 6.8.1E, the normative references in Chapter 12, and the informative references in Informative Appendix E.	0 (updating references).
11	K	6. Heating, Ventilating, and Air Conditioning.	Updates Tables 6.8.1E and 7.8 to identify specific sections of referenced standards. Table 7.8 also reflects the current federal efficiency levels for residential water heaters and adds a requirement for electric table-top water heaters.	0 (updating tables to reflect current federal standards).
12	L	6. Heating, Ventilating, and Air Conditioning.	Adds minimum efficiency and certification requirements for axial and centrifugal fan closed-circuit cooling towers. Also adds a reference to ATC–105S, The Cooling Technology Institute test standard for closed-circuit cooling towers to Section 12.	0 (Requirement codifies industry standard practice).
13	M	6. Heating, Ventilating, and Air Conditioning.	Updates chiller efficiency requirements. Establishes additional path of compliance for water-cooled chillers. Combines all water-cooled chillers into one category and adds a new size category for centrifugal chillers at or above 600 tons.	Major + (updates chiller efficiency requirements).
14	N	6. Heating, Ventilating, and Air Conditioning.	Extends Variable Air Volume (VAV) fan control requirements to large single-zone units.	Major + (extends control requirements to another equipment class).
15	O	8. Power	Modifies the scope of Section 8 and adds requirements specific to low voltage dry-type distribution transformers.	0 (implements Federal efficiency standards for transformers).
16	P	6. Heating, Ventilating, and Air Conditioning.	Provides pressure credits for laboratory exhaust systems that allow prescriptive compliance with the standard.	Minor—(increases allowable pressure drop in laboratory exhaust systems).

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS—Continued

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
17	Q	5. Building Envelope	Vestibules, remove CZ4 exception	Minor + (applies vestibule requirement in more locations).
18	R	Informative Appendix G. Performance Rating Method.	Changes Informative Appendix G Performance Rating Method into a Normative Appendix. Additionally, some language has been modified to make the Appendix Enforceable.	0 (performance rating method only).
19	S	6. Heating, Ventilating, and Air Conditioning.	Updates the Coefficient of Performance (COP) at 17 °F efficiency levels for commercial heat pumps and introduces a new part-load energy efficiency descriptor (IEER) for all commercial unitary products above 65,000 Btu/h of cooling capacity.	0 (replaces Integrated Part Load Value (IPLV) with Energy Efficiency Ratio(EER) to capture part load performance).
20	T	6. Heating, Ventilating, and Air Conditioning.	Removes the term ''replacement'' and ''new construction'' from the product classes listed in Table 6.8.1D and replaces them with the terms ''nonstandard size'' and ''standard size'' to clarify that one product class is intended for applications with nonstandard size exterior wall openings while the other is intended for applications with standard size exterior wall openings. Also amends section 6.4.1.5.2 and footnote b to Table 6.8.1D to clarify that nonstandard size packaged terminal equipment have sleeves with an external wall opening less than 16 in. high or less than 42 in. wide to reflect existing applications where the wall opening is not necessarily less than 16 in. high and less than 42 in. wide. However, to avoid a potential abuse of the definition, nonstandard size packaged terminal equipment are required to have a cross-sectional area of the sleeves less than 670 in^2.	0 (clarification of definitions).
21	U	6. Heating, Ventilating, and Air Conditioning.	Adds a new section requiring centrifugal fan open-circuit cooling towers over 1100 gpm at the rating conditions to meet efficiency requirements for axial fan units found in 6.8.1G.	Minor + (applies cooling tower requirements more broadly).
22	V	6. Heating, Ventilating, and Air Conditioning; 12. Normative References.	Revises section 6.4.2.1 to reference ANSI/ASHRAE/ACCA Standard 183–2007 for sizing heating and cooling system design loads. Adds requirements for calculating pump head.	0 (updates references).
23	W	Normative Appendix G. Performance Rating Method.	Changes footnote to Table G3.1.1A to make it clear that Exception a to Section G3.1.1 also applies here. Changes the exception to G3.1.2.10 on Exhaust Air Energy Recovery for multifamily buildings because they are unlikely to have a centralized exhaust air system needed to effectively recover heat.	0 (performance rating method).
24	X	9. Lighting	Updates requirements for automatic lighting shutoff, adds specific occupancy sensor applications, and provides additional clarification.	Major + (adds occupancy sensor requirements for many specific applications).
25	Y	7. Service Water Heating.	Establishes ARI 1160 as the test procedure for heat pump pool heaters and requires that the minimum COP of 4 be met at the low outdoor temperature of 50 °F.	Minor + (requires COP be met at lower temperature).
26	Aa	9. Lighting	Adds space exceptions for automatic lighting controls.	Minor + (limits automatic-on controls to specific space types).
27	Ab	3. Definitions, Abbreviations, and Acronyms; and 9. Lighting.	Adds definitions and provides daylighting control requirements for side-lighted spaces.	Major + (adds daylighting control requirements for side-lighted spaces).

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS—Continued

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
28	Ac	3. Definitions, Abbreviations, and Acronyms; 9. Lighting.	Adds incentives to use advanced lighting controls.	0 (alternate compliance path).
29	Ad	6. Heating, Ventilating, and Air Conditioning.	Includes certification requirements for liquid-to-liquid heat exchangers to benefit both manufacturers and consumers, allow product comparisons, and provide incentives to manufacturers to improve efficiency in order to gain market share.	0 (documentation only).
30	Ae	6. Heating, Ventilating, and Air Conditioning.	Adds a requirement for insulating the surfaces of radiant panels that do not face conditioned spaces.	Minor + (reduced heat loss in radiant panels).
31	Af	6. Heating, Ventilating, and Air Conditioning.	Provides requirement for designers, contractors, and owners to properly size system piping (hydronic systems) to balance ongoing energy costs and first costs.	Minor + (requires proper hydronic system sizing).
32	Ag	5. Building Envelope	Adds requirement for rigid board insulation overlap.	Minor + (reduces potential for thermal bridging).
33	Ai	Normative Appendix G. Performance Rating Method.	Removes requirement for comparing proposed buildings utilizing chilled water with a baseline building with on-site chillers, and instead requires a baseline that also uses purchased chilled water. Details modifications to be made to the baseline HVAC systems when purchased chilled water or heat are included.	0 (alternative compliance path).
34	Aj	10. Other Equipment	Updates the text and table of Chapter 10 to comply with new federal law for motors rated at 1.0 horsepower and greater. Adding this information will help designers, end-use customers, and code officials with motor specifications and verifications.	0 (implements Federal motor requirements).
35	Ak	6. Heating, Ventilating, and Air Conditioning.	Adds a pump isolation requirement for systems with multiple chillers and boilers and temperature reset requirement for equipment with a minimum Btu/h. Revises wording to have requirements of 6.5.4.1 apply only to cooling systems. Changes threshold of variable speed systems to 7.5 HP. Adds requirement for differential pressure reset. Does not preclude also implementing chilled water supply temperature setpoint reset. Includes requirements for hydronic Heat Pump and Water-Cooled Unitary Air Conditioners.	Minor + (reduces pumping energy).
36	Al	5. Building Envelope	Adds skylight requirements in certain space types (enclosed spaces) to promote daylighting energy savings.	Major + (requires skylights and daylighting in some building types.
37	Am	5. Building Envelope	Revise air leakage criteria for fenestration and doors.	Minor + (decreased air leakage).
38	An	5. Building Envelope	Expands table of default U-values for single-digit rafter roofs.	0 (updates default tables).
39	Ao	6. Heating, Ventilating, and Air Conditioning.	Repairs know errata to Table 6.8.1E and reorders the notes to properly organize them. Corrects the error of identifying E_C, which should be listed as Et under "Warm Air Furnaces, Gas-Fired" and also eliminates incorrect and redundant footnotes.	0 (editorial only).
40	Ap	6. Heating, Ventilating, and Air Conditioning.	Includes demand controlled ventilation in the simplified approach.	Major + (reduces ventilation energy.
41	Aq	Title, 1. Purpose, and 2. Scope.	Modify Title Purpose & Scope of ASHRAE 90.1.	0 (no impact now, but does allow future positive additions to Standard 90.1).
42	Ar	9. Lighting	Corrects an oversight in previous versions where expanded exterior lighting power limits were put in place but the details of how to calculate the installed power and compare it to the limits was not included. This language revision puts the needed details in the standard.	0 (editorial only).

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS—Continued

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
43	As	6. Heating, Ventilating, and Air Conditioning.	Removes exception for VAV turndown requirements for zones with special pressurization requirements. Reduces laboratory threshold where VAV or heat recovery is required.	Minor + (saves large amount of fan and reheat energy in hospitals).
44	At	6. Heating, Ventilating, and Air Conditioning.	Clears up inconsistencies and conflicts regarding damper requirements in Chapter 6.	0 (editorial only).
45	Au	6. Heating, Ventilating, and Air Conditioning.	Updates efficiency tradeoff table for eliminating economizers.	0 (alternate compliance path).
46	Av	9. Lighting	Changes Section 9.1.2 to require that in all spaces where alterations take place, all requirements of Section 9 are met. Changes exception so that the lighting power density (LPD) requirements of the standard are met in the altered space if less than 10% of luminaries are replaced.	Major + (expansion of new lighting power densities to more retrofits).
47	Aw	9. Lighting	Recognizes practical design application of excluding bathroom lighting from ''master'' switch control in hotel/motel guest rooms and adds a requirement to eliminate wasted light in guest room bathrooms. Adds a 5W allowance for night lights that recognizes the practical current design application of guest room bathroom night light use but at a reasonable low level.	Minor—(adds additional lighting allowance).
48	Ax	3. Definitions, Abbreviations, and Acronyms; 6. Heating, Ventilating, and Air Conditioning.	Expands requirements for Kitchen Exhaust Systems (formerly Kitc8.4.1hen Hoods). Includes addition of definitions for transfer air, replacement air, and makeup air. Add Table 6.5.7.1.3 defining the maximum exhaust flow rate through various hood types (CFM/Linear Foot of Hood Length). Include provisions for hoods with flows greater than 5,000 CFM. Require performance testing to evaluate design airflow rates and demonstrate capture and containment performance.	Minor + (more stringent kitchen exhaust requirements).
49	Ay	9. Lighting	Change that requires users to identify spaces by function.	Minor + (requires users to use proper LPDs).
50	Az	9. Lighting	Adds requirements for lighting controls to be functionally tested to ensure proper use and appropriate energy savings.	Minor + (requires testing of lighting systems).
51	Ba	6. Heating, Ventilating, and Air Conditioning.	Allows a system performance option that allows for compensating for the insulating value of the piping while maintaining the same net thermal requirements.	0 (alternative compliance path).
52	Bc	5. Building Envelope	Clarifies that the requirements in Section 5.5.4.2.3 are also specified for unconditioned spaces.	0 (clarification only).
53	Bd	8. Power	Removes emergency circuits not used for normal building operation from the requirements which will lead to increased compliance. Allows for an increased conformance/use of 90.1 standard by eliminating issues of impracticality of feeder drop requirements for emergency circuits and provides significant initial cost savings.	0 (removes emergency circuits from requirements, but only impact is when emergency circuits are activated).
54	Bf	3. Definitions, Abbreviations, and Acronyms; 4. Administration and Enforcement; 5. Building Envelope.	Modifies language to include performance requirements for air leakage of the opaque envelope.	Minor + (reduces air leakage allowances in opaque envelope).

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS—Continued

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
55	Bg	6. Heating, Ventilating, and Air Conditioning; 12. Normative References.	Establishes a product class for water-to-water heat pumps. Intent is to recognize the technology in 90.1 by requiring minimum energy efficiency standards. Cooling Energy Efficiency Ratios (EERs) and heating COPs are proposed for products with cooling capacities below 135,000 Btu/h at standard rating conditions listed in International Organization for Standardization (ISO) standard 13256–2.	Minor + (adds requirement where no requirement previously existed).
56	Bh	6. Heating, Ventilating, and Air Conditioning.	Provides requirements for multiple zone HVAC systems (that include simultaneous heating and cooling) to include controls that automatically raise the supply air-temperature when the spaces served are not at peak load conditions. Allows an override of the temperature reset if a maximum space humidity setpoint is exceeded. There is an exception from this requirement for warm and humid climate zones 1a, 2a, and 3a.	Major + (requires supply air temperature reset for non-peak conditions).
57	Bi	6. Heating, Ventilating, and Air Conditioning.	Updates requirements for piping insulation, including incorporation of new 90.1 SPPC economic criteria used in developing standard requirements. Adds footnotes to address constrained locations and clarify requirements for direct buried piping.	Minor + (reduced piping heat loss/gain).
58	Bj	Normative Appendix G. Performance Rating Method.	Adds an exception within Appendix G that allows users to claim energy cost savings credit for the increased ventilation effectiveness of certain HVAC system designs.	0 (alternative compliance path).
59	Bk	3. Definitions, Abbreviations and Acronyms; and 10. Other Equipment.	Includes the minimum efficiency requirements for both Subtype I and Subtype II motors as well as clarifies what specific motor types these requirements apply to.	0 (clarification only).
60	Bl	6. Heating, Ventilating, and Air Conditioning.	Corrects the intent of the standard to not exempt all chillers with secondary coolants for freeze protection from coverage by Table 6.8.1C and removes ambiguity. Changes footnote a to Table 6.8.1C in recognition of lower practical scope limits for the lower limit introduced in Addendum M for centrifugal chillers.	Minor + (removes exemption for some chillers).
61	Bm	5. Building Envelope	Coordinates terminology for visible transmittance with NFRC 200.	0 (terminology only).
62	Bn	5. Building Envelope; 11. Energy Cost Budget Method.	Limits use of poorly oriented fenestration—compliance shown by having more south-facing than west-facing fenestration. Provides exceptions for retail glass and buildings potentially shaded from the south or west. Exception also provided for certain additions and alterations.	Minor + (limits poor fenestration orientation).
63	Bo	Normative Appendix G. Performance Rating Method.	Effort to keep requirements of Section 11 and Appendix G consistent with other addenda. Makes changes related to Addenda E, S, and U.	0 (alternative compliance path).
64	Bp	9. Lighting	Allows the use of control that provides automatic 50% auto on with the capability to manually activate the remaining 50% and has full auto-off.	Minor + (allows use of additional energy saving control strategy).
65	Bq	9. Lighting	Retail lighting additional allowance levels reduced.	Minor + (lower retail lighting energy).
66	Br	9. Lighting	Adds an exterior zone 0 to cover very low light requirement areas.	Minor + (reduced exterior lighting energy).
67	Bs	8. Power	Adds requirements to provide a means for non-critical receptacle loads to be automatically controlled based on occupancy or scheduling without additional individual desktop or similar controllers.	Minor + (reduces energy use during unoccupied periods).

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS—Continued

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
68	Bt	6. Heating, Ventilating, and Air Conditioning.	Modifies equation for determining the performance adjustment factor for chillers under nonstandard conditions. Adds labeling requirements for chillers to make compliance determinations simpler.	Minor + (chillers that were previously exempt are no longer exempt).
69	Bu	3. Definitions, Abbreviations, and Acronyms; and 6. Heating, Ventilating, and Air Conditioning.	Modifies and adds to requirements for computer rooms.	Major + (adds efficiency requirements for data centers).
70	Bv	Normative Appendix G. Performance Rating Method.	Effort to keep requirements of Section 11 and Appendix G consistent with other addenda to 90.1. This addendum includes changes to Section 11 and Appendix G due to Addendum Y, AJ, BK, and AX.	0 (alternative compliance paths).
71	Bw	6. Heating, Ventilating, and Air Conditioning.	Amends minimum energy efficiency requirements for standard-size package terminal equipment to be consistent with the new federal standards.	0 (implements existing Federal standards).
72	Bx	6. Heating, Ventilating, and Air Conditioning.	Supplements changes made in addendums H and AS. Attempts to bring into alignment requirements of ASHRAE 90.1 and ASHRAE 62.1. Limits the reheat supply air temperature from ceiling supply air devices to achieve better room air distribution and reduce short-circuiting of air into ceiling return air inlets. Promotes alternative methods of heating perimeter spaces with high heat losses other than use of a VAV box with terminal reheat.	Minor + (limits reheat supply air temperatures).
73	By	3. Definitions, Abbreviations, and Acronyms; 9. Lighting.	Revision represents a complete review, update, correction, and restructuring of the modeling and calculation basis for the space type and resulting whole building type lighting power densities.	Major + (lowered lighting power densities).
74	Ca	6. Heating, Ventilating, and Air Conditioning.	Closes a loophole in the fan power allowances for single zone variable air volume (VAV) systems.	Minor + (removes fan power allowance for VAV systems without terminal units).
75	Cb	6. Heating, Ventilating, and Air Conditioning.	Adds requirement for simple systems to meet prescriptive outdoor air damper requirements. Allows backdraft dampers only for exhaust and relief dampers in buildings less than 3 stories in height. Requires backdraft dampers on outdoor air intakes to be protected from wind limiting windblown infiltration through the damper. Moves climate zone 5a to the category of climates that require low leak dampers. Corrects a mistake in Table 6.4.3.4.4 Reformats Table 6.4.3.4.4 for clarity.	Major + (expansion of automatic damper requirements).
76	Cc	6. Heating, Ventilating, and Air Conditioning.	Corrects a mistake in the way 8″ pipe was analyzed.	Minor—(increases allowable flow rate in 8″ pipe).
77	Cd	9. Lighting	Additions to (1) Strengthen language to actually require exterior control rather than just require the control capability, (2) add bi-level control for general all-night applications such as parking lots to reduce lighting when not needed, and (3) add control for façade and landscape lighting not needed after midnight.	Major + (requires control of exterior lighting—savings during night when lights not needed).
78	Ce	9. Lighting	Adds requirements for multilevel control capability (bi-level switching) in all spaces except those specifically exempted.	0 (manual control requirement).
79	Cf	9. Lighting	Adds requirements for automatic reduction of stairway lighting within 30 minutes of occupants exiting the zone.	Minor + (energy savings through use of controls in stairways).

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS—Continued

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
80	Ch	11. Energy Cost Budget Method; Normative Appendix G. Performance Rating Method.	Clarifies baseline minimum setpoints for fan-powered boxes and VAV reheat boxes. Modifies exceptions to: remove exception originally intended for hospitals and laboratory type spaces, clarify that lab systems with greater than 5000 cfm of exhaust air use a single VAV baseline system; and add exception to the 50% lab VAV minimum airflow to address minimum ventilation requirements lab designers follow to meet codes and accreditation standards.	0 (alternative compliance path).
81	Ck	6. Heating, Ventilating, and Air Conditioning.	Expands zone-level demand controlled ventilation to include various forms of system level strategies. It is being added to the prescriptive section, so that it could be traded off using the Energy Cost Budget (ECB) method.	Minor + (expands automatic zone reset in multizone systems).
82	Cl	3. Definitions, Abbreviations, and Acronyms; 5. Building Envelope.	Clarifies how to interpret the use of dynamic glazing which are designed to be able to vary a performance property such as Solar Heat Gain Coefficient (SHGC), rather than having just a single value.	0 (alternative compliance path).
83	Cn	9. Lighting	Adds two versions of a combined advanced control to the control incentives table (9.6.2). These control system combinations involve personal workstation control and work-station-specific occupancy sensors for open office applications.	0 (alternative compliance path).
84	Co	6. Heating, Ventilating, and Air Conditioning.	This proposal makes three amendments to Table 6.8.1A. First, it updates EER and IEER values for all condensing units and water and evaporatively cooled air conditioners with cooling capacities greater than 65,000 Btu/h. Second, the proposal establishes a separate product class for evaporatively cooled air conditioners with different energy efficiency standards. Third, the proposal replaces the IPLV descriptor for condensing units with the new IEER metric and amends the EERs with more stringent values.	Minor + (improves efficiency of minor market products).
85	Cp	3. Definitions, Abbreviations, and Acronyms; 6. Heating, Ventilating, and Air Conditioning.	Establishes efficiency requirements for Variable Refrigerant Flow (VRF) air conditioners and heat pumps including heat pumps that use a water source for heat rejection.	0 (not more stringent than common practice).
86	Cq	6. Heating, Ventilating, and Air Conditioning; Informative Appendix E. Informative References.	Addendum is based on economic analysis using the current scalar value. Nearly all classes are economically justified at seal class A, allowing for the removal of two tables.	Minor + (reduced duct leakage).
87	Cr	3. Definitions, Abbreviations, and Acronyms; 11. Energy Cost Budget Method and Normative Appendix G. Performance Rating Method.	Modifies definition of unmet load hour and adds definition for temperature control throttling range. Requires that both baseline and proposed unmet hours not exceed 300. Removes language allowing modification of system coil capacities to reduce unmet hours as needed.	0 (alternative compliance paths).
88	Cs	8. Power	Modifies automatic receptacle control requirements and exemptions to eliminate potential practical application issues.	Major+ (minimizes exceptions to switched receptacle requirement.
89	Ct	9. Lighting	Reduces the area threshold where side daylighting requires daylight sensor control down to 250 square feet.	Minor + (reduce area requirement for occupancy sensors).
90	Cv	10. Other Equipment	Adds requirements for service water pressure booster systems.	Minor + (adds requirement s for service water pressure booster systems).

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS—Continued

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
91	Cw	11. Energy Cost Budget Method.	Revises the Energy Cost Budget for service hot water heaters. Corrects contradiction with section 11.32(b). Provides user instruction for situations where a certain type of service hot water system is not listed in Table 7.8.	0 (alternative compliance path).
92	Cy	6. Heating, Ventilating, and Air Conditioning.	Makes several revisions to the economizer requirements in section 6.5.1 and 6.3.2. Updates Table 6.3.2 which allows for the elimination of economizers through the use of higher efficiency HVAC equipment.	Major + (expands use of economizers).
93	Cz	9. Lighting	Incorporates bi-level control for parking garages to reduce energy waste during unoccupied periods.	Minor + (reduced parking garage lighting).
94	da	Normative Appendix G. Performance Rating Method.	Establishes that an Appendix G baseline shall be based on the minimum ventilation requirements required by local codes or a rating authority and not the proposed design ventilation rates.	0 (performance rating method).
95	db	Normative Appendix G. Performance Rating Method.	This addendum modifies the design air flow rates for laboratory systems in the baseline building in Appendix G.	0 (performance rating method).
96	dc	9. Lighting	Removes information related to tandem wiring of lighting.	Minor—(tandem wiring no longer used in practice—possible small increase in energy usage).
97	dd	5. Building Envelope; and 9. Lighting.	Reduces the area threshold where skylights are required to be designed into building spaces down to 5000 square feet and similarly reduces the threshold where daylighting controls must be applied to 900 square feet.	Major + (requires daylighting controls in more spaces).
98	de	9. Lighting	Splits the ''generic lobby'' from common elevator lobbies and lighting power densities were adjusted to reflect specific space needs. Also removes the fitness center audience seating because it's considered a space type that was considered not used and potentially confusing..	0 (allows more lighting power in lobbies but less in elevator lobbies).
99	df	10. Other Equipment	Adds requirements that address excess energy use in elevators due to ventilation fans and cab lighting.	Minor + (small lighting and ventilation savings).
100	dg	3. Definitions, Acronyms, and Abbreviations; and Normative Appendix G. Performance Rating Method.	Adds a definition for the term ''field-fabricated fenestration'' used in section 5.4.3.2 consistent with Interpretation IC 90.1–2007–01 and similar language in California's Title 24.	0 (clarification of definition).
101	di	3. Definitions, Abbreviations, and Acronyms; 6. Heating, Ventilating, and Air Conditioning.	Adds requirements for enclosed parking garage ventilation.	Minor + (reduced parking garage ventilation energy).
102	dj	6. Heating, Ventilating, and Air Conditioning.	Limits the fan energy allowance for energy recovery devices to values that approximate the results of the economic analysis, with some allowance to permit adequate pressure drop for products near the minimum recovery effectiveness of 50%. A separate allowance is also created for coil runaround loop systems.	Minor + (limits fan energy allowance of energy recovery devices).
103	dk	Normative Appendix C. Methodology for Building Envelope Trade-Off Option in Subsection 5.6.	Adds clarity and instruction to the users of Appendix C, the envelope trade off option, for new requirements that were added in addendums AL, BC, and BN. AL required skylights and lighting controls in certain occupancies. BC required skylights and lighting controls in unconditioned semi-heated spaces. BN dealt with orientation specific SHGC requirements..	0 (alternative compliance path).

TABLE 1—RESULTS OF ADDENDUM-BY-ADDENDUM ANALYSIS—Continued

No.	Addendum to standard 90.1–2007	Section affected	Description of changes	Impact on energy efficiency and reason
104	dl	Normative Appendix C. Methodology for Building Envelope Trade-Off Option in Subsection 5.6.	Gives instruction to the users of Appendix C on how to model the base envelope design and the proposed envelope design on how to comply with the cool roof provisions of Section 5.	0 (alternative compliance path).
105	dn	Normative Appendix G. Performance Rating Method.	This addendum adds system types 9 and 10 for heated only storage spaces and associated changes.	0 (performance rating method).
106	do	4. Administration and Enforcement; 9. Lighting.	Establishes the goals and requirements of the lighting system including controls and ensures that owners are provided all the information necessary to best use and maintain lighting systems.	0 (documentation only).
107	dp	12. Normative References.	Updates the references in 90.1 to reflect the current edition of the cited standard. Substantive changes in the referenced documents did not affect the requirements in 90.1 or change the stringency of the requirements of 90.1.	0 (updates references).
108	dq	Normative Appendix C. Methodology for Building Envelope Trade-Off Option in Subsection 5.6.	Modifies the calculations found in Appendix C in order to reflect modifications to the modeling assumptions.	0 (alternative compliance path).
109	dr	9. Lighting	Original purpose of 9.4.4 was to limit the use of inefficient lighting sources for high wattage applications when there was not a comprehensive table of lighting power density limits. With such a table now in place, section 9.4.4 is no longer necessary.	0 (editorial only).

Table 2 is an overall summary of the addenda in terms of their impact in the qualitative analysis. Overall, the sum of the major positive and minor positive addenda (56) greatly overwhelms the number of minor negative addenda (6), leading to the conclusion that the overall impact of the addenda on the standard is positive.

TABLE 2—OVERALL SUMMARY OF ADDENDA IMPACT IN QUALITATIVE ANALYSIS

Major negative	Minor negative	Neutral	Minor positive	Major positive	Total
None	6	47	37	19	109

The 6 negative impacts on energy efficiency include:

1. Addendum b—allows larger than minimum ventilation rates if required by other codes.
2. Addendum c—allows an exception to dehumidification for controls for vivariums.
3. Addendum p—increases allowable pressure drop in laboratory exhaust systems.
4. Addendum aw—adds an additional lighting allowance for nightlights in hotel/motel bathrooms.
5. Addendum cc—allows higher flow rates in 8'' piping.
6. Addendum dc—eliminates tandem wiring requirement.

None of these negative impacts are judged to be significant. Addendum b simply acknowledges that Standard 90.1 does not address ventilation rates that are required in other codes. Addendum c simply adds vivariums (spaces used for plant or animal growth) to the list of spaces that may have more stringent humidity requirements than normal spaces. Addendum p increases allowable pressure drop in laboratory exhaust systems and addresses some noted shortcomings in the previous version of Standard 90.1 with regard to fume hoods. Addendum aw acknowledges the common practice of the use of bathroom lights as ''nightlights'' in hotel/motel guest rooms. Addendum cc corrects a calculation error in the previous version of Standard 90.1. Addendum dc eliminates a tandem wiring requirement for ballasts that is no longer used with the widespread use of electronic ballasts.

The 19 major positive impacts on energy efficiency include:

1. Addendum d—requires daylighting controls under skylights and commissioning of daylighting controls.
2. Addendum e—requires increased use of heat recovery.
3. Addendum f—requires cool roofs in hot climates.
4. Addendum i—lower illuminance requirements in certain exterior zones.
5. Addendum m—updates chiller efficiency requirements.
6. Addendum n—extends VAV fan control requirements.
7. Addendum x—adds occupancy sensor requirements for many specific applications.
8. Addendum ab—adds daylighting control requirements for side-lighted spaces.

9. Addendum al—requires skylights and daylighting in some building types.
10. Addendum ap—reduces ventilation energy.
11. Addendum av—expansion of new lighting power densities to more retrofits.
12. Addendum bh—requires supply air temperature reset for non-peak conditions.
13. Addendum bu—adds efficiency requirements for data centers.
14. Addendum by—required lower lighting power densities.
15. Addendum cb—expands automatic damper requirements.
16. Addendum cd—requires control of exterior lighting.
17. Addendum cs—minimizes exceptions to switched receptacle requirement.
18. Addendum cy—expands use of economizers.
19. Addendum dd—requires daylighting controls in more spaces.

Many of these ''major positive'' addenda are self descriptive. The high-level themes of the major positive addenda tend to be as follows:

- Better lighting, daylighting, and controls (d, i, x, ab, al, av, by, cd, cs, and dd)
- Better mechanical systems and application to more systems (e, m, n, ap, bh, bu, cb, and cy).
- Better building envelope (f).

There are an additional 37 addenda that have minor positive impacts. See the complete qualitative analysis for additional detail.

B. Quantitative Analysis

1. Discussion of Whole Building Energy Analysis

The quantitative comparison of Standard 90.1–2010 was carried out using whole-building energy simulations of buildings built to both Standard 90.1–2007 and Standard 90.1–2010. DOE simulated 16 representative building types in 15 U.S. climate locations, each climate location selected to be representative of one of the 15 U.S. climate zones used in the definition of building energy code criteria in Standard 90.1–2007 and Standard 90.1–2010. The simulations were developed using specific building prototypes based on the DOE commercial reference building models developed for DOE's Net-Zero Energy Commercial Building Initiative. (These reference building prototypes were formerly known as Benchmark building models). No changes were made to the final quantitative analysis from the preliminary quantitative analysis.

For each building prototype simulated in each climate the energy use intensities (EUI) by fuel type and by end-use were extracted. These EUIs by fuel type for each building were then weighted to national average EUI figures using weighting factors based on the relative square footage of construction represented by that prototype in each of the 15 climate regions. These weighting factors were based on commercial building construction starts data for a five year period from 2003 to 2007. The source of data was the McGraw-Hill Construction Projects Starts Database (MHC). The MHC database captures over 90% of new commercial construction in any given year and the collection process is independently monitored to ensure the coverage of most of the commercial construction in the U.S. The data is used by other federal agencies such as the U.S. Census Bureau, the Federal Reserve and the U.S. Department of Health and Human Services (HHS) for characterizing building construction in the U.S. For the purpose of developing construction weighting factors, the strength of this data lies in the number of samples, the characterization of each sample in terms of building end-use and size and number of stories, the frequency of data collection, and the detailed location data. In addition, the MHC database can be used to identify multifamily residential buildings that would be covered under ASHRAE Standard 90.1.

DOE's prototypes reflect the use of two fuel types, electricity and natural gas. Using the weighting factors, DOE was able to establish an estimate of the relative reduction in building energy use, as determined by a calculated reduction in weighted average site EUI for each building prototype. Site energy refers to the energy consumed at the building site. In a corresponding fashion, DOE was also able to calculate a reduction in terms of weighted average primary EUI and in terms of weighted average energy cost intensity (ECI) in $/sq. ft. of building floorspace. Primary energy as used here refers to the energy required to generate and deliver energy to the site. To estimate primary energy, all electrical energy use intensities were first converted to primary energy using a factor of 10,918 Btus primary energy per kWh (based on the 2010 estimated values reported in Table 2 of the EIA 2010 Annual Energy Outlook, release date December 2009, available at *http://www.eia.doe.gov/oiaf/archive/aeo10/aeoref_tab.html*).

The conversion factor of 10,918 was calculated from Table 2 by summing the commercial electricity value of 4.62 quads with the electricity losses value of 10.17 quads and then dividing that sum by the commercial value. ((4.62 + 10.17)/4.62 = 3.2) This yields an electricity ratio of 3.2 for converting how much primary (source) electricity is required per unit of site required electricity. This ratio of 3.2 is then multiplied by 3,412 Btu per kWh, producing a value of 10,918 Btus primary energy per kWh of site energy. Natural Gas EUIs in the prototypes were converted to primary energy using a factor of 1.090 Btus primary energy per Btu of site natural gas use (based on the 2010 national energy use estimated shown in Table 2 of the AEO 2010). This natural gas source energy conversion factor was calculated by dividing the natural gas subtotal of 23.15 quads (sum of all natural gas usage, including usage for natural gas field production, leases, plant fuel, and pipeline (compression) supply) by the delivered natural gas total of 21.23 quads (sum of four primary energy sectors (residential, commercial, industrial, and transportation).

a. Calculation of Energy Cost Index

To estimate the reduction in energy cost index, DOE relied on national average commercial building energy prices of $0.1026/kWh of electricity and $10.06 per 1000 cubic feet ($0.9796/therm) of natural gas, based on EIA statistics for 2009 (the last complete year of data available in Table 5B Commercial Average Monthly Bill by Census Division, and State—available from EIA at *http://www.eia.gov/cneaf/electricity/esr/table5_b.html* and for 2009 (the last complete year of data available from the EIA Natural Gas Annual Summary for the commercial sector available at *http://tonto.eia.doe.gov/dnav/ng/ng_pri_sum_dcu_nus_a.htm*.) DOE recognizes that actual fuel costs will vary somewhat by building type within a region, and will in fact vary more across regions. Nevertheless, DOE believes that the use of simple national average figures illustrates whether there will be energy cost savings sufficient for the purposes of the DOE determination.

b. Calculation of Energy Use Intensities

Energy use intensities developed for each representative building type were weighted by total national square footage of each representative building type to provide an estimate of the difference between the national energy use in buildings constructed to the 2007 and 2010 editions of the Standard 90.1. Note that the 16 buildings types used in the final determination reflect approximately 80% of the total square footage of commercial construction including multi-family buildings greater

than three stories covered under ASHRAE Standard 90.1.

Note that only differences between new building requirements were considered in this quantitative analysis. Changes to requirements in the 2010 edition that pertain to existing buildings only are addressed in the detailed textual analysis only.

c. Application to Additions and Renovations

Both the 2010 and 2007 editions address additions and renovations to existing buildings. Since DOE has preliminarily found insufficient data to characterize renovations in terms of what energy using features are utilized, DOE has not determined that the results obtained from the whole building prototypes used would reasonably reflect the EUI benefits that would accrue to renovated floor space. For this reason, renovated floor space is not included in the DOE weighting factors. Building additions on the other hand are believed to be substantially equivalent to new construction. For this reason, FW Dodge construction data on additions has been incorporated into the overall weighting factors. Floor space additions reflect approximately 13 percent of new construction floor space based on data captured in the FW Dodge dataset.

d. Ventilation Rate Assumptions

The final quantitative analysis assumed the same base ventilation level for buildings constructed to Standard 90.1–2007 and Standard 90.1–2010. Neither edition of Standard 90.1 specifies ventilation rates for commercial building construction. ASHRAE has a separate ventilation standard for commercial construction, ASHRAE Standard 62.1 *Ventilation for Acceptable Indoor Air Quality.* This standard is cited only in a few exceptions within the mechanical sections of either Standard 90.1–2007 or Standard 90.1–2010, with each edition referencing a different version of Standard 62.1. Standard 90.1–2007 lists Standard 62.1–2004 in its table of references. Standard 90.1–2010 lists Standard 62.1–2007 in its table of references.

Ventilation rates can have significant impact on the energy use of commercial buildings. States and local jurisdictions typically specify the ventilation requirements for buildings within their respective building codes and can set these requirements independent of the energy code requirements. Because of the limited reference to ventilation within either the 2007 or the 2010 edition, the requirements that States certify that their energy codes meet or exceed the 2010 edition of Standard 90.1 would in general not require modification of State ventilation code requirements. However, in many cases, ventilation requirements can be traced back to requirements found in one or another version of Standard 62.1. For the purpose of the quantitative analysis, DOE assumed ventilation rates for the simulation prototypes based on the requirements of Standard 62.1–2004.

2. Results of Whole Building Energy Analysis

The final quantitative analysis of the energy consumption of buildings built to Standard 90.1–2010, as compared with buildings built to Standard 90.1–2007, indicates national primary energy savings of approximately 18.2 percent of commercial building energy consumption based on the weighting factors for the 16 buildings simulated. Site energy savings are estimated to be approximately 18.5 percent. Using national average fuel prices for electricity and natural gas DOE estimated a reduction in energy expenditures of 18.2 percent would result from the use of Standard 90.1–2010 as compared to Standard 90.1–2007. As identified previously, these estimated savings figures do not include energy savings from equipment or appliance standards that would be in place due to Federal requirements regardless of their presence in the Standard 90.1–2010.

Tables 3 and 4 show the aggregated energy use and associated energy savings by building type for the 16 building prototypes analyzed and on an aggregated national basis for the 2007 and 2010 editions, respectively. For each edition of Standard 90.1, the national building floor area weight used to calculate the national impact on building EUI or building ECI is presented. National-average site energy use intensities ranges from over five hundred Btu per square foot annually for the Fast Food prototype to approximately 20 Btu per square foot annually for the Non-refrigerated Warehouse type. Source energy use intensities and building energy cost intensities ($/sf-yr) are also presented. Further details on the final quantitative analysis can be found in the full final quantitative analysis report available at *http://www.energycodes.gov/status/determinations_com.stm.*

TABLE 3—ESTIMATED ENERGY USE INTENSITY BY BUILDING TYPE—2007 EDITION

Building type	Building prototype	Building type floor area weight %	Whole building EUI data for building population		
			Site EUI kBtu/ft2-yr	Source EUI kBtu/ft2-yr	ECI $/ft^2$-yr
Office	Small Office	5.61	39.1	118.4	$1.11
	Medium Office	6.05	47.7	140.6	1.32
	Large Office	3.33	42.8	123.3	1.16
Retail	Stand-Alone Retail	15.25	65.0	179.5	1.69
	Strip Mall	5.67	68.3	186.0	1.75
Education	Primary School	4.99	63.4	170.2	1.60
	Secondary School	10.36	54.2	149.7	1.41
Healthcare	Outpatient Health Care	4.37	162.0	438.0	4.11
	Hospital	3.45	156.4	374.9	3.51
Lodging	Small Hotel	1.72	70.8	179.4	1.68
	Large Hotel	4.95	157.1	315.8	2.95
Warehouse	Non-Refrigerated Warehouse	16.72	24.2	58.6	0.55
Food Service	Fast-Food Restaurant	0.59	547.7	1068.0	9.98
	Sit-Down Restaurant	0.66	382.4	810.7	7.59
Apartment	Mid-Rise Apartment	7.32	44.2	123.7	1.16
	High-Rise Apartment	8.97	44.2	129.3	1.22
National		100	67.5	174.0	1.63

TABLE 4—ESTIMATED ENERGY USE INTENSITY BY BUILDING TYPE—2010 EDITION

Building type	Building prototype	Building type floor area weight %	Whole building EUI data for building population		
			Site EUI kBtu/ft2-yr	Source EUI kBtu/ft2-yr	ECI $/ft2-yr
Office	Small Office	5.61	32.8	99.0	$0.93
	Medium Office	6.05	37.1	106.3	1.00
	Large Office	3.33	33.3	96.8	0.91
Retail	Stand-Alone Retail	15.25	48.0	135.1	1.27
	Strip Mall	5.67	56.9	150.9	1.42
Education	Primary School	4.99	48.0	134.8	1.27
	Secondary School	10.36	39.8	114.9	1.08
Healthcare	Outpatient Health Care	4.37	125.4	340.9	3.20
	Hospital	3.45	118.1	299.5	2.81
Lodging	Small Hotel	1.72	66.6	165.7	1.55
	Large Hotel	4.95	139.8	282.5	2.64
Warehouse	Non-Refrigerated Warehouse	16.72	19.2	45.0	0.42
Food Service	Fast-Food Restaurant	0.59	519.9	976.5	9.12
	Sit-Down Restaurant	0.66	330.9	654.1	6.12
Apartment	Mid-Rise Apartment	7.32	41.2	118.3	1.11
	High-Rise Apartment	8.97	41.0	123.5	1.16
National		100	55.0	142.4	1.34

Table 5 presents the estimated percent energy savings (based on change in EUI) between the 2007 and 2010 editions. Overall, considering those differences that can be reasonably quantified, the 2010 edition is expected to increase the energy efficiency of commercial buildings. Numbers in Table 5 represent percent energy savings.

TABLE 5—ESTIMATED PERCENT ENERGY SAVINGS WITH 2010 EDITION—BY BUILDING TYPE

Building type	Building prototype	Building type floor area weight %	Percent savings in whole building energy use intensity (%)		
			Site EUI	Source EUI	ECI
Office	Small Office	5.61	16.1	16.4	16.4
	Medium Office	6.05	22.1	24.4	24.4
	Large Office	3.33	22.3	21.5	21.5
Retail	Stand-Alone Retail	15.25	26.1	24.7	24.7
	Strip Mall	5.67	16.8	18.9	18.9
Education	Primary School	4.99	24.2	20.8	20.8
	Secondary School	10.36	26.7	23.3	23.2
Healthcare	Outpatient Health Care	4.37	22.6	22.2	22.2
	Hospital	3.45	24.5	20.1	20.1
Lodging	Small Hotel	1.72	5.9	7.7	7.7
	Large Hotel	4.95	11.0	10.5	10.5
Warehouse	Non-Refrigerated Warehouse	16.72	20.7	23.1	23.1
Food Service	Fast Food Restaurant	0.59	5.1	8.6	8.6
	Sit-Down Restaurant	0.66	13.5	19.3	19.4
Apartment	Mid-Rise Apartment	7.32	6.8	4.4	4.4
	High-Rise Apartment	8.97	7.2	4.5	4.5
National		100	18.5	18.2	18.2

C. Final Determination Statement

DOE's review and evaluation indicates that there are significant differences between the 2007 edition and the 2010 edition. DOE's overall final conclusion is that the 2010 edition will improve the energy efficiency of commercial buildings.

However, DOE identified six changes in textual requirements that taken alone appear to represent a reduction in stringencies and could decrease energy efficiency. The six changes are:

- Addendum b, which allows larger than minimum ventilation rates if required by other codes;
- Addendum c, which allows an exception to dehumidification for controls for vivariums;
- Addendum p, which increases allowable pressure drop in laboratory exhaust systems;
- Addendum aw, which adds an additional lighting allowance for nightlights in hotel/motel bathrooms;
- Addendum cc, which allows higher flow rates in 8″ piping; and
- Addendum dc, which eliminates tandem wiring requirements.

DOE believes that in these cases, the reduction in stringency was not considered a major impact. For the other addenda, DOE determined that the remaining addenda either represented no change in stringency, or indicated a positive change in stringency corresponding to improved efficiency. Overall, DOE concluded the changes in textual requirements and stringencies are ''positive,'' in the sense that they would improve energy efficiency in commercial construction.

The quantitative analysis shows that for the 16 prototype buildings, a weighted average national improvement in new building efficiency of 16.5 percent, when considering source energy, and by 17.1 percent, when considering site energy.

As both the 2007 and 2010 editions cover existing buildings, to the extent that these standards are applied to existing buildings in retrofits or in new construction addition, the 2010 edition should improve the efficiency of the existing building stock.

DOE has, therefore, concluded that Standard 90.1–2010 receive an affirmative determination under Section 304(b) of ECPA.

III. Filing Certification Statements With DOE

A. Review and Update

Upon publication of this affirmative final determination, each State is required to review and update, as necessary, the provisions of its commercial building energy code to meet or exceed the energy efficiency provisions of the 2010 edition. (42 U.S.C. 6833(b)(2)(B)(i)) This action is required to be taken not later than two years from the date of publication of this notice of final determination, unless an extension is provided.

The DOE recognizes that some States do not have a State commercial building energy code or have a State code that does not apply to all commercial buildings. If local building energy codes regulate commercial building design and construction rather than a State code, the State must review and make all reasonable efforts to update as authorized those local codes to determine whether they meet or exceed the 2010 edition of Standard 90.1. States may base their certifications on reasonable actions by units of general purpose local government. Each such State must still review the information obtained from the local governments and gather any additional data and testimony for its own certification.

Note that the applicability of any State revisions to new or existing buildings would be governed by the State building codes. However, it is our understanding that generally, the revisions would not apply to existing buildings unless they are undergoing a change that requires a building permit.

States should be aware that the DOE considers high-rise (greater than three stories) multi-family residential buildings, hotel, motel, and other transient residential building types of any height as commercial buildings for energy code purposes. Consequently, commercial buildings, for the purposes of certification, would include high-rise (greater than three stories) multi-family residential buildings, hotel, motel, and other transient residential building types of any height.

B. Certification

Section 304(b) of ECPA, as amended, requires each State to certify to the Secretary of Energy that it has reviewed and updated the provisions of its commercial building energy code regarding energy efficiency to meet or exceed the Standard 90.1–2010 edition. (42 U.S.C 6833(b)) Today's final determination is being published before the 2 year deadline to file a certification for the 2007 positive determination; therefore, a state may file just one certification to address both determinations. The certification must include a demonstration that the provisions of the State's commercial building energy code regarding energy efficiency meet or exceed Standard 90.1–2010. If a State intends to certify that its commercial building energy code already meets or exceeds the requirements of Standard 90.1–2010, the State should provide an explanation of the basis for this certification, *e.g.,* Standard 90.1–2010 is incorporated by reference in the State's building code regulations. The chief executive of the State (*e.g.,* the Governor) or a designated State official, such as the Director of the State energy office, State code commission, utility commission, or equivalent State agency having primary responsibility for commercial building energy codes, is to provide the certification to the Secretary. Such a designated State official also is to provide the certifications regarding the codes of units of general purpose local government based on information provided by responsible local officials. Certifications are to be sent to the address provided in the **ADDRESSES** section.

DOE does list the States that have filed certifications and those that have or have not adopted new codes on the DOE Energy Efficiency and Renewable Energy Web site at *http://www.energycodes.gov/states/.* Once a State has adopted a new commercial code, DOE typically provides software, training, and support for the new code as long as the new code is based on the national model codes (in this case, ASHRAE Standard 90.1).

Some States develop their own codes that are only loosely related to the national model codes and DOE does not typically provide technical support for those codes. However, DOE does provide grants to these States through grant programs administered by the National Energy Technology Laboratory (NETL). DOE does not prescribe how each State adopts and enforces its energy codes.

C. Request for Extensions To Certify

Section 304(c) of ECPA, requires that the Secretary permit an extension of the deadline for complying with the certification requirements described above, if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting its certification obligations. (42 U.S.C. 6833(c)) Such demonstrations could include one or both of the following: (1) A plan for response to the requirements stated in section 304; or (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of Section 304 of ECPA. This list is not exhaustive. Requests are to be sent to the address provided in the **ADDRESSES** section.

IV. Regulatory Analysis

A. Review Under Executive Order 12866

Today's action is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735; October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' (67 FR 53461 (Aug. 16, 2002)), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.*

DOE has reviewed today's final determination under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Since today's action on the determination of improved energy efficiency between the 2007 and 2010 editions of Standard 90.1 is now finalized by DOE, it requires States to

undertake an analysis of their respective building codes. As such, the only entities directly regulated by this final determination would be States. DOE does not believe that there will be any direct impacts on small entities such as small businesses, small organizations, or small governmental jurisdictions.

On the basis of the foregoing, DOE certifies that this final determination would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this final determination. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

C. Review Under the National Environmental Policy Act of 1969

Today's action is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6. of Appendix A to subpart D, 10 CFR part 1021. That Categorical Exclusion applies to actions that are strictly procedural, such as rulemaking establishing the administration of grants. Today's action is required by Title III of ECPA, as amended, which provides that whenever the Standard 90.1–1989, or any successor to that code, is revised, the Secretary must make a determination, not later than 12 months after such revision, whether the revised code would improve energy efficiency in commercial buildings and must publish notice of such determination in the **Federal Register**. (42 U.S.C. 6833(b)(2)(A)) If the Secretary determines that the revision of Standard 90.1–1989 or any successor thereof, improves the level of energy efficiency in commercial buildings then no later than two years after the date of the publication of such affirmative determination, each State is required to certify that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency with respect to the revised or successor code. (42 U.S.C. 6833(b)(2)(B)(i)) If the Secretary makes a determination that the revised standard will not improve energy efficiency in commercial buildings then State commercial codes shall meet or exceed the last revised standard for which the Secretary has made a positive determination. (42 U.S.C. 6833(b)(2)(B)(ii)) Therefore, DOE has preliminarily determined that the Secretary's determination is not a major federal action that would have direct environmental impacts. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

D. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, 64 FR 43255 (Aug 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that pre-empt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions.

DOE has reviewed the statutory authority. Congress found that:

(1) Large amounts of fuel and energy are consumed unnecessarily each year in heating, cooling, ventilating, and providing domestic hot water for newly constructed residential and commercial buildings because such buildings lack adequate energy conservation features;

(2) Federal voluntary performance standards for newly constructed buildings can prevent such waste of energy, which the Nation can no longer afford in view of its current and anticipated energy shortage;

(3) the failure to provide adequate energy conservation measures in newly constructed buildings increases long-term operating costs that may affect adversely the repayment of, and security for, loans made, insured, or guaranteed by Federal agencies or made by federally insured or regulated instrumentalities; and

(4) State and local building codes or similar controls can provide an existing means by which to assure, in coordination with other building requirements and with a minimum of Federal interference in State and local transactions, that newly constructed buildings contain adequate energy conservation features. (42 U.S.C. 6831)

Pursuant to Section 304(b) of ECPA, DOE is statutorily required to determine whether the most recent versions of ASHRAE 90.1 would improve the level of energy efficiency in commercial buildings as compared to the previous version. If DOE makes a positive determination, the statute requires each State to certify that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency with respect to the revised or successor codes. (42 U.S.C. 6833(b)(2)(B)(i))

Executive Order 13132, 64 FR 43255 (August 4, 1999) requires meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications unless ''funds necessary to pay the direct costs incurred by the State and local governments in complying with the regulation are provided by the Federal Government.'' (62 FR 43257) Pursuant to section 304(e) of ECPA, the DOE Secretary is required to ''provide incentive funding to States to implement the requirements of [Section 304], and to improve and implement State residential and commercial building energy efficiency codes, including increasing and verifying compliance with such codes. In determining whether, and in what amount, to provide incentive funding under this subsection, the Secretary shall consider the actions proposed by the State to implement the requirements of this section, to improve and implement residential and commercial building energy efficiency codes, and to promote building energy efficiency through the use of such codes.'' (42 U.S.C. 6833(e)) Therefore, consultation with States and local officials regarding this final determination was not required.

However, DOE notes that State and local governments were invited to participate in the development Standard 90.1–2010. Standard 90.1–2010, was developed in a national ANSI consensus process open to the public and in which State and local governments participate along with DOE and other interested parties. It is the product of a series of amendments to the prior addition of the standard. Each addendum is put out for national public review. Anyone may submit comments, and in the process comments were received from State and local governments. Comments on the addendum are received, reviewed and resolved through a consensus process. Members of the standards project committee have included representatives of State and local governments.

DOE annually holds a national building energy codes workshop at which the progress on development of the model energy codes are presented, along with discussion and sharing of problems and successes in adoption, implementation, and enforcement of building energy codes. The predominate attendance of these workshops are State and local officials responsible for building energy codes. They are consistently encouraged and urged to participate in the model building energy code processes, which will be the subject of DOE's next determinations under section 304 of ECPA. Thus, State and local officials have had the opportunity to participate in the development of the standard through

the ASHRAE process. Some have done so.

Similarly, the comments of States and local governments about provisions of the developing Standard 90.1–2010 were received in formal comment periods and heard and addressed in ASHRAE committee deliberations open to the public. In addition, concerns and issues about adoption, implementation and enforcement issues were presented and discussed at informal sessions at the Department's annual national workshops on building energy codes. DOE believes that the above process has given State and local jurisdictions extensive opportunity to comment on and express their concerns on Standard 90.1–2010, the subject of this determination.

On issuance of a final determination that Standard 90.1–2010 would improve the energy efficiency of commercial buildings, ECPA requires the States to certify to the Secretary that it has reviewed and updated the provisions of its commercial building code regarding energy efficiency to meet or exceed the requirements of Standard 90.1–2010. DOE notes that ECPA sets forth this requirement for States. (42 U.S.C. 6833(b)(2)(B)(i)) States are given broad freedom to either adopt Standard 90.1–2010 or develop their own code that meets equivalent energy efficiency.

E. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Subsection 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

Upon publication of this affirmative final determination, each State is required under section 304 of ECPA to review and update, as necessary, the provisions of its commercial building energy code to meet or exceed the provisions of the 2010 edition of Standard 90.1. (42 U.S.C. 6833(b)(2)(B)(i)) Section 304 of ECPA requires State action in response to this positive determination by DOE. The statutory requirements of ECPA require DOE to provide a determination irrespective of costs. While the processes that States may undertake to update their codes vary widely, as a general rule a State at a minimum needs to:

- Evaluate Standard 90.1–2010 using the background material provided by DOE
- Compare the existing State commercial building energy code to Standard 90.1–2010 to see if an update is needed
- Update the State commercial building energy code to meet or exceed Standard 90.1–2010.

DOE evaluated the potential for State activity to exceed $100 million in any one year. The approach looked at the three steps for minimum activity listed in the previous paragraph—evaluate, compare and update. A fourth potential step of providing training on the new code was also considered as some States may consider training on the new code to be an integral part of adopting the new code. For the three steps of minimum activity, DOE estimated the following:

Evaluate Standard 90.1–2010—DOE estimated a minimum of 8 hours of review per State and a maximum review time of 500 hours of review per State (12.5 work weeks). The minimum review time of 8 hours (one day) is the estimated minimum amount of time DOE can see States taking to review Standard 90.1–2010. Reading and reviewing the **Federal Register** notice, the qualitative analysis document and the quantitative analysis document will take the average person several hours. Deciding on whether or not to upgrade to Standard 90.1–2010 may take another couple of hours. The maximum review time of 500 hours (62.5 day, 3 working months) upper limit was estimated as the amount of time that a State that was not familiar with energy codes at all or which has a particularly arduous review process within the State would take to review these documents.

(1) A cost per hour of $100 per hour was assumed based on actual rates proposed in subcontracts associated with compliance studies funded by DOE. The average rate calculated from these subcontracts for 10 types of building officials from 6 states was $93.41, so DOE chose to round this up to $100 per hour.

a. Low estimate—8 hours × 50 states × $100 per hour = $40,000.
b. High estimate—500 hours × 50 states × $100 per hour = $2,500,000.

(2) Compare Standard 90.1–2010 to existing state code—Assuming the State is familiar with its code and has performed an effective evaluation of Standard 90.1 in the first step, the range of potential costs should be similar to Step 1. (See Step 1 for discussion of 8 hour and 500 hour times and $100 per hour cost estimate).

a. Low estimate—8 hours × 50 states × $100 per hour = $40,000.
b. High estimate—500 hours × 50 states × $100 per hour = $2,500,000.

(3) Update the State Codes to meet or exceed Standard 90.1–2010—Adopting a new energy code could be as simple as updating an order within the State, or it could be very complex involving hearings, testimony, *etc.* Again, the range of potential costs should be similar to Step 1. (See Step 1 for discussion of origin of 8 hour and 500 hour times and $100 per hour cost estimate).

a. Low estimate—8 hours × 50 states × $100 per hour = $40,000.
b. High estimate—500 hours × 50 states × $100 per hour = $2,500,000.

The potential range of total costs States to under these assumptions would be $120,000 to $7.5 million. This range is well below the $100 million threshold in the Unfunded Mandates Act. DOE has also considered potential costs were States to provide training on the new code.

(4) Train Code officials on New Code—Assuming every jurisdiction has at least one person that needs to be trained on energy code. There are roughly 40,000 general purpose local governments, or jurisdictions, in the U.S.. The total number of jurisdictions in the U.S. that enforce energy codes is not known with any degree of certainty. The National League of Cities publishes an estimate of the number of local governments in the U.S. at *http://www.nlc.org/build-skills-networks/resources/cities-101/number-of-local-governments—population-distribution.* Their summary indicates the following:

- 19,492 Municipal governments;
- 16,519 Town or Township governments;

- 3,033 County governments;
- 13,726 School districts; and
- 37,381 Special district governments.

(5) DOE believes it is reasonable to assume that all of the municipal governments, town or township governments, and county governments could be required to acquire training on Standard 90.1–2010 in order to enforce this standard as an adopted energy code. In addition, the 50 state governments would be required to acquire training. This number adds up to 19,429+16,504+3,033+50 = 39,094. Another widely mentioned estimate of the total number of code adopting jurisdictions in the U.S. is 44,000. This number is based on the National Conference of States on Building Codes and Standards (NCBCS). See, for example, *http://www.ncsbcs.org/newsite/New%20Releases/RW_Presentation_060602.htm.* Both these estimates are in reasonable agreement and so DOE assumed that there are 40,000 potential jurisdictions that potentially would need training on a new energy code.

Based on training experiences of the Building Energy Codes Program staff, with conducting training sessions for jurisdictional staff regarding Standard 90.1, one full-day (8 hours) of training is normally sufficient. Therefore, DOE has used 8 hours as a low estimate and 16 hours as a high estimate for training hours required if a jurisdiction were to adopt Standard 90.1–2010.

a. Low estimate—8 hours × 40,000 jurisdictions × $100 per hour = $32,000,000.

b. High Estimate—16 hours × 40,000 jurisdictions × $100 per hour = $64,000,000.

Adding the potential training costs of $32 million to $64 million to the costs for the three steps indicates a potential total costs ranging from $32.12 million to $71.5 million. The high end of this estimate is less than the $100 million threshold in the Unfunded Mandates Act. Accordingly, no further action is required under the Unfunded Mandates Reform Act of 1995.

F. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's action would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Review Under the Treasury and General Government Appropriations Act of 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's action under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

H. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) Is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) Is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use, should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

I. Review Under Executive Order 13175

Executive Order 13175. ''Consultation and Coordination with Indian tribal Governments'' (65 FR 67249 (Nov. 9, 2000)), requires DOE to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' refers to regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

Today's action is not a policy that has ''tribal implications'' under Executive Order 13175. DOE has reviewed today's action under Executive Order 13175 and has determined that it is consistent with applicable policies of that Executive Order.

Issued in Washington, DC, on October 12, 2011.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–27057 Filed 10–18–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Unconventional Resources Technology Advisory Committee

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, October 27, 2011; 11 a.m. to 1 p.m. (EDT).

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: (202) 586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on development and implementation of programs related to onshore unconventional natural gas and other petroleum resources to the Secretary of Energy and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Title IX, Subtitle J, section 999.

Tentative Agenda

10:30 a.m. Registration.

11 a.m. Welcome and Roll Call; Opening Remarks by the Committee Chair; Program Status Update Since the Last Meeting.
12:45 p.m. Public Comments.
1 p.m. Adjourn.

Public Participation: The meeting is open to the public. The Designated Federal Officer and the Chairman of the Committee will lead the meeting for the orderly conduct of business. Individuals who would like to attend must RSVP by e-mail to: *UnconventionalResources@hq.doe.gov* no later than 12 p.m. on Tuesday, October 25, 2011. Please provide your name, organization, and citizenship. Anyone attending the meeting will be required to present government issued photo identification. Space is limited. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert at the address or telephone number listed above. You must make your request for an oral statement at least two business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the three minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at: *http://www.fossil.energy.gov/programs/oilgas/advisorycommittees/UnconventionalResources.html*.

Issued at Washington, DC, on October 11, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–27054 Filed 10–18–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EERE–2011–BT–DET–0057]

RIN 1904–AC59

Updating State Residential Building Energy Efficiency Codes

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

ACTION: Notice of preliminary determination.

SUMMARY: The Department of Energy (DOE or Department) has preliminarily determined that the 2012 edition of the International Code Council (ICC) International Energy Conservation Code (IECC) (2012 IECC or 2012 edition) would achieve greater energy efficiency in low-rise residential buildings than the 2009 IECC. Upon publication of an affirmative final determination, States would be required to file certification statements to DOE that they have reviewed the provisions of their residential building code regarding energy efficiency and made a determination as to whether to update their code to meet or exceed the 2012 IECC. Additionally, this Notice provides guidance to States on how the codes have changed from previous versions, and the certification process should this preliminary determination be finalized.

DATES: Comments on this preliminary determination must be provided by November 18, 2011.

ADDRESSES: You may submit comments, identified by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: michael.erbesfeld@ee.doe.gov.* Include RIN 1904–AC59 in the subject line of the message.
- *Postal Mail:* Mr. Michael Erbesfeld, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Please submit one signed paper original.
- *Hand Delivery/Courier:* Mr. Michael Erbesfeld, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Building, Room 6014, 950 L'Enfant Plaza, Washington, DC 20024.
- *Instructions:* All submissions must include the agency name, Department of Energy, and docket number, EERE–2011–BT–DET–0057, or Regulatory Information Number (RIN), (1904–AC59) for this determination.

FOR FURTHER INFORMATION CONTACT: Michael Erbesfeld, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 287–1874, *e-mail: michael.erbesfeld@ee.doe.gov.* For legal issues contact Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0669, *e-mail: kavita.vaidyanathan@hq.doe.gov.*

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I. Introduction

A. Statutory Requirements

Title III of the Energy Conservation and Production Act, as amended (ECPA), establishes requirements for the Building Energy Standards Program. (42 U.S.C. 6831–6837) Section 304(a) of ECPA, as amended, provides that when the 1992 Model Energy Code (MEC), or any successor to that code, is revised, the Secretary must determine, not later than 12 months after the revision, whether the revised code would improve energy efficiency in residential buildings and must publish notice of the determination in the **Federal Register**. (42 U.S.C. 6833(a)(5)(A)) The Department, following precedent set by the ICC and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) considers high-rise (greater than three stories) multifamily residential buildings and hotel, motel, and other transient residential building types of any height as commercial buildings for energy code purposes. Low-rise residential buildings include one- and two-family detached and attached buildings, duplexes, townhouses, row houses, and low-rise multifamily buildings (not greater than three stories) such as condominiums and garden apartments.

If the Secretary determines that the revision would improve energy efficiency then, not later than 2 years after the date of the publication of the

affirmative determination, each State is required to certify that it has compared its residential building code regarding energy efficiency to the revised code and made a determination whether it is appropriate to revise its code to meet or exceed the provisions of the successor code. (42 U.S.C. 6833(a)(5)(B)) State determinations are to be made: (1) After public notice and hearing; (2) in writing; (3) based upon findings included in such determination and upon evidence presented at the hearing; and (4) available to the public. (See, 42 U.S.C. 6833(a)(5)(C).) In addition, if a State determines that it is not appropriate to revise its residential building code, the State is required to submit to the Secretary, in writing, the reasons, which are to be made available to the public. (See, 42 U.S.C. 6833(a)(5)(C).)

B. Background

The ICC's IECC establishes a national model code for energy efficiency requirements for buildings. In 1997, the Council of American Building Officials (CABO) was incorporated into the ICC and the MEC was renamed to the IECC. A previous **Federal Register** notice, 59 FR 36173, July 15, 1994, announced the Secretary's determination that the 1993 MEC increased energy efficiency relative to the 1992 MEC for residential buildings. Similarly, another **Federal Register** notice, 61 FR 64727, December 6, 1996, announced the Secretary's determination that the 1995 MEC is an improvement over the 1993 MEC. **Federal Register** notice 66 FR 1964, January 10, 2001, simultaneously announced the Secretary's determination that the 1998 IECC is an improvement over the 1995 MEC and the 2000 IECC is an improvement over the 1998 IECC. Finally **Federal Register** notice 76 FR 42688, July 19, 2011, announced the Secretary's determination that the 2003 IECC was not a substantial improvement over its predecessor, while the 2006 and 2009 editions were a substantial improvement over its predecessors.

C. DOE's Preliminary Determination Statement

The 2012 IECC has a substantial variety of revisions compared to the 2009 IECC. Most of these revisions appear to directly improve energy efficiency that, on the whole, would result in a significant improvement in efficiency to homes built to the code. Therefore, the Department preliminarily concludes that the 2012 edition of the IECC should receive an affirmative determination under Section 304(a) of ECPA.

II. Discussion of Changes in the 2012 IECC Compared With the 2009 IECC Summary

The 2012 IECC appears to improve residential energy efficiency with respect to the 2009 IECC. Based on DOE's preliminary analysis, a preponderance of major energy efficiency improvements more than offset a small number of changes which have unclear or negative impacts on energy efficiency. The major changes that are estimated to improve energy efficiency in new homes built to comply with the code in most climate zones include:

- Building thermal envelope improvements.
  - Increases in prescriptive insulation levels of walls, roofs and floors.
  - Decrease (improvement) in U-factor allowances for fenestration.
  - Decrease (improvement) in allowable Solar Heat Gain Coefficient (SHGC) for fenestration in warm climates.
- Infiltration control: Mandated whole-house pressure test with strict allowances for air leakage rates.
- Wall insulation when structural sheathing is used.
- Ventilation fan efficiency.
- Lighting—Increased fraction of lamps required to be high-efficacy.
- Air distribution systems—leakage control requirements.
- Hot water pipe insulation and length requirements.
- Skylight definition change.
- Penalizing electric resistance heating in the performance compliance path.
- Fireplace air leakage control.
- Insulating covers for in-ground hot tubs and spas.
- Baffles for attic insulation.

Changes that appear to decrease residential efficiency in some situations include the following.

- Steel-framed wall insulation.
- Air barrier location.

Changes whose effect is unclear:

- Fenestration SHGC requirement in climate zone 4.
- Interior shading assumptions in the performance compliance path.

All of the changes that are estimated to positively or negatively impact energy efficiency are discussed in the following text.

A. Changes in the 2012 IECC That Are Estimated To Increase Energy Efficiency

Building Thermal Envelope Improvements

Table R402.1.1 which specifies prescriptive envelope requirements, has been extensively modified in the 2012 IECC compared to the 2009 IECC. This table represents the code's primary regulation of a home's envelope thermal resistance, or the resistance of the ceilings, walls, windows, and floors to the transfer of heat into or out of the home. The criteria are expressed as either R-values (Btu/h-ft^2-F), which quantify a building component's resistance to heat flow, or U-factors (h-ft^2-F/Btu), which are the inverse of R-values and represent a component's thermal conductance. A higher R-value or a lower U-factor represents an efficiency improvement. Table R402.1.1 also includes requirements for glazed fenestration solar heat gain coefficients (SHGC) in the southern and central climate zones. In a cooling-dominated climate, a lower SHGC will almost always reduce a home's annual energy consumption.

Table 1 below shows the changes in the code's required R-values and U-factors by climate zone. DOE has preliminarily determined that every change in the code's table represents an improvement in efficiency. Table 2 below shows the increase in required thermal resistance for each building component type weighted by climate zone.

For the fenestration U-factor, the code has increased the required thermal resistance by an average of 26.7%. In climate zone 1, Table R402.1.1 appears to revert from a required U-factor of 1.2 to NR (no requirement). This, however, should have no effect on the energy efficiency of the code because the U-factor of a minimally efficient single-pane window meets the requirement of 1.2. Seen in this light, the change to NR is really a clarification, rather than an actual change. The U-factor requirements for skylights in the 2012 IECC would reduce allowable heat loss through skylights an average of 12.6% compared to the 2009 IECC.

For glazed fenestration the allowable solar heat gain coefficient (SHGC) has been lowered, reducing solar heat gain by 17% in the cooling-dominated climate zones (1–3).

Four climate zones (2 through 5) were affected by more stringent insulation requirements in ceilings. Required R-values increased by 27% to 29% in these zones. However, accounting for the thermal bridging effects of typical wood framing members, DOE has preliminarily determined that the changes in the code represent a weighted average increase of 12.2% in the thermal resistance of ceilings.

For wood frame walls, the code allows a choice in some climate zones of a single value for insulation in the

cavity between wall studs, or two values: One for cavity insulation and one for additional continuous insulation applied to the interior or exterior of the wall. Accounting for thermal bridging effects, and choosing the least thermally resistive of the two options, the 2012 code is estimated to improve thermal resistance of wood-frame walls an average of 13.7%. Mass wall (*e.g.,* concrete, concrete block, log) R-value requirements increased by an average of 33.4%. Basement wall and crawl space wall R-values increased by 14.5% and 17.6%, respectively.

Table 1: Changes in insulation and U-factors for prescriptive (Table R402.1.1) path in the 2012 IECC

Climate Zone	Fenest. U-Factor	Skylight U-Factor	Glazed Fenest. SHGC	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Slab R-Value & Depth	Crawl Wall R-Value
1	~~1.20~~ 0.50[a]	0.75	~~0.3~~ 0.25	30	13	3/4	13	0	0	0
2	~~0.65~~ 0.40	~~0.75~~ 0.65	~~0.3~~ 0.25	~~30~~ 38	13	4/6	13	0	0	0
3	~~0.50~~ 0.35	~~0.65~~ 0.55	~~0.3~~ 0.25	~~30~~ 38	~~13~~ 20 or 13+5	~~5/8~~ 8/13	19	5/13	0	5/13
4 except Marine	0.35	~~0.60~~ 0.55	~~NR~~ 0.40	~~38~~ 49	~~13~~ 20 or 13+5	~~5/10~~ 8/13	19	10/13	10, 2 ft	10/13
5 and Marine 4	~~0.35~~ 0.32	~~0.60~~ 0.55	NR	~~38~~ 49	20 or 13+5	13/17	30	~~10/13~~ 15/19	10, 2 ft	~~10/13~~ 15/19
6	~~0.35~~ 0.32	~~0.60~~ 0.55	NR	49	~~20 or 13+5~~ 20+5 or 13+10	15/~~19~~ 20	30	15/19	10, 4 ft	~~10/13~~ 15/19
7 and 8	~~0.35~~ 0.32	~~0.60~~ 0.55	NR	49	~~21~~ 20+5 or 13+10	19/21	38	15/19	10, 4 ft	~~10/13~~ 15/19

(a) In the prescriptive approach, any fenestration is credited with meeting this requirement.

TABLE 2—NATIONAL AVERAGE INCREASE IN THERMAL RESISTANCE FOR LOWEST REQUIRED INSULATION LEVEL BY BUILDING COMPONENT

Building component	Increase in thermal resistance of required insulation (percent)
Fenestration	26.7
Skylights	12.6
Ceiling	18.2
Wood Frame Wall	13.7
Mass Wall [1]	33.4
Basement Wall [1]	14.5
Crawl Space Wall [1]	17.6

[1] There are two R-value options in the IECC. The first R-value option is used for this comparison. For mass walls, this first value applies when less than half of the insulation is on the interior of the mass wall, the case for which the code allows a greater reduction in required R-value due to the beneficial effects of thermal mass. The second number is more similar to wood frame wall requirements. For basement and crawl space walls, this first value applies for continuous insulation on the interior or exterior of the wall, whereas the second value is for insulation in cavities between studs or furring strips. In this case the two values represent approximately similar overall thermal resistance.

The 2012 IECC specifies that insulation R-values conform to the requirements of Table R402.1.1 even if the insulation must be compressed to fit within the available cavity. This clause primarily affects some nominal R–19 fiberglass batts that are designed for floor and/or ceiling applications where the available cavity is greater than the 5.5 inches typically available in a 2x6 wall. However, the 2012 edition has no prescriptive requirements that exactly require R–19 in wall cavities, so it is expected that there is no direct impact on energy savings.

Infiltration Control

Section 402.4.1.2 contains a new provision for a mandatory whole-house pressure test to determine the envelope air leakage rate (the test was optional in the 2009 IECC). The maximum allowable air leakage rate is 5 air changes/hour when tested at a pressure difference of 50 Pascals (5 ACH50) in climate zone 1 and climate zone 2; and 3 air changes/hour (3 ACH50) in climate zones 3–8. The 2009 IECC specified a maximum of 7 ACH50 when the optional test was used, or directed the building official to inspect the envelope

against a detailed checklist when the test was not used. The lower allowed leakage rate of the 2012 IECC is expected to save energy, and the mandatory test will likely result in improved energy efficiency in homes that would have had higher leakage rates as a result of leaks that would not be detected by visual inspection.

Wall Insulation When Structural Sheathing Is Used

Footnote h to Table R402.1.1 allows certain reductions in the required R-value of continuous insulation on walls that use structural sheathing (*e.g.,* plywood, OSB) for shear bracing. The footnote is relevant only when there is a mixture of structural and insulating sheathing on the wall(s). The 2009 IECC states: ''First value is cavity insulation, second is continuous insulation, so ''13+5'' means R–13 cavity insulation plus R–5 insulated sheathing. If structural sheathing covers 25 percent or less of the exterior, insulating sheathing is not required in the locations where structural sheathing is used. If structural sheathing covers more than 25 percent of exterior, structural sheathing shall be supplemented with insulated sheathing of at least R–2.''

The footnote has the effect of suspending the continuous R-value requirement for portions of the wall covered with structural sheathing, provided those portions represent 25% or less of the wall area. If structural sheathing covers more than 25% of the wall, the structural portions must be augmented with additional insulating sheathing of at least R–2. The 2012 IECC states: ''First value is cavity insulation, second is continuous insulation, so ''13+5'' means R–13 cavity insulation plus R–5 continuous insulation. If structural sheathing covers 40 percent or less of the exterior, continuous insulation R-value shall be permitted to be reduced by no more than R–3 in the locations where structural sheathing is used—to maintain a consistent total sheathing thickness.''

The 2012 IECC allows a larger fraction of the wall (40% rather than 25%) to contain reduced continuous insulation but, unlike the 2009 IECC, does not allow elimination of continuous insulation. The 2012 IECC specifies substantially more continuous insulation layered on top of structural sheathing when the structural fraction exceeds the 40% threshold. It is estimated that the net effect is greater overall efficiency.

Ventilation Fan Efficiency

When installed to function as a whole-house ventilation system, the 2012 IECC specifies that mechanical fans meet the following requirements:

- Range Hoods and In-line fans: 2.8 cfm/watt.
- Bathroom (10–90 cfm): 1.4 cfm/watt.
- Bathroom (>90 cfm): 2.8 cfm/watt.

Because the 2012 IECC places upper limits on the energy requirements for these fans where there were no such limits in the 2009 IECC, this change is expected to improve overall efficiency in residences.

Lighting

The requirement for high efficacy lamps has been increased from a minimum of 50% of the lamps in permanently-installed fixtures to a minimum of 75%. Further, the high efficacy lamp requirement has been changed from prescriptive to mandatory, meaning the specification cannot be lessened in trade for efficiency improvements elsewhere in the home. This change also addresses an aspect of the 2009 IECC under which the use of high-efficacy lamps is not specified when a building achieved compliance via the simulated performance compliance path. This is expected to improve the energy savings in the 2012 IECC by reducing lighting energy use. The 2012 IECC also added an option for calculating the high-efficacy fraction based on a count of fixtures instead of individual lamps, a change not expected to change overall efficiency.

Section R404.1.1 in the 2012 IECC contains a new provision that bans continuously burning pilot lights on fuel-fired lighting. While the potential energy savings are limited due to the fringe application of this type of lighting, where applied, this rule would tend to increase energy savings by cutting standby energy use of the pilot light.

Air Distribution System

There are three key changes to requirements for air distribution systems that improve energy efficiency:

- A change to section R403.2.2.1 that places a limit on air leakage from air handlers. The change is to ensure that the air handler delivers the vast majority of the supply air downstream to the rest of the distribution system.
- Section R403.2.2 reduces maximum allowable levels of duct leakage in the distribution system compared to the 2009 IECC (from 12 cfm per 100 ft^2 of conditioned floor area to 4 cfm/100 ft^2 for tests done on completed buildings, and from 6 to 4 cfm per 100 ft^2 for tests done at the rough-in stage of construction).
- Section R403.2.3 now specifies that building framing cavities may not be used as supply ducts or plenums, which would eliminate the potential for air leaks into adjacent framing cavities and/or attics, crawlspaces, or unheated basements. This may also lessen the chance of an unbalanced distribution system.

DOE has preliminarily determined that all of these changes will increase the energy savings of the 2012 edition of the IECC by delivering more of the conditioned air to where it is needed via a more efficient distribution system.

Hot Water Pipe Insulation and Length Requirements

Section R403.4.2 contains new specifications for noncirculating service hot water distribution systems that should reduce energy losses from ''stranded'' hot water and conduction of heat out of the pipes. The 2012 IECC specifies that all such pipes to be insulated unless they have sufficiently low volume as defined by a combination of their length (measured from the tank or distribution manifold to the point of use) and diameter. This change is expected to reduce the amount of hot water that cools off in the pipes and is thus wasted as users wait for sufficiently warm water to reach the fixture. Also, for circulating hot water systems, the required insulation has been increased from R-2 to R-3 and therefore should increase efficiency. A final change in the 2012 IECC requires that piping insulation be protected from the elements. Although primarily a durability concern, this change may save energy by reducing the incidence of damaged and/or missing insulation.

Skylight Definition Change

Previously, skylights were defined as any glazed fenestration at less than 75 degrees from horizontal. That definition has been changed in the 2012 IECC to be less than 60 degrees from horizontal. The effect of this change is to classify more glazing as vertical fenestration rather than skylights. Although the number of skylights in this slope range is small, because the U-factor requirements for vertical fenestration are more stringent than for skylights, this change is expected to improve the energy savings of the 2012 IECC.

Electric Resistance Heating in the Performance Path

Under the performance compliance path (Section R405), the 2012 IECC has modified the reference design for buildings with electric heating systems that do not use a heat pump, requiring that a heat pump be assumed in the

standard reference design. Because of the efficiency of heat pumps as compared to other electric heating technologies, this code change is expected to increase the energy efficiency of the reference design, which would have the effect of specifying that the proposed design to be more energy efficient if it is to comply via this section and the proposed design has an electric heating system that is less efficient than a heat pump. Although this affects only homes with electric resistance heating, its effect is expected to be an improvement in efficiency if such homes comply via the performance method.

Fireplace Air Leakage Control

The 2012 IECC specifies that all fireplaces have tight-fitting flue dampers and gasketed doors (the 2009 IECC requires such only for wood-burning fireplaces). This is expected to result in very air-tight fireplaces which would improve a home's air leakage characteristics. Therefore, this is deemed an improvement in efficiency for homes with fireplaces.

In-Ground Hot Tubs and Spas

Section R403.9 has been updated to include in-ground hot tubs and spas under the purview of the code, where previously only swimming pools were included. The change effectively requires hot tubs and spas to have insulating covers, which should lower energy losses. To the extent that these devices typically already have insulating covers this may have limited impact in terms of efficiency.

The 2012 IECC now specifies that log walls meet the requirements of ICC–400, a separate standard for log wall construction. Although this does not change the thermal requirements, it may result in better quality construction of log walls, which would improve energy performance by reducing air leaks and thermal bypasses.

Baffles for Attic Insulation

Section R402.2.3 now requires a wind wash baffle for vented attics. For air-permeable insulation, this should improve the effective insulation value of the ceiling by reducing wind-driven air movement and may in some cases prevent blown-in insulation from being displaced by wind. Therefore, this is an improvement in efficiency for attics.

B. Changes in the 2012 IECC That Are Estimated To Decrease Energy Efficiency

Steel-Framed Wall Insulation

The 2012 IECC modifies the IECC code's tables of steel-framed wall U-factor equivalences with wood-frame walls of various R-values in such a way that less efficient steel-framed walls will be deemed equivalent to a corresponding wood-frame wall in many cases. In the 2009 IECC, there was no distinction between homes with different steel stud spacing. In the 2012 IECC, there are now separate U-factor equivalences for studs with 16'' and 24'' spacing. The 16'' stud spacing requirements have two categories that are directly comparable to the 2009 IECC requirements: walls with wood-frame R-values of R-13 or R-21. According to Table A3.3 of ASHRAE 90.1 2007, the 2009 IECC-required R-factors represent an equivalent U-factor for the wall assembly of 0.077 to 0.080 Btu/hr-ft^2-F, depending on the compliance option. This has been changed in the 2012 IECC to a range of 0.059–0.089 Btu/hr-ft^2-F. The average compliance option based on R-13 wood-frame walls represents a 5.4% higher U-factor. For R-21 wood-frame walls, the steel frame options previously represented U-factors of 0.054, whereas in the 2012 code, they represent U-factors of 0.056, a 3.1% increase.

Insulation equivalences in the 2012 IECC for steel walls with 24'' stud spacing are slightly more lax, reflecting the decreased thermal bridging effects, compared with 16'' stud spacing. Because the baseline for comparison for 24'' stud spacing in the 2009 IECC is still the general requirements that did not distinguish based on stud spacing, these new requirements represent higher increases in assembly U-factors than for 16'' stud spacing. Specifically, there is a 9.1% increase in assembly U-factors among the various insulation options for R-13 and an 11.8% increase for R-21. The steel-wood framing equivalences of the 2009 IECC and the 2012 IECC are compared below in Table 3. In this table, the first value is cavity insulation and the second is continuous insulation. For example, R-13+5 is R-13 cavity insulation plus R-5 continuous insulation.

Note that while the steel/wood equivalences have changed such that steel-stud walls may be less efficient than before in comparison to a particular wood-frame R-value, the base R-value requirements (expressed in terms of wood-frame walls) have substantially increased in climate zones 3, 4, 6, 7, and 8 which would result in energy savings in these zones even for steel framed walls. Because the number of homes with external walls with steel framing is small compared to wood-frame homes, this change is not expected to result in substantial overall efficiency losses in zones 1, 2, and 5.

TABLE 3—COMPARISON OF STEEL-FRAME WALL REQUIREMENTS BETWEEN THE 2009 AND 2012 IECC

Steel frame spacing	16″ stud spacing		24″ stud spacing	
Wood-Frame Requirement	R-13	R-21	R-13	R-21
2009 IECC Options	R-0+10 or R13+5 or R-15+4 or R-21+3	R-13+10 or R-19+9 or R-25+8	R-13+5 or R-15+4 or R-21+3 or R-0+10	R-13+10 or R-19+9 or R-25+8
2012 IECC Options	R-0+9.3 or R-13+4.2 or R-15+3.8 or R-19+2.1 or R-21+2.8	R-0+14.6 or R-13+9.5 or R-15+9.1 or R-19+8.4 or R-21+8.1 or R-25+7.7	R-0+9.3 or R-13+3 or R-15+2.4	R-0+14 or R-13+8.3 or R-15+7.7 or R-19+6.9 or R-21+6.5 or R-25+5.9
Average U-factor (2009) [1]	0.079	0.054	0.063	0.04
Average U-factor (2012)	0.083	0.056	0.07	0.045
Average U-factor Increase	5.4%	3.1%	9.1%	11.8%

[1] Calculated using ASHRAE 90.1–2007 Table A3.4.

Air Barrier Location

The 2012 IECC changes Table R402.4.1.1 by removing a requirement that air-permeable insulation be located inside the air barrier, allowing the insulation to be outside of the air barrier in the exterior envelope construction. By allowing air-permeable insulation to be located outside the air barrier this change may result in increased levels of outdoor air infiltration in the interstices of the insulation material. This would tend to reduce the effectiveness of the insulation. The magnitude of impact for this change, however, is expected to be minimal because an interior air barrier will still be effective at reducing air movement through the envelope and because the 2012 IECC's new mandate for a whole-house pressure test will ensure that total air leakage through the building envelope be kept at a low rate.

There is an additional change in the 2012 IECC that may reduce the energy efficiency of the code. In the 2009 IECC, the common wall between dwelling units of a multifamily or two-family structure was required to be air-sealed. In the 2012 IECC, this requirement has been removed. In practice, these common walls can provide a route for air leakage to the outdoors if they are coupled to attics, basements, crawlspaces, or other unconditioned spaces. Because multifamily represent a small fraction of low-rise residential dwelling units (about 15%) and because this change creates the potential for only an indirect air movement path, DOE does not consider this change to be significant.

C. Changes in the 2012 IECC That Have an Unclear Impact on Energy Efficiency

Fenestration SHGC in Climate Zone 4

As presented in Table 1, the 2012 IECC changes SHGC specifications for climate zone 4 from no requirement (NR) to 0.4. Because climate zone 4 contains locations where the energy savings from increased solar heat gains in winter may more than offset increased energy use for air conditioning in summer, it is possible that a lower SHGC would increase energy use in some parts of the zone. However, the specified fenestration U-factor of 0.35 in both the 2009 and 2012 IECC usually implies the use of windows with low-emissivity coatings that have an SHGC of 0.4 or below even in the absence of a specific SHGC requirement. Therefore, DOE expects this change to have minimal impact either in terms of energy savings or energy losses.

Interior Shading Assumptions in the Performance Compliance Path

The 2012 IECC modifies internal shade fractions required as inputs to the performance compliance path. The 2009 IECC specified the following internal shade fractions for the reference design: Summer—0.70, Winter—0.85. These have been replaced in the 2012 IECC with the following equation for calculating interior shade fraction (ISF):

$$ISF = 0.92 - 0.21 \cdot SHGC$$

The impact of this change on the energy consumption of homes complying via the performance path is nuanced and difficult to generalize, but is expected to be small. Its primary impact is to modestly change the relative importance of cooling- and heating-oriented energy-saving features.

D. Changes in the 2012 IECC That Do Not Affect Energy Efficiency

Several changes were made to the IECC that do not directly affect energy efficiency. Table 4 details these changes, listing the section of the 2009 IECC to which the change was made, a description of the change, and an explanation why overall energy efficiency is not affected.

TABLE 4—CHANGES TO IECC THAT DO NOT EFFECT ENERGY EFFICIENCY

Code Section	Change	Comments
R202	Clarifies that residential buildings covered by chapter 4 are one- and two-family dwellings, townhouses and multi-family residential (R-2) not over 3 stories in height above grade.	This change is only a clarification.
R202	Definition of a whole-house ventilation system	Because whole-house ventilation systems are not yet required by the code, this new definition effects no real change to the code's requirements.
R401.3	Results of an air leakage test must be documented on the certificate	This change only affects the transparency of code compliance.
R202 and R303.1.3	Introduction of "Visible Transmittance"(VT) for fenestrations. Default "Visible Transmittances" defined in Table.	The table only provides default VT values for certain window types. VT is not directly regulated by the code.
R402.4.4	Clarification that recessed lighting must be labeled as having a leakage rate to ceiling cavity of < = 2 cfm.	This is only a clarification of previous text.
Chapter 6	Introduction of ASHRAE test procedure 193 for determining the air leakage rate for HVAC Equipment.	Provides a test procedure to enable compliance with a new requirement.
Chapter 5	Introduction of test standard for home ventilation systems: HVI 916–09 Airflow Test Procedure.	Provides a test procedure to enable compliance with a new requirement.
Table R405.5.2(1)	Requirements for Proposed Design for Thermal Distribution Systems: Thermal distribution system efficiency shall be as tested or as specified by Table 405.5.2 if not tested. Duct insulation shall be as proposed.	This change is only a clarification.
R403.6	Heating and cooling equipment shall be sized in accordance with ACCA Manual S based on building loads calculated in accordance with ACCA Manual J or other approved heating and cooling calculation methodologies.	This moves this requirement directly into the IECC instead of referencing the IRC.

III. Filing Certification Statements With DOE

A. State Determinations

If today's determination is finalized, each State would be required to determine the appropriateness of revising the portion of its residential building code regarding energy efficiency to meet or exceed the energy efficiency provisions of the 2012 IECC. (42 U.S.C. 6833(a)(5)(B)) Note that the applicability of any State revisions to new or existing buildings would be governed by the State building codes. However, it is our understanding that generally, the revisions would not apply to existing buildings unless they are undergoing a change that requires a building permit. The determinations are required to be made not later than two years from the date of publication of a notice of final determination, unless an extension is provided. The State determination must be: (1) Made after public notice and hearing; (2) in writing; (3) based upon findings and upon the evidence presented at the hearing; and (4) made available to the public. States have considerable discretion with regard to the hearing procedures they use, subject to providing an adequate opportunity for members of the public to be heard and to present relevant information. The Department recommends publication of any notice of public hearing in a newspaper of general circulation.

Section 304(a)(4) of ECPA, as amended, requires that if a State makes a determination that it is not appropriate to revise the energy efficiency provisions of its residential building code, the State must submit to the Secretary, in writing, the reasons for this determination and the statement shall be available to the public. (42 U.S.C. 6833(a)(4))

States should be aware that, consistent with IECC definitions, the Department considers high-rise (greater than three stories) multifamily residential buildings and hotel, motel, and other transient residential building types of any height as non-residential buildings for energy code purposes. Residential buildings include one- and two-family detached and attached buildings, duplexes, townhouses, row houses, and low-rise multifamily buildings (not greater than three stories) such as condominiums and garden apartments.

States should also be aware that this preliminary determination does not apply to IECC chapters specific to non-residential buildings as defined above. Therefore, if today's action is finalized then States must certify their evaluations of their State building codes for residential buildings with respect to all provisions of the IECC except for those chapters.

B. Requests for Extensions To Certify

Section 304(c) of ECPA, as amended, requires that the Secretary permit an extension of the deadline for complying with the certification requirements described above, if a State can demonstrate that it has made a good faith effort to comply with such requirements and that it has made significant progress toward meeting its certification obligations. (42 U.S.C. 6833(c)) Such demonstrations could include one or both of the following: (1) A plan for response to the requirements stated in Section 304; and/or (2) a statement that the State has appropriated or requested funds (within State funding procedures) to implement a plan that would respond to the requirements of Section 304 of ECPA. This list is not exhaustive.

IV. Regulatory Analysis

A. Review Under Executive Order 12866

Today's action is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735 (Oct. 4, 1993)). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' (67 FR 53461 (Aug. 16, 2002)), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel's Web site: *http://www.gc.doe.gov.* If today's action on the preliminary determination of improved energy efficiency between IECC editions is finalized it would require States to undertake an analysis of their respective building codes. Today's action does not impact small entities. Therefore, DOE has preliminarily certified that there is no significant economic impact on a substantial number of small entities.

C. Review Under the National Environmental Policy Act of 1969

DOE has preliminarily determined that today's action is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.6 of Appendix A to subpart D, 10 CFR part 1021. That Categorical Exclusion applies to actions that are strictly procedural, such as rulemaking establishing the administration of grants. Today's action impacts whether States must perform an evaluation of State building codes. The action would not have direct environmental impacts. Accordingly, DOE has not prepared an environmental assessment or an environmental impact statement.

D. Review Under Executive Order 13132, ''Federalism''

Executive Order 13132, 64 FR 43255 (Aug. 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that pre-empt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's action and has determined that it will not pre-empt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Today's action impacts whether States must perform an evaluation of State building codes. No further action is required by Executive Order 13132.

F. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and Tribal governments. Subsection 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon State, local, or Tribal governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory

actions on State, local, and Tribal governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or Tribal governments, or to the private sector, of $100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and Tribal governments.

Today's action impacts whether States must perform an evaluation of State building codes. Today's action would not impose a Federal mandate on State, local or Tribal governments, and it would not result in the expenditure by State, local, and Tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

G. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's action would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has preliminarily concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under the Treasury and General Government Appropriations Act of 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's action under the OMB and DOE guidelines and has preliminarily concluded that it is consistent with applicable policies in those guidelines.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use, should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under Executive Order 13175

Executive Order 13175. ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249 (Nov. 9, 2000)), requires DOE to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' refers to regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Today's regulatory action is not a policy that has ''tribal implications'' under Executive Order 13175. DOE has reviewed today's action under executive Order 13175 and has determined that it is consistent with applicable policies of that Executive Order.

V. Public Participation

The public is invited to submit comments on the preliminary determinations. Comments must be provided by the date specified in the **DATES** section of this notice using any of the methods described in the **ADDRESSES** section of this notice. 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 13, 2011.

Henry Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–27050 Filed 10–18–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2011–BT–BC–0046]

Building Energy Codes Cost Analysis

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

ACTION: Notice of reopening the public comment period.

SUMMARY: This notice announces a reopening of the time period for submitting comments on the request for information on Building Energy Codes Cost Analysis published in the **Federal Register** on September 13, 2011. 76 FR 56413. The original comment period closed on October 13, 2011. The comment period is reopened for an additional 30 days.

DATES: Comments must be received no later that November 18, 2011.

ADDRESSES: Any comments submitted must identify the request for information on Building Energy Code Cost Analysis and provide docket number EERE–2011–BT–BC–0046. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: Res-CEAM–2011–BC–0046@ee.doe.gov.* Include EERE–2011–BT–BC–0046 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building

Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, please call Ms. Brenda Edwards at the above telephone number for additional information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to Ms. Kym Carey, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* 202–287–1775. *E-mail: Kym.Carey@ee.doe.gov.*

For legal issues contact Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Mailstop GC–71, 1000 Independence Ave., SW., Washington, DC 20585, *Telephone:* (202) 586–0669, *E-mail: kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On September 13, 2011, the U.S. Department of Energy (DOE or the Department) published a request for information (RFI) in the **Federal Register** (76 FR 56413) to request information on how the Department may improve the methodology it intends to use for assessing cost effectiveness (which includes an energy savings assessment) of changes to residential building energy codes. The RFI provided for the submission of comments by October 13, 2011. Commenters requested an extension of the comment period given the extensive analysis required to complete a thorough response. DOE has determined that a reopening of the public comment period is appropriate based on the complexity of the issues to be considered in the analysis and the need for interested parties to submit a thorough response—and is hereby reopening the comment period. DOE will consider any comments received by the date presented in the **DATES** section of this notice.

Further Information on Submitting Comments

Under 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on October 13, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–27049 Filed 10–18–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–510–001]

Commission Information Collection Activities (FERC–510); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 USC 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the Federal Register (76 FR 43996, 07/22/2011) requesting public comments. FERC received no comments on the FERC–510 and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by November 18, 2011.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0068 for reference. The Desk Officer may be reached by telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC11–510–001. Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp.* To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC11–510–001.

Users interested in receiving automatic notification of activity in FERC Docket Number IC11–510 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–510, ''Application for Surrender of Hydropower License'' (OMB No. 1902–0068), is used by the Commission to implement the statutory provisions of sections 4(e), 6 and 13 of the Federal Power Act (FPA) (16 U.S.C. sections 797(e), 799 and 806). Section 4(e) gives the Commission authority to issue licenses for the purposes of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other power project works necessary or convenient for developing and improving navigation, transmission and utilization of power using bodies of water over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of licenses including the revocation or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed or natural catastrophes have damaged or destroyed the project facilities. The information collected under the designation FERC–510 is in the form of a written application for surrender of a hydropower license. The information is used by Commission staff to determine the broad impact of such surrender. The Commission will issue a notice soliciting comments from the public and other agencies and conduct a careful review of the prepared application before issuing an order for Surrender of a License. The order is the result of an analysis of the information produced, i.e., economic, environmental concerns, etc., which are examined to determine if the application for surrender is warranted. The order implements the existing regulations and is inclusive for surrender of all types of hydropower licenses issued by FERC and its predecessor, the Federal Power Commission. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 6.1–6.4.

ACTION: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

BURDEN STATEMENT: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
16	1	10	160

Estimated cost burden to respondents is $10,952 (160 hours/2080 hours per year times $142,372 per year average per employee = $10,952(rounded)). The estimated annual cost per respondent is $685 (rounded).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: October 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26985 Filed 10–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14285–000]

Alaska Power Company, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 12, 2011, Alaska Power Company, 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 Moira Sound Hydroelectric Project (Moira Sound Project or project) to be located on Dickman, Kugel, Aiken, Luelia, and Niblack Creeks; Lake Luelia, Kugel and Aiken Lakes, and seven unnamed lakes near Hollis, on Prince of Wales Island in the Prince of Wales—Hyder Census Area, Alaska. The project as proposed would occupy 10,041 acres, 7,839 acres of which are lands of the Tongass National Forest, managed by the U.S. Forest Service. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands

or waters owned by others without the owners' express permission.

The proposed project would consist of 11 developments, plus support facilities for the project. All proposed facilities are new.

Lower Kugel Development

(a) The Lower Kugel Development would consist of the following: (1) A 300-foot-long, 65-foot-high concrete gravity dam, which would raise the elevation of the existing Kugel Lake from 397 feet mean sea level (msl) to 450 feet msl; (2) a 2,900-foot-long penstock consisting of a 900-foot-long, 5-foot-diameter buried high density polyethylene (HPDE) section and a 2,000-foot-long, 4.5-foot-diameter buried ductile iron section; (3) a 40-foot-long, 60-foot-wide powerhouse containing one 4.1-megawatt (MW) turbine/generator unit with an adjacent 40-foot-long, 40-foot-wide substation; (4) a 30-foot-long tailrace returning flows from the powerhouse to Kugel Creek; (5) three access roads, totaling 1.6 miles in length; (6) a 0.2-mile-long, 69-kV transmission line from the Lower Kugel Development substation to the project substation; and (7) appurtenant facilities.

Middle Kugel Development

(b) The Middle Kugel Development would consist of the following: (1) A 300-foot-long, 40-foot-high concrete-faced rockfill dam, which would raise the elevation of an existing unnamed lake (referred to as Lake 930 in the project application) from 930 feet msl to 960 feet msl; (2) a 6,700-foot-long, 4.5-foot-diameter buried ductile iron penstock; (3) a 40-foot-long, 60-foot-wide powerhouse containing one 4.8–MW turbine/generator unit with an adjacent 40-foot-long, 40-foot-wide substation; (4) a 30-foot-long tailrace returning flows from the powerhouse to Kugel Lake; (5) two access roads, totaling 2.9 miles in length; (6) a 2.2-mile-long, 34.5-kV transmission line from the Middle Kugel Development substation to the project substation; and (7) appurtenant facilities.

Upper Kugel Development

(c) The Upper Kugel Development would consist of the following: (1) A 500-foot-long, 60-foot-high concrete-faced rockfill dam, which would raise the elevation of an existing unnamed lake (referred to as Lake 1125 in the project application) from 1,125 feet msl to 1,175 feet msl; (2) a 1,300-foot-long, 3-foot-diameter buried ductile iron penstock; (3) a 30-foot-long, 50-foot-wide powerhouse containing one 0.9–MW turbine/generator unit with an adjacent 30-foot-long, 40-foot-wide substation; (4) a 30-foot-long tailrace returning flows from the powerhouse to Lake 930; (5) a 0.8-mile-long access road; (6) a 0.5-mile-long, 34.5-kV transmission line from the Upper Kugel Development substation to the Aiken Development substation; and (7) appurtenant facilities.

Aiken Development

(d) The Aiken Development would consist of the following: (1) A 300-foot-long, 40-foot-high concrete-faced rockfill dam, which would raise the elevation of Aiken Lake from approximately 1,119 feet msl to 1,150 feet msl; (2) a 3,500-foot-long penstock consisting of an 800-foot-long, 5-foot-wide, 7-foot-high tunnel section and a 2,700-foot-long, 2.5-foot-diameter buried HPDE section; (3) a 30-foot-long, 50-foot-wide powerhouse containing one 0.4–MW turbine/generator unit with an adjacent 30-foot-long, 50-foot-wide substation; (4) a 30-foot-long tailrace returning flows from the powerhouse to Lake 930; (5) a 2-mile-long access road; (6) a 1.3-mile-long, 34.5-kV transmission line from the Aiken Development substation to the Middle Kugel Development substation; and (7) appurtenant facilities.

Dickman Development

(e) The Dickman Development would consist of the following: (1) A 300-foot-long, 60-foot-high concrete-faced rockfill dam, which would raise the elevation of an existing unnamed lake (referred to as Lake 305 in the project application) from 305 feet msl to 350 feet msl; (2) a 5,200-foot-long penstock consisting of a 3,300-foot-long, 4-foot-diameter buried HPDE section and a 1,900-foot-long, 3.5-foot-diameter buried ductile iron section; (3) a 40-foot-long, 60-foot-wide powerhouse containing one 2.2–MW turbine/generator unit with an adjacent 40-foot-long, 60-foot-wide substation; (4) a 30-foot-long tailrace returning flows from the powerhouse to an unnamed creek (referred to as Dickman Creek in the project application); (5) two access roads, totaling 3.3 miles in length; (6) a 2.4-mile-long, 34.5-kV transmission line from the Dickman Development substation to the project substation; and (7) appurtenant facilities.

Lower Luelia Development

(f) The Lower Luelia Development would consist of the following: (1) A 150-foot-long, 45-foot-high concrete-faced rockfill dam, which would raise the elevation of an existing unnamed lake (referred to as Lake 592 in the project application) from 592 feet msl to 625 feet msl; (2) a 1,500-foot-long penstock consisting of an 800-foot-long, 3.5-foot-diameter buried HPDE section and a 700-foot-long, 3-foot-diameter above-ground steel section; (3) a 40-foot-long, 60-foot-wide powerhouse containing one 2.2-MW turbine/generator unit with an adjacent 40-foot-long, 60-foot-wide substation; (4) a 30-foot-long tailrace returning flows from the powerhouse to Luelia Creek; (5) two access roads, totaling 3.6 miles in length; (6) a 2.3-mile-long, 69-kV transmission line from the Lower Luelia Development substation to the project substation; and (7) appurtenant facilities.

Middle Luelia Development

(g) The Middle Luelia Development would consist of the following: (1) A siphon intake in Lake Luelia; (2) a 1,700-foot-long penstock consisting of a 500-foot-long, 4-foot-diameter buried HPDE section and a 1,200-foot-long, 3.5-foot-diameter above-ground steel section; (3) a 40-foot-long, 60-foot-wide powerhouse containing one 2.3-MW turbine/generator unit with an adjacent 40-foot-long, 60-foot-wide substation; (4) a 30-foot-long tailrace returning flows from the powerhouse to Lake 592; (5) two access roads, totaling 1.2 miles in length; (6) a 1.1-mile-long, 69-kV transmission line from the Middle Luelia Development substation to the Lower Luelia Development substation; and (7) appurtenant facilities.

Upper Luelia Development

(h) The Upper Luelia Development would consist of the following: (1) A 100-foot-long, 10-foot-high concrete gravity dam, which would raise the elevation of an existing unnamed lake (referred to as Lake 1050 in the project application) from 1,050 feet msl to 1,055 feet msl; (2) a 1,100-foot-long, 2.5-foot-diameter buried ductile iron penstock; (3) a 30-foot-long, 50-foot-wide powerhouse containing one 0.4-MW turbine/generator unit with an adjacent 30-foot-long, 50-foot-wide substation; (4) a 20-foot-long tailrace returning flows from the powerhouse to Lake Luelia; (5) two access roads, totaling 1.3 miles in length; (6) a 1.5-mile-long, 69-kV transmission line from the Upper Luelia Development substation to the Middle Luelia Development substation; and (7) appurtenant facilities.

Lower Niblack Development

(i) The Lower Niblack Development would consist of the following: (1) A 250-foot-long, 30-foot-high concrete-faced rockfill dam, which would raise the elevation of Myrtle Lake from 92 feet msl to 110 feet msl; (2) a 900-foot-long,

3-foot-diameter buried HDPE penstock; (3) a 40-foot-long, 60-foot-wide powerhouse containing one 0.4-MW turbine/generator unit with an adjacent 40-foot-long, 60-foot-wide substation; (4) a 30-foot-long tailrace returning flows from the powerhouse to Myrtle Creek; (5) two access roads, totaling 1 mile in length; (6) a 0.7-mile-long, 34.5-kV transmission line from the Lower Niblack Development substation to a substation located at the Niblack Mine; and (7) appurtenant facilities.

Middle Niblack Development

(j) The Middle Niblack Development would consist of the following: (1) A 1,100-foot-long, 50-foot-high concrete-faced rockfill dam, which would raise the elevation of an existing unnamed lake (referred to as Lake 630 in the project application) from 630 feet msl to 670 feet msl; (2) a 3,400-foot-long, 3-foot-diameter ductile iron penstock, installed within an access tunnel; (3) a 40-foot-long, 60-foot-wide powerhouse containing one 2.1-MW turbine/generator unit with an adjacent 40-foot-long, 40-foot-wide substation; (4) a 20-foot-long tailrace returning flows from the powerhouse to Myrtle Lake; (5) two access roads, totaling 2.6 miles in length; (6) a 1.3-mile-long, 69-kV transmission line from the Middle Niblack Development substation to the Lower Niblack Development substation; and (7) appurtenant facilities.

Upper Niblack Development

(k) The Upper Niblack Development would consist of the following: (1) A 100-foot-long, 10-foot-high concrete gravity dam, which would raise the elevation of an existing unnamed lake (referred to as Lake 1300 in the project application) from 1,300 feet msl to 1,305 feet msl; (2) a 3,100-foot-long penstock, which would include a 900-foot-long, 1.5-foot-diameter HDPE section and a 2,200-foot-long, 1.5-foot-diameter above-ground steel section; (3) a 30-foot-long, 50-foot-wide powerhouse containing one 0.6-MW turbine/generator unit with an adjacent 30-foot-long, 50-foot-wide substation; (4) a 20-foot-long tailrace returning flows from the powerhouse to Lake Luelia; (5) a 1.3-mile-long access road; (6) a 1.5-mile-long, 69-kV transmission line from the Upper Niblack Development substation to the Upper Luelia Development substation and the Middle Luelia Development substation; and (7) appurtenant facilities.

(l) The support facilities for the project would consist of the following: (1) A marine access facility located on the shore of Dickman Bay, which would include a barge landing, a boat ramp, and a boat/seaplane dock; (2) a construction camp/staging area/maintenance facility, which would include two residences for maintenance personnel, and a garage/shop building; (3) a project substation located in the construction camp/staging area/maintenance facility; (4) a 13.4-mile-long, 69-kilovolt (kV) transmission line to transmit power from the project substation to the Bokan Mountain mine; and (5) appurtenant facilities.

The total proposed generating capacity of the Moira Sound Project would be 20.4 MW, with an estimated annual generation of 79.7 gigawatt-hours.

Applicant Contact: Mr. Robert S. Grimm, CEO/President, Alaska Power Company, Inc., c/o Alaska Power & Telephone Company, P.O. Box 3222, Port Townsend, WA 98368; *phone:* (360) 385–1733.

FERC Contact: Jennifer Harper; phone: (202) 502–6136.

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–14285–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26982 Filed 10–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–14–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits tariff filing per 154.204: DTI—October 11, 2011 Negotiated Rate Agreement to be effective 11/1/2011.
Filed Date: 10/11/2011.
Accession Number: 20111011–5210.
Comment Date: 5 p.m. Eastern Time on Monday, October 24, 2011.

Docket Numbers: RP12–15–000.
Applicants: Gas Transmission Northwest LLC.
Description: Gas Transmission Northwest LLC submits tariff filing per 154.204: Pressure Commitments to be effective 11/11/2011.
Filed Date: 10/11/2011.
Accession Number: 20111011–5262.
Comment Date: 5 p.m. Eastern Time on Monday, October 24, 2011.

Docket Numbers: RP12–16–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits tariff filing per 154.203: Beacon Non-conforming Compliance Filing to be effective 9/22/2011.
Filed Date: 10/12/2011.
Accession Number: 20111012–5042.
Comment Date: 5 p.m. Eastern Time on Monday, October 24, 2011.

Docket Numbers: RP12–17–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: Southern Natural Gas Company, L.L.C. submits tariff filing per 154.204: SNG Name Change Filing Errata 2 to be effective 10/12/2011.
Filed Date: 10/12/2011.
Accession Number: 20111012–5113.
Comment Date: 5 p.m. Eastern Time on Monday, October 24, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and

385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26980 Filed 10–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4281–024, ER99–2161–012, ER99–3000–011, ER00–2810–010, ER99–4359–009, ER99–4358–009, ER99–2168–012, ER09–1300–003, ER10–1291–002, ER09–1301–003, ER99–2162–012, ER00–2807–010, ER00–2809–010, ER99–4355–009, ER99–4356–009, ER00–3160–015, ER99–4357–009, ER00–3160–016, ER00–2313–011, ER02–2032–009, ER02–1396–009, ER02–1412–009, ER99–3637–010, ER99–1712–012, ER00–2808–011.

Applicants: Norwalk Power LLC, NRG Power Marketing LLC, Connecticut Jet Power LLC, Montville Power LLC, Middletown Power LLC, Somerset Power LLC, NRG Energy Center Dover LLC, Arthur Kill Power LLC, Dunkirk Power LLC, Huntley Power LLC, Conemaugh Power LLC, Indian River Power LLC, Keystone Power LLC, NRG Energy Center Paxton LLC, NRG Rockford LLC, NRG Rockford II LLC, Vienna Power LLC, Devon Power LLC, GenConn Middletown LLC, GenConn Devon LLC, GenConn Energy LLC, NRG New Jersey Energy Sales LLC, Oswego Harbor Power LLC, Astoria Gas Turbines Power LLC, NEO Freehold-Gen LLC.

Description: Supplement to Updated Market Power Analysis of NRG Northeast MBR Entities.

Filed Date: 10/06/2011.

Accession Number: 20111006–5148.

Comment Date: 5 p.m. Eastern Time on Friday, October 21, 2011.

Docket Numbers: ER12–57–000.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Company submits tariff filing per 35.13(a)(2)(iii: 20111011 ETEC Revised PSA to be effective 12/17/2010.

Filed Date: 10/11/2011.

Accession Number: 20111011–5197.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

Docket Numbers: ER12–58–000.

Applicants: Southwestern Electric Power Company.

Description: Southwestern Electric Power Company submits tariff filing per 35.13(a)(2)(iii: 20111011 TexLa Revised PSA to be effective 12/17/2010.

Filed Date: 10/11/2011.

Accession Number: 20111011–5229.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

Docket Numbers: ER12–59–000.

Applicants: City of Banning, California.

Description: City of Banning, California submits tariff filing per 35.13(a)(2)(iii: Offer of Settlement Under Docket ER11–3962 to be effective 7/1/2011.

Filed Date: 10/11/2011.

Accession Number: 20111011–5248.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

Docket Numbers: ER12–60–000.

Applicants: Tenaska Power Management, LLC.

Description: Tenaska Power Management, LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization to be effective 10/12/2011.

Filed Date: 10/11/2011.

Accession Number: 20111011–5250.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

Docket Numbers: ER12–61–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: PJM Queue No. M24; Original Service Agreement Nos. 3086 and 3087 to be effective 9/8/2011.

Filed Date: 10/11/2011.

Accession Number: 20111011–5251.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

Docket Numbers: ER12–62–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Revisions to the PJM Tariff Schedule 12A to be effective 12/11/2011.

Filed Date: 10/11/2011.

Accession Number: 20111011–5260.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

Docket Numbers: ER12–63–000.

Applicants: National Grid Generation LLC.

Description: National Grid Generation LLC submits tariff filing per 35.13(a)(2)(iii: National Grid Generation RS 1 Filing to be effective 12/31/9998.

Filed Date: 10/11/2011.

Accession Number: 20111011–5261.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 12, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27000 Filed 10–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–6–000.

Applicants: Michigan Electric Transmission Company, Wolverine Power Supply Cooperative, Inc.

Description: Application for Order Authorizing Transactions Under Section 203 of the Federal Power Act, and Request for Waivers and Confidential Treatment of Michigan Electric Transmission Company, LLC, and Wolverine Power Supply Cooperative, Inc.

Filed Date: 10/11/2011.
Accession Number: 20111011–5312.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Docket Numbers: EC12–7–000.
Applicants: Michigan Electric Transmission Company, Wolverine Power Supply Cooperative, Inc.
Description: Application for Order Authorizing Transactions Under Section 203 of the Federal Power Act, and Request for Waivers of Michigan Electric Transmission Company, LLC and Wolverine Power Supply Cooperative, Inc.
Filed Date: 10/11/2011.
Accession Number: 20111011–5314.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3125–003; ER10–3102–003; ER10–3100–003; ER10–3107–003; ER10–3109–003.
Applicants: Effingham County Power, LLC, Walton County Power, LLC, Washington County Power, LLC, AL Sandersville LLC, MPC Generating LLC.
Description: Notice of Non-Material Change in Status of AL Sandersville LLC, et al.
Filed Date: 10/12/2011.
Accession Number: 20111012–5088.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Docket Numbers: ER11–3962–001.
Applicants: City of Banning, California.
Description: City of Banning, California submits tariff filing per 35: Offer of Settlement and Settlement Agreement to be effective 7/1/2011.
Filed Date: 10/12/2011.
Accession Number: 20111012–5007.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Docket Numbers: ER11–4462–002.
Applicants: NEPM II, LLC.
Description: NEPM II, LLC submits tariff filing per 35.17(b): NEPM II, LLC Amendment to Market-Based Rate Tariff to be effective 11/1/2011.
Filed Date: 10/12/2011.
Accession Number: 20111012–5066.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Docket Numbers: ER12–64–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Letter Agreement for Houweling Nurseries Oxnard Project with HNO to be effective 10/7/2011.
Filed Date: 10/12/2011.
Accession Number: 20111012–5053.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Docket Numbers: ER12–65–000.
Applicants: Granite Reliable Power, LLC.
Description: Granite Reliable Power, LLC Request for Waiver of Unreserved Transmission Use Penalties and Advance Reservation.
Filed Date: 10/11/2011.
Accession Number: 20111011–5318.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Docket Numbers: ER12–66–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: First Energy submits revised Schedule B to ISA No. 2832 to be effective 10/10/2011.
Filed Date: 10/12/2011.
Accession Number: 20111012–5071.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–45–000.
Applicants: Old Dominion Electric Cooperative, Inc.
Description: Amendment to Application of Old Dominion Electric Cooperative.
Filed Date: 10/07/2011.
Accession Number: 20111007–5036.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA12–1–000.
Applicants: SU FERC, L.L.C.
Description: Request for Waiver of Order No. 1000 of SU FERC, L.L.C.
Filed Date: 10/11/2011.
Accession Number: 20111011–5311.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD11–12–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Interpretations to Requirements of Reliability Standards EOP–001–0 and EOP–001–2, Emergency Operations Planning.
Filed Date: 09/09/2011.
Accession Number: 20110909–5258.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 2, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 12, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26999 Filed 10–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–2–000.
Applicants: Covanta Energy Corporation.
Description: Covanta Union, Inc. Application for Authority to Transfer Jurisdictional Facilities and Request for Expedited Consideration and Waiver.
Filed Date: 10/07/2011.
Accession Number: 20111007–5106.
Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: EC12–3–000.
Applicants: Epsom Investment Pte Ltd., Arlington Valley, LLC, Griffith Energy LLC.
Description: Joint Application for Transaction Approval Pursuant to FPA—203 and Request for Expedited Action of Epsom Investment Pte Ltd, Arlington Valley, LLC, and Griffith Energy LLC.
Filed Date: 10/07/2011.
Accession Number: 20111007–5109.
Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: EC12–4–000.
Applicants: Thermo Cogeneration Partnership, LP, Stargen CO ILP, L.L.C., Stargen CO IGP, L.L.C.
Description: Application for Authorization under Federal Power Act

Section 203 of Thermo Cogeneration Partnership, L.P., *et al.*

Filed Date: 10/07/2011.

Accession Number: 20111007–5186.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–2–000.

Applicants: Windpower Partners 1993, L.P.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Windpower Partners 1993, L.P.

Filed Date: 10/07/2011.

Accession Number: 20111007–5150.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2651–002.

Applicants: Lockhart Power Company.

Description: Lockhart Power Company submits tariff filing per 35: Revisions to Lockhart MBR Tariff to be effective 10/11/2011.

Filed Date: 10/11/2011.

Accession Number: 20111011–5005.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Docket Numbers: ER10–3069–002.

Applicants: Alcoa Power Generating Inc.

Description: Alcoa Power Generating Inc. submits tariff filing per 35: APGI Revisions to MBR Tariff—Seller Category to be effective 10/12/2011.

Filed Date: 10/11/2011.

Accession Number: 20111011–5117.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Docket Numbers: ER10–3070–002.

Applicants: Alcoa Power Marketing LLC.

Description: Alcoa Power Marketing LLC submits tariff filing per 35: APM Revisions to MBR Tariff—Seller Category to be effective 10/12/2011.

Filed Date: 10/11/2011.

Accession Number: 20111011–5120.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Docket Numbers: ER11–4475–002.

Applicants: Rockland Wind Farm LLC.

Description: Rockland Wind Farm LLC submits tariff filing per 35.17(b): Rockland Wind Farm LLC—Second Amendment to be effective 10/7/2011.

Filed Date: 10/07/2011.

Accession Number: 20111007–5161.

Comment Date: 5 p.m. Eastern Time on Monday, October 24, 2011.

Docket Numbers: ER11–4475–003.

Applicants: Rockland Wind Farm LLC.

Description: Rockland Wind Farm LLC submits tariff filing per 35.17(b): Amendment to Rate Schedule to be effective 10/11/2011.

Filed Date: 10/11/2011.

Accession Number: 20111011–5151.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 26, 2011.

Docket Numbers: ER11–4527–001.

Applicants: Record Hill Wind LLC.

Description: Record Hill Wind LLC submits tariff filing per 35.17(b): Amendment to Market-Based Rate Application Under Docket ER11–4527 to be effective 10/5/2011.

Filed Date: 10/11/2011.

Accession Number: 20111011–5118.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Docket Numbers: ER11–4555–001.

Applicants: ONEOK Energy Services Company, L.P.

Description: ONEOK Energy Services Company, L.P. submits tariff filing per 35: ONEOK Energy Services Amendment to Order 697 Compliance Filing of MBR Tariff to be effective 9/16/2011.

Filed Date: 10/07/2011.

Accession Number: 20111007–5148.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER11–4636–001.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits tariff filing per 35.17(b): Colstrip Project Transmission Agreement—Clone to be effective 1/1/2012.

Filed Date: 10/11/2011.

Accession Number: 20111011–5000.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Docket Numbers: ER11–4686–001.

Applicants: Goldfinch Capital Management, LP.

Description: Goldfinch Capital Management, LP submits tariff filing per 35: Revised Baseline Filing of Goldfinch Capital to be effective 10/7/2011.

Filed Date: 10/07/2011.

Accession Number: 20111007–5033.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER11–4718–001.

Applicants: Gateway Energy Marketing.

Description: Gateway Energy Marketing submits tariff filing per 35: Gateway Market-Based Rate Revised Baseline Filing to be effective 10/7/2011.

Filed Date: 10/07/2011.

Accession Number: 20111007–5031.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–45–000.

Applicants: Alabama Power Company.

Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): PowerSouth NITSA Amendment to Add Hewett Delivery Point to be effective 3/16/2012.

Filed Date: 10/07/2011.

Accession Number: 20111007–5061.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–46–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits tariff filing per 35.13(a)(2)(iii): FPL OATT Attachment P to be effective 12/6/2011.

Filed Date: 10/07/2011.

Accession Number: 20111007–5088.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–47–000.

Applicants: Celerity Energy Partners San Diego LLC.

Description: Celerity Energy Partners San Diego LLC submits tariff filing per 35.37: Celerity Triennial and Category Status Filing to be effective 10/8/2011.

Filed Date: 10/07/2011.

Accession Number: 20111007–5134.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–48–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): LGIA among NYISO, LIPA, and Long Island Solar Farm to be effective 10/5/2011.

Filed Date: 10/07/2011.

Accession Number: 20111007–5149.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–49–000.

Applicants: Citigroup Energy Inc.

Description: Citigroup Energy Inc. submits tariff filing per 35.13(a)(2)(iii): CEI MBR Tariff with MISO Ancillary Services to be effective 10/8/2011.

Filed Date: 10/07/2011.

Accession Number: 20111007–5162.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–50–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits tariff filing per 35.13(a)(2)(iii): 2011–10–07 CAISO Flexible Ramping Constraint Amendment to be effective 12/13/2011.

Filed Date: 10/07/2011.

Accession Number: 20111007–5163.

Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–51–000.
Applicants: Citigroup Energy Canada ULC.
Description: Citigroup Energy Canada ULC submits tariff filing per 35.13(a)(2)(iii): CECU MBR Tariff adding MISO Ancillary Servs to be effective 10/8/2011.
Filed Date: 10/07/2011.
Accession Number: 20111007–5164.
Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–52–000.
Applicants: Windpower Partners 1993, L.P.
Description: Windpower Partners 1993, L.P. submits tariff filing per 35.12: Windpower Partners 1993, L.P. Market-Based Rate Tariff to be effective 10/8/2011.
Filed Date: 10/07/2011.
Accession Number: 20111007–5165.
Comment Date: 5 p.m. Eastern Time on Friday, October 28, 2011.

Docket Numbers: ER12–53–000.
Applicants: Torofino Trading LLC.
Description: Torofino Trading LLC submits tariff filing per 35.1: FERC Electric Tariff No.1 to be effective 10/13/2009.
Filed Date: 10/11/2011.
Accession Number: 20111011–5003.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 1, 2011.

Docket Numbers: ER12–55–000.
Applicants: Pacific Gas and Electric Company.
Description: Notices of Termination of CalPeak Vaca Dixon and Panoche Service Agreement Nos. 39 and 43 under Pacific Gas and Electric Company FERC Electric Tariff Volume No. 5.
Filed Date: 10/11/2011.
Accession Number: 20111011–5107.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

Docket Numbers: ER12–56–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 10–11–11 Attachment X Clean-Up to be effective 12/11/2011.
Filed Date: 10/11/2011.
Accession Number: 20111011–5150.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 01, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–40–000.
Applicants: Entergy Services, Inc., Entergy Arkansas Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc, System Energy Resources, Inc.
Description: Supplemental Information of Entergy Services, Inc., et al.
Filed Date: 10/07/2011.
Accession Number: 20111007–5193.
Comment Date: 5 p.m. Eastern Time on Monday, October 17, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–26981 Filed 10–18–11; 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: Of the Organization of MISO States and Midwest Independent Transmission System Operator, Inc. (MISO):

OMS Annual Meeting, October 18, 2011, 9 a.m.–3 p.m., Local Time.
MISO Board Markets Subcommittee, October 19, 2011, 8 a.m.–10 a.m., Local Time.
MISO Advisory Committee Meeting, October 19, 2011, 10 a.m.–3 p.m., Local Time.
MISO Board of Directors Meeting, October 20, 2011, 8:30 a.m.–10 a.m., Local Time.

The above-referenced meeting will be held at:

MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *http://www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–3728, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL11–56, *First Energy Service Company.*
Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: October 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26986 Filed 10–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–52–000]

Windpower Partners 1993, L.P.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Windpower Partners 1993, LP's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 1, 2011.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 12, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–26984 Filed 10–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are 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, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. ER10–1791–001	10–13–11	Dale Osborn.
Exempt:		
1. CP11–56–000	10–11–11	Michael G. Grimm.
2. Project No. 199–205	10–3–11	John Inabinet.[1]
3. Project No. 2210–090	9–29–11	Governor Robert F. McDonnell.
4. Project No. 2784–000	10–12–11	Paul Maben.
5. Project No. 13351–000	10–11–11	Charlene Dwin Vaughn.
6. Project No. 13351–000	10–11–11	LaDonna Young.

[1] Re: May 26, 2011 ESA consultation meeting.

Dated: October 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27001 Filed 10–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Regional Entity Trustee, Regional State Committee and Board of Directors Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional Entity Trustee (RE), Regional State Committee (RSC) and Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

All meetings will be held at the Eldorado Hotel, 309 West San Francisco Street, Santa Fe, NM 87501. The hotel phone number is (505) 988–4455.

SPP RE

October 24, 2011 (8:30 a.m.–2 p.m.)

SPP RSC

October 24, 2011 (1 p.m.–5 p.m.)

SPP Board of Directors

October 25, 2011 (8 a.m.–2 p.m.)

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, *Southwest Power Pool, Inc.*

Docket No. ER08–1419, *Southwest Power Pool, Inc.*

Docket No. ER09–659, *Southwest Power Pool, Inc.*

Docket No. ER09–1050, *Southwest Power Pool, Inc.*

Docket No. ER10–696, *Southwest Power Pool, Inc.*

Docket No. ER10–941, *Southwest Power Pool, Inc.*

Docket No. ER10–1069, *Southwest Power Pool, Inc.*

Docket No. ER10–1254, *Southwest Power Pool, Inc.*

Docket No. ER10–1269, *Southwest Power Pool, Inc.*

Docket No. ER10–1697, *Southwest Power Pool, Inc.*

Docket No. ER10–2244, *Southwest Power Pool, Inc.*

Docket No. ER11–2528, *Southwest Power Pool, Inc.*

Docket No. ER11–2725, *Southwest Power Pool, Inc.*

Docket No. ER11–2736, *Southwest Power Pool, Inc.*

Docket No. ER11–2758, *Southwest Power Pool, Inc.*

Docket No. ER11–2781, *Southwest Power Pool, Inc.*

Docket No. ER11–2783, *Southwest Power Pool, Inc.*

Docket No. ER11–2787, *Southwest Power Pool, Inc.*

Docket No. ER11–2828, *Southwest Power Pool, Inc.*

Docket No. ER11–2837, *Southwest Power Pool, Inc.*

Docket No. ER11–2881, *Southwest Power Pool, Inc.*

Docket No. ER11–2916, *Southwest Power Pool, Inc.*

Docket No. ER11–3025, *Southwest Power Pool, Inc.*

Docket No. ER11–3073, *Southwest Power Pool, Inc.*

Docket No. ER11–3130, *Southwest Power Pool, Inc.*

Docket No. ER11–3133, *Southwest Power Pool, Inc.*

Docket No. ER11–3159, *Southwest Power Pool, Inc.*

Docket No. ER11–3230, *Southwest Power Pool, Inc.*

Docket No. ER11–3299, *Southwest Power Pool, Inc.*

Docket No. ER11–3331, *Southwest Power Pool, Inc.*

Docket No. ER11–3838, *Southwest Power Pool, Inc.*

Docket No. ER11–3622, *Southwest Power Pool, Inc.*

Docket No. ER11–3627, *Southwest Power Pool, Inc.*

Docket No. ER11–3650, *Southwest Power Pool, Inc.*

Docket No. ER11–3665, *Southwest Power Pool, Inc.*

Docket No. ER11–3666, *Southwest Power Pool, Inc.*

Docket No. ER11–3672, *Southwest Power Pool, Inc.*

Docket No. ER11–3710, *Southwest Power Pool, Inc.*

Docket No. ER11–3776, *Southwest Power Pool, Inc.*

Docket No. ER11–3952, *Southwest Power Pool, Inc.*

Docket No. ER11–3958, *Southwest Power Pool, Inc.*

Docket No. ER11–3967, *Southwest Power Pool, Inc.*

Docket No. ER11–3728, *Midwest Independent System Operator, Inc.*

Docket No. EL11–34, *Midwest Independent System Operator, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: October 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–27002 Filed 10–18–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

[DOE/EIS–0461]

Notice of Cancellation of Environmental Impact Statement for the Proposed Hyde County Wind Energy Center Project, Hyde County, SD

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Cancellation of Environmental Impact Statement.

SUMMARY: The U.S. Department of Energy (DOE), Western Area Power Administration (Western) is issuing this notice to advise the public that it is cancelling the preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) on an interconnection request by NextEra Energy Resources (NextEra).

DATES: This cancellation is effective on October 19, 2011.

FOR FURTHER INFORMATION CONTACT: For additional information on the cancellation of this EIS process, contact Matt Marsh, NEPA Document Manager, Upper Great Plains Regional Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, e-mail *MMarsh@wapa.gov,* telephone (800) 358–3415. For general information on DOE's NEPA review process, contact Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–54, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: NextEra proposed to design, construct, operate, and maintain a 150-megawatt Hyde County Wind Energy Center Project (Project) in Hyde County, South Dakota, and interconnect that Project with Western's transmission system. NextEra's interconnection request caused Western to initiate a NEPA review of its action to allow the interconnection. Western published a Notice of Intent for the EIS in the **Federal Register** on November 30, 2010 (75 FR 74040), and started the EIS process. A public scoping meeting was held subsequent to the Notice of Intent, but a Draft EIS was not produced because NextEra decided to suspend further action on its proposed Project. NextEra notified Western of its decision, and Western is now terminating the NEPA review process on its interconnection decision and NextEra's proposed Project. NextEra could decide to reinitiate the proposed Project at some future date. In that event Western would issue a new Notice of Intent, and would start an entirely new NEPA process.

The Assistant Secretary, Environment, Safety, and Health granted approval authority to Western's Administrator for EISs related to integrating major new sources of generation in a October 4, 1999, memorandum. Under the authority granted by that memorandum, I have terminated the NEPA process for NextEra's proposed Hyde County Wind Energy Center Project with the publication of this notice.

Dated: October 11, 2011.

Timothy J. Meeks,

Administrator.

[FR Doc. 2011–27046 Filed 10–18–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2011–0795; FRL–9481–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Administrative Requirements for Assistance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on April 30, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before December 19, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2011–0795, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* EPA Docket Center, Environmental Protection Agency, Office of Environmental Information, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OARM–2011–0795. 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.*

FOR FURTHER INFORMATION CONTACT: Alexandra Raver, Office of Grants and Debarment, National Policy, Training and Compliance Division, Mail Code: 3903R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–5296; *fax number:* (202) 565–2470; *e-mail address: Raver.Alexandra@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OARM–2011–0795, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are institutions of

higher education, hospitals, and other non-profit organizations; State, local, and Indian tribal governments.

Title: General Administrative Requirements for Assistance Programs.

ICR numbers: EPA ICR No. 0938.18, OMB Control No. 2030–0020.

ICR status: This ICR is currently scheduled to expire on April 30, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The information is collected from applicants/recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program. It is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). 40 CFR part 30, ''Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations,'' includes the management requirements for potential grantees from non-profit organizations. 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' includes the management responsibilities for potential State and local government grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. This ICR combines all of these requirements under OMB Control Number 2030–0020. The information required by these regulations will be used by EPA award officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars A–21, A–87, A–102, A–110, A–122, and A–133, which set forth the pre-award, post-award, and after-the-grant requirements.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 19 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 6,105.

Frequency of response: On occasion, quarterly, and annually.

Estimated total average number of responses for each respondent: 8.

Estimated total annual burden hours: 114,531 hours.

Estimated total annual costs: $5,930,031. This includes an estimated burden cost of $5,930,031 and an estimated cost of $0 for capital investment or maintenance and operational costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 13, 2011.

Howard Corcoran,

Director of the Office of Grants and Debarment.

[FR Doc. 2011–27053 Filed 10–18–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9481–2]

Proposed Cercla Administrative Cost Recovery Settlement; ACM Smelter and Refinery Site, Located in Cascade County, MT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the ACM Smelter and Refinery NPL Site (Site), Operable Unit 1, located near Great Falls, in Cascade County, Montana, with the following settling parties: Atlantic Richfield Company and ARCO Environmental Remediation, L.L.C. The settlement requires the settling parties to perform a remedial investigation and feasibility study in portions of Operable Unit 1 of the Site, and to pay $1,050,000.00 to the Hazardous Substance Superfund for past response costs, as well as future response costs under the settlement. The settlement includes a covenant not to sue the settling parties pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a). For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Black Eagle Community Center, in the Black Eagle community, Cascade County, Montana, and at the EPA Region 8 Records Center located on the second floor at 1595 Wynkoop Street, Denver, Colorado 80202 during normal business hours.

DATES: Comments must be submitted on or before November 18, 2011.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Region 8 Records Center located on the second floor at 1595 Wynkoop Street, in Denver, Colorado, during normal business hours. A copy of the proposed settlement may be obtained from David Sturn, Technical Enforcement Program, EPA Region 8, Montana Office (8MO), Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626. Mr. Sturn can be reached at (406) 457–5027. Comments should reference the ACM Smelter and Refinery NPL Site, the EPA Docket No. CERCLA–08–2011–0017, and should be addressed to Mr. Sturn at the address given above.

FOR FURTHER INFORMATION CONTACT: David Sturn, Technical Enforcement Program, U.S. EPA Region 8, Montana Office (8MO), Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626. *Telephone:* (406) 457–5027.

Dated: October 7, 2011.

Art Palomares,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region 8.

[FR Doc. 2011–27051 Filed 10–18–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2011–076]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Co-Financing with Foreign Export Credit Agency (EIB11–04).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form will enable Ex-Im Bank to identify the specific details of the proposed co-financing transaction between a U.S. exporter, Ex-Im Bank, and a foreign export credit agency; the information collected includes vital facts such as the amount of U.S.-made content in the export, the amount of financing requested from Ex-Im Bank, and the proposed financing amount from the foreign export credit agency. These details are necessary for approving this unique transaction structure and coordinating our support with that of the foreign export credit agency to ultimately complete the transaction and support U.S. exports—and U.S. jobs. The form can be viewed at: *http://www.exim.gov/pub/pending/eib11-04.pdf.*

DATES: Comments should be received on or before December 19, 2011 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *http://www.regulations.gov* or by mail to Ms. Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB11–04 Co-Financing with Foreign Export Credit Agency.

OMB Number: 3048-xxxx.

Type of Review: New.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 60.

Estimated Time per Respondent: 15 minutes.

Government Annual Burden Hours: 15 hours.

Frequency of Reporting or Use: On occasion.

Total Cost to the Government: $580.30.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2011–27048 Filed 10–18–11; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011938–006.

Title: HSDG/Alianca/CSAV/Libra/CLNU Cooperative Working Agreement.

Parties: Hamburg-Sud (''HSDG''); Alianca Navegacao e Logistica Ltda. e CIA (''Alianca''); Compania Sud Americana de Vapores, S.A.; Companhia Libra de Navegacao; and Montemar Maritima S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would delete Venezuela from the geographic scope of the agreement, increase the size of vessels that can be deployed under the agreement and revise the parties' space allocations accordingly, delete obsolete language, and revise the governing law and arbitration provisions of the agreement.

Agreement No.: 011961–010.

Title: Maritime Credit Agreement.

Parties: Alianca Navegacao e Logistica Ltda. & Cia.; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sud Americana de Vapores, S.A.; COSCO Container Lines Company Limited; Dole Ocean Cargo Express; Hamburg-Süd; Hoegh Autoliners A/S; Hyundai Merchant Marine Co., Ltd.; Independent Container Line Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Safmarine Container Lines N.V.; United Arab Shipping Company (S.A.G.); Wallenius Wilhelmsen Logistics AS; YangMing Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW., Suite 1100; Washington, DC 20006.

Synopsis: The amendment removes Tropical Shipping & Construction Co., Ltd. as party to the Agreement.

Agreement No.: 012073–001.

Title: MSC/CSAV Group Vessel Sharing Agreement.

Parties: MSC Mediterranean Shipping Company SA; Compañia Sud Americana de Vapores S.A.; Companhia Libra de Navegacao; and Compania Libra de Navegacion Uruguay S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW.; Suite 1100; Washington, DC 20006–4007.

Synopsis: The amendment would increase the size of vessels that can be deployed under the agreement and revise the parties' space allocations accordingly.

Agreement No.: 012139.

Title: OVSA/MSC Space Charter Agreement.

Parties: Hamburg-Sud, A.P. Moller-Maersk A/S, MSC Mediterranean Shipping Company S.A., CMA CGM, S.A., and Hapag-Lloyd AG.

Filing Parties: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW; Suite 1100; Washington, DC 20006–4007.

Synopsis: The Agreement authorizes Hamburg-Sud, Moller-Maersk, Hapag, Lloyd and CMA CGM to charter space to Med Shipping in the trade between U.S. West Coast ports and ports in Australia, and New Zealand.

Agreement No.: 012140.

Title: CSAV/Siem Turkey Space Charter Agreement.

Parties: Compania Sud Americana de Vapores, S.A. and Siem Car Carriers (Pacific) AS.

Filing Party: Walter H. Lion Esq.; McLaughlin & Stern, LLP; 260 Madison Avenue, New York NY 10016.

Synopsis: The agreement permits CSAV and Siem to cross charter space for the movement of motorized vehicles in the trade from Turkey to the U.S. East Coast.

Agreement No.: 012141.

Title: COSCON and WHL Transpacific Vessel Sharing and Slot Allocation Agreement.

Parties: COSCO Container Lines Company Limited. and Wan Hai Lines (Singapore) Ptd. Ltd.

Filing Parties: Susannah Keagle, Esq.; Nixon Peabody LLP; 555 West 5th Street, 46th Floor; Los Angeles, CA 90013–1025.

Synopsis: The agreement authorizes the parties to operate six vessels and exchange slots in the trades between Vietnam, China, and the United States.

Agreement No.: 201165–001.

Title: Marine Terminal Lease and Operating Agreement.

Parties: Broward County, Saw Grass Transport, Inc., and Dole Fresh Fruit Company

Filing Party: Candace J. McCann; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive, Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The amendment revises the legal description of the demised premises and provides for the reassignment of the lease and operating agreement to Dole.

By Order of the Federal Maritime Commission.

Dated: October 14, 2011.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–27055 Filed 10–18–11; 8:45 am]

BILLING CODE 6730–01–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 14, 2011.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Midwest Bancshares, Inc.,* to become a bank holding company by acquiring 100 percent of Security State Bank, both of Tyndall, South Dakota, and Dakota Heritage State Bank, Chancellor, South Dakota. Applicant also applied to acquire control of Chancellor Insurance Agency, LLC, Chancellor, South Dakota, and thereby engage in the sale of insurance in a town of less than 5,000, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 14, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–27032 Filed 10–18–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 111 0166]

Teva Pharmaceutical Industries Ltd. and Cephalon, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Teva Cephalon, File No. 111 0166'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/tevacephalonconsent,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Kari Wallace (202–326–3085), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 7, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference

Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 2, 2011. Write ''Teva Cephalon, File No. 111 0166'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/tevacephalonconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Teva Cephalon, File No. 111 0166'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 7, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Teva Pharmaceutical Industries Ltd. (''Teva'') and Cephalon, Inc. (''Cephalon'') that is designed to remedy the anticompetitive effects of Teva's acquisition of Cephalon. Under the terms of the proposed Consent Agreement, Teva would be required to divest to Par Pharmaceutical, Inc. (''Par'') all of Teva's rights and assets relating to its generic transmucosal fentanyl citrate lozenges (''fentanyl citrate'') and generic extended release cyclobenzaprine hydrochloride capsules (''cyclobenzaprine hydrochloride''). Teva will also enter into a supply agreement to allow Par to sell generic modafinil tablets (''modafinil'') for a period of at least one year; Par has the option to extend that supply agreement for up to one additional year if it chooses.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order'').

Pursuant to an Asset Purchase Agreement dated May 1, 2011, Teva proposes to acquire Cephalon in a transaction valued at approximately $6.8 billion (''Proposed Acquisition''). The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the U.S. markets for fentanyl citrate, cyclobenzaprine hydrochloride, and modafinil. The proposed Consent Agreement will remedy the alleged violations by replacing the competition that would otherwise be eliminated by the acquisition.

The Products and Structure of the Markets

The Proposed Acquisition would reduce the number of suppliers in each of the relevant markets. In human pharmaceutical product markets with generic competition, price generally decreases as the number of generic competitors increases. Accordingly, the reduction in the number of suppliers within each relevant market has a direct and substantial effect on pricing.

Transmucosal fentanyl citrate lozenges are a treatment for breakthrough cancer pain originally developed by Cephalon and marketed under the brand name Actiq. Three companies—Teva, Cephalon/Watson Pharmaceuticals, Inc., and Covidien—manufacture and market a generic version of the product for sale in the United States. Teva and Covidien both manufacture their own products while Watson's product is manufactured and supplied by Cephalon. In 2010, Teva had 43 percent of generic sales, while the Cephalon/Watson product had 40 percent and Covidien had 17 percent. Therefore, the proposed acquisition combines the two most competitively significant suppliers of generic fentanyl citrate.

Extended release cyclobenzaprine hydrochloride is an extended release version of Flexeril, a muscle relaxant. Cephalon acquired the North American rights to the branded formulation of extended release cyclobenzaprine hydrochloride, called Amrix, which was

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

approved by the Food and Drug Administration (''FDA'') in 2007. No companies currently market a generic version of Amrix, but Teva and Cephalon (through an authorized generic product [1]) are two of a limited number of suppliers capable of entering with a generic cyclobenzaprine hydrochloride product in a timely manner.

Modafinil tablets treat excessive sleepiness caused by narcolepsy or shift work disorder. Cephalon markets modafinil tablets under the brand name Provigil, sales of which totaled approximately $1 billion in 2010. No companies currently market a generic version of Provigil. Teva, Ranbaxy Pharmaceuticals, Inc., Mylan Pharmaceutical Inc., and Barr Laboratories, Inc. (now owned by Teva) each filed applications seeking FDA approval to market generic Provigil before expiration of Cephalon's patent. They all filed on the first day that the FDA would accept such an application, making them all eligible for the 180-day marketing exclusivity period provided under the Hatch-Waxman Act.[2] Subsequently, each of the companies agreed with Cephalon to refrain from marketing generic Provigil until April 2012. Cephalon (through an authorized generic product) and Teva are two of a limited number of suppliers best-positioned to enter with a generic modafinil product during the upcoming Hatch-Waxman exclusivity period for sales of generic modafinil.

Entry

Entry into the markets for fentanyl citrate, cyclobenzaprine hydrochloride, and modafinil would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. The combination of drug development times and regulatory requirements, including FDA approval, takes at least two years. And even companies for whom the FDA approval process is well underway face other regulatory barriers, including Hatch-Waxman regulatory exclusivity and pending patent litigation, that limit their ability to enter these markets in a timely manner.

Effects

The Proposed Acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for fentanyl citrate, cyclobenzaprine hydrochloride, and modafinil. In pharmaceuticals markets with generic competition, price generally decreases as the second, third, fourth, and even fifth competitors enter. Although generic versions of cyclobenzaprine hydrochloride and modafinil are not yet available in the United States, the FDA approval process provides information about the timeliness and likeliness of entry by generic products. In addition, substantial experience and empirical evidence of the impact of multiple generic suppliers on prices for other drugs provide a strong basis to draw conclusions about the likely effects of the Proposed Acquisition in the markets for these products. Moreover, for a drug with high dollar sales such as Provigil, the impact from a reduction of competition during the 180-day exclusivity period alone is substantial. The Proposed Acquisition, by reducing an already limited number of competitors or potential competitors in each of these markets, would cause anticompetitive harm to U.S. consumers by increasing the likelihood of higher post-acquisition prices.

The Consent Agreement

The proposed Consent Agreement effectively remedies the Proposed Acquisition's anticompetitive effects in the relevant markets by requiring Teva to divest certain rights and assets related to generic fentanyl citrate and generic cyclobenzaprine hydrochloride to a Commission-approved acquirer no later than ten days after the acquisition. In addition, to remedy the consolidation of marketers of generic modafinil during the exclusivity period, the Consent Agreement requires Teva to enter into a supply agreement to provide a Commission-approved acquirer with generic modafinil tablets to sell in the United States for at least one year. The acquirer of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating a possible purchaser of divested assets is to maintain the competitive environment that existed prior to the acquisition.

The proposed Consent Agreement remedies the competitive concerns the acquisition raises by requiring Teva to divest its generic fentanyl citrate and generic cyclobenzaprine hydrochloride to Par, which will purchase all rights currently held by Teva. In addition, Teva will supply Par with at least a one-year supply of modafinil tablets. Par has the option to extend the modafinil supply agreement for an additional year. Par is a New Jersey-based generic pharmaceutical company with 115 active products and an active product development pipeline. With its experience in generic markets, Par is expected to replicate the competition that would otherwise be lost with the Proposed Acquisition.

If the Commission determines that Par is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures is not acceptable, the parties must unwind the sale to Par and divest the products, within six months of the date the Order becomes final, to a Commission-approved acquirer. In that circumstance, the Commission may appoint a trustee to divest the products if Teva fails to divest the products as required.

The proposed Consent Agreement contains several provisions to help ensure that the divestitures are successful. The Order requires Teva to take all action to maintain the economic viability, marketability, and competitiveness of the products until such time as they are transferred to a Commission-approved acquirer. Teva must transfer the manufacturing technology for the fentanyl citrate and cyclobenzaprine hydrochloride products to Par and must supply Par with fentanyl citrate and cyclobenzaprine hydrochloride products during the transition period.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011–26970 Filed 10–18–11; 8:45 am]

BILLING CODE 6750–01–P

[1] Authorized generic products are manufactured by branded pharmaceutical companies and marketed and sold under a non-brand label at generic prices.

[2] Under the Hatch-Waxman Act, if a generic company plans to launch a generic version of a pharmaceutical product before the patents covering the branded product expire it must certify that its product does not infringe the branded company's patents or that the branded company's patents are invalid. The certification usually results in patent litigation. If the generic company successfully challenges the patents held by the branded company, the generic company may be eligible to receive a 180-day period of market exclusivity for its generic product.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Marija Manojlovic, University of Pittsburgh: Based on an inquiry conducted and written admission obtained by the University of Pittsburgh (UP) and additional analysis conducted by ORI in its oversight review, ORI found that Ms. Marija Manojlovic, former graduate student, Department of Chemistry, UP, engaged in research misconduct in research supported by National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH), grant P50 GM067082, National Cancer Institute (NCI), NIH, grant P01 CA078039, National Institute of Mental Health (NIMH), NIH, grant U54 MH074411, and National Institute of Allergy and Infectious Diseases (NIAID), NIH, grant R01 AI033506.

ORI found that the Respondent engaged in research misconduct by falsifying and fabricating the synthesis and spectral data that were included in one (1) poster presentation and in one (1) pre-submission draft of a paper to be submitted for publication.

Specifically, ORI found that the Respondent knowingly falsified and fabricated the synthesis and characterization, largely in the form of manipulated 1H- and 13C–NMR spectral data, for five intermediate steps and the final product, 9-desmethylpleurotin, and presented these false results in a poster, ''Efforts Towards the Total Synthesis of Pleurotin,'' presented at the 2011 National Organic Symposium, and in a manuscript, ''Total Synthesis of 9-desmethylpleurotin,'' prepared for submission to *Angewandte Chemie International Edition.*

Ms. Manojlovic has voluntarily agreed for a period of three (3) years, beginning on September 26, 2011:

(1) To have her U.S. Public Health Service (PHS)-supported research supervised; Respondent agreed that prior to the submission of an application for PHS support for a research project on which her participation is proposed and prior to her participation in any capacity on PHS-supported research, she shall ensure that a plan for supervision of her duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of her research contribution; Respondent agreed that she shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) That any institution employing her shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which she is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract; and

(3) To exclude herself from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

John Dahlberg,

Director, Division of Investigative Oversight, Office of Research Integrity.

[FR Doc. 2011–27022 Filed 10–18–11; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From Oak Ridge National Laboratory (X–10), Oak Ridge, TN, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from Oak Ridge National Laboratory (X–10), Oak Ridge, Tennessee, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Oak Ridge National Laboratory (X–10)

Location: Oak Ridge, Tennessee.

Job Titles and/or Job Duties: All contractor employees, subcontractor employees, and AEC employees who were monitored or should have been monitored for any of the various radionuclides and fission products present at the X–10 plant.

Period of Employment: January 1, 1943 through December 31, 1952.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by e-mail to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2011–27035 Filed 10–18–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Senior Executive Service Performance Review Board Membership

The Agency for Healthcare Research and Quality (AHRQ) announces the appointment of members to the AHRQ Senior Executive Service (SES) Performance Review Board (PRB). This action is being taken in accordance with 5 U.S.C. 4314(c)(4), which requires notice of appointment of members to performance review boards to be published in the **Federal Register.**

Members of the PRB are appointed in a manner that will ensure consistency, stability and objectivity in the SES performance appraisals. The function of the PRB is to make recommendations to the Director, AHRQ, relating to the performance of senior executives in the Agency.

The following persons will serve on the AHRQ SES Performance Review Board:

Irene Fraser, Stephen B. Cohen, William Munier, David Meyers, Michael Fitzmaurice, Phyllis Zucker, Mark Handelman, Jean Slutsky.

For further information about the AHRQ Performance Review Board, contact Ms. Alison Reinheimer, Office of Performance, Accountability, Resources, and Technology, Agency for Healthcare Research and Quality, 540 Gaither Road, Suite 4012, Rockville, Maryland 20850.

Dated: October 2, 2011.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 2011–26965 Filed 10–18–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of the Award of a Single-Source Grant to The WorkPlace, Inc., in Bridgeport, CT

AGENCY: Office of Family Assistance, ACF, HHS.

ACTION: Award of a Single-source Grant to The WorkPlace, Inc., a local workforce investment board located in Bridgeport, CT.

Statutory Authority: Section 2008(a) of Title XX of the Social Security Act, as amended by Section 5507 of the Affordable Care Act (Pub. L. No. 111–148).

SUMMARY: The Administration for Children and Families (ACF), Office of Family Assistance (OFA), Health Profession Opportunity Grants (HPOG) program announces the award of a single-source grant (cooperative agreement) to The WorkPlace, Inc. a local, non-profit workforce investment board located in Bridgeport, CT. Award funds will support a program to provide education and training to Temporary Assistance to Needy Families (TANF) recipients, and other low-income individuals, for occupations in the health care field that pay well and are expected to either experience labor shortages or be in high demand.

The city of Bridgeport, CT, faces high levels of unemployment. The WorkPlace, Inc., proposes working with numerous community partners to coordinate referrals, conduct assessments, and provide remedial and life skills training, supportive services, and occupational skills training.

If performance by the grantee is deemed satisfactory and funds are available, the grantee may be awarded future funding in the form of annual noncompetitive continuation grants.

DATES: The project period for the award is September 30, 2011–September 29, 2012.

FOR FURTHER INFORMATION CONTACT: Stan Koutstaal, Program Manager, Office of Family Assistance, 370 L'Enfant Promenade, SW., Washington, DC 20447. *Telephone:* 202–401–5457; *E-mail: stanley.koutstaal@acf.hhs.gov.*

Dated: September 26, 2011.

Earl S. Johnson,

Director, Office of Family Assistance.

[FR Doc. 2011–27067 Filed 10–18–11; 8:45 am]

BILLING CODE 4184–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0494]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Data To Support Communications To Educate Consumers on How To Safely Purchase Drugs Online

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 18, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, *Fax:* 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title ''Data to Support Communications to Educate Consumers on How to Safely Purchase Drugs Online.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Data To Support Communications To Educate Consumers on How To Safely Purchase Drugs Online—(OMB Control Number 0910–NEW)

FDA has planned an integrated public outreach campaign to improve the safe use of online pharmacies for drug purchases. In order to effectively evaluate this campaign, FDA must understand individuals' knowledge, attitudes, and practices with regard to online pharmacies both at the start of the campaign and on an ongoing basis. This will enable FDA to gauge progress toward educating the public on safely purchasing from online pharmacies. An online survey panel will be employed to collect this information, which serves the need for direct and quantitative measurement of our target population, and which, as a quantitative research tool has some major benefits:

- To focus on our target population of adults who use the Internet.
- To collect data quickly and efficiently with minimal cost to the government.
- To reduce burden to the public by providing a means to complete the survey at a time and place of their choosing.

FDA will use online data collection to establish a baseline and evaluate the success of its messages and distribution methods for its outreach campaign, which educates consumers about how to safely purchase drugs online. Additionally, FDA will use this method to help tailor messages and communications vehicles to have both a more powerful and desired impact on target audiences. The data will not be used for the purposes of making policy or regulatory decisions.

In the **Federal Register** of July 12, 2011 (76 FR 40920), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Survey Study	5,000	1	5,000	.33 (20 min.)	1,650

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Annually, FDA projects one survey study. FDA is requesting this data collection burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

Dated: October 14, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27019 Filed 10–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0510]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substances Prohibited From Use in Animal Food or Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by November 18, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0627. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Substances Prohibited From Use in Animal Food or Feed—21 CFR Part 589 (OMB Control Number 0910–0627)—(Extension)

The final rule on bovine spongiform encephalopathy (BSE) (73 FR 22720, April 25, 2008) prohibits the use of certain cattle origin materials in the food or feed of all animals to help prevent the spread of BSE in U.S. cattle. BSE is a progressive and fatal neurological disorder of cattle that results from an unconventional transmissible agent. BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). All TSEs affect the central nervous system of infected animals. These measures will further strengthen existing safeguards against BSE.

In the **Federal Register** of July 28, 2011 (76 FR 45259), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received on the information collection.

Description of Recordkeeping for Respondents: Rendering facilities, medicated feed manufacturers, livestock feeders.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours	Total operating & maintenance costs
589.2001 (c)(2)(vi) and (c)(3)(i)	175	1	175	20	3,500	$59,500
589.2001 (c)(2)(ii)	50	1	50	20	1,000	17,000
589.2001 (c)(3)(i)(A)	175	1	175	26	4,550	80,580
Total					9,050	157,080

[1] There are no capital costs associated with this collection of information.

The number of recordkeepers times the number of records per recordkeeper equals total annual records. Total annual records times average burden per recordkeeper equals total hours.

Description of Respondents for Reporting: The final rule on BSE (73 FR 22720) included a provision that exempts cattle materials prohibited in animal feed (CMPAF) from designated countries from the prohibition on its use in animal feed (21 CFR 589.2001(b)(1)(vi)). A foreign country seeking this designation will submit a written request to FDA that includes a variety of information about the countries' BSE status (21 CFR 589.2001(f)). FDA estimates that 10 countries could submit a request to FDA to be exempted from CMPAF restrictions.

FDA estimates the reporting burden for this information collection as follows:

TABLE 2—ESTIMATED ONE-TIME AND RECURRING REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
589.2001(b)(1) [2]	10	1	10	80	800
589.2001(f)	10	1	10	26	260

[1] There are no capital costs or operating costs associated with the collection of information.

[2] One-time burden.

Dated: October 14, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–27020 Filed 10–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Cellular, Tissue and Gene Therapies 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: Cellular, Tissue and Gene Therapies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 17, 2011, from 8:30 a.m. to 5 p.m.

Location: Hilton Washington, DC/Silver Spring, 8727 Colesville Rd., Silver Spring, MD 20910, 301–589–5200. For those unable to attend in person, the meeting will also be available by Web cast. On September 22, 2011, the link for the Web cast is available at *http://fda.yorkcast.com/webcast/Viewer/?peid=041ef376b14f4599be568b1b2893e85d1d.*

Contact Person: Gail Dapolito or Sheryl Clark, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC, area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 17, 2011,the committee will discuss Apligraf (Oral), Organogenesis, Inc., BLA 125400, for the treatment of surgically created gingival and alveolar mucosal surface defects in adults.

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 9, 2011. Oral presentations from the public will be scheduled between approximately 11:35 p.m. and 12:35 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 1, 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 2, 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 Gail Dapolito 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 12, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–27038 Filed 10–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0026]

Apothecon et al.; Withdrawal of Approval of 103 New Drug Applications and 35 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of February 11, 2009 (74 FR 6896). The document withdrew approval of 103 new drug applications (NDAs) and 35 abbreviated new drug applications (ANDAs) from multiple applicants. The document inadvertently withdrew approval of NDA 50–435 for GEOCILLIN (carbenicillin indanyl sodium) Tablets held by Pfizer, Inc., 235 East 42d St., New York, NY 10017. FDA confirms that approval of NDA 50–435 is still in effect.

FOR FURTHER INFORMATION CONTACT: Florine Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6366, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In FR Doc. E9–2901, appearing on page 6896, in the **Federal Register** of Wednesday, February 11, 2009, the following correction is made:

1. On page 6900, in the table, the entry for NDA 50–435 is removed.

Dated: September 30, 2011.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2011–26967 Filed 10–18–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Council on Graduate Medical Education.

Dates and Times: November 8, 2011, 8:30 a.m.–5:15 p.m.; November 10, 2011, 8:30 a.m.–4:30 p.m.

Place: Georgetown University Hotel & Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057.

Status: The meeting will be open to the public.

Purpose: The Council on Graduate Medical Education (''The Council'') was authorized by Congress in 1986 to provide an ongoing assessment of physician workforce trends, training issues, and financing policies, and to recommend appropriate Federal and private sector efforts to address identified needs. The Council provides advice and recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS), the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce.

At this meeting there will be a number of speakers who will address issues relating to the Council's 21st report on ensuring that the supply of physicians meets the needs of the Nation. Some meeting time will be devoted to developing recommendations and an outline for the report. There also will be a discussion of the Council's new legislative authorities relating to performance measures and longitudinal evaluation. Reports are submitted to the Secretary of the Department of Health and Human Services; the Committee on Health, Education, Labor and Pensions of the Senate; and the Committee on Energy and Commerce of the House of Representatives.

Agenda

The meeting on Tuesday, November 8, 2011, will begin with welcoming remarks from the Division of Medicine and Dentistry within the Health Resources and Services Administration's Bureau of Health Professions (BHPr). Speakers during the morning session will address critical issues relating to the projected physician shortages, indirect medical education funding, and provider training at critical access hospitals. Speakers in the afternoon will address implications of reduced funding for graduate medical education (GME), the reconfiguring of health professions training programs at the Veteran's Administration, and the Macy Foundation's recommendations for GME reform. There also will be a panel discussion on whether the current number of physicians being trained will meet future demand.

The meeting on November 10, 2011 will start with a presentation on teaching health centers. This will be followed by a session on new authorities, added by the Affordable Care Act, requiring the Committee to develop performance measures and methods of longitudinal evaluation of relevant training programs. There also will be time allotted for members to begin drafting recommendations and an outline for the 21st report on ensuring physician supply for the future. Opportunity for public comment will be provided at the end of each day.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., PhD, Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone (301) 443–7271. The web address for information on the Advisory Committee is *http://www.hrsa.gov/advisorycommittees/bhpradvisory/cogme/index.html.*

The Council will join the three other advisory committees in the Bureau of Health Professions for the fourth BHPr All-Advisory Committee Meeting on Wednesday, November 9, 2011. Please refer to the **Federal Register** notice for the BHPr All-Advisory Committee Meeting for additional details.

Dated: October 13, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–27030 Filed 10–18–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care, Medicine and Dentistry .

Dates and Times: November 7, 2011, 8:30 a.m.–4:30 p.m.; November 8, 2011, 8:30 a.m.–4:30 p.m.

Place: Georgetown University Hotel & Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057.

Status: The meeting will be open to the public.

Purpose: The Advisory Committee on Training in Primary Care Medicine and Dentistry (''Advisory Committee'') provides advice and recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS), the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce. on policy and program development concerning certain medicine, general pediatrics, general dentistry, pediatric dentistry, and physician assistant programs. The Advisory Committee is authorized by section 749 of the Public Health Service Act (PHS Act), as amended by the Affordable Care Act.

At this meeting there will be a number of speakers who will address issues relating to the topic of the Advisory Committee's tenth report: inter-professional education of primary care providers. Some meeting time will be devoted to developing recommendations and an outline for the report. There also will be a discussion of the Committee's new legislative authorities on performance measures and longitudinal evaluation, added by the Affordable Care Act. Reports are submitted to the Secretary of the Department of Health and Human Services; the Committee on Health, Education, Labor and Pensions of the Senate; and the Committee on Energy and Commerce of the House of Representatives.

Agenda: The meeting on Monday, November 7, will begin with opening comments from the Division of Medicine and Dentistry within the Health Resources and Services Administration's Bureau of Health Professions (BHPr). Speakers from the disciplines of medicine, dentistry, nursing, and physician assistants will address critical features of the inter-professional education of primary care providers. At the end of the morning session, they will form a panel and respond to questions from the membership. The Affordable Care Act added authorization for the Committee to develop performance measures and methods of longitudinal evaluation for certain Title VII programs; the afternoon session will be devoted, to this topic.

The meeting on November 8, 2011, will provide time for members to work on the Advisory Committee's tenth report on inter-professional education. In both plenary session and in small groups, the Advisory Committee will begin drafting report recommendations and establish an outline for the report. It will determine next steps in the report preparation process and plan for the next Advisory Committee meeting. An opportunity will be provided for public comment at the end of each day.

For Further Information Contact: Anyone interested in obtaining a roster of members or other relevant information should write or contact Jerilyn K. Glass, M.D., PhD, Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7271. The web address for information on the Advisory Committee is *http://www.hrsa.gov/advisorycommittees/bhpradvisory/actpcmd/index.html.*

The Advisory Committee will join the three other advisory committees in the Bureau of Health Professions for the fourth BHPr All Advisory Committee Meeting on Wednesday, November 9, 2011. Please refer to the Federal Register notice for the BHPr All Advisory Committee Meeting for additional details.

Dated: October 13, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–27027 Filed 10–18–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Nurse Education and Practice; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meetings:

Name: National Advisory Council on Nurse Education and Practice (NACNEP).

Dates and Times: November 7, 2011, 8:30 a.m.–4 p.m.; November 8, 2011, 8:30 a.m.–4 p.m.

Place: Georgetown University Hotel & Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057.

Status: The meeting will be open to the public.

Purpose: The purpose of this meeting is to delineate the contribution of nursing workforce development to meeting the health and health care challenges facing the nation, and to articulate a strategic vision and agenda for NACNEP in meeting those challenges. The objectives of the meeting are: (1) To identify the key issues challenging nursing workforce development in meeting the health care needs of the nation; (2) to develop goals and a blueprint for Council action to address these challenges; and (3) to articulate the activities, initiatives, and stakeholder partnerships that are critical to advancing 21st century interprofessional education and practice models needed to promote the health of the public. This meeting will form the basis for NACNEP's mandated Twelfth Annual Report to the Secretary of Health and Human Services and the Congress.

Agenda: The meeting will include a panel presentation and discussion focused around the purpose and objectives of this meeting. The agenda will be available on the NACNEP website *http://www.hrsa.gov/advisorycommittees/bhpradvisory/nacnep/index.html* one day prior to the meeting. Agenda items are subject to change as priorities dictate. Those requesting to participate in the meeting can do so by contacting the Designated Federal Officer by email. Interested parties will participate by invitation.

For Further Information Contact: For further information regarding NACNEP, to obtain a roster of members, minutes of the meeting, or other relevant information, contact Commander Serina Hunter-Thomas, Designated Federal Officer, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–61, 5600 Fishers Lane, Rockville, Maryland 20857; e-mail *SHunter-Thomas@Hrsa.gov;* telephone (301) 443–5688.

The Council will join the three other advisory committees in the Bureau of Health Professions (BHPr) for the fourth BHPr All-Advisory Committee Meeting on Wednesday, November 9, 2011. Please refer to the **Federal Register** notice for the BHPr All-Advisory Committee Meeting for additional details.

Dated: October 12, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–27025 Filed 10–18–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 76 FR 62420–62421 dated October 7, 2011).

This notice reflects organizational changes in the Health Resources and Services Administration. Specifically, this notice realigns the Office of Women's Health (RAW) to the Immediate Office of the Administrator (RA), in accordance with Section 3509(f) of the Patient Protection and Affordable Care Act (ACA), Public Law 111–148, which requires the Secretary to establish an Office of Women's Health within the Office of the Administrator of HRSA.

Chapter RA—Office of the Administrator

Section RA–10, Organization

Delete in its entirety and replace with the following:

The Office of the Administrator (RA) is headed by the Administrator, Health Resources and Services Administration, who reports directly to the Secretary. The OA includes the following components:

(1) Immediate Office of the Administrator (RA);

(2) Office of Equal Opportunity, Civil Rights, and Diversity Management (RA2);

(3) Office of Planning, Analysis, and Evaluation (RA5);

(4) Office of Communications (RA6);

(5) Office of Special Health Affairs (RA1);

(6) Office of Legislation (RAE); and

(7) Office of Women's Health (RAW).

Section RA–20, Functions

Update the functional statement for the Immediate Office of the Administrator (RA); and move the Office of Women's Health (RAW) from the Maternal and Child Health Bureau (RM) to the Immediate Office of the Administrator (RA).

Immediate Office of the Administrator (RA)

(1) Leads and directs programs and activities of the Agency and advises the Office of the Secretary of Health and Human Services on policy matters concerning them; (2) provides consultation and assistance to senior Agency officials and others on clinical and health professional issues; (3) serves as the Agency's focal point on efforts to strengthen the practice of public health as it pertains to the HRSA mission; (4) establishes and maintains verbal and written communications with health organizations in the public and private sectors to support the mission of HRSA; (5) coordinates the Agency's strategic, evaluation and research planning processes; (6) manages the legislative and communications programs for the Agency; (7) administers HRSA's equal opportunity and civil rights activities; (8) provides overall leadership, direction, coordination, and planning in the support of the Agency's special health programs; and (9) manages the health, wellness, and safety of women and girls with the support of the Office of Women's Health, through policy, programming and outreach education.

Office of Women's Health (RAW)

(1) Serves in a leadership capacity on women's health and sex/gender-specific issues and policy for HRSA senior managers and with other agencies in HHS; (2) coordinates and supports sex/gender-specific disease prevention and health promotion activities within HRSA and HHS; (3) serves as the HRSA liaison with other Federal and non-Federal individuals and organizations working on women's health and sex/gender-specific health related issues; (4) provides mentorship experiences for scholars and interns and encourages staff development opportunities; and (5) supports educational and information dissemination efforts on topics related to sex/gender-specific health issues.

Section RA–30, Delegations of Authority

All delegations and re-delegations of authority made to HRSA officials and employees of affected organizational components will continue in them or

their successors pending further re-delegations, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

Dated: October 7, 2011.

Mary K. Wakefield,

Administrator.

[FR Doc. 2011–27031 Filed 10–18–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Grantee Outcomes and Satisfaction

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Environmental Health Sciences (NIEHS), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* DERT Extramural Grantee Data Collection. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* In order to make informed management decisions about its research programs and to demonstrate the outputs, outcomes and impacts of its research programs NIEHS will collect, analyze and report on data from extramural grantees who are currently receiving funding or who have received funding in the past on topics such as: (1) Key scientific outcomes achieved through the research and the impact on the field of environmental health science; (2) Contribution of research findings to program goals and objectives; (3) Satisfaction with the program support received; (4) Challenges and benefits of the funding mechanism used to support the science; and (5) Emerging research areas and gaps in the research.

Information gained from this primary data collection will be used in conjunction with data from grantee progress reports and presentations at grantee meetings to inform internal programs and new funding initiatives. Outcome information to be collected includes measures of agency-funded research resulting in dissemination of findings, investigator career development, grant-funded knowledge and products, commercial products and drugs, laws, regulations and standards, guidelines and recommendations, information on patents and new drug applications and community outreach and public awareness relevant to extramural research funding and emerging areas of research. Satisfaction information to be collected includes measures of satisfaction with the type of funding or program management mechanism used, challenges and benefits with the program support received, and gaps in the research. *Frequency of Response:* Once per grantee, per NIEHS research portfolio. *Affected Public:* Current or past NIEHS grantees. *Type of Respondents:* Principal Investigators with current or past NIEHS research or training grants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 600 over 3 years; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* .5; and *Estimated Total Annual Burden Hours Requested:* 100. The annualized cost to respondents is estimated at: Approximately $17. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Kristianna Pettibone, Evaluator, Program Analysis Branch, NIEHS, NIH, 530 Davis Dr., Room 3055, Morrisville, NC 20560, or call non-toll-free number (919) 541–7752 or e-mail your request, including your address to: *pettibonekg@niehs.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: October 5, 2011.

Joellen M. Austin,

NIEHS, Associate Director for Management.

[FR Doc. 2011–27063 Filed 10–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee B

Date: November 16–17, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications, Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, 301–594–2886, *zacharya@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 13, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27068 Filed 10–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Phase III Antibiotic Clinical Trials.

Date: November 14, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18K, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18K, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 13, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27074 Filed 10–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the proovisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR 10–021: AIDS–Science Track Award for Research Transition.

Date: November 7, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: Eduardo A Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-Organ Diseases Study Section.

Date: November 7, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Mandarin Oriental, 1330 Maryland Avenue Southwest, Washington, DC 20024.

Contact Person: Eduardo A Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Clinical Studies and Epidemiology Study Section.

Date: November 8, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Lorien Hotel & Spa, 1600 King Street, Alexandria, VA.

Contact Person: Hilary D Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: November 10–11, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eduardo A Montalvo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cell, Computational, and Molecular Biology.

Date: November 10, 2011.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Georgetown, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Maria DeBernardi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, 301–435–1355, *debernardima@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Discovery and Development of Therapeutics Study Section.

Date: November 15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Shiv A Prasad, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Child Psychopathology and Developmental Disabilities.

Date: November 15–16, 2011.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Complex Human Genetics.

Date: November 16, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 435–1147, *mschmidt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biobehavioral Mechanisms of Emotion, Stress and Health.

Date: November 16, 2011.

Time: 9 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3089B, MSC 7848, Bethesda, MD 20892, (301) 402–4411, *tianbi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Therapeutics.
Date: November 16, 2011.
Time: 11 a.m. to 12:30 p.m
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 806–2515, *chatterm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.
Date: November 16, 2011.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Dianne Hardy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: Topics in Lung Host Defense.
Date: November 16, 2011.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Everett E Sinnett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1016, *sinnett@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular and Cellular Substrates of Complex Brain Disorders.
Date: November 16, 2011.
Time: 12:30 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Morrison Clark Hotel, 1015 L Street, NW., Washington, DC 20001.
Contact Person: Deborah L Lewis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–408–9129, *lewisdeb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27076 Filed 10–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Hematology.
Date: November 15–16, 2011.
Time: 11 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Bukhtiar H Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Behavioral Neuroscience.
Date: November 17–18, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Kristin Kramer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.
Date: November 17–18, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1121 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Mary Schueler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–451–0996, *marygs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.
Date: November 17, 2011.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: David R Filpula, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Epidemiology.
Date: November 17–18, 2011.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Infectious Diseases and Microbiology.
Date: November 18, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Alexander D Politis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Muscular Rehabilitation.
Date: November 18, 2011.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Basic and Integrative Bioengineering.

Date: November 18, 2011.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Georgetown, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Ross D Shonat, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, 301–435–2786, *ross.shonat@nih.hhs.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 13, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27077 Filed 10–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of T32 Grant Applications.

Date: November 18, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: John J. Laffan, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18J, Bethesda, MD 20892, 301–594–2773, *laffanjo@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 13, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27075 Filed 10–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Training Grant Applications.

Date: November 14, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN18A, Bethesda, MD 20892 (Telephone Conference Call.)

Contact Person: C. Craig Hyde, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18A, Bethesda, MD 20892. 301–435–3825, *hydec@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 13, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–27073 Filed 10–18–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Docket ID FEMA–2011–0017; OMB No. 1660–0040]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Standard Flood Hazard Determination Form

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before November 18, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Standard Flood Hazard Determination Form.

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0040.

Form Titles and Numbers: FEMA Form 086–0–32 (previously FEMA Form 81–93), Standard Flood Hazard Determination Form (SFHDF).

Abstract: FEMA Form 086–0–32 (previously FEMA Form 81–93), SFHDF is used by regulated lending institutions, federal agency lenders, related lenders/regulators, and the Government. Federally regulated lending institutions complete this form when making, increasing, extending, renewing or purchasing each loan for the purpose is of determining whether flood insurance is required and available. The form may also be used by property owner, insurance agents, realtors, community officials for flood insurance related documentation.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 46,456,460.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: Standard Flood Hazard Determination Form (SFHDF), 20 minutes.

Estimated Total Annual Burden Hours: 15,330,632 hours.

Estimated Cost: There are no operation and maintenance, or capital and start-up costs associated with this collection of information.

Dated: October 13, 2011.

Gary L. Anderson,

Acting Chief Administrative Officer, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–27071 Filed 10–18–11; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4017–DR; Docket ID FEMA–2011–0001]

Puerto Rico; Amendment No. 5 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 Commonwealth of Puerto Rico (FEMA–4017–DR), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* October 4, 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 Commonwealth of Puerto Rico is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 27, 2011.

Patillas Municipality for Public Assistance (already designated for Individual Assistance).

(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.)

Dated: October 13, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–27058 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4031–DR; Docket ID FEMA–2011–0001]

New York; Amendment No. 6 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 New York (FEMA–4031–DR), dated September 13, 2011, and related determinations.

DATES: *Effective Date:* October 4, 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 New York is hereby amended to include 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 13, 2011.

Oneida and Ulster Counties for Individual Assistance.

Orange County for Individual Assistance (already designated for Public Assistance).

Ulster County for Public Assistance.

(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.)

Dated: October 13, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–27056 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4033–DR; Docket ID FEMA–2011–0001]

New Jersey; 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 New Jersey (FEMA–4033–DR), dated September 15, 2011, and related determinations.

DATES: *Effective Date:* September 15, 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 15, 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 New Jersey resulting from severe storms and flooding during the period of August 13–15, 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 New Jersey.

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. 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, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Cumberland, Gloucester, and Salem Counties for Public Assistance.

All counties within the State of New Jersey 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.

Dated: October 13, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–27083 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4037–DR; Docket ID FEMA–2011–0001]

Delaware; 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 Delaware (FEMA–4037–DR), dated September 30, 2011, and related determinations.

DATES: *Effective Date:* September 30, 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 30, 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 Delaware resulting from Hurricane Irene during the period of August 25–31, 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 Delaware.

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. 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, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Delaware have been designated as adversely affected by this major disaster:

Kent and Sussex Counties for Public Assistance.

All counties within the State of Delaware 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.)

Dated: October 13, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–27079 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4036–DR; Docket ID FEMA–2011–0001]

District of Columbia; 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 District of Columbia (FEMA–4036–DR), dated September 28, 2011, and related determinations.

DATES: *Effective Date:* September 28, 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 28, 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 District of Columbia resulting from Hurricane Irene during the period of August 26 to September 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 District of Columbia.

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 and Hazard Mitigation in the District of Columbia. 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, Kim R. Kadesch, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the District of Columbia have been designated as adversely affected by this major disaster:

The District of Columbia for Public Assistance.

The District of Columbia is 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.)

Dated: October 13, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–27072 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0032]

Federal Radiological Preparedness Coordinating Committee

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) is holding a public meeting on November 1, 2011 in Arlington, VA.

DATES: The meeting will take place on November 1, 2011. The session is open to the public from 9 a.m. to 10 a.m. Send written statements and requests to make oral statements to the contact person listed under the **FOR FURTHER INFORMATION CONTACT** section by close of business October 28, 2011.

ADDRESSES: The meeting will be held at the Radisson Hotel Reagan National Airport in Salons I, II and III at 2020 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Timothy Greten, FRPCC Executive Secretary, DHS/FEMA, 1800 South Bell Street—CC847, Mail Stop 3025, Arlington, VA 20598–3025; telephone (202) 646–3907; fax (703) 305–0837; or e-mail *timothy.greten@dhs.gov.*

SUPPLEMENTARY INFORMATION: The role and functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC) are described in 44 CFR 351.10(a) and 351.11(a). The FRPCC is holding a public meeting on November 1, 2011 from 9 a.m. to 10 a.m., at the Radisson Hotel Reagan National Airport in Salons I, II and III at 2020 Jefferson Davis Highway, Arlington, VA 22202. Please note that the meeting may close early. This meeting is open to the public. Public meeting participants must pre-register to be admitted to the meeting. To pre-register, please provide your name and telephone number by close of business on October 28, 2011, to the individual listed under the **FOR FURTHER INFORMATION CONTACT** caption.

The tentative agenda for the FRPCC meeting includes: (1) Introductions, (2) Radiological and Emergency Preparedness (REP) Manual Update, (3) FRPCC Nuclear and Radiological Integration Initiative Update, (4) Discussion on Formalization of the Process for International Atomic Energy Agency Notification Following a Domestic Nuclear Power Plant Incident, and (5) Senior Official Exercise/Principal Level Exercise SOE/PLE 3–10 Nuclear Power Plant Communications Update. The FRPCC Co-Chairs shall conduct the meeting in a way that will facilitate the orderly conduct of business. Reasonable provisions will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the meeting should send a written request for time by close of business on October 28, 2011, to the individual listed under the **FOR FURTHER INFORMATION CONTACT** caption. Any member of the public who wishes to file a written statement with the FRPCC should provide the statement by close of business on October 28, 2011, to the individual listed under the **FOR FURTHER INFORMATION CONTACT** caption.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please write or call the individual listed under the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

Authority: 44 CFR 351.10(a) and 351.11(a).

Dated: September 26, 2011.

Timothy W. Manning,

Deputy Administrator, Protection and National Preparedness, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–26968 Filed 10–18–11; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Flight Crew Self-Defense Training—Registration and Evaluation

AGENCY: Transportation Security Administration, DHS.

ACTION: 30 day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0028, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day period soliciting comments, of the following collection of information on May 12, 2011 (76 FR 27656).

Upon registering for a voluntary advanced self-defense training class provided by TSA, the collection process involves requesting, the name, contact information, airline employee number, and Social Security number (last four digits) from flight and cabin crew members of air carriers to verify employment status and to confirm eligibility to participate. Eligible training participants are flight and cabin crew members of a U.S. airline conducting scheduled passenger operations. As such, on attending class, in person, crew members are asked to show a second form of identification to confirm registration information. See 49 U.S.C. 44918. Additionally, each participant is asked to complete a voluntary course evaluation form after the training concludes. The registration process was not mentioned in the 60-day notice, but is part of the process. Registration adds approximately five minutes per person to the burden of this collection.

DATES: Send your comments by November 18, 2011. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Flight Crew Self-Defense Training—Registration and Evaluation.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0028.

Forms(s): ''Level 1 End-of-Course Evaluation''; ''Community College Sign-In Sheet''

Affected Public: Flight and cabin crewmembers on passenger and cargo flights.

Abstract: TSA is seeking to renew the ICR, currently approved under OMB number 1652–0028, to continue compliance with a statutory mandate. Specifically, under Section 603 of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176, 117 Stat. 2490, 2563, Dec. 12, 2003), TSA must develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation. See 49 U.S.C. 44918(b).

TSA requests this renewal so that TSA may collect limited biographical information from flight and cabin crew members to continue to confirm their eligibility to participate in this training program and to confirm their attendance. TSA confirms the eligibility of the participant by contacting the participant's employer, and confirms attendance by comparing the registration information against a sign-in sheet provided in the classroom. TSA also asks participants to complete an anonymous and voluntary evaluation form after participation in the training to assess the quality of the training.

Number of Respondents: 2,000.

Estimated Annual Burden Hours: An estimated 500 hours annually.

Issued in Arlington, Virginia, on October 13, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2011–26971 Filed 10–18–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Accreditation and Approval of SGS North America, Inc. as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of SGS North America, Inc., Carson, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, SGS North America, Inc., Carson, California 90746, has been approved to gauge and test petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The approval of SGS North America, Inc. as a commercial gauger and approved laboratory became effective on May 26, 2011. The first triennial inspection date will be scheduled for May 2014.

FOR FURTHER INFORMATION CONTACT: Donald Cousins, Director, Scientific Services, Laboratories and Scientific

Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1295.

Dated: August 16, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services .

[FR Doc. 2011–26977 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation and Approval of INSPECTORATE America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 16025–C Jacintoport Blvd., Houston, TX 77015, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on July 13, 2011. The next triennial inspection date will be scheduled for July 2014.

FOR FURTHER INFORMATION CONTACT: Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: October 6, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–27018 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation and Approval of SAYBOLT LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 1809 Magnolia Ave, Port Neches, TX 77651, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on May 19, 2011. The next triennial inspection date will be scheduled for May 2014.

FOR FURTHER INFORMATION CONTACT: Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: October 6, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–27016 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 149 Pintail St., St. Rose, LA 70087, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on June 22, 2011. The next triennial inspection date will be scheduled for June 2014.

FOR FURTHER INFORMATION CONTACT: Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: October 6, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–27015 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 2780 Highway 69 N, Nederland, TX 77627, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories:

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on May 11, 2011. The next triennial inspection date will be scheduled for May 2014.

FOR FURTHER INFORMATION CONTACT: Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: October 6, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–27014 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., Carr. # 28, Km 2.0, Ind. Park Luchetti, Bayamon, PR 00960, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories:

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on February 25, 2010. The next triennial inspection date will be scheduled for February 2013.

FOR FURTHER INFORMATION CONTACT: Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: October 6, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–27004 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Re-Accreditation and Re-Approval of OMNI Hydrocarbon Measurement, Inc. as a Commercial Gauger

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Omni Hydrocarbon Measurement, Inc., Crosby, Texas, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Omni Hydrocarbon Measurement, Inc., Crosby, Texas 77532, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the gauger service requested. Alternatively, inquiries regarding the gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Omni Hydrocarbon Measurement, Inc. as a commercial gauger became effective on April 28, 2011. The next triennial inspection date will be scheduled for April 2014.

FOR FURTHER INFORMATION CONTACT: Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1295.

Dated: August 16, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–27003 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Re-Accreditation and Re-Approval of Inspectorate America Corporation as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Inspectorate America Corporation, Savannah, Georgia, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, Savannah, Georgia 31415, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Inspectorate America Corporation as a commercial gauger and laboratory became effective on May 19, 2011. The next triennial inspection date will be scheduled for May 2014.

FOR FURTHER INFORMATION CONTACT: Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1295.

Dated: August 16, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–26997 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Re-Accreditation and Re-Approval of SGS North America, Inc. as a Commercial Gauger and Laboratory

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of SGS North America, Inc., Bayonne, New Jersey, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, SGS North America, Inc., Bayonne, New Jersey 07002, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of SGS North America, Inc. as a commercial gauger and laboratory became effective on May 2, 2011. The next triennial inspection date will be scheduled for May 2014.

FOR FURTHER INFORMATION CONTACT: Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1295.

Dated: August 16, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011–26996 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning October 1, 2011, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

DATES: Effective Date: October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2011–18, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2011, and ending on December 31, 2011. The interest rate paid to the Treasury for

underpayments will be the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus one percentage point (1%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). These interest rates are subject to change for the calendar quarter beginning January 1, 2012, and ending March 31, 2012.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	123111	3	3	2

Dated: October 12, 2011.

Alan D. Bersin,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2011–27088 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Re-Accreditation and Re-Approval of Intertek Caleb Brett as a Commercial Gauger

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of Intertek Caleb Brett, Ponce, Puerto Rico, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek Caleb Brett, Ponce, Puerto Rico 00717–2235, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is accredited or approved by the Bureau of Customs and Border Protection to conduct the gauger service requested. Alternatively, inquiries regarding the gauger services this entity is accredited or approved to perform may be directed to the Bureau of Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.*

DATES: The re-approval of Intertek Caleb Brett as a commercial gauger became effective on March 10, 2010. The next triennial inspection date will be scheduled for March 2013.

FOR FURTHER INFORMATION CONTACT: Donald Cousins, Director, Scientific Services, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1331 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1295.

Dated: August 16, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services .

[FR Doc. 2011–26976 Filed 10–18–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2011–N174; 50120–1112–0000–F2]

Notice of Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Karner Blue Butterfly and Frosted Elfin From National Grid

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft environmental assessment, receipt of application, and habitat conservation plan.

SUMMARY: Pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*) the U.S. Fish and Wildlife Service (Service or ''we'') announce the availability of an application for an incidental take permit and the associated habitat conservation plan (HCP) from National Grid (NG), Syracuse, New York, and draft environmental assessment (EA) for public review and comment. We received the permit application from NG for incidental take of federally listed Karner blue butterfly (*Lycaeides melissa samuelis*) and unlisted frosted elfin (*Callophyrs irus*) (should this species become listed in the future) over the next 50 years during operations, maintenance, and construction activities associated with electric and natural gas facilities within portions of Albany, Oneida, Schenectady, Saratoga, and Warren Counties, New York. We prepared a draft EA that describes the proposed action and possible alternatives and analyzes the effects of alternatives on the human environment.

We provide this notice to: (1) Seek public comments on the proposed HCP; (2) seek public comments on the scope of issues and alternatives considered in the draft EA and our consideration as to whether the draft EA supports a Finding of No Significant Impact under NEPA; and (3) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare a final EA.

The proposed HCP and EA are being made available during a 60-day comment period. To ensure consideration, we must receive your written comments by December 19, 2011.

ADDRESSES: Send comments by U.S. mail to Robyn Niver, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045; by facsimile at 607–753–9699; or by electronic mail at *robyn_niver@fws.gov.* In the subject line of your letter, facsimile or electronic mail, include the document identifier: NG HCP.

SUPPLEMENTARY INFORMATION: We received a permit application from NG for incidental take of federally listed Karner blue butterfly (*Lycaeides melissa samuelis*) and unlisted frosted elfin (*Callophyrs irus*) (should this species become listed in the future) over the next 50 years during operations, maintenance, and construction activities associated with electric and natural gas facilities. A conservation program to minimize and mitigate for the incidental take would be implemented by NG as described in the draft NG HCP.

We prepared a draft EA to comply with the NEPA. The Service will evaluate whether the proposed action, issuance of an incidental take permit to NG, and other alternatives in this draft EA are adequate to support a Finding of No Significant Impact.

This notice is provided pursuant to section 10(c) of the ESA and NEPA regulations (40 CFR 1506.6).

We are requesting comments on the proposed HCP and our consideration as to whether the draft EA supports a Finding of No Significant Impact under NEPA.

Availability of Documents

The proposed HCP and draft EA are available on the New York Field Office's (NYFO) Web site at: *http://www.fws.gov/northeast/nyfo/es/kbb.htm.* Copies of the proposed HCP and draft EA will be available for public review during regular business hours at the NYFO (see **ADDRESSES**). Those who do not have access to the Web site or cannot visit our office can request copies by telephone at 607–753–9334 or by letter to the NYFO (see **ADDRESSES**).

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species,

respectively, are found in the Code of Federal Regulations (October 1, 2006, 50 CFR 17.22; October 1, 2001, 50 CFR 17.32).

NG is seeking a permit for the incidental take of Karner blue butterfly (*Lycaeides melissa samuelis*) and frosted elfin (*Callophyrs irus*) (should this species become listed in the future) for a term of 50 years. Incidental take of these species may occur in patches of habitat within approximately 56.1 miles of electric transmission line right-of-way (ROW), 52.9 miles of electric sub-transmission line, 42.32 miles of gas lines located in ROWs, and 8.41 miles of distribution line ROW (covered lands) within portions of Albany, Oneida, Schenectady, Saratoga, and Warren Counties, New York. Where multiple electric lines are located parallel in the same ROW, the length has only been counted once. Where a gas pipeline is located adjacent to an electric transmission line, both lengths have been counted. An additional 28 acres of mitigation lands are also included as covered lands. The covered activities may result in the permanent loss of 3.5 acres of occupied habitat and periodic temporary disturbance of 29.3 acres of occupied habitat during the term of the permit.

Proposed covered activities include operations, maintenance, reconstruction, and new construction of electric transmission, sub-transmission, and distribution structures and substations, as well as underground natural gas pipelines and associated aboveground gas regulator stations and valve sites.

The HCP's proposed conservation strategy is designed to avoid, minimize, and mitigate the impacts of covered activities on the covered species. The biological goals and objectives are to complement the existing conservation efforts in New York State for the butterflies by (a) Focusing mitigation/restoration/enhancement efforts within the Albany Pine Bush and Queensbury viable butterfly populations where corridor connections can be made and larger habitats of wild blue lupine can be developed; (b) working with non-governmental organizations in the area with an interest in protecting butterfly habitat; (c) avoiding and minimizing negative effects and actions; (d) promoting education and outreach; and (e) ensuring that the amount of habitat for the covered species within the covered lands does not drop below the 2006 Baseline Survey acreage.

The HCP provides a mechanism to supply funding for a full range of conservation measures targeting the butterflies and the ecosystems that support them. Conservation measures proposed include implementation of avoidance and minimization measures to ensure continued existence of the butterflies within the covered lands, creation of a 5-acre, off-ROW preserve, and creation and/or enhancement of up to 23 acres of ROW habitat. Additionally, and although not required, NG will be proactive and conduct enhancement measures above and beyond the regulatory requirements that should result in the ultimate creation and promotion of habitat within strategically selected ROW areas of the covered lands.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP. Two other alternatives to the proposed action were considered in the HCP: no action (*i.e.,* the incidental take permit for Karner blue butterfly and frosted elfin would not be issued and the HCP would not be implemented), and avoiding or reducing the performance of infrastructure repairs and replacements. However, these two alternative actions were eliminated from further consideration, due to logistical and public safety considerations, and the associated regulatory and business-related obligations to continue providing reliable electricity and natural gas service to NG's customers. NG has developed an implementation agreement (IA) that ensures proper implementation of each of the terms and conditions of the HCP and describes the applicable remedies and recourse should any party fail to perform its obligations, responsibilities, and tasks. The IA is being included with the proposed HCP for public review.

National Environmental Policy Act

In compliance with the NEPA of 1969, we analyzed the impacts of implementing the HCP, issuance of the permit, and a reasonable range of alternatives. Based on this analysis and any new information resulting from public comment on the proposed action, we will determine if there are any significant impacts or effects caused by issuing the incidental take permit. We have prepared a draft EA on this proposed action and have made it available for public inspection online or in person at the NYFO (see **ADDRESSES**).

NEPA requires that a range of reasonable alternatives to the proposed action be described. The draft EA analyzes three alternatives that were derived from discussions with NG during the development of the HCP. We evaluated a no action alternative (do not issue a permit, status quo), the proposed action, (issue the permit and implement the HCP) and one other alternative that limits the mitigation activities to areas of impact.

Next Steps

We will evaluate the plan and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant.

Public Comments

The Service invites the public to comment on the proposed HCP and draft EA during a 60-day public comment period ending on December 19, 2011. Comments can be submitted to the NYFO (see **ADDRESSES**). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. 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 may request at the top of your document that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 11, 2011.

Kenneth D. Elowe,

Acting Regional Director, Region 5.

[FR Doc. 2011–26793 Filed 10–18–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0G01253]

Notice of Filing of Plats of Survey; South Dakota

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 18, 2011.

DATES: Protests of the survey must be filed before November 18, 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, Great Plains Region, Bureau of Indian Affairs, Aberdeen, South Dakota, and was necessary to determine trust and tribal lands.

The lands we surveyed are:

Fifth Principal Meridian, South Dakota

T. 123 N., R. 53 W.

The plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of section 10, and the adjusted original meanders of Enemy Swim Lake, formerly Lake Parker, through section 10, Township 123 North, Range 53 West, Fifth Principal Meridian, South Dakota, was accepted September 28, 2011.

We will place a copy of the plat, in two sheets, 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 two 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 two 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.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–27021 Filed 10–18–11; 8:45 am]

BILLING CODE 4310– DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0G04510]

Notice of Filing of Plats of Survey; South Dakota

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 18, 2011.

DATES: Protests of the survey must be filed before November 18, 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, Great Plains Region, Bureau of Indian Affairs, Aberdeen, South Dakota, and was necessary to determine trust and tribal lands.

The lands we surveyed are:

Black Hills Meridian, South Dakota

T. 12 N., R. 24 E.

The plat, in three sheets, representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the subdivision of section 18, and the resurvey of portions of Lots 1, 2, 3, and 4 of the SE ¼ of section 18, and portions of Spiel's Subdivision in section 18, and portions of Spiel's Second Subdivision in section 18, Township 12 North, Range 24 East, Black Hills Meridian, South Dakota, was accepted September 28, 2011.

We will place a copy of the plat, in two sheets, 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 two 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 two 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.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–27029 Filed 10–18–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA 942000 L57000000 BX0000]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey and supplemental plats of lands described below are scheduled to be officially filed in the Bureau of Land Management California State Office, Sacramento, California, thirty (30) calendar days from the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

PROTEST: A person or party who wishes to protest a survey must file a notice that they wish to protest with the California State Director, Bureau of Land Management, 2800 Cottage Way, Sacramento, California, 95825.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: These surveys and supplemental plats were executed to meet the administrative needs of various federal agencies; the Bureau of Land Management, Bureau of Indian Affairs or US Forest Service. The lands surveyed are:

Humboldt Meridian, California

T. 8 N., R. 3 E., dependent resurvey and subdivision accepted September 9, 2011.

Mount Diablo Meridian, California

T. 25 N., R. 8 W., dependent resurvey and

subdivision of sections accepted September 7, 2011.
T. 21 N., R. 6 W., dependent resurvey, subdivision and metes-and bounds survey accepted September 14, 2011.
T. 25 N., R. 9 W., dependent resurvey and subdivision of section accepted September 15, 2011.
T. 6 S., R. 2 W., metes-and-bounds survey accepted September 30, 2011.

San Bernardino Meridian, California

T. 4 S., R. 4 E., supplemental plat of the West ½ of section 14, accepted August 18, 2011.
T. 5 S., R. 12 W., metes-and-bounds survey accepted September 28, 2011.
T. 5 S., R. 23 E., dependent resurvey and subdivision of sections 1 and 12 accepted September 30, 2011.

Dated: October 7, 2011, Authority: 43 U.S.C., chapter 3.

Lance J. Bishop,

Chief Cadastral Surveyor, California.

[FR Doc. 2011–27024 Filed 10–18–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0G04815]

Notice of Filing of Plats of Survey; South Dakota

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 18, 2011.

DATES: Protests of the survey must be filed before November 18, 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, Great Plains Region, Bureau of Indian Affairs, Aberdeen, South Dakota, and was necessary to determine trust and tribal lands.

The lands we surveyed are:

Fifth Principal Meridian, South Dakota

T. 125 N., R. 53 W.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of section 15, and a portion of the adjusted original meanders of Buffalo Lake, through section 15, and the subdivision of section 15, Township 125 North, Range 53 West, Fifth Principal Meridian, South Dakota, was accepted September 28, 2011.

We will place a copy of the plat, in one sheet, we described in the open files. It 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.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–27008 Filed 10–18–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO910000 L71220000.PN0000 LVTFC09C0020]

Notice of Final Supplementary Rules Concerning Fireworks on Public Land in Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is issuing final supplementary rules to restrict the possession and use of fireworks on public land within the State of Colorado. The rules are necessary to protect natural resources and provide for public health and safety.

DATES: *Effective Date:* These rules are effective December 19, 2011.

ADDRESSES: You may send inquiries by mail to the Office of Law Enforcement, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215; or by e-mail to *john_bierk@blm.gov.*

FOR FURTHER INFORMATION CONTACT: John Bierk, Chief Ranger, BLM Colorado State Office (see address listed above); or by phone (303) 239–3893. 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:

I. Background
II. Discussion
III. Procedural Matters

I. Background

The BLM proposed these Supplementary Rules in the **Federal Register** on May 10, 2010 (75 FR 25879). Under current regulations found in 43 CFR 8365.2–5 (a), no person shall discharge or use fireworks at a developed recreation site. Seasonal fire prevention orders issued under the authority of 43 CFR 9212.2 (a) are commonly used at the local level to reduce the chance of human-caused fires during peak fire season. This action will supplement the existing regulations to prohibit the possession and use of fireworks on all public land in Colorado. Drought and subsequent insect kill of large stands of pine trees in Colorado have made the threat of wildfires greater each year. The challenges of fire protection and suppression increase as more people move into the wildland urban interface. Ensuring public and firefighter safety, while protecting property and natural resources, remain the BLM's priorities.

Under the National Fire Plan, the BLM works with other agencies and communities to ensure adequate preparedness for future fire seasons, restore landscapes, rebuild communities damaged by wildfire, and invest in projects to reduce fire risk. These rules complement the National Fire Plan. Land management agencies have taken precautions to enhance public awareness, provide proactive pre-suppression efforts, and implement fire restrictions that are reasonable and consistent among Federal, state, and local agencies. Federal, state, and local land management agencies should strive to implement fire restrictions and

closures that are uniform across administrative and geographic boundaries. The restrictions contained in this rulemaking will help achieve that goal.

The prohibition on the possession and use of fireworks is consistent with the other land management regulations designed to enhance fire prevention, and it is consistent with the definitions of fireworks found in Colorado Revised Statutes sections 12–28–101(1), 12–28–101(1.5), and 12–28–101(8)(a), with one exception. Under Colorado Revised Statutes section 12–28–101(8)(a)(VII)(D), strike-on-box matches are listed as a permissible firework. This section was dropped from the definitions so it would not interfere with visitor use of strike-on-box matches for normal campfire or other uses.

II. Discussion

The proposed supplementary rules received six public comments, four were in support of the proposed rule and two were against the proposed rule. One comment in opposition to the proposed rules cited a family tradition of fireworks use on public land. While the BLM recognizes the importance of family traditions, such traditions must be weighed against the need to protect the natural resources located on public lands and the need to protect public health and safety at the same time. Considering that there are appropriate and safe areas in Colorado where fireworks are allowed and there are a large number of professional fireworks displays available for public viewing throughout the year, the benefits of these rules outweigh the costs. The second comment received in opposition to the proposed rules cited a concern that the definition of an explosive device would eventually include firearms. The BLM definition of fireworks, which substantially relies on the definition under Colorado Revised Statutes 12–28–101(1), 12–28–101(1.5), and 12–28–101(8)(a) does not include firearms and the BLM has no intention of including firearms in the definition of fireworks under this final rule.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The Final Supplementary Rules do not comprise a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They do not have an annual effect of $100 million or more on the economy. They do not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. They do not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They do not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. They merely establish rules of conduct for public use of a limited area of public lands.

National Environmental Policy Act

The BLM has found that the Final Supplementary Rules comprise a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment. See 40 CFR 1508.4; 43 CFR 26.210. Specifically, the promulgation of the Final Supplementary Rules is an action that is of an administrative, financial, legal, technical, or procedural nature within the meaning of 43 CFR 26.210(i), and none of the extraordinary circumstances listed at 43 CFR 26.215 are applicable. Therefore the BLM is not required to prepare an environmental assessment or an environmental impact statement for the Final Supplementary Rules.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These Final Supplementary Rules merely establish rules of conduct for public use of a limited area of public lands. Therefore, the BLM has determined under the RFA that they will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These Final Supplementary Rules are not considered a 'major rule' as defined under 5 U.S.C. 804(2). They merely establish rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

The Final Supplementary Rules do not impose an unfunded mandate on state, local, or tribal governments in the aggregate, or the private sector of more than $100 million per year; nor do they have a significant or unique effect on small governments. They have no effect on governmental or tribal entities and will impose no requirements on any of these entities. They merely establish rules of conduct for public use of a limited area of public lands and do not affect tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The Final Supplementary Rules do not represent a government action capable of interfering with constitutionally protected property rights. Therefore, the BLM has determined that they will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The Final Supplementary Rules do not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these rules will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that the Final Supplementary Rules do not unduly burden the judicial system, and that they meet the requirements of Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the Final Supplementary Rules do not include policies that have tribal implications.

Information Quality Act

In developing the Final Supplementary Rules, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the

Information Quality Act (Section 515 of Pub. L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, the BLM has determined that the Final Supplementary Rules do not comprise a significant energy action and do not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

The Final Supplementary Rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecutions conducted under these rules are exempt from the provisions of 44 U.S.C. 3518(c)(1).

Author

The principal author of the Final Supplementary Rules is John Bierk, Chief Ranger, BLM Colorado State Office.

For the reasons stated in the preamble, and under the authorities for supplementary rules found at 43 U.S.C. 1740, 43 U.S.C. 315(a), and 43 CFR 8365.1–6, the BLM Colorado State Director issues supplementary rules for public lands managed by the BLM in Colorado, to read as follows:

SUPPLEMENTARY RULES FOR FIREWORKS USE AND POSSESSION ON PUBLIC LAND IN COLORADO

Definitions

''Fireworks'' means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and that meets the definition of articles pyrotechnic, permissible fireworks, or display fireworks, as defined below.

''Articles pyrotechnic'' means pyrotechnic special effects materials and pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but are intended for theatrical performances and not intended for consumer use. Articles pyrotechnic shall also include pyrotechnic devices meeting the weight limits for consumer fireworks but are not labeled as such and are classified as UN0431 or UN0432 pursuant to 49 CFR 172.101, as amended.

''Display fireworks'' means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than 130 milligrams of explosive material, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks as defined in 16 CFR 1500.1 to 1500.272 and 16 CFR 1507.1 to 1507.12 and are classified as fireworks UN0333, UN0334, or UN0335 pursuant to 49 CFR 172.101, as amended, and including fused set pieces containing components that exceed 50 milligrams of salute powder.

''Permissible fireworks'' means the following small fireworks devices designed to produce audible or visual effects by combustion, complying with the requirements of the United States consumer product safety commission as set forth in 16 CFR 1500.1 to 1500.272 and 1507.1 to 1507.12, and classified as consumer fireworks UN0336 and UN0337 pursuant to 49 CFR 172.101:

(I) Cylindrical fountains, total pyrotechnic composition not to exceed 75 grams each for a single tube or, when more than one tube is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;

(II) Cone fountains, total pyrotechnic composition not to exceed 50 grams each for a single cone or, when more than one cone is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;

(III) Wheels, total pyrotechnic composition not to exceed 60 grams for each driver unit or 200 grams for each complete wheel;

(IV) Ground spinner, a small device containing not more than 20 grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;

(V) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed 200 grams each;

(VI) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed 100 grams, of which the composition of any chlorate or perchlorate shall not exceed 5 grams;

(VII) Any of the following that do not contain more than 50 milligrams of explosive composition:

(A) Explosive auto alarms;

(B) Toy propellant devices;

(C) Cigarette loads;

(D) Other trick noise makers;

(VIII) Snake or glow worm pressed pellets of not more than 2 grams of pyrotechnic composition and packaged in retail packages of not more than 25 units;

(IX) Fireworks that are used exclusively for testing or research by a licensed explosives laboratory;

(X) Multiple tube devices with:

(A) Each tube individually attached to a wood or plastic base;

(B) The tubes separated from each other on the base by a distance of at least one-half of one inch;

(C) The effect limited to a shower of sparks to a height of no more than 15 feet above the ground;

(D) Only one external fuse that causes all of the tubes to function in sequence; and

(E) A total pyrotechnic composition of no more than 500 grams.

Prohibited Acts

Unless otherwise authorized, the following acts are prohibited on all public lands, roads, trails, and waterways administered by the BLM in Colorado:

1. The possession, discharge, or use of all fireworks as defined above; and

2. The violation of the terms, conditions of use, or stipulations of any written authorization that may be exempted under this rule. The following person(s) are exempt from this order: Any Federal, state, or local officer, or member of an organized rescue or fire suppression or fuels management force or other authorized agency personnel while in the performance of their official duties.

Penalties

Under the Taylor Grazing Act of 1934, 43 U.S.C. 315a, any willful violation of these supplementary rules on public lands within a grazing district shall be punishable by a fine of not more than $500 or,

Under Section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within Colorado may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

[Authority: FLPMA 43 U.S.C. 1740, 43 CFR 8364, 8365.1–6, 8365.2–5(a), and 9212.2]

Helen M. Hankins,

State Director.

[FR Doc. 2011–27044 Filed 10–18–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–KOVA; 9924–PYS]

Notice of Public Meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Kobuk Valley National Park SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues.

The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting to be announced in the **Federal Register**.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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.

If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Kobuk Valley National Park SRC Meeting Date and Location: The Kobuk Valley National Park SRC will meet at the National Park Service Northwest Arctic Heritage Center, 171 Third Avenue in Kotzebue, Alaska, (907) 442–3890, on Tuesday, November 15, 2011. The meeting will start at 9 a.m. and conclude at 5 p.m. At the discretion of the Chair, this meeting may be extended to Wednesday, November 16, 2011, from 9 a.m. to 5 p.m. or until business is completed.

FOR FURTHER INFORMATION ON THE KOBUK VALLEY NATIONAL PARK SRC MEETING CONTACT: Frank Hays, Superintendent, or Willie Goodwin, Subsistence Community Liaison, at (907) 442–3890 or Ken Adkisson, Subsistence Manager, at (907) 443–2522 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Kobuk Valley National Park SRC membership contact the Superintendent at P.O. Box 1029, Kotzebue, AK 99752, (907) 442–3890, or visit the park Web site at: *http://www.nps.gov/kova/contacts.htm.*

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to order.
2. Welcome and Introductions.
3. Administrative Announcements.
4. Approve Agenda.
5. Approval of Minutes.
6. SRC Purpose and Membership.
a. Election of Chair.
b. Election of Vice Chair.
7. SRC Member Reports/Comments.
8. National Park Service Reports.
a. Superintendent Updates.
1. Unit 23 User Issues.
2. Local Hire/Internship.
3. Cross Cultural Education.
4. Consultation and Coordination with Indian Tribal Governments.
5. Protection of Archaeological Resources and Consultation Requirements.
6. Climate Change Research.
b. Subsistence Manager Updates.
c. Resource Management Updates.
1. Wildlife (Musk Ox, Brown Bear, Sheep).
2. Fisheries Management.
3. NPS Research/Studies.
d. Ranger Updates (Education, Resources and Visitor Protection).
9. Federal Subsistence Board Updates.
10. Alaska Board of Game Updates.
11. Old Business.
12. Subsistence Collections and Uses of Shed or Discarded Animal & Plants Draft Environmental Assessment Update.
13. 2011 SRC Chairs' Workshop.
14. New Business.
a. Gates of the Arctic National Park SRC Draft Hunting Plan Recommendation 10–01.
15. Public and other Agency Comments.
16. SRC Work Session.
17. Select Time and Location for Next Meeting.
18. Adjourn Meeting.

Debora Cooper,

Associate Regional Director, Resources and Subsistence, Alaska Region.

[FR Doc. 2011–26969 Filed 10–18–11; 8:45 am]

BILLING CODE 4312–HP–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) has forwarded the information collection renewal request relating to the permanent program performance standards—surface mining activities and underground mining activities, to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost. This information collection activity was previously approved by OMB and assigned control number 1029–0047.

DATES: Comments must be submitted on or before November 18, 2011, to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Department of Interior Desk Officer, by telefax at (202) 395–5806 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 203–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.* You may also review this information collection request by going to *http://www.reginfo.gov* (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI–OSMRE).

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information in 30 CFR Parts 816 and 817—Permanent Program Performance Standards—Surface and Underground Mining Activities. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control number for this collection of information is 1029–0047.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on August 3, 2011 (76 FR 46840). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR 816 and 817—Permanent Program Performance Standards—Surface and Underground Mining Activities.

OMB Control Number: 1029–0047.

Summary: Sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provide that permittees conducting coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau Form Number: None.

Frequency of Collection: Once, on occasion, quarterly and annually.

Description of Respondents: Coal mining operators and State regulatory authorities.

Total Annual Responses: 361,266.

Total Annual Burden Hours: 1,813,063.

Total Annual Non-Wage Burden Cost: $9,506,784.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES**. Please refer to the appropriate OMB control number 1029–0047 in your correspondence.

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: October 12, 2011.

Stephen M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–26962 Filed 10–18–11; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information regarding the requirements for coal exploration. The information collection request describes the nature of the information collection and the expected burden and costs. This information collection activity was previously approved by the Office of Management and Budget and assigned control number 1029–0112.

DATES: Comments on the proposed information collection activities must be received by December 19, 2011, to be assured of consideration.

ADDRESSES: Submit comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783 or via e-mail at the address listed above.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice seeks public comment for the information collection that OSM will be submitting to OMB for approval, which is for 30 CFR 772—Requirements for coal exploration. OSM will request a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 1029–0112 and is found at 30 CFR 772.10.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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.

Title: 30 CFR 772—Requirements for coal exploration.

OMB Control Number: 1029–0112.

Summary: OSM and State regulatory authorities use the information collected under 30 CFR Part 772 to keep track of coal exploration activities, evaluate the need for an exploration permit, and ensure that exploration activities comply with the environmental protection and reclamation requirements of 30 CFR Parts 772 and 815 and section 512 of SMCRA (30 U.S.C. 1262).

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Persons planning to conduct coal exploration and State regulatory authorities.

Total Annual Responses: 2,526.

Total Annual Burden Hours: 9,114.

Total Annual Non-Wage Costs: $2,074.

Dated: October 12, 2011.

Stephen M. Sheffield,

Acting Chief,

Division of Regulatory Support.

[FR Doc. 2011–26964 Filed 10–18–11; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[Docket No. ATF 47N]

Commerce in Explosives; List of Explosive Materials (2011R–18T)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice.

ACTION: Notice of list of explosive materials.

SUMMARY: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in 18 U.S.C. 841(c). This notice publishes the 2011 List of Explosive Materials.

DATES: The list becomes effective October 19, 2011.

FOR FURTHER INFORMATION CONTACT: William J. Miller, Chief; Explosives Industry Programs Branch; Firearms and Explosives Industry Division; Bureau of Alcohol, Tobacco, Firearms and Explosives; United States Department of Justice; 99 New York Avenue, NE., Washington, DC 20226 (202–648–7120).

SUPPLEMENTARY INFORMATION: The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all-inclusive. The fact that an explosive material is not on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in 18 U.S.C. 841. Explosive materials are listed alphabetically by their common names followed, where applicable, by chemical names and synonyms in brackets.

The Department has not added any new terms to the list of explosive materials or removed or revised any listing since its last publication.

This list supersedes the List of Explosive Materials dated November 17, 2010 (Docket No. ATF 42N, 75 FR 70291).

Notice of List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as explosive materials covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
* Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate explosive mixtures (excluding ammonium perchlorate composite propellant (APCP)).
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
* ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
* Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

Approved: October 6, 2011.

B. Todd Jones,

Acting Director.

[FR Doc. 2011–26963 Filed 10–18–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the ''Current Population Survey (CPS) Disability Supplement.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section of this notice on or before December 19, 2011.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212. 202–691–7628. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The May 2012 CPS Disability Supplement will be conducted at the request of the Department of Labor's Office of Disability Employment Policy. The Disability Supplement will provide information on the low labor force participation rates for people with disabilities; the use of and satisfaction with programs that prepare people with disabilities for employment; the work history, barriers to employment, and workplace accommodations reported by persons with a disability; and the effect of financial assistance programs on the likelihood of working.

Because the Disability Supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available about respondents to the supplement. Thus, comparisons will be possible across respondent characteristics, including sex, race, age, and educational attainment. It will also be possible to create estimates for those who are employed, unemployed, and not in the labor force. Because the CPS is such a rich source of information on the employment status of the population, it will be possible to examine in detail the nature of various employment and unemployment situations.

II. Current Action

Office of Management and Budget clearance is being sought for the CPS Disability Supplement. These data are necessary to provide information about the labor market challenges facing persons with a disability and will contribute to improvements in policies and programs designed to assist these individuals.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: New Collection.
Agency: Bureau of Labor Statistics.
Title: CPS Disability Supplement.
OMB Number: 1220–NEW.
Affected Public: Individuals or households.
Total Respondents: 63,000.
Frequency: Once.
Total Responses: 106,000.
Average Time per Response: 5 minutes.
Estimated Total Burden Hours: 8,833.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 13th day of October 2011.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2011–26966 Filed 10–18–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Longshore and Harbor Workers' Compensation Proposed Renewal of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the proposed collection: Notice of Controversion of Right to Compensation (LS–207). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 19, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–2447, Email *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

OWCP administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees. Pursuant to section 914(d) of the Longshore Act, and 20 CFR 702.251, if an employer controverts the right to compensation, he/she shall file with the district director in the affected compensation district on or before the fourteenth day after he/she has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted. Form LS–207 has been designated for this purpose. Form LS–207 is used by insurance carriers and self-insured employers to controvert claims under the Longshore Act and extensions. The information is used by OWCP district offices to determine the basis for not paying benefits in a case. This information collection is currently

approved for use through December 31, 2011.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval of this information collection in order to carry out its responsibility to meet the statutory requirements to provide compensation or death benefits under the Act to workers covered by the Act.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Notice of Controversion of Right to Compensation.

OMB Number: 1240–0042.

Agency Number: LS–207.

Affected Public: Business or other for-profit.

Total Respondents: 700.

Total Annual Responses: 17,500.

Estimated Total Burden Hours: 4,375.

Estimated Time per Response: 15 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $9,012.50.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 13, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2011–26939 Filed 10–18–11; 8:45 am]

BILLING CODE 4510–CF–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0131]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 5, 2011 (76 FR 39133).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 100 ''Reactor Site Criteria.''

3. *Current OMB approval number:* 3150–0093.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* As necessary in order for the NRC to assess the adequacy of proposed seismic design bases and the design bases for other site hazards for nuclear power and test reactors constructed and licensed in accordance with 10 CFR parts 50 and 52 and the Atomic Energy Act of 1954, as amended.

6. *Who will be required or asked to report:* Applicants and licensees for nuclear power and test reactors.

7. *An estimate of the number of annual responses:* 2.

8. *The estimated number of annual respondents:* 2.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* Annually, 146,000 hours (73,000 per application × 2 applications) .

10. *Abstract:* 10 CFR part 100, A Reactor Site Criteria, establishes approval requirements for proposed sites for the purpose of constructing and operating stationary power and testing reactors pursuant to the provisions of 10 CFR parts 50 or 52. These reactors are required to be sited, designed, constructed, and maintained to withstand geologic hazards, such as faulting, seismic hazards, and the maximum credible earthquake, to protect the health and safety of the public and the environment. Non-seismic siting criteria must also be evaluated. Non-seismic siting criteria include such factors as population density, the proximity of man-related hazards, and site atmospheric dispersion characteristics. NRC uses the information required by 10 CFR part 100 to evaluate whether natural phenomena and potential man-made hazards will be appropriately accounted for in the design of nuclear power and test reactors.

The public may examine and have copied for a fee publicly, available documents, including the final supporting statement, at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC *Web site: http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by November 18, 2011. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0093), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *CWhiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 11th day of October , 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–26978 Filed 10–18–11; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Public Hearing Cancellation Notice; October 19, 2011

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 76, Number 189, Page 60559) on September 29, 2011. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 PM, October 19, 2011 in conjunction with OPIC's October 27, 2011 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, or via e-mail at *Connie.Downs@opic.gov.*

Dated: October 17, 2011.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2011–27145 Filed 10–17–11; 11:15 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–8; Order No. 905]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Rhodell, West Virginia post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* October 21, 2011; *deadline for notices to intervene:* November 7, 2011, 4:30 p.m., eastern time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on October 6, 2011, the Commission received a petition for review of the Postal Service's determination to close the Rhodell post office in Rhodell, West Virginia. The petition for review was filed by Alvin Lambert, Jr. (Petitioner) and is postmarked September 27, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–8 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 10, 2011.

Issues apparently raised. Petitioner contends that the Postal Service: (1) failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 21, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 21, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before November 7, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 21, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than October 21, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Pamela A. Thompson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this Notice and Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

October 6, 2011	Filing of Appeal.
October 21, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 21, 2011	Deadline for the Postal Service to file any responsive pleading.
November 7, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 10, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
November 30, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 15, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 22, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 25, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–27039 Filed 10–18–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–9; Order No. 906]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Humbird, Wisconsin post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due* (*from Postal Service*): October 24, 2011; *deadline for notices to intervene:* November 7, 2011, 4:30 p.m., eastern time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on October 7, 2011, the Commission received a petition for review of the Postal Service's determination to close the Humbird post office in Humbird, Wisconsin. The petition for review was filed by Helynn Schufletowski (Petitioner) and is postmarked September 29, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–9 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than November 14, 2011.

Issue apparently raised. Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is October 24, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 24, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before November 7, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than October 24, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than October 24, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Jeremy L. Simmons is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

October 7, 2011	Filing of Appeal.
October 24, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 24, 2011	Deadline for the Postal Service to file any responsive pleading.
November 7, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
November 14, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 5, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
December 20, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
December 27, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
January 27, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–27040 Filed 10–18–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65548; File No. SR–ISE–2011–39]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to Complex Orders

October 13, 2011.

I. Introduction

On July 1, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rule 722, ''Complex Orders.'' The proposed rule change was published for comment in the **Federal Register** on July 15, 2011.[3] The Commission received one comment letter regarding the proposed rule change and [4] ISE submitted a response to the comment letter.[5] This order approves the proposed rule change.

II. Description

The ISE proposes to amend ISE Rule 722 to: (1) Allow market makers to enter quotations for complex order strategies on the complex order book, provide that such quotations will not execute automatically against bids and offers for the individual legs of the order, and make existing market maker risk management tools available for these quotations; (2) add a size pro rata method of execution priority for bids and offers on the complex order book at the same price; and (3) provide for an enhanced allocation of complex orders to a market maker that an Electronic Access Member (''EAM'') designates as a ''Preferred Market Maker'' and that satisfies certain requirements.

A. Quotations for Complex Orders

Currently, ISE market makers may enter quotes for single-leg options orders, but not for complex order strategies.[6] New Supplementary Material .03 to ISE Rule 722 allows market makers to enter quotes for complex order strategies on the complex order book in their appointed options classes and provides that these quotes will not execute automatically against bids and offers for the individual legs of the order.[7] Market makers will continue to have the ability to enter complex orders on the complex order book. ISE represents that it is not aware of any demand from non-market maker

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64853 (July 11, 2011), 76 FR 41850 (''Notice'').

[4] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Geva Patz, Principal, Android Alpha Fund, dated July 27, 2011 (''Android Letter'').

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary and General Counsel, ISE, dated October 12, 2011 (''ISE Letter'').

[6] Only market makers may enter quotes. *See* ISE Rule 804(a) (stating that a quotation only may be entered by a market maker, and only in the options classes to which the market maker is appointed under ISE Rule 802). *See also* ISE Rule 100(a)(42) (defining ''quote'' or ''quotation'' as a bid or offer entered by a market maker that updates the market maker's previous bid or offer, if any).

[7] Quotes and orders are processed as they are received by the ISE's trading system. Quotes are not processed more quickly than orders. *See* Notice at footnote 5.

participants to quote on the complex order book.[8]

New Supplementary Material .03 to ISE Rule 722 provides that complex order quotes may not be marked for price improvement,[9] nor are market makers required to enter quotes for complex orders. Quotations and executions against complex orders shall not be taken into consideration in determining whether a market maker is meeting, respectively, its quoting obligations under ISE Rule 804 or its obligation under ISE Rule 805 to refrain from executing more than a specified percentage of contracts in options classes which it is not appointed.[10] Under new Supplementary Material .04 to ISE Rule 722, the same risk management tools that currently are available for market maker quotes in the individual leg market will also be available for market makers' complex order quotes.[11]

B. Size Pro Rata Execution Priority

Currently, ISE may designate on a class basis whether complex orders at the same price on the complex order book will execute (A) in time priority; or (B) on a size pro-rata basis after all Priority Customer Orders at the same price have been executed in full.[12] As amended, ISE Rule 722(b)(3)(i) adds a third method of execution priority that will allow ISE to designate on a class basis that bids and offers on the complex order book at the same price may be executed pro-rata based on size. Under this priority method, Priority Customer Orders would receive a pro-rata allocation along with all other orders and quotes at the same price.[13]

C. Enhanced Allocation for Complex Orders

New Supplementary Material .05 to ISE Rule 722 provides an enhanced allocation for a market maker quoting at the best price that is designated by the entering EAM as a Preferred Market Maker. The enhanced allocation will be available only for options classes that are allocated pro-rata based on size with Priority Customer Order priority, and a Preferred Market Maker that satisfies the requirements of Supplementary Material .05 will receive an enhanced allocation only after all Priority Customer Orders on the complex order book at the same price have been executed in full.[14] A Preferred Market Maker on the complex order book must satisfy its quoting obligations in the options class in the regular leg market, including the enhanced quoting requirements in ISE Rule 804(e)(2)(ii) applicable to Competitive Market Makers that receive Preferenced Orders.[15] Accordingly, a market maker must be quoting at least 90% of the series of an options class in the regular market to receive an enhanced allocation on the complex order book.

After all Priority Customer Orders on the complex order book at the same price have been executed in full, a Preferred Market Maker that satisfies the requirements in ISE Rule 722, Supplementary Material .05 will receive an allocation equal to the greater of: (i) The proportion of the total size at the best price represented by the size of the market maker's quote; or (ii) 60% of the contracts to be allocated if there is only one other Professional Order or market maker quotation at the best price, and 40% of the contracts to be allocated if there are two or more other Professional Orders and/or market maker quotes at the best price.[16]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that allowing market makers to enter quotations for complex order strategies, as well as complex orders, in the complex order book is consistent with the Act. Allowing market markers to submit complex order quotes could result in additional liquidity for complex orders on ISE, thereby potentially benefitting investors.[19]

The Commission also believes that the limitation on automatic executions of market maker complex order strategy quotations against leg market interest is consistent with the Act. According to the ISE, this limitation is designed to address an operational issue that ISE believes could discourage market makers from adding liquidity to the complex order book. This operational issue may arise when a market maker updating its complex order strategy quotation inadvertently trades with its own leg market quotations or the leg market quotations of another market maker before the complex order strategy quotation update is processed. By addressing an operational issue that might discourage market makers from adding liquidity to the complex order book, the Commission believes that the limitation on automatic executions against leg market interest could help to increase liquidity in the complex order

[8] *See* Notice, 76 FR at 41852.

[9] In contrast, under ISE Rule 722(b)(3)(iii), complex orders may be marked for price improvement and exposed for up to one second before executing automatically against pre-existing complex orders or bids and offers for the individual legs.

[10] Telephone conversation among Kathy Simmons, Deputy General Counsel, ISE, and David Hsu, Assistant Director, Division of Trading and Markets (''Division''), Commission, and Yvonne Fraticelli, Special Counsel, Division, Commission, on October 12, 2011. A Primary Market Maker must, on a daily basis, enter continuous quotations and enter into any resulting transactions in all of the series listed on ISE of the options classes to which the market maker is appointed. A Competitive Market Maker must, on a given day, participate in the opening rotation and make markets and enter into any resulting transactions on a continuous basis in at least 60% of the series listed on ISE of at least 60% of the options classes for the Group to which the Competitive Market Maker is appointed or 40 options classes in the Group, whichever is lesser. *See* ISE Rule 804(e)(1) and (2). The total number of contracts executed during a quarter by a Competitive Market Maker in options classes in which it is not appointed may not exceed 25% of the total number of contracts traded by such Competitive Market Maker in classes to which it is appointed and with respect to which it was quoting pursuant to ISE Rule 804(e)(2). The total number of contracts executed during a quarter by a Primary Market Maker in options classes to which it is not appointed may not exceed 10% of the total number of contracts traded per each Primary Market Maker Membership. *See* ISE Rule 805(b)(2) and (3).

[11] ISE Rule 804, Supplementary Material .01 sets forth certain enhanced risk management tools that currently are available for market maker quotes in the individual leg market. *See* Securities Exchange Act Release No. 63117 (October 15, 2010), 75 FR 65042 (October 21, 2010) (notice of filing and immediate effectiveness of File No. SR–ISE–2010–101).

[12] *See* ISE Rule 722(b)(3)(i).

[13] ISE notes that the new execution priority provision does not affect ISE Rule 722(b)(2), which, among other things, provides requirements for executing complex orders when the established bid or offer on ISE for any leg of the complex order consists of a Priority Customer Order. *See* Notice, 76 FR at 41851.

[14] *See* ISE Rule 722, Supplementary Material .05.

[15] *See* ISE Rule 722, Supplementary Material .05. Among other things, ISE Rule 804(e)(2)(ii) requires a Competitive Market Maker to maintain continuous quotations in at least 90% of the series of any options class in which it receives Preferenced Orders.

[16] *See* ISE Rule 722, Supplementary Material .05.

[17] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* ISE Rule 722, Supplementary Material .03.

book, thus benefitting investors seeking to execute complex orders.

The Commission believes that the market maker risk management tools in new Supplementary Material .04 to ISE Rule 722 could assist ISE market makers in effectively managing their complex order strategy quotations. Accordingly, the Commission believes that Supplementary Material .04 to ISE Rule 722 is consistent with the Act.

The proposal also amends ISE Rule 722(b)(3)(i) to provide for executions of complex orders at the same price on a size pro-rata basis.[20] The Commission believes that providing an additional method of execution priority in ISE Rule 722(b)(3)(i) will provide ISE with greater flexibility in determining how complex order bids and offers at the same price may be executed. The Commission notes that the rules of other options exchanges currently permit size pro-rata executions of orders at the same price.[21] In addition, the Commission notes that the addition of this new execution priority method to ISE Rule 722(b)(3)(i) does not affect the complex order priority provisions in ISE Rule 722(b)(2).[22]

The Commission believes that new Supplementary Material .05 to ISE Rule 722, which permits preferencing of certain complex orders to a market maker with a quote at the best price on the complex order book that the EAM entering the order designates as a ''Preferred Market Maker,'' is consistent with the Act. The Commission notes that the Chicago Board Options Exchange, Inc. (''CBOE'') currently permits preferencing of complex orders[23] and that the requirements for receiving an enhanced complex order allocation under ISE Rule 722, Supplementary Material .05, are the same as the requirements for receiving an enhanced complex order allocation under CBOE Rule 8.13, Commentary .01. Although the ISE and CBOE rules provide different complex order percentage allocations for Preferred Market Makers, the complex order percentage allocation in ISE Rule 722, Supplementary Material .05 is the same as the enhanced allocation for single options currently provided to Preferred Market Makers under ISE Rule 713, Supplementary Material .03(c), which the Commission previously approved.[24] The Commission also notes ISE's statement that it would be a violation of ISE Rule 400, ''Just and Equitable Principles of Trade,'' for EAMs and Preferred Market Makers to coordinate their action, and ISE's representation that it will proactively conduct surveillance for, and enforce against, such violations.[25] For example, it would be a violation of ISE Rule 400 for an EAM to notify a Preferred Market Maker immediately prior to sending a complex order so that the market maker could post a complex order strategy quotation on the complex order book before the EAM's order arrived.

The Commission received one comment letter regarding the proposed rule change.[26] ISE responded to the commenter letter.[27] The commenter expresses concern that ISE lacks the system capacity to handle the additional volume that market maker complex order quotes could produce.[28] In particular, the commenter notes that ISE's systems incur overhead to create a new instrument whenever a complex order is created for a new spread, regardless of whether any trades occur in that spread.[29] According to the commenter, ISE had indicated that this overhead could become problematic even at the level of a few tens of thousands of spreads.[30] Noting that there are over 24,000,000 valid two-legged spreads alone for options currently traded on ISE, the commenter believed that ISE's system would be unable to keep up with the volume of quotations even if ISE market makers chose to quote only a small fraction of these spreads.[31] Accordingly, the commenter believes that the proposal ''presents a serious risk of causing an unacceptable degradation of exchange infrastructure to the detriment of all users, both current and potential, of the ISE Complex Order Book,'' and urged the Commission not approve the proposal ''unless and until the ISE is able to provide adequate assurances that its systems will not be adversely affected by the change.''[32]

In its response to the commenter's concerns regarding the number of complex order strategies that potentially could trade on ISE, ISE states that the Exchange currently supports 3,000 complex order instruments per options class, for a total of more than 7.2 million instruments on a daily basis.[33] ISE states, further, that far fewer than 3,000 complex order instruments have ever traded across all options class on ISE on a single day.[34] Accordingly, ISE believes that it has more than sufficient capacity to meet investor demand.[35]

In response to the commenter's concern regarding the potential increase in quotation volume, ISE states that it maintains a rigorous capacity planning program that monitors system performance and projected capacity demands, and that, as a general matter, ISE considers the potential system capacity impact of all new initiatives.[36] ISE represents that it has analyzed the potential for additional message traffic resulting from market makers entering quotes on the complex order book and has concluded that, while quotes may update more frequently than orders, it has sufficient system capacity to handle those quotes without degrading the performance of its systems or reducing the number of complex order instruments it currently supports.[37] In addition, ISE states that because market

[20] *See* ISE Rule 722(b)(3)(i)(C).

[21] *See, e.g.,* CBOE Rule 6.45B(a)(i) and C2 Rule 6.12(a)(2). In approving CBOE direct, a screen-based trading system, the Commission stated that both price-time priority and pro rata priority were consistent with the Act. *See* Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (order approving File No. SR–CBOE–00–55).

[22] *See* Notice, 76 FR at 41851. ISE Rule 722(b)(2) provides that a complex order may be executed at a total net debit or credit price with one other Member without giving priority to bids or offers established in the marketplace that are no better than the bids or offers comprising such total credit or debit, provided that if any of the bids or offers in the marketplace consists of a Priority Customer Order, the price of at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace by at least one minimum trading increment, as defined in ISE Rule 710.

[23] *See* CBOE Rule 8.13, Interpretation and Policy .01. *See also* Securities Exchange Act Release No. 60957 (November 6, 2009), 74 FR 58332 (November 12, 2009) (File No. SR–CBOE–2009–070) (approving proposal to establish a participation entitlement for complex orders).

[24] *See* Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (order approving File No. SR–ISE–2005–18). Under CBOE's rules, the complex order participation entitlement for a Preferred Market Maker, after equivalent net priced orders in the EBook and equivalent public customer orders resting in the complex order book have been satisfied, is 40% when there are two or more market makers quoting at the best net priced bid/offer execution price, and 50% when there is only one other market maker quoting at the best net priced bid/offer execution price. *See* CBOE Rule 8.13, Interpretation and Policy .01(b). Under ISE Rules 713, Supplementary Material .03(c) and 722, Supplementary Material .05, a Preferred Market Maker has a participation right equal to: (i) the proportion of the total size at the best price represented by the size of its quote; or (ii) 60% of the contracts to be allocated if there is only one other Professional Order or market maker quotation at the best price and 40% if there are two or more other Professional Orders and/or market maker quotes at the best price.

[25] *See* Notice at footnote 10. *See also* Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (order approving File No. SR–ISE–2005–18) at footnote 10.

[26] *See* Android Letter, *supra* note 4.

[27] *See* ISE Letter, *supra* note 5.

[28] *See* Android Letter, *supra* note 4, at 1.

[29] *See* Android Letter, *supra* note 4, at 1.

[30] *See id.*

[31] *See id.*

[32] Android Letter, *supra* note 4, at 2.

[33] *See* ISE Letter, *supra* note 5, at 1.

[34] *See id.*

[35] *See id.*

[36] *See id.*

[37] *See* ISE Letter, *supra* note 5, at 1–2.

makers are able to update multiple instruments with a single quote change, encouraging market makers to add liquidity to the complex order book through quotations, rather than orders, will require less ISE capacity.[38] For example, ISE notes that ISE market makers currently must enter two separate orders to update a bid and an offer for each complex order instrument.[39] However, market makers will be able to update both the bid and the offer for multiple complex order instruments with one quote change.[40]

In approving the proposed rule change, the Commission has relied on ISE's representation that it has the necessary systems capacity to implement the proposed changes. The Commission expects ISE to continue to monitor the quoting volume associated with market makers' complex order strategy quotations and its effect on ISE's systems.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[41] that the proposed rule change (SR–ISE–2011–39) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26990 Filed 10–18–11; 8:45 am]

BILLING CODE 8011–01–P

[38] *See* ISE Letter, *supra* note 5, at 2.

[39] *See id.*

[40] *See id.*

[41] 15 U.S.C. 78s(b)(2).

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65549; File No. SR–NYSEAmex–2011–77]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Amendments to the NYSE Amex Options Fee Schedule Relating to Electronic Complex Orders

October 13, 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 October 5, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III 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 the NYSE Amex Options Fee Schedule (''Fee Schedule'') with respect to Electronic Complex Order executions. The proposed change will be operative on October 5, 2011. 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 proposes to amend the Fee Schedule with respect to Electronic Complex Order[3] executions and to make other technical changes.

The current Fee Schedule sets forth a separate list of charges for Electronic Complex Orders. Under the Fee Schedule, when an Electronic Complex Order trades against another Electronic Complex Order, there is a charge of $.05 per contract side, including where the same firm represents both sides. Customers (excluding Professional Customers) are not charged. If an Electronic Complex Order trades against an individual order in the Consolidated Book, it is subject to standard trade-related charges in the Fee Schedule. Under endnote 5 of the Fee Schedule, Specialist, e-Specialist, and Market Maker (both Directed and non-Directed) fees are aggregated and capped at $350,000 per month plus an incremental service fee of $.01 per contract for all Specialist, e-Specialist and Market Maker volume executed in excess of 3,500,000 contracts per month. Electronic Complex Order fees currently count toward both the $350,000 cap and the 3,500,000 thresholds, but are not themselves capped.

The Exchange proposes to eliminate the separate list of charges for Electronic Complex Orders and instead impose the standard per contract fees set forth in the Fee Schedule. Each market participant will pay the applicable rate per contract set forth in the Fee Schedule, ranging from $.10 to $.40, that applies for all other transactions; Customers (excluding Professional Customers) will continue to trade for free.[4]

The Exchange also proposes to amend endnote 5 with respect to the fee caps. Under the amendment, Electronic Complex Order fees will be subject to the $350,000 per month fee cap plus an incremental service fee of $.05 per contract for all Specialist, e-Specialist and Market Maker volume executed in excess of 3,500,000 contracts per month.[5]

The proposed changes will be operative on October 5, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[6] of the Securities Exchange Act of 1934 (the ''Act''), in general, and 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 its members and other persons using its facilities.

The Exchange believes that adopting the proposed amendments will make its Fee Schedule simpler and easier for market participants to understand. In addition, the Exchange believes that the proposed Electronic Complex Orders

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Under NYSE Amex Option Rule 980NY, an ''Electronic Complex Order'' is any Complex Order as defined in NYSE Amex Options Rule 900.3NY(e) or any Stock/option Order or Stock/Complex Order as defined in NYSE Amex Options Rule 900.3NY(h) that is entered into the NYSE Amex System.

[4] The Exchange notes that a complex order executed as part of a Qualified Contingent Cross (''QCC'') trade will never interact with the Electronic Complex Order Book. As such, a complex order executed as part of a QCC will be subject to the fees applicable to QCCs. If a single leg order, complex order, or Strategy Trade is marked QCC, it receives QCC billing treatment.

[5] The Exchange further notes that, like all transactions subject to the standard trade-related charges in the Fee Schedule, Marketing Charges will continue to apply to Electronic Complex Orders. The only transactions to which Marketing Charges do not apply are expressly excluded in endnote 10 of the Fee Schedule.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

fees are fair and reasonable, equitably allocated, and not unfairly discriminatory because they generally will be the same as the currently applicable standard fee schedule, with the exception of transactions that exceed the fee cap threshold for Specialists, e-Specialists, and Market Makers (both Directed and non-Directed).[8]

The Exchange also believes that with the proposed transition to the standard fee schedule, it is reasonable and not unfairly discriminatory to include Electronic Complex Orders in the fee cap for Specialists, e-Specialists, and Market Makers. These market participants incur permit fees and are obligated to provide liquidity; the Exchange believes that it is appropriate to reduce their fees once they have provided the threshold level of liquidity to the market. The Exchange believes that the fee cap, along with the reduced fee, will encourage these dedicated liquidity providers to continue to provide liquidity on a non-discriminatory basis to all market participants.

The proposal to charge $.05 per contract for those transactions that exceed the fee cap threshold also is reasonable, equitable and not unfairly discriminatory because it is the same fee that such a participant would pay today under the under the current Fee Schedule for Electronic Complex Orders. In addition, the Exchange incurred costs to build the Electronic Complex Order book and the marginally higher fee ($.05 versus $.01) for transactions in excess of the fee cap will assist the Exchange in recouping such costs from the market participants that derive benefits from the Electronic Complex Order book.

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.

[8] NYSE Amex notes that at least one other exchange generally applies its standard transaction fees to Electronic Complex Orders too. *See* Chicago Board Options Exchange, Incorporated Fees Schedule, dated September 1, 2011, available at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange. 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–2011–77 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–2011–77. 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, NW., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–77 and should be submitted on or before November 9, 2011.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26991 Filed 10–18–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65550; File No. SR–ISE–2011–65]

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 13, 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 30, 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 fees and rebates for certain complex orders executed on the Exchange. The text of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 per contract transaction charges and credits to market participants that add or remove liquidity from the Exchange (''maker/taker fees'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees are applicable to regular and complex orders executed in the Select Symbols.[4] Recently, the Exchange extended the fees and rebates for complex orders applicable to the Select Symbols to all symbols that are in the Penny Pilot program.[5]

For complex orders in the Select Symbols and in symbols that are in the Penny Pilot program but excluding the Designated Symbols, the Exchange currently charges a ''take'' fee of: (i) $0.30 per contract for Market Maker,[6] Market Maker Plus,[7] Firm Proprietary and Customer (Professional)[8] orders; and (ii) $0.35 per contract for Non-ISE Market Maker[9] orders. Priority Customer[10] orders, regardless of size, are not charged a take fee for complex orders. For these same symbols, the Exchange currently charges a ''make'' fee of: (i) $0.10 per contract for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) $0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders, regardless of size, are not charged a make fee for complex orders.

Further, for Priority Customer complex orders in the Select Symbols and in the symbols that are in the Penny Pilot program but excluding the Designated Symbols, the Exchange currently provides a rebate of $0.25 per contract when these orders trade with non-customer orders in the Complex Order Book.

Additionally, the Exchange currently provides certain rebates that are applicable to executions in the Select Symbols. Specifically, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism,[11] Price Improvement Mechanism[12] and Solicited Order Mechanism.[13] For the Facilitation and Solicited Order Mechanisms, the rebate is currently $0.15 per contract. For the Price Improvement Mechanism, the rebate is currently $0.25 per contract. The Exchange now proposes to extend these rebates to complex special orders in the symbols that are in the Penny Pilot program.

Further, the Exchange currently has a ''take'' fee of $0.40 per contract[14] for Market Maker Plus, Market Maker, Non-ISE Market Maker, Firm Proprietary, Customer (Professional) and Priority Customer interest that responds to special orders.[15] The Exchange now proposes to extend this $0.40 per contract ''take'' fee to complex special orders in the symbols that are in the Penny Pilot program.

The Exchange has designated this proposal to be operative on October 3, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(4) of the Act[17] 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 interact with and respond to certain types of orders.

The Exchange believes that it is reasonable and equitable to provide a rebate for complex contracts that do not trade with the contra order in the Exchange's various auction mechanisms because paying a rebate would continue to attract additional order flow to the Exchange and thereby create liquidity in

[3] Options classes subject to maker/taker fees are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] The Exchange has also adopted fees and rebates for complex orders in a select number of option classes (''Designated Symbols'') that are distinct from the fees for complex orders in the Select Symbols. These Designated Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees. *See* Exchange Act Release Nos. 65084 (August 10, 2011), 76 FR 50805 (August 16, 2011) (SR–ISE–2011–49).

[5] *See* Exchange Act Release No. 65021 (August 3, 2011), 76 FR 48933 (August 9, 2011) (SR–ISE–2011–45).

[6] Market Makers who remove liquidity in the Select Symbols from the Complex Order Book by trading with orders preferenced to them are charged $0.28 per contract.

[7] 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.

[8] A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

[9] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[10] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[11] *See* Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25).

[12] *See* Exchange Act Release No. 62048 (May 6, 2010), 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43). The Exchange subsequently increased this rebate to $0.25 per contract. *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

[13] *See* Exchange Act Release No. 63283 (November 9, 2010), 75 FR 70059 (November 16, 2010) (SR–ISE–2010–106).

[14] *Id.*

[15] A special order is an order submitted for execution in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism. A response to a special order is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism and Price Improvement Mechanism.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

these additional symbols, *i.e.,* the Penny Pilot symbols, that ultimately will benefit all market participants who trade on the Exchange. The Exchange already provides this rebate for executions in the Select Symbols and is now proposing to extend the rebate to complex orders transacted in the Exchange's various auction mechanisms in the symbols that are in the Penny Pilot program.

The Exchange also believes that the proposed extension of the special order response fee for complex orders in the symbols that are in the Penny Pilot symbols will allow the Exchange to remain competitive with fees charged by other exchanges and are therefore reasonable and equitably allocated. The Exchange believes that the proposed extension of the special order response fee to complex orders in the symbols that are in the Penny Pilot symbols is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes.[18]

The Exchange believes that its fees and credits remain competitive with fees charged by other exchanges and therefore are reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange. The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes extending certain aspects of its maker/taker pricing structure will attract additional complex order business while at the same time create standardization in complex order pricing across symbols that make up the majority of daily volume in options trading. The Exchange further believes that the amounts of the proposed fees are reasonable because they are identical to fees assessed by the Exchange for execution of complex orders in the Select Symbols.

The Exchange further believes that the Exchange's maker/taker fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exists today at other options exchanges. Additionally, 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 option exchanges. Finally, 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.

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.[19] 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–2011–65 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–2011–65. 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–ISE–2011–65 and should be submitted on or before November 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26992 Filed 10–18–11; 8:45 am]

BILLING CODE 8011–01–P

[18] The Boston Options Exchange currently assesses a similar fee. *See* Exchange Act Release No. 62632 (August 3, 2010), 75 FR 47869 (August 9, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fee Schedule of the Boston Options Exchange Facility) (SR–BX–2010–049).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65553; File No. SR–Phlx–2011–138]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for the NASDAQ OMX PSX Facility To Accept Inbound Orders Routed From the NASDAQ OMX BX Equities Market of NASDAQ OMX BX, Inc.

October 13, 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 October 6, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by 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 is filing a proposed rule change for the NASDAQ OMX PSX facility of PHLX (''System'') to receive inbound orders routed from the NASDAQ OMX BX Equities Market of NASDAQ OMX BX, Inc. (''BX''), as described further below.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* 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 aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with a proposal by BX 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 BX to the Exchange on a one-year pilot basis.

NES is a broker-dealer and member of NASDAQ, PHLX and BX. NES provides all routing functions for The NASDAQ Stock Market (''NASDAQ'') as well as, pursuant to recent proposed rule changes, BX and PHLX.[4] BX, NASDAQ, PHLX and NES are affiliates. Accordingly, the affiliate relationship between PHLX 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 PHLX to accept inbound orders that NES routes in its capacity as a facility of BX, subject to these same limitations and conditions:

- First, the Exchange and 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, PHLX 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 PHLX Rule 985, 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 BX, be authorized for a pilot period of one year.

The Exchange believes that the above-listed conditions protect the independence of the Exchange's

[3] *See* Securities Exchange Act Release No. 65470 (October 3, 2011) (SR–BX–2011–048).

[4] *See* Securities Exchange Act Release Nos. 65470 (October 3, 2011) (SR–BX–2011–048); and 65469 (October 3, 2011) (SR–Phlx–2011–108).

[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 No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–PHLX–2010–79).

[7] *Id.*

[8] 17 CFR 240.17d–2.

[9] NES is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[10] Pursuant to 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 BX routing orders to PHLX) is identified as a participant that has potentially violated applicable 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.

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 BX, 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

The Exchange 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 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[13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would benefit users by offering more opportunities for their orders to be executed.[15] The Commission notes that the proposed rule change is consistent with the rules of the Exchange, which permits the Exchange to accept inbound routed orders from its affiliate NASDAQ, through NES,[16] and rules of other national securities exchanges, and does not raise any new substantive issues.[17] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposal to be operative upon filing with the Commission.[18]

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 email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–138 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–Phlx–2011–138. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–138 and should be submitted on or before November 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26993 Filed 10–18–11; 8:45 am]

BILLING CODE 8011–01–P

[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)(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.

[15] *See* SR–Phlx–2011–138, Item 7.

[16] *See* Securities Exchange Act Release No. 62877 (September 9, 2011), 75 FR 56633 (September 16, 2011) (SR–Phlx–2010–79).

[17] *See, e.g.,* Securities Exchange Act Release Nos. 62901 (September 13, 2010), 75 FR 57097 (September 17, 2010) (SR–BATS–2010–024); and 64729 (June 23, 2011), 76 FR 38232 (June 29, 2011) (SR–NYSE–2011–24).

[18] 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).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65552; File No. SR–Phlx–2011–139]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Period for Receiving Orders Routed From The NASDAQ Stock Market LLC Into NASDAQ OMX PSX

October 13, 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 October 6, 2011, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''PHLX'') 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 is filing this proposed rule change to extend the pilot period of PHLX's prior approval to receive inbound routes of equities orders from The NASDAQ Stock Market LLC (''NASDAQ'') through Nasdaq Execution Services, LLC (''NES''), into PHLX's NASDAQ OMX PSX trading system (''PSX''). There is no proposed rule text.

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

Currently, NES is the approved outbound routing facility of NASDAQ for cash equities, providing outbound routing from NASDAQ to other market centers.[3] PSX also has been previously approved to receive inbound routes of equities orders by NES in its capacity as an order routing facility of NASDAQ on a one-year pilot basis.[4] Because PSX commenced receiving orders routed to it by NES on October 8, 2010, the pilot will expire shortly. The Exchange hereby seeks to extend this previously approved pilot period for inbound routing (with the attendant obligations and conditions) for an additional 6 months, through April 8, 2012.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] 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. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from NES acting in its capacity as a facility of NASDAQ, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months is of sufficient length to permit both the Exchange and the Commission to assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via NES (including the attendant obligations and conditions) and to determine whether to approve the pilot on a permanent basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not 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 waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because a temporary suspension of authority to receive inbound routes of equities orders from NASDAQ would be highly disruptive to the Exchange, NASDAQ and their respective market participants and would not serve to advance any countervailing public interest.[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 8, 2012 while the Exchange's proposal to make the pilot permanent is under consideration.[11] Therefore, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NASDAQ Rule 4758. *See also* Securities Exchange Act Release Nos. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004) (Order Granting Application for a Temporary Conditional Exemption Pursuant To Section 36(a) of the Exchange Act by the National Association of Securities Dealers, Inc. Relating to the Acquisition of an ECN by The Nasdaq Stock Market, Inc.) and 52902 (December 7, 2005), 70 FR 73810 (December 13, 2005) (SR–NASD–2005–128) (Order Approving a Proposed Rule Change To Establish Rules Governing the Operation of the INET System).

[4] *See* Securities Exchange Act Release No. 62877 (September 9, 2011), 75 FR 56633 (September 16, 2011) (SR–PHLX–2010–79) (the ''PSX Approval Order'').

[5] During this pilot period, the Exchange will file a separate proposal with the Commission seeking permanent approval of the PSX and NES routing relationship.

[6] 15 U.S.C. 78f.

[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.

[10] *See* SR–Phlx–2011–139, Item 7.

[11] *See supra* note 5.

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 email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–139 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–Phlx–2011–139. This file number should be included on the subject line if email 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 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–Phlx-2011–139 and should be submitted on or November 9, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–26994 Filed 10–18–11; 8:45 am]

BILLING CODE 8011–01–P

[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).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Houston District Office Advisory Committee

AGENCY: U.S. Small Business Administration (SBA).

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 Houston District Office Advisory committee. The meeting will be open to the public.

DATES: The meeting will be held on October 20, 2011 from approximately 11:30 a.m. to 12:30 p.m. Central Standard Time.

ADDRESSES: The meeting will be held at the Internal Revenue Service (IRS), Conference Room 12th Floor; located at 8701 South Gessner, Houston, TX. 77074.

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 Houston District Office Advisory Committee. The Houston District Office Advisory Committee is tasked with providing advice and recommendations to the District Director, Regional Administrator, and the SBA Administrator.

The purpose of the meeting is to interact and get feedback from the community stakeholders on how we can better serve our community and to create new networking opportunities with the Houston community. The agenda or topics to be discussed will include: Houston District Office, Lenders and SBA Goals for 2011–2012, Small Business Week 2012.

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 Houston District Office Advisory Committee must contact Sonia Maldonado, Business Development Specialist by October 13, 2011, by fax or e-mail in order to be placed on the agenda. Sonia Maldonado, Business Development Specialist, SBA; 8701 South Gessner Drive, Suite 1200, Houston, TX 77074, Fax 202–481–5617, or e-mail *Sonia.maldonado@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Sonia Maldonado.

For more information, please visit our Web site at *http://www.sba.gov/tx.*

Dated: October 13, 2011.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2011–27052 Filed 10–18–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory (AFMAC)

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 Audit and Financial Management Advisory (AFMAC). The meeting will be open to the public.

DATES: The meeting will be held on October 31, 2011 from 1 p.m. to approximately 3 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be accomplished via teleconference with the U.S. Small Business Administration, 409 3rd Street, SW., Office of the Chief Financial Officer, Washington, DC 20416.

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 AFMAC. The AFMAC is tasked with providing recommendation and advice regarding the Agency's financial management, including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations.

The purpose of the meeting is to discuss SBA's FY 2011 Financial

Statements, Credit Modeling, FMFIA Assurance/A–123 Results, Management's Planned Assertions Statement for Inclusion in the Annual Financial Report, FY 2011 Agency Financial Report, FY 2011 Agency Performance Report, and the Auditor's Anticipated Opinion Letter, Anticipated Report on Significant Control Deficiencies or Material Weaknesses, and Anticipated Comments on SBA Compliance with Laws and Administrative Regulations.

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 AFMAC must contact Jonathan Carver, by fax or e-mail, in order to be placed on the agenda. Jonathan Carver, Chief Financial Officer, 409 3rd Street, SW., 6th Floor, Washington, DC 20416, *phone:* (202) 205–6449, *fax:* (202) 205–6969, *e-mail: Jonathan.Carver@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Jeff Brown at (202) 205–6117, *e-mail: Jeffrey.Brown@sba.gov,* SBA, Office of Chief Financial Officer, 409 3rd Street, SW., Washington, DC 20416.

For more information, please visit our Web site at *http://www.sba.gov/aboutsba/sbaprograms/cfo/index.html.*

Dan S. Jones,

White House Liaison.

[FR Doc. 2011–26832 Filed 10–18–11; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 7660]

Certification Related to Guatemalan Armed Forces Under Section 7045(D) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111–117), as Carried Forward by the Full-Year Continuing Appropriations Act, 2011 (Division B, Pub. L. 112–10)

Pursuant to the authority vested in me as Deputy Secretary of State, including under Section 7045(d) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117) (''the Act''), as carried forward by the Full-Year Continuing Appropriations Act, 2011 (Div. B, Pub. L. 112–10), and Delegation of Authority No. 245–1, I hereby certify that:

(A) The Guatemalan Air Force, Navy, and Army Corps of Engineers are respecting internationally recognized human rights;

(B) The Guatemalan Air Force, Navy, and Army Corps of Engineers are cooperating with civilian judicial investigations and prosecutions of current and retired military personnel who have been credibly alleged to have committed violations of such rights, including protecting and providing to the Attorney General's office all military archives pertaining to the internal armed conflict; and

(C) The Guatemalan Air Force, Navy, and Army Corps of Engineers are cooperating with the International Commission Against Impunity in Guatemala (CICIG) by granting access to CICIG personnel, providing evidence to CICIG, and allowing witness testimony.

This Certification shall be published in the **Federal Register**, and copies shall be transmitted to the appropriate committees of Congress.

Dated: August 15, 2011.

Thomas R. Nides,

Deputy Secretary for Management and Resource.

[FR Doc. 2011–27065 Filed 10–18–11; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Assessment for the I–395 Air Rights Project

AGENCY: Federal Highway Administration, District of Columbia Division.

ACTION: Notice of availability and public hearing.

SUMMARY: The Federal Highway Administration (FHWA), District of Columbia Division and the District Department of Transportation are announcing the availability for public review of the Environmental Assessment (EA) prepared for the I–395 Air Rights Projects in conjunction with the District Department of Transportation (DDOT). The EA was prepared in compliance with the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality Regulations; and the FHWA Environmental Impact and Related Procedures. The project is also being reviewed under Section 106 of the National Historic Preservation Act and the EA includes a Section 106 Effects Assessment. Interested persons are invited to comment on both the EA and the Effects Assessment.

DATES: *Public hearing:* The public hearing will be held on November 2, 2011, at Holy Rosary Church (Casa Italiana), 595½ 3rd Street, NW., Washington, DC 20001. The public hearing will consist of an open house from 5:30 p.m. to 6 p.m. followed by a formal presentation and opportunity to comment from 6 p.m. to 7:30 p.m.

Comments: Comments on the EA must be received on or before November 19, 2011.

ADDRESSES: In addition to attending the public hearing at Holy Rosary Church (Casa Italiana), 595 ½ 3rd Street, NW., Washington, DC 20001, you may submit comments or requests for copies of the EA by any of the following methods:

- *Project* Web site: *http://www.i395ea.com.* Follow the instructions for submitting comments on the web site.
- *E-mail: i395ea@stvinc.com.*
- *Mail:* Mr. Michael Randolph, c/o STV Incorporated, 2722 Merrilee Drive, Suite 350, Fairfax, VA 22031.

Electronic copies may be downloaded from the Project Web Site and hard copies of the EA may also be viewed at the following locations:

Federal Highway Administration (FHWA) 1990 K Street, NW., Suite 510, Washington, DC 20006–1103.

District Department of Transportation, Planning, Policy, and Sustainability Administration, 55 M Street SE., 4th Floor, Washington DC 20003.

Martin Luther King, Jr. Memorial Library, 901 G Street, NW., Washington, DC 20001.

Walker Jones Education Campus Library, 155 L Street NW., Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Federal Highway Administration, District of Columbia Division: Mr. Michael Hicks, Environmental/Urban Engineer, 1990 K Street, Suite 510, Washington, DC 20006–1103, Telephone number 202–219–3513, e-mail: *michael.hicks@dot.gov*; or Mr. Michael Randolph, c/o STV Incorporated, 2722 Merrilee Drive, Suite 350, Fairfax, VA 22031, e-mail: *i395ea@stvinc.com.*

SUPPLEMENTARY INFORMATION: The proposed action consists of modification to the access ramps connecting the Center Leg Freeway (I–395) with 3rd Street and 2nd Street, just south of Massachusetts Avenue, in Northwest Washington, DC. In addition, the air rights above the depressed portion of the interstate between Massachusetts Avenue, E Street, 3rd Street, and 2nd Street would be declared excess, as would several adjacent parcels of land.

FHWA and DDOT are committed to ensuring that no person is excluded from participation in, or denied the

benefits of, its projects, programs, and services on the basis of race, color, national origin, or gender, as provided by Title VI of the Civil Rights Act of 1964 or on the basis of disability as provided by the Americans with Disabilities Act. The meeting location is accessible to persons with disabilities. If you need special accommodations or language assistance services (translation or interpretation), please contact Valerie Lamont at (571) 633–2220 at least one week in advance. These services will be provided free of charge.

Joseph C. Lawson,

Division Administrator.

[FR Doc. 2011–27033 Filed 10–18–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 145 (Sub-No. 1X); Docket No. AB 55 (Sub-No. 715X)]

Carrollton Railroad—Abandonment Exemption—in Carroll County, KY CSX Transportation, Inc.—Discontinuance of Service Exemption—in Carroll County, KY

Carrollton Railroad (CRR) [1] and CSX Transportation, Inc. (CSXT) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* for CRR to abandon, and for CSXT to discontinue service over, approximately 0.79 miles of rail line on CSXT's Northern Region, Louisville Division, LCL Subdivision, between mileposts 0CR 6.72 and 0CR 7.51, at the end of the track in Carrollton, Carroll County, KY.[2] The line traverses United States Postal Service Zip Code 41008.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on November 18, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 31, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 8, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Applicants have filed a combined environmental and historic report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. OEA will issue an environmental assessment (EA) by October 24, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CRR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CRR's filing of a notice of consummation by October 19, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 13, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–27041 Filed 10–18–11; 8:45 am]

BILLING CODE 4915–01–P

[1] CRR is a wholly owned and controlled subsidiary of CSXT.

[2] CSXT states that empty cars are stored on the line temporarily because they are not needed in common carrier service at the present time. Once the line is abandoned, the cars will be stored at another location.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on November 1, 2011 at 9:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of the Securities Industry and Financial Markets Association

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, 202(c)(1)(B)(31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the

Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622–1876.

Dated: October 5, 2011.

Mary Miller,

Assistant Secretary, Financial Markets.

[FR Doc. 2011–26422 Filed 10–18–11; 8:45 am]

BILLING CODE 4810–25–M

FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for the Tidewater Goby; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0085; MO 92210–0–0009]

RIN 1018–AX39

Endangered and Threatened Wildlife and Plants; Designation of Revised Critical Habitat for the Tidewater Goby

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to revise critical habitat for the tidewater goby (*Eucyclogobius newberryi*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 12,157 acres (4,920 hectares) are being proposed for designation as critical habitat. The proposed revised critical habitat is located in Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, and San Diego Counties, California.

DATES: We will accept comments received or postmarked on or before December 19, 2011. We must receive requests for public hearings, in writing, at one of the addresses shown in the **FOR FURTHER INFORMATION CONTACT** section by December 5, 2011.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter Docket No. FWS–R8–ES–2011–0085, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0085*; Division of* Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: For general information, and information about the proposed designation in Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, and Los Angeles Counties, contact Diane K. Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958.

For information about the proposed designation in Del Norte, Humboldt, and Mendocino Counties, contact Nancy Finley, Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521 (telephone 707–822–7201; facsimile 707–822–8411).

For information about the proposed designation in Sonoma, Marin, and San Mateo Counties, contact Susan Moore, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825 (telephone 916–414–6600; facsimile 916–414–6712).

For information about the proposed designation in Orange and San Diego Counties, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Service Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011 (telephone 760–431–9440; facsimile 760–431–5901).

If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available, and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed revised rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of tidewater goby habitat;

(b) Which areas that are within the geographical area occupied at the time of listing (or are currently occupied) contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed for the physical or biological features essential to the conservation of the species in areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas outside the geographical area occupied at the time of listing that should be included in the designation because they are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the tidewater goby, the features essential to its conservation and the areas proposed as critical habitat.

(5) Any probable economic, national security, environmental, cultural, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(6) Any information on potential threats to habitat and the feasibility of reintroduction or introduction of the tidewater goby to: Walker Creek, Bolinas Lagoon, Pomponio Creek, Waddell Creek, Salinas River, Arroyo del Cruz, Oso Flaco Lake, Arroyo Sequit, Zuma Creek, Aliso Creek, or any other areas identified for reintroduction or introduction in the recovery plan for the tidewater goby (Service 2005), and the reasons why we should or should not designate these or other unoccupied areas as critical habitat for the tidewater goby.

(7) Specifically with reference to those State Park lands under the jurisdiction of the California Department of Parks and Recreation (CDPR) that are proposed for designation, information on any areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act.

(8) Any additional proposed critical habitat areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act. We specifically request any information on any operative or draft habitat conservation plans for the tidewater goby that have been prepared under section 10(a)(1)(B) of the Act, or any other management or other conservation plan or agreement that benefits the tidewater goby or its primary constituent elements.

(9) Any information concerning tribal lands or trust resources that may be

impacted by this proposed revision to critical habitat.

(10) Whether our exemption under section 4(a)(3)(B) of the Act of Department of Defense land at Vandenberg Air Force Base (VAFB) in Santa Barbara County, and Marine Corps Base (MCB) Camp Pendleton in San Diego County, is or is not appropriate, and why.

(11) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section. We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the tidewater goby in this proposed rule. This proposed rule incorporates new information on tidewater goby genetics and distribution that was not available when we completed our 2008 final critical habitat designation (73 FR 5920; January 31, 2008). A summary of topics that are relevant to this proposed critical habitat designation is provided below. For more information on tidewater goby taxonomy, biology, and ecology, please refer to: the final listing rule published in the **Federal Register** on February 4, 1994 (59 FR 5494); the first and second rules proposing critical habitat published in the **Federal Register** on August 3, 1999 (64 FR 42250) and November 28, 2006 (71 FR 68914), respectively; and the subsequent final critical habitat designations published in the **Federal Register** on November 20, 2000 (65 FR 69693) and January 31, 2008 (73 FR 5920). Additionally, more species information can be found in the Recovery Plan for the Tidewater Goby (Recovery Plan) (Service 2005), and in the Tidewater Goby 5-year review (Service 2007).

Species Description and Genetic/Morphological Characteristics

The tidewater goby is a small, elongate, grey-brown fish rarely exceeding 2 inches (in) (5 centimeters (cm)) in length. This species possesses large pectoral fins, with the pelvic or ventral fins joined to each other beginning below the chest and belly and from below the gill cover back to just anterior of the anus. Male tidewater goby are nearly transparent with a mottled brown upper surface. Female tidewater goby develop darker colors, often black, on the body and dorsal and anal fins. Tidewater goby are short-lived species; the lifespan of most individuals appears to be about 1 year (Irwin and Soltz 1984, p. 26; Swift *et al.* 1989, p. 4; M. Hellmair, pers. comm. 2010).

Various genetic markers demonstrate that pronounced differences exist in the genetic structure of the tidewater goby, and that tidewater goby populations in some locations are genetically distinct. A study of mitochondrial DNA and cytochrome b (molecular material used in genetic studies) sequences from tidewater goby that were collected at 31 locations throughout the species' geographic range has identified six major phylogeographic units (Dawson *et al.* 2001, p. 1171). These six regional units are the basis for the recovery units in the Recovery Plan (Service 2005), and include the following areas: (1) Tillas Slough (Smith River) in Del Norte County to Lagoon Creek in Mendocino County (North Coast (NC) Unit); (2) Salmon Creek in Sonoma County to Bennett's Slough in Monterey County (Greater Bay (GB) Unit); (3) Arroyo del Oso to Morro Bay in San Luis Obispo County (Central Coast (CC) Unit); (4) San Luis Obispo Creek in San Luis Obispo County to Rincon Creek in Santa Barbara County (Conception (CO) Unit); (5) Ventura River in Ventura County to Topanga Creek in Los Angeles County (Los Angeles-Ventura (LV) Unit); and (6) San Pedro Harbor in Los Angeles County to Los Peñasquitos Lagoon in San Diego County (South Coast (SC) Unit).

A more recent study to gather genetic distribution data for the tidewater goby used a panel of novel microsatellite loci (repeating sequences of DNA) assessed in a first-order (unbound strands of DNA) survey across its range (Earl *et al.* 2010, p. 104). More specifically, Earl *et al.* (2010, p. 103) described 19 taxon-specific microsatellite loci, and assessed genetic variation across the tidewater goby's range relative to genetic subdivision. The study concluded: (1) Populations of tidewater goby in northern San Diego County form a highly divergent clade (a genetically related group) with reduced genetic variation that appears to merit status as a separate species; (2) populations along the mid-coast of California are subdivided into regional groups, which are more similar to each other than different, contrary to conclusions from previous mitochondrial sequence-based studies (Dawson *et al.* 2001, p. 1176); and (3) that tidewater goby dispersal during the Pleistocene/Holocene sea-level rise (approximately 7,000 years ago), followed by increased isolation during the Holocene, formed a star phylogeny (recent population formed from a common ancestor) with geographic separation in the northernmost populations and some local differentiation (Earl *et al.* 2010, p. 103). Genetic diversity among populations within a species may be important to long-term persistence because it represents the raw material for adapting to differing local conditions and environmental stochasticity (Frankham 2005, p. 754).

The conclusion that the North Coast populations of the tidewater goby formed as a result of a single recent episode of colonization of newly formed habitats is supported by McCraney and Kinziger (2009, p. 30). They compared genetic variation of 13 naturally and artificially fragmented populations of the tidewater goby in northern California, including eight Humboldt Bay populations and five coastal lagoon populations, and reached similar conclusions to Earl *et al.* (2010, p. 113). McCraney *et al.* (2010, p. 3325) also concluded that natural and artificial habitat fragmentation caused marked divergence among the tidewater goby in the North Coast populations. Their study showed that Humboldt Bay populations, due to isolation by man-made barriers, exhibited very high levels of genetic differentiation between populations, extremely low levels of genetic diversity within populations, and no migration among populations. They concluded that this pattern makes the Humboldt Bay populations of tidewater goby vulnerable to extirpation (McCraney and Kinziger 2009, p. 37). In contrast, the study found that while coastal lagoon populations also exhibited very high levels of genetic differentiation between populations, these populations displayed substantial

levels of genetic diversity within populations indicating occasional migration among lagoons (McCraney and Kinziger 2009, p. 32). Populations in all coastal lagoons, with the exception of Lake Earl in Del Norte County, appear to be stable and genetically healthy (McCraney and Kinziger 2009, p. iii). The Lake Earl population exhibited reduced levels of genetic diversity in comparison to similar coastal lagoon populations (McCraney and Kinziger 2009, p. 34). The reduced genetic diversity detected within Lake Earl is likely due to repeated population bottlenecks (reduced genetic diversity due to reduced population size) resulting from regular artificial breaching of the lagoon mouth (McCraney and Kinziger 2009, p. 34).

The conclusions from these studies are:

(1) The tidewater goby exhibits considerable genetic diversity across its range.

(2) The species can be divided into six phylogeographic units based upon genetic similarities and differences.

(3) The tidewater goby to the south of the gap between Los Angeles and Orange Counties is probably a distinct species from populations to the north based on its divergent genetic makeup.

(4) Natural and anthropogenic barriers have contributed to genetic differentiation among populations.

(5) Although genetic differences occur between populations north of Los Angeles County, they are not as divergent as those populations found south of Los Angeles County.

Metapopulation Dynamics

Local populations of tidewater goby are best characterized as metapopulations (Lafferty *et al.* 1999a, p. 1448). A metapopulation is defined as a population made up of a group of subpopulations interconnected through patterns of gene flow, extinction, and recolonization, and at least somewhat geographically isolated from other populations (Meffe and Carrol 1994, p. 189). Local tidewater goby populations are frequently isolated from other local populations by extensive areas of unsuitable habitat. They occupy coastal lagoons and estuaries that in most cases are separated by the open ocean. Very few tidewater goby have ever been captured in the marine environment (Swift *et al.* 1989, p. 7), which suggests that this species rarely occurs in the open ocean. Studies of the tidewater goby suggest that some populations persist on a consistent basis, while other populations appear to experience intermittent extirpations (local extinctions) (Lafferty *et al.* 1999a, p. 1452). These extirpations may result from one or a series of factors, such as the drying up of some small streams during prolonged droughts (Lafferty *et al.* 1999a, p. 1451). Some of the areas where the tidewater goby has been extirpated apparently have been recolonized by nearby (within 6 miles (mi) (10 kilometers (km))) populations (Lafferty *et al.* 1999a, p. 1451). These recolonization events suggest that tidewater goby populations exhibit a metapopulation dynamic where some populations survive or remain viable by continually exchanging individuals and recolonizations after occasional extirpations (Doak and Mills 1994, p. 619).

Lafferty *et al.* (1999b, p. 618) monitored the post-flood persistence of several tidewater goby populations in Santa Barbara and Los Angeles Counties after the heavy winter floods of 1995. All of the monitored populations persisted after the floods, and no significant changes in population sizes were noted (Lafferty *et al.* 1999b, p. 621). However, tidewater goby apparently colonized Cañada Honda in Santa Barbara County after one flood event (Lafferty *et al.* 1999b, p. 621). This suggests that flooding may sometimes have a positive effect by contributing to recolonization of habitats where a tidewater goby population has become extirpated.

The largest wetland habitats where the tidewater goby has been known to occur are not necessarily the most secure, as evidenced by the fact that the Santa Margarita River in San Diego County and the San Francisco Bay have lost their populations of tidewater goby. Today, the most stable locations with the largest tidewater goby populations consist of lagoons and estuaries of intermediate sizes (5 to 125 ac (2 to 50 ha)) that have remained relatively unaffected by human activities (Service 2005, p. 12). Many of the locations where tidewater goby are consistently present are likely to be ''source'' populations, which probably provide the colonists for locations where tidewater goby are intermittently extirpated.

Historical records and survey results for several areas occupied by tidewater goby are available (Swift *et al.* 1989, pp. 18–19; Swift *et al.* 1994, pp. 8–16). These documents suggest that the persistence of tidewater goby populations is related to habitat size, configuration, location, and proximity to human development. In general, the most stable and persistent tidewater goby populations occur in lagoons and estuaries that are more than 2.47 ac (1 ha) in size, and that have remained relatively unaffected by human activities (Lafferty *et al.* 1999a, pp. 1450–1453). We note, however, that some systems that are affected or altered by human activities also have relatively large and stable populations, for example, Humboldt Bay in Humboldt County, Pismo Creek in San Luis Obispo County, Santa Ynez River in Santa Barbara County, and the Santa Clara River in Ventura County. Also, some habitats less than 2.47 ac (1 ha) in size have tidewater goby populations that persist on a regular basis, such as Cañada del Agua Caliente in Santa Barbara County (Swift *et al.* 1997, p. 3). The best available information suggests that the lagoons and estuaries with persistent tidewater goby populations are likely the source of core populations that provide individuals that colonize adjacent smaller locations with intermittent populations (Lafferty *et al.* 1999a, p. 1452).

Distribution

The known geographic range of the tidewater goby is limited to the coast of California (Eschmeyer *et al.* 1983, p. 262; Swift *et al.* 1989, p. 12). The species historically occurred from locations 3 mi (5 km) south of the California-Oregon border (Tillas Slough in Del Norte County) to 44 mi (71 km) north of the United States-Mexico border (Agua Hedionda Lagoon in San Diego County). The available documentation (e.g., Eschmeyer *et al.* 1983, p. 262; Swift *et al.* 1989, p. 12) suggests that the northernmost extent of the current geographic range has not changed over time. Tidewater goby historically occurred in Agua Hedionda Lagoon, but do not currently. The species' southernmost known currently occupied locality is the San Luis Rey River, 5 mi (8 km) north of Agua Hedionda Lagoon. Although the northernmost and southernmost extent of the tidewater goby's range has not changed, its overall distribution has become patchy and fragmented along the coast.

The tidewater goby appears to be naturally absent from several long (50 to 135 mi (80 to 217 km)) stretches of coastline lacking lagoons or estuaries, where steep topography or swift currents may prevent the tidewater goby from dispersing between adjacent locations (Swift *et al.* 1989, p. 13; Earl *et al.* 2010, p. 104). One such gap occurs between the Eel River in Humboldt County and the Ten Mile River in Mendocino County. A second gap exists between Davis Lake in Mendocino County and Salmon Creek in Sonoma County. Another large natural gap

occurs between the Salinas River in Monterey County and Arroyo del Oso in San Luis Obispo County. Habitat loss and other anthropogenic-related factors have resulted in the tidewater goby's absence from several locations where it historically occurred; their recent disappearance from some of these locations has created additional gaps in the species' geographic distribution (Capelli 1997, p. 7). Such locations include San Francisco Bay in San Francisco and Alameda Counties, and Redwood Creek and Freshwater Lagoon in Humboldt County.

Swift *et al.* (1989, p. 13) reported that, as of 1984, tidewater goby occurred or had been known to occur at 87 locations, including those at the extreme northern and southern end of the species' historical geographic range. An assessment of the species' distribution in 1993, using records that were limited to the area between the Monterey Peninsula in Monterey County and the United States-Mexico border, found the tidewater goby occurring at four additional sites since 1984 (Swift *et al.* 1993, p. 129). Other locations have been identified since 1993, and to date the tidewater goby has been documented at 135 locations within its historical range. Of these 135 locations, 23 (17 percent) are no longer occupied by the tidewater goby. Therefore, 112 locations are currently occupied (Service 2005, p. 6).

Habitat

The lagoons, estuaries, backwater marshes, and freshwater tributaries that tidewater goby occupy are dynamic environments subject to considerable fluctuations on a seasonal and annual basis. Typically, a sandbar forms in the late spring as flow into a lagoon declines enough to allow the ocean surf to build up sand at the mouth of the lagoon. Winter rains and increased stream flows may bring in considerable sediment and dramatically affect the bottom profile and substrate composition of a lagoon or estuary. Fine mud and clay either move through the lagoon or estuary, or settle out in the backwater marshes, while heavier sand is left behind. High flows associated with winter rains can scour out the lagoon bottom to a lower level, especially after breaching the mouth sandbar, with sand building up again after flows decline. These dynamic processes result in wetland habitats that, over time, move both up or down coast, and inland or coastward.

The horizontal extent of the lentic (pond-like) wetland habitat associated with a particular tidewater goby locality varies, and is affected in part, by local precipitation patterns and topography. In coastal areas where the topography is steep and precipitation relatively low, such as areas adjacent to the Santa Ynez Mountains in Santa Barbara County, the habitats occupied by tidewater goby may be a few acres in size, only extend a few hundred feet inland from the ocean, with backwater marshes small or absent. In other coastal settings where topography is less steep and precipitation is more abundant, surface streams are larger, coastal lagoons or estuaries may be hundreds of acres in size and extend many miles inland, and may include extensive backwater marshes (Lake Earl in Del Norte County and Ten Mile River in Mendocino County). Some locations occupied by the tidewater goby, for example, Bennett's Slough in Monterey County, receive water from upstream areas on a year-round basis. Such locations tend to possess wetland habitats that are larger and can extend inland for several miles. Other occupied locations do not possess stream channels or tributaries that provide a considerable amount of water throughout the summer or fall months. Such locations, such as Little Pico Creek in San Luis Obispo County, tend to possess wetland habitats that extend only a short distance inland.

Reproduction

The tidewater goby has been observed to spawn in every month of the year except December (Swenson 1999, p. 107). Reproduction tends to peak in late April or May to July, and can continue into November depending on seasonal temperature and rainfall. Swenson (1995, p. 31) has documented the spawning activities of adult fish or the presence of egg clutches at water temperatures between 48 and 77 degrees Fahrenheit (F) (9 and 25 degrees Celsius (C)). Spawning tidewater goby have been observed in water salinities between 2 and 27 parts per thousand (ppt) (Swenson 1999, p. 31).

Threats

The final listing rule for the tidewater goby published in 1994 (59 FR 5494; February 4, 1994) and the 5-year review (Service 2007) states that this species is threatened, or potentially threatened, by: (1) Coastal development projects that result in the loss or alteration of coastal wetland habitat; (2) water diversions and alterations of water flows upstream of coastal lagoons and estuaries that negatively impact the species' breeding and foraging activities; (3) groundwater overdrafting; (4) channelization of the rivers where the species occurs; (5) discharge of agricultural and sewage effluents; (6) cattle grazing and feral pig activity that results in increased sedimentation of coastal lagoons and riparian habitats, removal of vegetative cover, increased ambient water temperatures, and elimination of plunge pools and undercut banks utilized by the tidewater goby; (7) introduced species that prey on the tidewater goby (e.g., bass (*Micropterus* spp.) and crayfish (*Cambaris* spp.)); (8) inadequacy of existing regulatory mechanisms; (9) drought conditions that result in the deterioration of coastal and riparian habitats; and (10) competition with introduced species, such as the yellowfin goby (*Acanthogobius flavimanus*) and chameleon goby (*Tridentiger trigonocephalus*).

Previous Federal Actions

On April 15, 2009, Natural Resources Defense Council (NRDC) filed a lawsuit in the U.S. District Court for the Northern District of California challenging a portion of the January 31, 2008, final rule that designated 44 critical habitat units in Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, and San Diego Counties, California (73 FR 5920, January 31, 2008). In a consent decree dated December 11, 2009, the U.S. District Court: (1) Stated that the 44 critical habitat units should remain in effect, (2) stated that the final rule designating critical habitat was remanded in its entirety for reconsideration, and (3) directed the Service to promulgate a revised critical habitat rule that considers the entire geographic range of the tidewater goby and any currently unoccupied tidewater goby habitat. The consent decree requires that the Service submit proposed and final revised rules to the **Federal Register** no later than October 7, 2011, and November 27, 2012, respectively. For additional information on previous Federal actions please refer to the 1994 listing rule (59 FR 5494; February 4, 1994), and previous critical habitat designation (73 FR 5920; January 31, 2008).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical or biological features which are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements (PCEs)) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was outside the geographical area occupied by the species at the time of listing may, however, be essential for the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we determine which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials, expert opinion, or personal knowledge.

Habitat is dynamic, and species (or habitats) may naturally shift within an area, or from one area to another, over time. Climate change will be a particular challenge for biodiversity because the addition of stressors associated with climate change to current stressors may push species beyond their ability to survive (Lovejoy and Hannah 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Lovejoy and Hannah 2005, p. 4), because species may not be able to migrate with shifting habitats. Current climate change predictions for terrestrial areas in the Northern Hemisphere generally indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying, although predictions vary for any given specific location (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 11; Cayan *et al.* 2009, p. xi). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504).

Furthermore, these predictions also point to a future of warmer oceans and melting glaciers and icecaps, all of which are expected to raise mean sea levels, leading to the inundation and displacement of many estuaries and lagoons. A rise in sea level will most dramatically affect those estuaries that have been confined by surrounding development that prohibits their boundaries from naturally shifting in response to inundation. Projections for sea-level rise by the year 2100 vary from 0.59 to 6.2 ft (0.18 to 1.9 m) (Raper and Braithwaite 2006, p. 311, IPCC 2007, p. 11; Rahmstorf 2007, p. 368; Herberger *et al.* 2009, p. 8; Vermeer and Rahmstorf 2009, p. 21530). Paleoclimatic data suggest that the rate of future melting of the Greenland and Antarctic ice sheets and related sea level rise could be faster than currently projected (Overpeck *et al.* 2006, p. 1747). Park *et al.* (1989, pp. 1–52) projected that of the salt marshes along the coast of the contiguous United

States, 30 percent would be lost with a 1.6-ft (0.5-m) sea level rise, 46 percent with a 3.3-ft (1-m) sea level rise, 52 percent with a 6.6-ft (2-m) sea level rise, and 65 percent with a 9.8-ft (3-m) sea level rise.

We cannot project directly to California the percentage of salt marsh habitat that would be lost based upon the estimates of Park *et al.* (1989, p. 1–52), who focused on the east coast and Gulf coast of the United States; however, we can anticipate that with a projected sea level rise of up to almost 6.6 ft (2 m), much of the marshlands and estuaries in the state will be lost by 2100. In addition to the inundation and displacement of estuaries/lagoons, there would be shifts in the quality of the habitats in affected coastal regions. Prior to being inundated, coastal watersheds would become saline due to saltwater intrusion into the surface and groundwater. However, predictions of climatic conditions for smaller sub-regions, such as California, remain less certain. The full effects of these changes on aquatic organisms, such as the tidewater goby, are not well known. Thus, the information currently available on the effects of global climate change is not sufficiently precise to determine what additional areas, if any, may be appropriate to include in the revised critical habitat for this species to address the effects of climate change.

Additionally, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species. Areas that are important to the conservation of the tidewater goby, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may result in take of the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features required for tidewater goby from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the final listing rule published in the **Federal Register** on February 4, 1994 (59 FR 5494), the Tidewater Goby 5-Year Review (Service 2007), and the Recovery Plan (Service 2005). Based on our current knowledge of the life history, biology, ecology, and the habitat requirements of the species, we have determined that the tidewater goby requires the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

Saline Aquatic Habitat

The tidewater goby occurs in lagoons, estuaries, and backwater marshes that are adjacent to the Pacific Ocean (Wang 1982, p. 14; Irwin and Soltz 1984, p. 27; Swift *et al.* 1989, p. 1; Swenson 1993, p. 3; Moyle 2002, p. 431). The tidewater goby is most commonly found in waters with relatively low salinities (less than 10 to 12 parts per thousand (ppt)) (Swift *et al.* 1989, p. 7). This species can, however, tolerate a wide range of salinities, and is frequently found in coastal habitats with higher salinity levels (Swift *et al.* 1989, p. 7; Worcester 1992, p. 106; Swift *et al.* 1997, pp. 15–22); it has been collected in salinities as high as 42 ppt by Swift *et al.* (1989, p. 7) and at 63 ppt in McDaniel Slough, Arcata Bay, Humboldt County (G. Goldsmith pers. comm. 2011). The species' tolerance of high salinities likely enables it to withstand some exposure to the marine environment, allowing it to recolonize nearby lagoons and estuaries following flood events. However, tidewater goby have only rarely been captured in the marine environment (Swift *et al.* 1989, p. 7), and they appear to enter the ocean only when flushed out of lagoons, estuaries, and river mouths by storm events or human-caused breaches of sand bars.

Freshwater Habitat

The tidewater goby also occurs in freshwater streams up-gradient and tributary to brackish habitats; the salinity of these freshwater streams is typically less than 0.5 ppt. The available documentation demonstrates that, in some areas, tidewater goby can occur 1.6 to 7.3 mi (2.6 to 11.7 km) upstream from the ocean environment (Irwin and Soltz 1984, p. 27; Swift *et al.* 1997, p. 20; Chamberlain and Goldsmith 2006, p. 1). Within a 2-hour period, hundreds of tidewater goby have been observed to move upstream of a fixed location into areas in the Santa Ynez River 3.2 mi (5.1 km) from the ocean in Santa Barbara County (Swift *et al.* 1997, p. 20). The fact that this many individuals were observed to move through an area suggests that freshwater tributaries in some riverine systems provide important habitat for individual and population growth.

We have reviewed a variety of documents to determine how far tidewater goby have been detected upstream from the ocean. Chamberlain and Goldsmith (2006, p. 1) found tidewater goby 1.6 to 2.0 mi (2.6 to 3.3 km) upstream from the ocean in the Ten Mile River in Mendocino County, Swift *et al.* (1997, p. 18) found tidewater goby 4.6 mi (7.3 km) upstream from the ocean in the San Antonio River in Santa Barbara County, Swift *et al.* (1997, p. 20) found tidewater goby at various distances from 3.9 to 7.3 mi (6.2 to 11.7 km) upstream from the ocean in the Santa Ynez River in Santa Barbara County, and Holland (1992, p. 9) found tidewater goby 3 mi (5 km) upstream from the ocean in the Santa Margarita River in San Diego County. Collectively, these data suggest the average distance tidewater goby have been detected

upstream from the ocean in medium to large rivers is approximately 3.8 mi (6.1 km). Other than a high stream gradient, the reasons for the variation in upstream movement between one locality and another have not been determined; salinity could be an important factor. Upstream salinity levels may vary with time of year, tidal cycles, storm events, and topography. However, Swift *et al.* (1997, p. 26) indicate that stream gradient and lack of barriers (e.g., beaver dams, sills) are more important factors than salinity to upstream dispersal.

Sandbars

Many of the locations occupied by the tidewater goby closely correspond to stream drainages. Under natural conditions these stream drainages and the marine environment collectively act to produce sandbars that form a barrier between the ocean and the lagoon, estuary, backwater marsh, and freshwater stream system (Habel and Armstrong 1977, p. 39). These sandbars tend to be present during the late spring, summer, and fall seasons. The presence of a sandbar can create a lower salinity level (5 to 10 ppt) in the area inshore from the sandbar (Carpelan 1967, p. 324) than would otherwise exist if there were no sandbar. The tidewater goby is more commonly associated with these lower salinity levels than with the salinity levels that occur in the ocean or an estuary without a sandbar (about 35 ppt). The formation of a sandbar also creates more habitat for aquatic organisms because water becomes ponded behind the sandbar. Artificial breaching of a sandbar tends to result in a rapid decrease in water levels, and increases the likelihood that adult tidewater goby, their nests, and their fry could become stranded and die, or become concentrated and subject to greater levels of predation pressure by birds or other predators.

In Humboldt Bay and the Eel River estuary in Humboldt County, a large amount of salt and brackish marsh habitat was eliminated through the construction of levees and drainage channels. As a result, several of the locations occupied by tidewater goby do not contain natural sandbars between the ocean and habitat where the species is present. Instead, manmade water control structures such as tidegates and culverts, exist between tidal waters and the locations where tidewater goby occur. These tidegates have been in place for decades, and in some cases they provide habitat conditions similar to those created by the presence of a seasonal sandbar. In fact, most of the occupied tidewater goby habitat in the Humboldt Bay-Eel River estuaries are above tidegates.

Therefore, lagoons and estuaries with relatively low salinities for suitable breeding conditions, upstream freshwater habitat for refuge, and sandbars, which creates larger areas of suitable habitat with lower salinities, are essential to the conservation of the species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Diet

The tidewater goby feeds mainly on macroinvertebrates such as mysid shrimp, gammarid amphipods, ostracods, and aquatic insects such as chironomid midge larvae (Irwin and Soltz 1984, pp. 21–23; Swift *et al.* 1989, p. 6; Swenson 1995, p. 87). The diets of adult and juvenile tidewater goby tend to include the same relative abundance of different invertebrate species (Swenson and McCray 1996, p. 962).

Water Depth, Velocity, and Temperature

The tidewater goby is most commonly collected in water less than 6 feet (ft) (2 meters (m)) deep (Wang 1982, pp. 4–5; Worchester 1992, p. 53). However, tidewater goby were recently collected in Big Lagoon in Humboldt County during the breeding season at a water depth of 15 ft (4.6 m) (Goldsmith 2006a, p. 1). Whether use of these deeper waters is confined to this locality or is more widespread will require additional sampling at various depths and locations. The tidewater goby tends to avoid currents and concentrate in slack-water areas; this suggests they are less likely to occur in areas with a steep gradient or microhabitats with a substantial current. At Pescadero Creek in San Mateo County, tidewater goby were absent from portions of the flowing creek that had a surface velocity of 0.15 m per second (0.49 ft per second), and were instead more densely concentrated in nearby eddies with lower water velocities (Swenson 1993, p. 3).

Backwater marshes, including lateral sloughs, are likely to be important to the tidewater goby for multiple reasons. Flood waters with increased water velocities can have a negative effect on the tidewater goby (Irwin and Soltz 1984, p. 27), and backwater marshes may provide important refuges that reduce the likelihood that tidewater goby will be flushed out of the lagoons or estuaries and into the marine environment during heavy winter floods (Lafferty *et al.* 1999a, p. 619). Evidence that increased flows can eliminate tidewater goby from a locality is suggested by the extirpation of tidewater goby from Waddell Creek in Santa Cruz County following a flood event in the winter of 1972–73 (Nelson as cited in Swift 1990, p. 2); this creek had been channelized and no longer afforded protection from high flows during flood events. Likewise, the channelization and elimination of habitat lateral to the main stream channel upstream of San Onofre Lagoon in San Diego County probably led to the flushing and extirpation of tidewater goby from this locality during a storm in 1993 (Swift *et al.* 1994, pp. 22–23). The importance of backwater marshes is also highlighted by the fact that tidewater goby in these habitats can achieve a greater size than in adjacent lagoons and creeks (Swenson 1993, pp. 6–7).

Therefore, lagoons and estuaries with a variety of aquatic macroinvertebrates providing food for tidewater goby as well as backwater marshes, including lateral sloughs, which are used as refuge during storm events and sandbar breaches, are essential to the conservation of the species.

Cover or Shelter

A variety of native and nonnative fish species and fish-eating bird species, such as egrets (*Egretta* spp.) and herons (e.g., great blue herons (*Ardea herodias*)), prey on tidewater goby. A species' ability to persist when it is subject to predation pressure frequently depends on the presence of escape cover or shelter, heterogeneous features that provide a greater level of structure to make it more likely to avoid predation (Crowder and Cooper 1982, p. 1802; Gilinsky 1984, p. 455). At locations where the tidewater goby occurs, submerged and emergent aquatic vegetation can create habitat heterogeneity and structure to provide a greater degree of cover from predators than would exist without it. Stable lagoons often possess dense aquatic vegetation, including sago pondweed (*Potamogeton pectinatus*) or widgeon grass (e.g., *Ruppia maritima* and *R. cirrhosa*). At some locations, juvenile tidewater goby are more prevalent in areas with at least some submergent vegetation compared to areas with little or no vegetation (Wang 1984, p. 16; Swenson 1994, p. 6; Trihey & Associates, Inc. 1996, p. 11). The presence of submerged or emergent vegetation appears to reduce the likelihood that tidewater goby will be preyed upon. Aquatic vegetation also may provide some degree of shelter or refuge during flash flood events (Lafferty *et al.* 1999b, p. 621) by lowering water velocity compared to unvegetated areas. Such refuges would

be especially important to fish species, such as tidewater goby, that are not strong swimmers. Therefore, lagoons and estuaries with submerged and emerged vegetation, which provide protection from predators and provide refuge during flood events, are essential to the conservation of the species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The eggs of the tidewater goby are laid in burrows excavated by male fish. Burrows most commonly occur in areas with relatively unconsolidated, clean, coarse sand (Swift *et al.* 1989, p. 8), and in silt or mud (Wang 1982, p. 6). Swenson (1995, p. 148) demonstrated that tidewater goby prefer a sandy substrate in the laboratory. Male tidewater goby remain in the burrow to guard the eggs attached to the burrow ceiling and walls, and care for the embryos for approximately 9 to 11 days until they hatch. They rarely, if ever, emerge from the burrow to feed (Swift *et al.* 1989, p. 4). The tidewater goby larvae occupy the water column after the eggs hatch (Wang 1982, p. 15), then move to the bottom substrate as they mature. Worcester (1992, pp. 77–79) found that larval tidewater goby in Pico Creek Lagoon in San Luis Obispo County tended to use the deeper portion of the lagoon at a depth of 29 in (73 cm), which is considerably deeper than the depth level of 17 in (42 cm) where they were not detected. Therefore, lagoons and estuaries with relatively unconsolidated, clean, coarse sand, and silt or mud, which provide for breeding, are essential to the conservation of the species.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

The majority of lagoons, estuaries, and coastal streams that currently support the tidewater goby have experienced some level of disturbance. These range in size from approximately 31.5 square feet (3 m^2) of surface area to about 2,000 acres (ac) (800 hectares (ha)). Most lagoons and estuaries that support tidewater goby range from about 1.25 to 12.5 ac (0.5 to 5 ha). Surveys of tidewater goby locations and historic records indicate that size, configuration, location, and access by humans are all factors in the persistence of populations of this species (Swift *et al.* 1989, p. 15; Swift *et al.* 1994, pp. 26–27). Lagoons and estuaries smaller than about 5 ac (2 ha) generally exhibit patterns of extirpation or population reduction and subsequent recolonization to very low levels. Many of the records for smaller locations, less than about 1 ac (0.4 ha), include one or a few large individuals with no evidence of reproduction. These small locations are also often within a mile or so of another locality from which recolonization could occur following catastrophic events, such as drought or artificial breaching of the lagoon.

The largest locations are not necessarily the most secure, such as the San Francisco Bay or the Santa Margarita River, which have lost their populations of tidewater goby. However, an exception is Lake Tolowa, Del Norte County, which is several thousand acres in size and has had a continuous presence of tidewater goby. The most stable or largest populations today are in locations of intermediate sizes, which range from 5 to 125 ac (2 to 50 ha). In many cases, the tidewater goby populations in these intermediate sized locations likely serve as source populations for the smaller ephemeral sites (Lafferty *et al.* 1999b, p. 1452). Therefore, lagoons and estuaries that range in size from small to large are important for maintaining the metapopulation dynamics and are essential to the conservation of the species.

Primary Constituent Elements for Tidewater Goby

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of tidewater goby in areas within the geographical area occupied by the species at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of the physical or biological features that provide for a species' life-history processes and, under the appropriate circumstances, are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent element (and its components) specific to tidewater goby are:

(1) Persistent, shallow (in the range of approximately 0.3 to 6.6 ft (0.1 to 2 m)), still-to-slow-moving, lagoons, estuaries, and coastal streams ranging in salinity from 0.5 ppt to about 12 ppt, which provides adequate space for normal behavior and individual and population growth that contain:

(a) Substrates (e.g., sand, silt, mud) suitable for the construction of burrows for reproduction;

(b) Submerged and emergent aquatic vegetation, such as *Potamogeton pectinatus, Ruppia maritima, Typha latifolia,* and *Scirpus* spp., that provides protection from predators and high flow events; or

(c) Presence of a sandbar(s) across the mouth of a lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, thereby providing relatively stable water levels and salinity.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. Special management considerations or protection may be necessary to eliminate or reduce the magnitude of threats that affect the tidewater goby. Threats identified in the final listing rule for the tidewater goby include: (1) Coastal development projects that result in the loss or alteration of coastal wetland habitat; (2) water diversions and alterations of water flows upstream of coastal lagoons and estuaries that negatively impact the species' breeding and foraging habitat and activities; (3) groundwater overdrafting that results in reduction of flows and negatively impacts the species' breeding and foraging habitat and activities; (4) channelization of habitats where the species occurs that removes or reduces quality of habitat; (5) discharge of agricultural and sewage effluents; (6) cattle grazing and feral pig activity that result in increased sedimentation of coastal lagoons and riparian habitats, remove vegetative cover, increase ambient water temperatures, and eliminate plunge pools and collapsed undercut banks utilized by the tidewater goby; (7) introduced species that prey on the tidewater goby (e.g., bass, crayfish); (8) the inadequacy of existing regulatory mechanisms; (9) drought conditions that result in the deterioration of coastal and riparian habitats; and (10) competition with introduced species, such as the yellowfin goby and chameleon goby.

For the purposes of this proposed rule, we have combined the ''water diversions and alterations of water flows upstream of coastal lagoons and estuaries that negatively impact the species' breeding and foraging activities'' threats category with ''drought conditions'' and ''groundwater overdrafting,'' along with the addition of

artificial breaching of sandbars, into one threat category, *i.e.,* ''water diversions, alterations of water flows, artificial sandbar breaching, and groundwater overdrafting that negatively impact the species' breeding and foraging activities.'' Similarly, we have combined the two threat categories of ''introduced species that prey on the tidewater goby (e.g., bass, crayfish)'' and ''competition with introduced species such as the yellowfin goby and chameleon goby'' into one category, *i.e.,* ''introduced species that prey on, or compete with, the tidewater goby (e.g., yellowfin goby, bass, and crayfish).'' Where special management may be necessary, regulatory mechanisms may need to be added or amended by local, State, or Federal governmental entities if sufficient management is not achievable through voluntary mechanisms.

The tidewater goby exhibits a pattern of occupancy and extirpation throughout its range. The species requires refugia under drought conditions and places to recolonize under wetter conditions; otherwise, the tidewater goby would be relegated to existing only within those few lagoons and estuaries large enough to support it during periods of drought. If the suitable localities that are occupied during periods of normal precipitation cease to function as tidewater goby habitat due to modification or destruction while the localities are unoccupied, the metapopulation dynamics may be disrupted and the species may not be able to respond by recolonizing unoccupied localities under favorable conditions. A more detailed discussion of threats to the tidewater goby can be found in the final listing rule (59 FR 5494, March 7, 1994), and the final Recovery Plan (Service 2005, pp. 16–19).

We find that the components of the PCE present within all the areas we are proposing to designate as critical habitat may require special management considerations or protection due to threats to the tidewater goby or its habitat. Using current information provided in the Recovery Plan (Service 2005, Appendix E) and other information in our files, we have identified the components of the PCE that may require special management considerations or protection from known threats within each of the critical habitat units (see Critical Habitat Designation and Table 3 below for a unit-by-unit description). Some of the special management actions that may be needed for essential features of tidewater goby habitat are briefly summarized below.

(1) Implement measures to avoid, minimize or mitigate direct and indirect loss and adverse modification of tidewater goby habitat due to dredging, draining, and filling of lagoons and estuaries. Additional management actions should be taken to restore historic locations and potential habitats as opportunities become available to eliminate, minimize, or mitigate the effects of existing structures and past activities that have destroyed or degraded tidewater goby habitat.

(2) Measures should be developed and implemented to minimize the adverse effects due to channelization that can eliminate crucial backwater habitats or other flood refuges.

(3) Implement measures, such as best management practices, for managing excessive sedimentation in tidewater goby habitat within current or enhanced parameters. Measures should prevent further increase in sedimentation in tidewater goby habitat due to cattle grazing, development, channel modification, recreational activity, and agricultural practices.

(4) Implement measures to prevent further decrease in freshwater inflow, water depth, and surface area within tidewater goby habitat due to dams, water diversions and groundwater pumping.

(5) Implement measures to avoid anthropogenic breaching of lagoons, for example, use of pumping and other water control structures to regulate water levels, to provide conditions during the summer and fall, when reproduction is at its highest and freshwater inflow is at its lowest.

(6) Implement measures to prevent further degradation of water quality resulting from agricultural runoff and effluent, municipal run-off, golf course runoff, sewage treatment effluent, cattle grazing, development, oil spills, oil field runoff, toxic waste, and gray water dumping. Also, measures should be implemented to prevent further degradation of the water quality due to dikes, tidal gates, and other impedances to the natural freshwater/saltwater interface that alter the salinity regime in some of the tidewater goby habitats.

(7) Implement measures that prevent further increases in the abundance and distribution of nonnative species.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing in 1994. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing that were historically occupied, but are presently unoccupied, because such areas are essential for the conservation of the species.

In proposing revised critical habitat for the tidewater goby, we made extensive use of the information in the Recovery Plan (Service 2005), and incorporated the recovery goals and strategy identified in the Recovery Plan in the development of our proposed revised designation. We also reviewed other relevant information, including peer-reviewed journal articles, unpublished reports and materials (e.g., survey results and expert opinions), the final listing rule (59 FR 5494; February 4, 1994), the 2000 final critical habitat rule (65 FR 69693; November 20, 2000), the 2006 proposed revised critical habitat rule (71 FR 68914; November 28, 2006), the 2008 final revised critical habitat rule (73 FR 5920; January 31, 2008), the 5-year review for the tidewater goby (Service 2007), and regional databases and GIS coverages, for example, California Natural Diversity Database, and National Wetlands Inventory maps. We analyzed this information to determine historical occupancy, occupancy at the time of listing, and current occupancy, and to develop criteria for identifying: (1) Specific areas within the geographical area occupied at the time of listing that contain the physical or biological features essential to the conservation of the tidewater goby and which may require special management considerations or protection, and (2) criteria for specific areas outside the geographical area occupied at the time of listing that are essential for the conservation of the tidewater goby.

The Recovery Plan focuses on preserving the diversity of tidewater goby habitats throughout the range of the species, preserving the natural processes of recolonization and population exchange (metapopulation dynamics) that enable recovery following catastrophic events, and preserving genetic diversity (Service 2005, p. 28). The conservation of the environmental, morphological, and genetic diversity across the range of the

species is an important consideration in determining specific areas on which are found the physical or biological features essential to the conservation of the species and other specific areas that are essential for the conservation of the tidewater goby. For example, a population's ability to successfully adapt to changing environmental conditions is a function of the population size, and genetic variation of the individuals at a given location (Reed and Frankham 2003, p. 233).

Local adaptations to different environmental conditions and morphological differences are likely linked to genetic variations among populations. These features may in turn be best protected by: (1) Identifying areas that represent the range of environmental, genetic, and morphological diversity; and (2) maximizing within these areas the protection of contiguous environmental gradients across which selection and migration can interact to maintain population viability and (adaptive) genetic diversity (Moritz 2002, p. 238). The Recovery Plan subdivides the geographical distribution of the tidewater goby into 6 recovery units, encompassing a total of 26 subunits defined according to genetic differentiation and geomorphology. We considered the conservation of the tidewater goby in each of the recovery units and subunits, as well as the species as a whole, in our analysis.

Based on the Recovery Plan, we developed the following conservation framework and criteria to identify the specific circumstances under which the presence of the components of the PCE within the geographical area occupied by the species at the time of listing provides the physical or biological features essential to the conservation of the tidewater goby, and thus delineates the specific areas that meet the definition of critical habitat:

(1) Areas that allow for the conservation of viable metapopulations (as defined in the Background section above) under varying environmental conditions, for example, drought. These areas include those that presumably support source populations (populations where local reproductive success is greater than local mortality (Meffe and Carroll 1994, p. 187)). For the purposes of this designation, we identified areas supporting source populations as those that are currently occupied and have been consistently occupied for three or more consecutive years based on survey data and published reports. We believe these source populations are more likely to be capable of maintaining populations over many years, and are therefore capable of providing individuals to recruit into surrounding subpopulations. We have also included other populations within each metapopulation in addition to source populations in the event that the source population is extirpated due to a catastrophic event such as a major flood or drought.

(2) Areas that provide connectivity between metapopulations. These areas are likely to act as ''stepping stones'' between more isolated populations, and thereby contribute to metapopulation persistence and genetic exchange. For the purposes of this designation, we identified locations that provide connectivity as those within 6 mi (10 km) of another occupied location.

We have determined that the specific areas within the geographical area occupied at the time of listing are not sufficient to meet the recovery goals for the species because:

(1) The Recovery Plan states that, to minimize the chance of local extirpations resulting in extinction of a broader metapopulation (see Background section) and resultant loss of its unique genetic traits, introduction and reintroduction of the tidewater goby into suitable habitat is necessary to recover the species (Service 2005, p. 29);

(2) There has been considerable loss and degradation of habitat throughout the species' range since the time of listing;

(3) We anticipate a further loss of habitat in the future due to sea-level rise resulting from climate change; and

(4) The species needs habitat areas that are arranged spatially in a way that will maintain connectivity and allow dispersal within and between units.

One example of the need to propose additional sites that are outside the geographical area occupied at the time of listing is where distances between areas occupied at the time of listing may make it difficult for tidewater goby to disperse from one area to the next. Another example is to help prevent the extirpation of a metapopulation in which only one or two occupied sites remain. These areas that are outside the geographical area occupied at the time of listing include locations that are currently occupied and, in a few cases, ones that were historically occupied. In some unoccupied areas proposed for introduction or reintroduction, habitat would require some restoration, for example, facilitation of a natural breaching regime, exotic predator management, or freshwater inflow enhancement. For areas outside the geographical area occupied at the time of listing, those meeting the criteria below are proposed for designation in this revised rule because they are essential for the conservation of the species:

(1) Areas of aquatic habitat in coastal lagoons and estuaries with still-to-slow moving water that allow for the conservation of viable metapopulations (as defined in the Background section above) under varying environmental conditions, for example, drought. Areas that are currently occupied may include those that presumably support source populations (e.g., Malibu Lagoon).

(2) Areas that provide connectivity between source populations or may provide connectivity in the future. These areas are likely to act as ''stepping stones'' between more isolated populations, and thereby contribute to metapopulation persistence and genetic exchange. For the purposes of this designation, we identified locations that provide connectivity as those within 6 mi (10 km) of another occupied location.

(3) Additional areas that may be more isolated but may represent unique adaptations to local features (habitat variability, hydrology, microclimate).

We did not propose to designate any unoccupied areas that are highly degraded or fragmented and not likely restorable. Such areas provide little or no long-term conservation value, and are not essential for the conservation of the species.

By applying these criteria to the 26 recovery subunits described in the Recovery Plan, we have identified 45 critical habitat units within the geographical area occupied by the species at the time of listing that we have determined contain the physical or biological features essential to the conservation of the tidewater goby, and 20 critical habitat units outside the geographical area occupied by the species at the time of listing that we have determined are essential for the conservation of the species. Please see Table 2, below, for the occupancy status of each of the 65 proposed critical habitat units.

Mapping

After determining the lagoons and estuaries necessary for the conservation of the tidewater goby by applying criteria outlined above, the boundaries of each critical habitat unit were mapped. Unit boundaries were based on several factors, including species occurrence data that demonstrated where tidewater goby have been observed, the presence of barriers and stream gradients that limit tidewater goby movements, and the presence and extent of the essential physical or biological features.

The geographic extent of each critical habitat unit was delineated, in part, using existing digital data. To determine the lateral boundaries of each critical habitat unit, we most frequently relied on the Pacific Institute global climate change model and National Wetland Inventory (NWI) maps that were prepared by the Service in 2006. The NWI maps are based on the Cowardin classification system (Cowardin *et al.* 1979, pp. 1–103). The Service has adopted this classification system as its official standard to describe wetland and deepwater habitats. Specifically, the following wetland types based on Cowardin (1979, p. 5) were used to delineate unit boundaries: Lake, Estuarine and Marine Deepwater, Estuarine and Marine Wetland, Freshwater Pond, Freshwater Emergent Wetland, Freshwater Forested/Shrub Wetland, and Riverine. These wetland types have, or are likely to have, components of the PCEs at various times throughout the year depending on the season and environmental factors, such as storm or drought events. In some cases, we used existing anthropogenic structures, such as concrete or riprap channel linings that occur within wetland habitat types, to delineate the lateral boundaries of units. To a lesser extent, we also used aerial imagery from the National Agricultural Imagery Program (NAIP) to delineate the lateral boundaries of a critical habitat unit where insufficient NWI data were available.

The precise location of tidewater goby habitat at a particular locality may vary on a daily, seasonal, and annual basis; the habitats occupied by tidewater goby exist in a dynamic environment that varies over time. For example, the size and lateral extent of a coastal lagoon or estuary varies with daily tide cycles. Flood events may also change the precise location where surface water exists within a given lagoon, estuary, backwater marsh, or freshwater tributary. Therefore, it is appropriate to delineate each critical habitat unit to encompass the entire area that may be occupied by tidewater goby on a daily, seasonal, and annual basis. This was accomplished by using the boundaries delineated on the NWI maps to determine the lateral extent of each unit.

The delineation of the farthest upstream extent of a particular critical habitat unit was determined using one of four features that include: (1) The average distance that tidewater goby are known to move upstream from the ocean (3.8 mi (6.1 km)), (2) the presence of barriers, such as culverts that may prevent tidewater goby from moving upstream, (3) the presence of a vertical drop, for example more than 4 to 8 in (10 to 20 cm) high, or steep gradient that precludes tidewater goby from swimming upstream or can act as a barrier that makes it less likely tidewater goby will be able to swim upstream (Swift *et al.* 1997, p. 20)), or (4) limited surface water in the tributary up-gradient from the lagoon or estuary. Each of the above features describes a barrier to upstream movement; therefore, the upstream extent of a particular unit was determined by whichever barrier was identified first through the mapping process regardless of whether or not components of the PCE were still present above it.

When determining revisions to critical habitat boundaries for this proposed rule, we made every effort to avoid developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack the physical or biological features for the tidewater goby. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this revised critical habitat are excluded by text in this proposed rule. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification, unless the specific action may affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are within the geographical area occupied by the species at the time of listing and contain those physical or biological features necessary to support life-history processes essential to the conservation of the species, and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of tidewater goby.

Units within the geographical area occupied at the time of listing are proposed for designation based on one or more components of the PCE being present to support tidewater goby life-history processes. Some units contain all of the identified elements of physical or biological features and support multiple life-history processes. Some units contain only some elements necessary to support the tidewater goby, but nevertheless provide the physical or biological features essential to the conservation of the species.

Summary of Changes From Previously Designated Critical Habitat

On January 31, 2008, we designated 44 coastal stream segments in Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, and Los Angeles Counties, California, totaling approximately 10,003 ac (4,053 ha) (73 FR 5920). We are proposing to revise this designation to a total of approximately 12,157 ac (4,920 ha) consisting of 65 critical habitat units. This is an increase of approximately 2,154 ac (867 ha) from the currently designated critical habitat. As a result of the additional units, some of the unit names have changed. In this section we present the differences between what was designated in 2008 and what is included in this proposed designation.

(1) Our analysis of new and updated information received since the 2008 critical habitat designation (73 FR 5920) resulted in the identification of areas meeting the definition of critical habitat that differ from the areas identified in 2008. We added and revised areas that meet the definition of critical habitat. Based on our current knowledge of the status and distribution of the species and life history requirements, we believe that including in this proposed rule some areas that were not previously identified as meeting the definition of critical habitat better supports the overall survival and conservation objectives for the species.

(2) We added information related to the genetics of the species rangewide and new distribution data that have become available to us following our 2008 designation (see Background section above).

As a result of the above, we are proposing to designate 12,157 ac (4,920 ha) as critical habitat in this revised rule (Table 1). The lands proposed for designation as critical habitat include areas in Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, and San Diego Counties, California.

TABLE 1—A COMPARISON OF THE AREAS (IN ACRES AND HECTARES) IDENTIFIED AS MEETING THE DEFINITION OF CRITICAL HABITAT FOR TIDEWATER GOBY IN THE 2008 FINAL CRITICAL HABITAT DESIGNATION AND THIS 2011 PROPOSED REVISED CRITICAL HABITAT DESIGNATION

Unit	Name	2008		2011	
		Acres	Hectares	Acres	Hectares
Del Norte County					
DN–1	Tillas Slough (Smith River)	0	0	21	8
DN–2	Lake Earl/Lake Tolowa	2,682	1,085	2,683	1,086
Totals		2,682	1,085	2,704	1,094
Humboldt County					
HUM–1	Stone Lagoon	586	237	653	264
HUM–2	Big Lagoon	1,505	609	1,529	619
HUM–3	Humboldt Bay	1,478	598	839	339
HUM–4	Eel River	268	109	39	15
Totals		3,837	1,553	3,060	1,237
Mendocino County					
MEN–1	Ten Mile River	218	88	73	30
MEN–2	Virgin Creek	11	4	4	2
MEN–3	Pudding Creek	23	9	17	7
MEN–4	Davis Lake and Manchester State Park Ponds	24	10	29	12
Totals		276	112	123	51
Sonoma County					
SON–1	Salmon Creek	100	41	108	44
Totals		100	41	108	44
Marin County					
MAR–1	Estero Americano	295	120	465	188
MAR–2	Estero de San Antonio	178	72	285	115
MAR–3	Walker Creek	0	0	118	48
MAR–4	Lagunitas (Papermill) Creek	849	344	998	405
MAR–5	Bolinas Lagoon	0	0	1,114	451
MAR–6	Rodeo Lagoon	40	16	40	16
Totals		1,362	551	3,020	1,223
San Mateo County					
SM–1	San Gregorio Creek	39	16	45	18
SM–2	Pomponio Creek	0	0	7	3
SM–3	Pescadero-Butano Creek	218	88	245	99
SM–4	Bean Hollow Creek (Arroyo de Los Frijoles)	10	4	10	4
Totals		267	108	307	124
Santa Cruz County					
SC–1	Waddell Creek	0	0	75	30
SC–2	Scott Creek	0	0	74	30
SC–3	Laguna Creek	26	11	26	11
SC–4	Baldwin Creek	17	7	27	11
SC–5	Moore Creek	0	0	15	6
SC–6	Corcoran Lagoon	32	12	28	11
SC–7	Aptos Creek	3	1	9	4
SC–8	Pajaro River	176	71	215	87
Totals		254	103	469	190
Monterey County					
MN–1	Bennett Slough	155	63	167	68
MN–2	Salinas River	0	0	466	189

TABLE 1—A COMPARISON OF THE AREAS (IN ACRES AND HECTARES) IDENTIFIED AS MEETING THE DEFINITION OF CRITICAL HABITAT FOR TIDEWATER GOBY IN THE 2008 FINAL CRITICAL HABITAT DESIGNATION AND THIS 2011 PROPOSED REVISED CRITICAL HABITAT DESIGNATION—Continued

Unit	Name	2008		2011	
		Acres	Hectares	Acres	Hectares
Totals		155	63	633	257
San Luis Obispo County					
SLO–1	Arroyo de la Cruz	0	0	33	13
SLO–2	Arroyo del Corral	5	2	5	3
SLO–3	Oak Knoll Creek (Arroyo Laguna)	3	1	5	3
SLO–4	Little Pico Creek	2	1	9	4
SLO–5	San Simeon Creek	16	7	17	7
SLO–6	Villa Creek	5	2	15	7
SLO–7	San Geronimo Creek	1	1	1	1
SLO–8	Toro Creek	0	0	9	4
SLO–9	Los Osos Creek	0	0	73	30
SLO–10	San Luis Obispo Creek	0	0	31	12
SLO–11	Pismo Creek	18	8	20	9
SLO–12	Oso Flaco Lake	0	0	171	69
Totals		50	20	389	162
Santa Barbara County					
SB–1	Santa Maria River	468	189	474	192
SB–2	Cañada de las Agujas	1	1	1	1
SB–3	Cañada de Santa Anita	3	1	3	1
SB–4	Cañada de Alegria	1	1	2	1
SB–5	Cañada del Agua Caliente	1	1	1	1
SB–6	Gaviota Creek	9	4	11	5
SB–7	Arroyo Hondo	0	0	1	1
SB–8	Winchester/Bell Canyon	6	3	6	3
SB–9	Goleta Slough	0	0	190	76
SB–10	Arroyo Burro	2	1	3	1
SB–11	Mission Creek-Laguna Channel	14	6	7	3
SB–12	Arroyo Paredon	0	0	4	3
Totals		505	204	703	288
Ventura County					
VEN–1	Ventura River	51	20	50	21
VEN–2	Santa Clara River	350	142	322	130
VEN–3	J Street Drain-Ormond Lagoon	45	18	121	49
VEN–4	Big Sycamore Canyon	0	0	1	1
Totals		446	180	495	201
Los Angeles County					
LA–1	Arroyo Sequit	0	0	1	1
LA–2	Zuma Canyon	0	0	5	2
LA–3	Malibu Lagoon	64	27	64	27
LA–4	Topanga Creek	5	2	6	2
Totals		69	29	76	32
Orange County					
OR–1	Aliso Creek	0	0	14	5
Totals		0	0	14	5
San Diego					
SAN–1	San Luis Rey River	0	0	56	23
Totals		0	0	56	23
Grand Totals		10,003	4,053	12,157	4,920

Note: Area sizes may not sum due to rounding.

Proposed Revised Critical Habitat Designation

We are proposing 65 units as critical habitat for the tidewater goby. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the tidewater goby. The 65 areas we propose as revised critical habitat are listed in Table 2, which shows the occupancy status of the units.

TABLE 2—OCCUPANCY OF TIDEWATER GOBY BY PROPOSED REVISED CRITICAL HABITAT UNITS

Unit	Name	Within the geographical area occupied at time of listing?	Currently occupied?
DN–1	Tillas Slough (Smith River)	Yes	Yes.
DN–2	Lake Earl/Lake Tolowa	Yes	Yes.
HUM–1	Stone Lagoon	Yes	Yes.
HUM–2	Big Lagoon	Yes	Yes.
HUM–3	Humboldt Bay	Yes	Yes.
HUM–4	Eel River	No	Yes.
MEN–1	Ten Mile River	Yes	Yes.
MEN–2	Virgin Creek	Yes	Yes.
MEN–3	Pudding Creek	Yes	Yes.
MEN–4	Davis Lake and Manchester State Park Ponds	Yes.	Yes.
SON–1	Salmon Creek	Yes.	Yes.
MAR–1	Estero Americano	Yes	Yes.
MAR–2	Estero de San Antonio	Yes	Yes.
MAR–3	Walker Creek	No	No.
MAR–4	Lagunitas (Papermill) Creek	No	Yes.
MAR–5	Bolinas Lagoon	No	No.
MAR–6	Rodeo Lagoon	Yes	Yes.
SM–1	San Gregorio Creek	Yes	Yes.
SM–2	Pomponio Creek	No	No.
SM–3	Pescadero-Butano Creek	Yes	Yes.
SM–4	Bean Hollow Creek (Arroyo de Los Frijoles)	Yes	Yes.
SC–1	Waddell Creek	Yes	No.
SC–2	Scott Creek	No	Yes.
SC–3	Laguna Creek	Yes	Yes.
SC–4	Baldwin Creek	Yes	Yes.
SC–5	Moore Creek	Yes	Yes.
SC–6	Corcoran Lagoon	Yes	Yes.
SC–7	Aptos Creek	Yes	Yes.
SC–8	Pajaro River	Yes	Yes.
MN–1	Bennett Slough	Yes	Yes.
MN–2	Salinas River	No	No.
SLO–1	Arroyo de la Cruz	No	No.
SLO–2	Arroyo del Corral	Yes	Yes.
SLO–3	Oak Knoll Creek (Arroyo Laguna)	Yes	Yes.
SLO–4	Little Pico Creek	Yes	Yes.
SLO–5	San Simeon Creek	Yes	Yes.
SLO–6	Villa Creek	Yes	Yes.
SLO–7	San Geronimo Creek	Yes	Yes.
SLO–8	Toro Creek	Yes	Yes.
SLO–9	Los Osos Creek	No	Yes.
SLO–10	San Luis Obispo Creek	Yes	Yes.
SLO–11	Pismo Creek	Yes	Yes.
SLO–12	Oso Flaco Lake	No	No.
SB–1	Santa Maria River	Yes	Yes.
SB–2	Cañada de las Agujas	Yes	Yes.
SB–3	Cañada de Santa Anita	Yes	Yes.
SB–4	Cañada de Alegria	Yes	Yes.
SB–5	Cañada del Agua Caliente	Yes	Yes.
SB–6	Gaviota Creek	Yes	Yes.
SB–7	Arroyo Hondo	No	Yes.
SB–8	Winchester/Bell Canyon	Yes	Yes.
SB–9	Goleta Slough	No	Yes.
SB–10	Arroyo Burro	No	Yes.
SB–11	Mission Creek-Laguna Channel	Yes	Yes.
SB–12	Arroyo Paredon	No	Yes.
VEN–1	Ventura River	Yes	Yes.
VEN–2	Santa Clara River	Yes	Yes.
VEN–3	J Street Drain-Ormond Lagoon	Yes	Yes.
VEN–4	Big Sycamore Canyon	No	Yes.
LA–1	Arroyo Sequit	No	No.
LA–2	Zuma Canyon	No	No.
LA–3	Malibu Lagoon	Yes	Yes.
LA–4	Topanga Creek	No	Yes.
OR–1	Aliso Creek	No	No.

TABLE 2—OCCUPANCY OF TIDEWATER GOBY BY PROPOSED REVISED CRITICAL HABITAT UNITS—Continued

Unit	Name	Within the geographical area occupied at time of listing?	Currently occupied?
SAN–1	San Luis Rey River	No	Yes.

Table 3 below provides the approximate area, by unit and landownership, proposed for revised designation of critical habitat for the tidewater goby.

TABLE 3—CRITICAL HABITAT UNITS PROPOSED FOR THE TIDEWATER GOBY (IN ACRES AND HECTARES) AND KNOWN THREATS THAT MAY REQUIRE SPECIAL MANAGEMENT CONSIDERATIONS OR PROTECTION OF THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES FOR UNITS WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING

Unit name	Federal	State	Local	Private	Total [1]	Known threats that may require special management considerations or protection of the essential features [2]
DN–1: Tillas Slough (Smith River)	0(0)	0(0)	0(0)	21(8)	21(8)	2,3,5
DN–2: Lake Earl/Lake Tolowa	0(0)	2,335(945)	0(0)	348(141)	2,683(1,086)	1,4
HUM–1: Stone Lagoon	0(0)	653(264)	0(0)	0(0)	653(264)	4
HUM–2: Big Lagoon	0(0)	1,527(618)	0(0)	2(1)	1,529(619)	4
HUM–3: Humboldt Bay	652(264)	61(24)	45(18)	81(33)	839(339)	1,3,4,5
HUM–4: Eel River	0(0)	5(2)	0(0)	34(13)	39(15)	N/A
MEN–1: Ten Mile River	0(0)	17(7)	0(0)	56(23)	73(30)	4
MEN–2: Virgin Creek	0(0)	2(1)	0(0)	2(1)	4(2)	1,4
MEN–3: Pudding Creek	0(0)	10(4)	1(1)	6(2)	17(7)	1,4
MEN–4: Davis Lake and Manchester State Park Ponds	0(0)	29(12)	0(0)	0(0)	29(12)	4
SON–1: Salmon Creek	0(0)	47(19)	14(6)	47(19)	108(44)	1,2,4,5
MAR–1: Estero Americano	0(0)	0(0)	0(0)	465(188)	465(188)	1,4,5
MAR–2: Estero De San Antonio	0(0)	0(0)	0(0)	285(115)	285(115)	1,2,4,5
MAR–3: Walker Creek	0(0)	9(4)	0(0)	109(44)	118(48)	N/A
MAR–4: Lagunitas (Papermill) Creek	318(129)	459(186)	0(0)	221(90)	998(405)	N/A
MAR–5: Bolinas Lagoon	29(12)	0(0)	1,048(424)	37(15)	1,114(451)	N/A
MAR–6: Rodeo Lagoon	40(16)	0(0)	0(0)	0(0)	40(16)	1
SM–1: San Gregorio Creek	0(0)	33(13)	0(0)	12(5)	45(18)	1,3
SM–2: Pomponio Creek	0(0)	1(1)	0(0)	6(2)	7(3)	N/A
SM–3: Pescadero-Butano Creek	0(0)	241(97)	0(0)	4(2)	245(99)	1,3,4
SM–4: Bean Hollow Creek (Arroyo de Los Frijoles)	0(0)	3(1)	0(0)	7(3)	10(4)	1,2
SC–1: Waddell Creek	0(0)	39(16)	0(0)	36(14)	75(30)	3,4
SC–2: Scott Creek	0(0)	66(27)	6(2)	2(1)	74(30)	N/A
SC–3: Laguna Creek	0(0)	26(11)	0(0)	0(0)	26(11)	2,4
SC–4: Baldwin Creek	0(0)	27(11)	0(0)	0(0)	27(11)	2,4
SC–5: Moore Creek	15(6)	0(0)	0(0)	0(0)	15(6)	2,4
SC–6: Corcoran Lagoon	0(0)	1(1)	6(2)	21(8)	28(11)	1,4
SC–7: Aptos Creek	0(0)	9(4)	0(0)	0(0)	9(4)	1,3,4
SC–8: Pajaro River	0(0)	158(64)	11(4)	46(19)	215(87)	1,3,4
MN–1: Bennett Slough	0(0)	108(44)	5(2)	54(22)	167(68)	1,2,3,4
MN–2: Salinas River	195(79)	33(13)	1(1)	237(96)	466(189)	N/A
SLO–1: Arroyo de la Cruz	0(0)	25(10)	0(0)	8(3)	34(13)	N/A
SLO–2: Arroyo del Corral	0(0)	4(2)	0(0)	1(1)	5(3)	1,5
SLO–3: Oak Knoll Creek (Arroyo Laguna)	0(0)	4(2)	0(0)	1(1)	5(3)	1,3
SLO–4: Little Pico Creek	0(0)	2(1)	0(0)	7(3)	9(4)	5
SLO–5: San Simeon Creek	0(0)	17(7)	0(0)	0(0)	17(7)	2,4,5
SLO–6: Villa Creek	0(0)	14(6)	0(0)	1(1)	15(7)	1,2,4,5
SLO–7: San Geronimo Creek	0(0)	1(1)	0(0)	0(0)	1(1)	5
SLO–8: Toro Creek	0(0)	1(1)	0(0)	8(3)	9(4)	2,3,4
SLO–9: Los Osos Creek	0(0)	62(25)	1(1)	10(4)	73(30)	N/A
SLO–10: San Luis Obispo Creek	0(0)	0(0)	3(1)	28(11)	31(12)	1,2,3,4
SLO–11: Pismo Creek	0(0)	14(6)	1(1)	5(2)	20(9)	1,3,4
SLO–12: Oso Flaco Lake	0(0)	165(67)	0(0)	6(2)	171(69)	N/A
SB–1: Santa Maria River	0(0)	0(0)	42(17)	432(174)	474(192)	1,2,4,5
SB–2: Cañada de las Agujas	0(0)	0(0)	0(0)	1(1)	1(1)	1,4

TABLE 3—CRITICAL HABITAT UNITS PROPOSED FOR THE TIDEWATER GOBY (IN ACRES AND HECTARES) AND KNOWN THREATS THAT MAY REQUIRE SPECIAL MANAGEMENT CONSIDERATIONS OR PROTECTION OF THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES FOR UNITS WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING—Continued

Unit name	Federal	State	Local	Private	Total [1]	Known threats that may require special management considerations or protection of the essential features [2]
SB–3: Cañada de Santa Anita	0(0)	0(0)	0(0)	3(1)	3(1)	4
SB–4: Cañada de Alegria	0(0)	0(0)	0(0)	2(1)	2(1)	1,2,4,5
SB–5: Cañada del Agua Caliente	0(0)	0(0)	0(0)	1(1)	1(1)	1,4
SB–6: Gaviota Creek	0(0)	10(4)	0(0)	1(1)	11(5)	1,3,4,5
SB–7: Arroyo Hondo	0(0)	0(0)	0(0)	1(1)	1(1)	N/A
SB–8: Winchester/Bell Canyon	0(0)	0(0)	1(1)	5(2)	6(3)	4
SB–9: Goleta Slough	0(0)	0(0)	164(66)	26(10)	190(76)	N/A
SB–10: Arroyo Burro	0(0)	0(0)	3(1)	0(0)	3(1)	N/A
SB–11: Mission Creek-Laguna Channel	0(0)	3(1)	4(2)	0(0)	7(3)	1,3,4
SB–12: Arroyo Paredon	0(0)	1(1)	1(1)	2(1)	4(3)	N/A
VEN–1: Ventura River	0(0)	25(10)	16(7)	9(4)	50(20)	1,2,3,4
VEN–2: Santa Clara River	0(0)	199(80)	14(6)	110(44)	323(130)	1,2,3,4
VEN–3: J Street Drain-Ormond Lagoon	0(0)	5(2)	49(20)	67(27)	121(49)	1,3,4
VEN–4: Big Sycamore Canyon	0(0)	1(1)	0(0)	0(0)	1(1)	N/A
LA–1: Arroyo Sequit	0(0)	1(1)	0(0)	0(0)	1(1)	N/A
LA–2: Zuma Canyon	0(0)	0(0)	5(2)	0(0)	5(2)	N/A
LA–3: Malibu Lagoon	0(0)	41(17)	1(1)	22(9)	64(27)	1,2,3,4
LA–4: Topanga Creek	0(0)	4(1)	0(0)	2(1)	6(2)	N/A
OR–1: Aliso Creek	0(0)	0(0)	8(3)	6(2)	14(5)	N/A
SAN–1: San Luis Rey River	0(0)	3(1)	49(20)	4(2)	56(23)	N/A
Total[1]	1,249(506)	6,501(2,636)	1,501(611)	2,906(1,177)	12,157(4,920)	

Note: Area sizes may not sum due to rounding.

[1]Area estimates in ac (ha) reflect the entire area within the proposed revised critical habitat unit boundaries. Area estimates are rounded to the nearest whole integer that is equal to or greater than 1.

[2]Codes of known threats that may require special management considerations or protection of the essential physical or biological features are as follows:

1. Coastal development projects that result in the loss or alteration of coastal wetland habitat affecting the PCE 1a, 1b, or 1c.
2. Water diversions, alterations of water flows, and groundwater overdrafting upstream of coastal lagoons and estuaries that negatively impact the species' breeding and foraging activities and the PCE 1a, or 1b.
3. Channelization of habitats where the species occurs affecting the PCE 1a, 1b, or 1c.
4. Non-point and point source pollution or discharge of agricultural and sewage effluents that are likely to impact the species' health or breeding and foraging activities and the PCE.
5. Cattle grazing that results in increased sedimentation of coastal lagoons and riparian habitats, removes vegetative cover, increases ambient water temperatures, and eliminates plunge pools and undercut banks utilized by tidewater goby affecting the PCE. N/A—Not applicable because location is outside the geographical area occupied by the species at the time of listing.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for tidewater goby, below. The first two or three letters in the code for each proposed revised critical habitat unit description reflect the county where the unit occurs: DN = Del Norte, HUM = Humboldt, MEN = Mendocino, SON = Sonoma, MAR = Marin, SM = San Mateo, SC = Santa Cruz, MN = Monterey, SLO = San Luis Obispo, SB = Santa Barbara, VEN = Ventura, LA = Los Angeles, OR = Orange, and SAN = San Diego. In Tables 1–3 above, these units are listed in sequential order from north to south. For the purposes of this document, the term ''local ownership'' refers to land owned or managed by a city, county, or municipal government entity.

DN–1: Tillas Slough (21 ac (8 ha))

This unit is located in Del Norte County, approximately 3.0 mi (4.8 km) west of the community of Smith River. The unit encompasses approximately 21 ac (8.0 ha), and consists entirely of private lands. DN–1 is located 8.0 mi (12.8 km) north of Lake Earl/Lake Tolowa (DN–2), which is also the next nearest extant population. DN–1 was occupied at the time of listing. This unit has the northernmost tidewater goby population rangewide. DN–1 will support the recovery of the tidewater goby population along this portion of the coast. This unit is important for maintaining the tidewater goby metapopulation in the region, and may play an important role in dispersal northwards and extending the range of the tidewater goby. This could prove critical if certain factors, such as climate change, adversely impact the tidewater goby habitat locally or to the south. A culvert that serves as a grade control structure, which mutes the tide cycle, provides relatively stable water levels in this unit (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater

goby habitat and potential management considerations.

DN–2: Lake Earl/Lake Tolowa (2,683 ac (1,086 ha))

This unit is located in Del Norte County, approximately 3 mi (4.8 km) north of the town of Crescent City. The unit encompasses approximately 2,683 ac (1,086 ha), and consists of 2,335 ac (945 ha) of State lands and 348 ac (140 ha) of private lands. This unit includes two contiguous lagoons (Lake Tolowa and Lake Earl), referred to collectively as Lake Earl. DN–2 is located 8.0 mi (12.8 km) south of (DN–1), which is also the nearest extant population. DN–2 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region.

DN–2 is representative of extensive coastal lagoons and bays north of Cape Mendocino formed over uplifting Holocene sediments on broad flat coastal benches. These coastal benches include an intricate network of estuaries and other channels that are features essential to the conservation of the tidewater goby because they provide refugia during seasonal floods and breeding habitat through the full range of drought cycles. The water level and salinity within the lagoon varies seasonally and annually in response to: (a) Periods of high precipitation or drought within its watershed; (b) the timing, duration, and frequency of breaching events; (c) the water level in the lagoon at the time of breaching; and (d) ocean tidal cycles during and immediately following a breach. As a result of natural and human-induced environmental changes, maximum water depth within Lake Earl/Lake Tolowa varies during an annual cycle from less than 5 ft (1.5 m) deep to more than 10 ft (3 m) deep. The distribution of tidewater goby and the PCE within Lake Earl/Lake Tolowa changes in response to these dynamic short-term habitat conditions; over a multi-year cycle, tidewater goby may persist and breed anywhere within the lagoon.

On an intermittent basis, DN–2 possesses a sandbar across the mouth of the lagoon or estuary during the majority of the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions during those times (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

HUM–1: Stone Lagoon (653 ac (264 ha))

This unit is located in Humboldt County, approximately 11 mi (18 km) north of the City of Trinidad. The unit encompasses approximately 653 ac (264 ha), and consists entirely of State lands. HUM–1 is located 3.1 mi (5.0 km) north of Big Lagoon (HUM–2), which is also the nearest extant population. HUM–1 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. HUM–1 will also support the recovery of tidewater goby populations along this portion of the coast.

Of special concern is the threat to Stone Lagoon from the potential for accidental introduction of New Zealand mud snails (NZMS; *Potamopyrgus antipodarum*) from nearby Big Lagoon (HUM–2) and Freshwater Lagoon (not proposed as critical habitat), which are currently infested with NZMS. NZMS have spread throughout the western United States since becoming established in Idaho and Montana approximately 25 years ago. Once in a new habitat, NZMS typically have explosive population growth. Their large population numbers can drastically alter natural ecosystems with the NZMS competing with native species. Recreational fishing and boating occurs at Stone, Big, and Freshwater Lagoons. Introduction of NZMS to Stone Lagoon is likely to occur through foot traffic and boat launching from the two infested lagoons. Additional threats include the accidental introduction of other exotic aquatic species from outside the local area, including quagga mussels (*Dreissena rostriformis*) and zebra mussels (*Dreissena polymorpha*), which may also drastically alter the natural ecosystem of Stone Lagoon.

On an intermittent basis, HUM–1 possesses a sandbar across the mouth of the lagoon or estuary during the majority of the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

HUM–2: Big Lagoon (1,529 ac (619 ha))

This unit is located in Humboldt County, approximately 7 mi (11 km) north of the City of Trinidad. The unit encompasses approximately 1,529 ac (619 ha), and consists of 1,527 ac (618 ha) of State lands and 2 ac (1 ha) of private lands. HUM–2 is located 3.1 mi (5.0 km) south of Stone Lagoon (HUM–1), which is also the nearest extant population. HUM–2 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. HUM–2 will also support the recovery of tidewater goby populations along this portion of the coast.

Mark and recapture surveys for tidewater goby were conducted by Humboldt State University in a large cove near the State Park boat ramp in Big Lagoon during the fall of 2008, 2009, and 2010, to estimate the minimum tidewater goby population for each year (Kinziger, pers. comm. 2010). Results indicate that, in 2008, the tidewater goby population was approximately 21,000 individuals. In 2009, the population was approximately 1.7 to 3.4 million individuals in the cove. In 2010, the population was approximately 30,000 individuals in the same cove. Based on the results of this research, which estimated that the population fluctuated between 21,000 and 1.7–3.4 million individuals, and the relatively large size of the lagoon, Big Lagoon likely has the largest and most robust tidewater goby population in northern California. The results of the study also reflect how variable tidewater goby population numbers can be from year to year in a given location.

On an intermittent basis, HUM–2 possesses a sandbar across the mouth of the lagoon or estuary during the majority of the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions during those times (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular

time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

HUM–3: Humboldt Bay (839 ac (339 ha))

This unit is located in Humboldt County, within an approximate 8-mi (13-km) radius to the north, south, and east of the City of Eureka. The unit encompasses approximately 839 ac (339 ha), and consists of 652 ac (264 ha) of Federal lands, 61 ac (24 ha) of State lands, 45 ac (18 ha) of local lands, and 81 ac (33 ha) of private lands. HUM–3 is located 18.4 mi (29.7 km) north of the Eel River (HUM–4), which is also the nearest extant population. HUM–3 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. HUM–3 will also support the recovery of tidewater goby populations along this portion of the coast. This population may provide essential demographic and genetic support to HUM–4, especially after periods of extreme floods, for example, after the 1964 ''Christmas Flood'', when the population of tidewater goby at the Eel River estuary may have been extirpated.

Humboldt Bay and its adjacent marshes and estuaries are a complex mixture of natural and human-made aquatic features that have experienced many decades of human-induced changes. These changes include the construction of levees, tidegates, culverts, and other water control structures, and extensive dredging of sandbars. Surrounding the bay itself is a generally broad bench historically dominated by mudflats, tidal marshes, estuarine channels, and brackish marshes. Substantial portions of these habitats were converted to agricultural, urban, and industrial uses in recent history, resulting in the loss of as much as 10,000 ac (4,047 ha) of potentially suitable tidewater goby habitat. This critical habitat unit consists of a complex of interconnected estuary channels and human-made structures along the eastern edge of Humboldt Bay, which collectively mimic, on a much reduced scale, habitats largely lost through past management practices. Many of these channels and marshes are themselves the result of changes to historical habitats, and depend on specific, yet generally undocumented, management activities, such as dredging or sandbar breaches, for their continued function.

To address the dynamic variability of these habitats resulting from seasonal and inter-annual precipitation differences, we have included both the actual known locations where tidewater goby have been documented, as well as portions of those channels contiguous to, upchannel or downchannel, occupied habitat. We have not proposed Humboldt Bay proper in critical habitat, nor have we proposed major channels substantially subject to daily tidal fluctuations, as tidewater goby are not known to breed there. Similarly, we have not proposed channels that are discontiguous with occupied habitat, nor have we included intervening marsh or agricultural lands that may occasionally be flooded during severe winter storm events.

Based on several recent surveys, we have found that the precise locations of tidewater goby use within the channel complex during any particular year may change in response to variations in precipitation and channel hydrology. We anticipate that the persistence of the tidewater goby source population within this unit may require protection of lagoons and estuaries that are not occupied every year, but collectively support a source population through an interconnected complex of channels and shallow water habitats. That is, any of the several known occupied locations within a channel complex may be used by tidewater goby during various years in response to dynamic habitat conditions during seasonal, annual, and longer term climatic cycles, such as drought. Recently, significant restoration efforts directed primarily at salmonid recovery have occurred, or are anticipated to occur, within areas proposed as critical habitat. The effects of these salmonid restoration efforts to tidewater goby are unknown, and will likely vary with their design features and location.

PCE 1c (a sandbar(s) across the mouth of a lagoon or estuary) is not likely to occur within this unit because a navigable, dredged channel with a permanent open connection to the ocean is maintained on a regular basis. PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

HUM–4: Eel River (39 ac (15 ha))

This unit is located in Humboldt County, approximately 4.0 mi (6.5 ha) northwest of the City of Ferndale. The unit consists of two subunits, totaling 5 ac (2 ha) of State lands and 34 ac (13 ha) of private lands. Both subunits are outside the geographical area occupied by the species at the time of listing but are now occupied. The Eel River estuary is similar to Humboldt Bay (HUM–3) in that tidewater goby populations have been found in isolated populations in severely and artificially fragmented habitats, which are often found behind tidegates, culverts, and other man-made structures. In Humboldt Bay (HUM–3), McCraney *et al.* (2010, p. 3315) found that artificial fragmentation reduced dispersal and gene flow in these populations. The same may be true for the Eel River estuary populations with isolated populations that are genetically distinct from each other. Therefore, until additional information is available regarding population genetics, distribution, and other parameters, we recommend that these two areas, the Eel River North Area (Subunit–4a) and the Eel River South Area (Subunit–4b), be considered distinct from each other. Artificially fragmented habitats in the Eel River estuary may have genetically isolated or weakened populations of tidewater goby, as has been identified in Humboldt Bay (HUM–3) (McCraney *et al.* 2010, p. 3315). Current and proposed estuarine restoration projects in the Eel River estuary may improve dispersal of tidewater goby, increase genetic diversity, and aid in recovery of the species in these locations as well.

Subunit–4a (Eel River North Area)

Subunit–4a encompasses approximately 16 ac (6 ha), and consists of 5 ac (2 ha) of State lands and 11 ac (4 ha) of private lands. Subunit–4a is located 18.4 mi (29.7 km) south of Humboldt Bay (HUM–3), which is also the nearest extant population. This subunit is essential for the conservation of the species because it possesses ecological characteristics that are important in maintaining the species' ability to adapt to changing environments, including the ability to disperse into higher channels and marsh habitat during severe flood events. The

Eel River delta includes a large, complex estuary with a network of diked and natural slough channels with suitable tidewater goby habitat. The Eel River delta contains many small unsurveyed slough channels and other backwater areas that provide suitable habitat for tidewater goby, but it also contains larger channels open to direct tidal influence that do not provide suitable habitat and are not included in this subunit. This subunit consists of backwater channels and immediately adjacent marsh contiguous to the known occupied habitat.

This unit is subject to infrequent, yet severe, flooding from the nearby Eel River proper. The major flood event of 1964 (''Christmas Flood''), and other major floods during the past century, may have severely altered habitat in most channels, including those currently occupied. Tidewater goby may have survived the flood and resulting loss of habitat in the refugia provided in upper channels and swales. Alternatively, the species may have been extirpated at the Eel River delta during those severe events, and become reestablished through recolonization by individuals from Humboldt Bay populations (HUM–3). Of particular importance, the Eel River location is at the north end of one of the largest natural geographic gaps in the tidewater goby's geographic range. The gap extends to the Ten Mile River (Mendocino County) to the south, representing a coastline distance in excess of 135 mi (217 km).

Although no tidewater goby surveys are known to have occurred in the Eel River estuary prior to listing, we considered this area to be unoccupied by the species until the Service discovered a new population of tidewater goby in the Eel River estuary during surveys in 2004 (Goldsmith 2006b, p. 1). Although Subunit–4a was not considered occupied at the time of listing, it does possess the PCE that could support tidewater goby. On an intermittent basis, Subunit–4a possesses a sandbar across the mouth of the lagoon or estuary during the majority of the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

Subunit–4b (Eel River South Area)

Subunit–4b encompasses approximately 23 ac (9 ha), and consists entirely of private lands. Subunit-4b is located 18.4 mi (29.7 km) south of Humboldt Bay (HUM–3), which is also the nearest extant population. This subunit is essential for the conservation of the species because it possesses ecological characteristics that are important in maintaining the species' ability to adapt to changing environments, including the ability to disperse into higher channels and marsh habitat during severe flood events. The Southern Eel River delta includes a large complex estuary with a network of diked and natural slough channels, and other backwater areas that provide suitable habitat for tidewater goby. It also contains larger channels open to direct tidal influence that do not provide suitable habitat and are not included in this unit. This unit consists of backwater channels and immediately adjacent marsh contiguous to the known occupied habitat.

This unit is subject to infrequent, yet severe, flooding from the nearby Eel River proper. The major flood event of 1964 (''Christmas Flood''), and other major floods during the past century, may have severely altered habitat in most channels, including those currently occupied. Tidewater goby may have survived the flood and resulting loss of habitat in the refugia provided in upper channels and swales. Alternatively, the species may have been extirpated at the Eel River delta during those severe events, and become reestablished through recolonization by individuals from Humboldt Bay populations (HUM–3). Of particular importance, the Eel River location is at the north end of one of the largest natural geographic gaps in the tidewater goby's geographic range. The gap extends to the Ten Mile River (Mendocino County) to the south, representing a coastline distance in excess of 135 mi (217 km).

Although no tidewater goby surveys are known to have occurred in the Eel River estuary prior to listing, we considered this area to be unoccupied by the species until the Service discovered a new population of tidewater goby in the Eel River estuary during surveys in 2004 (Goldsmith 2006b, p. 1). Although Subunit-4b was not considered occupied at the time of listing, it does possess the PCE that could support tidewater goby. On an intermittent basis, Subunit-4b possesses a sandbar across the mouth of the lagoon or estuary during the majority of the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

MEN–1: Ten Mile River (73 ac (30 ha))

This unit is located in Mendocino County, approximately 9.0 mi (14.5 km) north of the Town of Fort Bragg. The unit encompasses approximately 73 ac (30 ha), and consists of 17 ac (7 ha) of State lands and 56 ac (23 ha) of private lands. MEN–1 is located 5.6 mi (8.9 km) north of the Virgin Creek (MEN–2), which is also the nearest extant population. MEN–1 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. Furthermore, this unit is the largest block of habitat along the coast of Mendocino County, and is the first location on the southern end of one of the longest stretches of unsuitable habitat in the species' range (previously described under HUM–4). Thus, this unit is important to connect populations within Mendocino County. South of Ten Mile River, only three other small isolated locations (MEN–2, 3, 4) occupied by tidewater goby are known to exist across the more than 100 miles of rugged coastline between MEN–1 and SON–1 in south coastal Sonoma County.

On an intermittent basis, MEN–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

MEN–2: Virgin Creek (4 ac (2 ha))

This unit is located in Mendocino County, approximately 3.5 mi (5.6 km) north of the Town of Fort Bragg. The unit encompasses approximately 4 ac (2 ha), and consists of 2 ac (1 ha) of State lands and 2 ac (1 ha) of private lands. MEN–2 is located 1.2 mi (2.0 km) north of Pudding Creek (MEN–3), which is also the nearest extant population. MEN–2 was occupied by tidewater goby

at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. On an intermittent basis, MEN–2 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

MEN–3: Pudding Creek (17 ac (7 ha))

This unit is located in Mendocino County, approximately 2.5 mi (4.0 km) north of the town of Fort Bragg. The unit encompasses approximately 17 ac (7 ha), and consists of 10 ac (4 ha) of State lands, 1 ac (1 ha) of local lands, and 6 ac (2 ha) of private lands. MEN–3 is located 1.2 mi (2.0 km) south of Virgin Creek (MEN–2), which is also the nearest extant population. MEN–3 was occupied by the tidewater goby at the time of listing. This unit allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. On an intermittent basis, MEN–3 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

MEN–4: Davis Lake and Manchester State Park Ponds (29 ac (12 ha))

This unit is located in Mendocino County, approximately 1.2 mi (1.9 ha) west of the community of Manchester. The unit encompasses approximately 29 ac (12 ha), and consists entirely of State lands. MEN–4 is located 32.4 mi (52.2 km) south of Pudding Creek (MEN–3), which is also the nearest extant population. MEN–4 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. On an intermittent basis, MEN–4 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SON–1: Salmon Creek (108 ac (44 ha))

This unit is located in Sonoma County, approximately 7 mi (11.3 km) south of the community of Jenner. The unit encompasses approximately 108 ac (44 ha), and consists of 47 ac (19 ha) of State lands, 14 ac (6 ha) local lands, and 47 ac (19 ha) of private lands. SON–1 is located 5.3 mi (8.5 km) north of the Estero Americano unit (MAR–1), which is also the nearest extant population. SON–1 was occupied by tidewater goby at the time of listing. The geological feature known as Bodega Head separates Salmon Creek and Estero Americano, and could reduce the exchange of tidewater goby between these two locations. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species.

On an intermittent basis, SON–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

MAR–1: Estero Americano (465 ac (188 ha))

This unit is located in Marin County, approximately 3.5 mi (5.7 km) south of Bodega Bay. The unit encompasses approximately 465 ac (188 ha), and consists entirely of private lands. MAR–1 is located 2.2 mi (3.5 km) north of the Estero de San Antonio (MAR–2), which is also the nearest extant population. MAR–1 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast. On an intermittent basis, MAR–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

MAR–2: Estero de San Antonio (285 ac (115 ha))

This unit is located in Marin County, approximately 5.6 mi (9 km) south of Bodega Bay. The unit encompasses approximately 285 ac (115 ha), and consists entirely of private lands. MAR–2 is located 2.2 mi (3.5 km) south of the Estero Americano (MAR–1), which is also the nearest extant population. MAR–2 was occupied by tidewater goby at the time of listing. This critical habitat unit supports a source population of tidewater goby that likely provides individuals that are recruited into surrounding subpopulations. Given the close proximity of the MAR–1 and MAR–2 units and the dispersal capabilities of tidewater goby, it is likely that the two populations have exchanged individuals in the past and will continue to exchange individuals in the future. Exchange between these populations would bolster the continued sustainable existence of the two populations which will, together with unit SON–1, provide for natural colonization of available, but currently unoccupied, estuaries within the region south of the Russian River and north of Point Reyes. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species.

On an intermittent basis, MAR–2 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

MAR–3: Walker Creek (118 ac (48 ha))

This unit is located in Marin County, approximately 2.5 mi (4 km) southwest of the Town of Tomales. The unit encompasses approximately 118 ac (48 ha) and consists of 9 ac (4 ha) of State lands and 109 ac (44 ha) of private lands. MAR–3 is located 4.6 mi (7.4 km) southeast of the Estero de San Antonio unit (MAR–2), which is also the nearest extant population. This unit is outside the geographical area occupied by the species at the time of listing and is not known to be currently occupied. However, tidewater goby were collected at Walker Creek in 1897, but were not found in sampling efforts conducted in 1996 or 1999 (Service 2005, p. C–8). This unit is identified in the Recovery Plan as a potential reintroduction site, and could provide habitat for maintaining the tidewater goby metapopulation in the region. MAR–3 is essential for the conservation of the species because establishing a tidewater goby population in this unit will support the recovery of the tidewater goby population along this portion of the coast and help facilitate colonization of currently unoccupied locations. Although MAR–3 is not currently occupied, it does possess the PCE that could support tidewater goby. However, PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

MAR–4: Lagunitas (Papermill) Creek (998 ac (405 ha))

This unit is located in Marin County, approximately 20.5 mi (33 km) south of Bodega Bay. The unit encompasses approximately 998 ac (405 ha), and consists of 318 ac (129 ha) of Federal lands, 459 ac (186 ha) of State lands, and 221 ac (90 ha) of private lands. MAR–4 is located 15.5 mi (25.0 km) south of the Estero de San Antonio unit (MAR–2), which is also the nearest extant population. Records indicate tidewater goby occurred at this location historically. This unit is outside the geographical area occupied by the species at the time of listing, but recent surveys have confirmed that the unit is currently occupied. This unit is essential for the conservation of the species because it is the only known location of the tidewater goby to remain within the greater Tomales Bay area. Without this subpopulation, there would be no source population within dispersal distance of Tomales Bay to maintain the metapopulation dynamics of populations within the area. Thus, if allowed to establish a robust population, the unit could support an important source population for future colonization or introductions to other habitats within Tomales Bay. Although MAR–4 was not considered occupied at the time of listing, it does possess the PCE that could support tidewater goby. We do not have information that confirms that PCE 1c (a sandbar(s) across the mouth of the lagoon or estuary) is present within this unit on at least an intermittent basis. However, PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

MAR–5: Bolinas Lagoon (1,114 ac (451 ha))

This unit is located in Marin County, approximately 0.5 mi (0.81 km) east of the community of Bolinas. The unit encompasses approximately 1,114 ac (451 ha), and consists of 29 ac (12 ha) of Federal Lands, 1,048 ac (424 ha) of local lands, and 37 ac (15 ha) of private lands. MAR–5 is located 9.4 mi (15.1 km) northwest of the Rodeo Lagoon unit (MAR–6), which is also the nearest extant population. This unit is outside the geographical area occupied by the species at the time of listing, is not known to be currently occupied, and there are no historical tidewater goby records for this location. However, this unit is essential for the conservation of the species because it provides habitat to nearby occupied units and is identified in the Recovery Plan as a potential introduction site, and could provide habitat for maintaining tidewater goby metapopulations in the region. If a tidewater goby population is established in this unit, MAR–5 unit will support the recovery of the tidewater goby population along this portion of the coast and help facilitate colonization of currently unoccupied locations. Although MAR–5 is not currently occupied, it does possess the PCE that could support tidewater goby. We do not have information that confirms that PCE 1c (a sandbar(s) across the mouth of the lagoon or estuary) is present within this unit on at least an intermittent basis. However, PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

MAR–6: Rodeo Lagoon (40 ac (16 ha))

This unit is located in Marin County, approximately 3.8 mi (6 km) north of San Francisco. The unit encompasses approximately 40 ac (16 ha), and consists entirely of Federal lands. MAR–6 is located 9.4 mi (15.1 km) south of Bolinas Lagoon (MAR–5), and is

separated from the nearest extant population to the south, San Gregorio Creek (SM–1), by 36 mi (58 km). MAR–6 was occupied by tidewater goby at the time of listing. MAR–6 is the only known location where the tidewater goby remains within the greater Bay Area. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). It also provides habitat for a population of tidewater goby that could disperse to other adjoining habitats. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species.

On an intermittent basis, MAR–6 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SM–1: San Gregorio Creek (45 ac (18 ha))

This unit is located in San Mateo County, approximately 28 mi (45 km) south of the San Francisco-San Mateo County line. The unit encompasses approximately 45 ac (18 ha), and consists of 33 ac (13 ha) of State lands and 12 ac (5 ha) of private lands. SM–1 is located 1.5 mi (2.4 km) north of Pomponio Creek (SM–2), and is separated from the nearest extant population to the south, Pescadero-Butano Creek (SM–3), by 3.8 mi (6.1 km). SM–1 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). This unit is noted for high densities of tidewater goby (Swenson 1993, p. 3).

On an intermittent basis, SM–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SM–2: Pomponio Creek (7 ac (3 ha))

This unit is located in San Mateo County, approximately 3.5 mi (5.6 km) north of the community of Pescadero. The unit encompasses approximately 7 ac (3 ha), and consists of 1 ac (1 ha) of State lands and 6 ac (2 ha) of private lands. SM–2 is located 1.5 mi (2.4 km) south of the San Gregorio Creek unit (SM–1), which is also the nearest extant population. This unit is outside the geographical area occupied by the species at the time of listing, is not known to be currently occupied, and there are no historical tidewater goby records for this location. However, this unit is essential for the conservation of the species because it provides habitat to nearby occupied units and is identified in the Recovery Plan as a potential introduction site, and could provide habitat for maintaining the tidewater goby metapopulation in the region. If a tidewater goby population is established in this unit, SM–2 unit will support the recovery of the tidewater goby population along this portion of the coast, and will help facilitate tidewater goby distribution between populations and colonization of currently unoccupied locations. Although SM–2 is not currently occupied, it does possess the PCE that could support tidewater goby.

On an intermittent basis, SM–2 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SM–3: Pescadero-Butano Creek (245 ac (99 ha))

This unit is located in San Mateo County, approximately 32.0 mi (51.0 km) south of the San Francisco-San Mateo County line. This unit encompasses approximately 245 ac (99 ha), and consists of 241 ac (97 ha) of State lands and 4 ac (2 ha) of private lands. SM–3 is located 2.2 mi (3.5 km) south of Pomponio Creek (SM–2), and is separated from the nearest extant population to the south, in Bean Hollow Creek (SM–4), by 3.0 mi (4.8 km). SM–3 was occupied by tidewater goby at the time of listing. This unit is unusual in that some tidewater goby from this location possess a parasite that appears to occasionally affect their health. These parasites, or the environmental factors that increase the prevalence of the parasites, may represent a threat to this population not identified in Table 3. This unit allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region.

On an intermittent basis, SM–3 possesses a sandbar across the mouth of the lagoon or estuary during the late spring and early fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SM–4: Bean Hollow Creek (Arroyo de Los Frijoles) (10 ac (4 ha))

This unit is located in San Mateo County, approximately 34.8 mi (56.0 km) south of the San Francisco-San Mateo County line. The unit encompasses approximately 10 ac (4 ha), and consists of 3 ac (1 ha) of State lands and 7 ac (3 ha) private lands. SM–4 is located approximately 3.0 mi (4.8 km) south of the Pescadero-Butano Creek (SM–3), which is also the nearest extant population. SM–4 was occupied by tidewater goby at the time of listing. Maintaining this unit, together with the

two units to the north, will reduce the chance of losing the tidewater goby along this important coastal range and allow for connectivity between tidewater goby source populations, thereby supporting gene flow and metapopulation dynamics in this region.

On an intermittent basis, SM–4 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SC–1: Waddell Creek (75 ac (30 ha))

This unit is located in Santa Cruz County, approximately 18 mi (29 km) northwest of the city of Santa Cruz. The unit encompasses approximately 75 ac (30 ha), and consists of 39 ac (16 ha) of State lands and 36 ac (14 ha) of private lands. SC–1 is located approximately 5.0 mi (8.0 km) north of the Scott Creek (SC–2), which is also the nearest extant population. This unit is at the northern extent of this metapopulation as described in the Recovery Plan. Tidewater goby were present in low numbers in 1996, and were absent during surveys from 1997 to 2000 (Service 2005, p. C–12). Therefore, SC–1 was occupied at the time of listing.

This unit is identified in the Recovery Plan as a potential reintroduction site. This unit will provide habitat for tidewater goby dispersing from Scott Creek either through natural means, or by reintroduction, which may serve to decrease the risk of extirpation of this metapopulation through stochastic events. If a tidewater goby population is established in this unit, it would also allow for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. Lastly, this unit may offer habitat that is superior to that in nearby occupied locations (the potential viability of tidewater goby in the unoccupied unit may be higher). The original population at this locality was considered extirpated by Swift *et al.* (1989, p. 4). However, tidewater goby were reintroduced in 1991 from Scott Creek (Lafferty *et al.* 1999b, p. 1448). Long-term sustainability of backwater habitat may preclude the establishment of a tidewater goby subpopulation; however, the creation of suitable backwater habitat would ensure a self-sustaining subpopulation of tidewater goby at this location. Although SC–1 is not currently occupied, it does possess the PCE that could support tidewater goby.

On an intermittent basis, SC–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SC–2: Scott Creek (74 ac (30 ha))

This unit is located in Santa Cruz County, approximately 11.8 mi (19.0 km) northwest of the City of Santa Cruz. The unit encompasses approximately 74 ac (30 ha), and consists of 66 ac (27 ha) of State lands, 6 ac (2 ha) of local lands, and 2 ac (1 ha) of private lands. SC–2 is located 5.0 mi (8.0 km) south of Waddell Creek (SC–1), and is separated from the nearest extant population to the south, in Laguna Creek (SC–3), by 6.0 mi (9.6 km). SC–2 is outside the geographical area occupied by the species at the time of listing, but was subsequently found to be occupied. This unit is essential for the conservation of the species because it provides habitat for the species, allows for connectivity between tidewater goby source populations from nearby units, supports gene flow, and provides for metapopulation dynamics in this region. Although SC–2 was not considered to be occupied at the time of listing, it does possess the PCE that support tidewater goby. On an intermittent basis, SC–2 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SC–3: Laguna Creek (26 ac (11 ha))

This unit is located in Santa Cruz County, approximately 7.5 mi (12.0 km) west of the City of Santa Cruz. The unit encompasses approximately 26 ac (11 ha), and consists entirely of State lands. SC–3 is located 6.0 mi (9.6 km) south of Scott Creek (SC–2), the nearest extant population to the north, and is separated from the nearest extant population to the south, in Baldwin Creek (SC–4), by 2.0 mi (3.2 km). SC–3 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). Together with Baldwin Creek (SC–4) to the south, this habitat unit helps conserve the genetic diversity of the species.

On an intermittent basis, SC–3 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SC–4: Baldwin Creek (27 ac (11 ha))

This unit is located in Santa Cruz County, approximately 6 mi (9.7 km) west of the City of Santa Cruz. The unit encompasses approximately 27 ac (11 ha), and consists entirely of State lands. SC–4 is located 2.0 mi (3.2 km) south of Laguna Creek (SC–3), and is separated from the nearest extant population to the south, Lombardi Creek (not proposed as critical habitat), by 0.7 mi (1.2 km). SC–4 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is

likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172) and, together with Laguna Creek (SC–3) to the north, helps conserve genetic diversity within the species.

On an intermittent basis, SC–4 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SC–5: Moore Creek (15 ac (6 ha))

This unit is located in Santa Cruz County, approximately 2.0 mi (3.2 km) west of the City of Santa Cruz. The unit encompasses approximately 15 ac (6 ha), and consists of entirely of Federal lands. SC–5 is located 4.0 mi (6.4) south of Baldwin Creek. SC–5 is separated from the nearest extant population to the north, Younger Lagoon (not proposed as critical habitat), by 0.5 mi (0.8 km). SC–5 was occupied at the time of listing. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species. On an intermittent basis, SC–5 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SC–6: Corcoran Lagoon (28 ac (11 ha))

This unit is located in Santa Cruz County, approximately 3 mi (4.8 km) east of the City of Santa Cruz. This unit encompasses approximately 28 ac (11 ha), and consists of 1 ac (1 ha) of State lands, 6 ac (2 ha) of local lands, and 21 ac (8 ha) of private lands. SC–6 is located 4.0 mi (6.4 km) south of Moore Creek (SC–5), and the unit is separated from the nearest extant population to the south, in Moran Lake (not proposed as critical habitat), by 0.7 mi (1.1 km). SC–6 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species.

On an intermittent basis, SC–6 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SC–7: Aptos Creek (9 ac (4 ha))

This unit is located in Santa Cruz County, approximately 0.5 mi (0.8 km) southwest of the City of Aptos. The unit encompasses approximately 9 ac (4 ha), and consists entirely of State lands. SC–7 is located 4.1 mi (6.6 km) east of Corcoran Lagoon (SC–6), and is separated from the nearest extant population to the north, Moran Lake (not proposed as critical habitat), by 4.2 mi (6.75 km). SC–7 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is likely a source population in this region, and is therefore important for maintaining the metapopulation in this region. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast. On an intermittent basis, SC–7 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SC–8: Pajaro River (215 ac (87 ha))

This unit is located in Santa Cruz County, approximately 5 mi (8 km) southwest of the City of Watsonville. The unit encompasses approximately 215 ac (87 ha), and consists of 158 ac (64 ha) of State lands, 11 ac (4 ha) of local lands, and 46 ac (19 ha) of private lands. SC–8 is located 9.7 mi (15.6 km) south of Aptos Creek (SC–7), and is separated from the nearest extant population to the south, in Bennett Slough (MN–1), by 3.0 mi (4.7 km). SC–8 was occupied by tidewater goby at the time of listing. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species. On an intermittent basis, SC–8 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see

Special Management Considerations or Protection section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

MN–1: Bennett Slough (167 ac (68 ha))

This unit is located in Monterey County, approximately 3.7 mi (6 km) northwest of the Town of Castroville. This unit encompasses approximately 167 ac (68 ha), and consists of 108 ac (44 ha) of State lands, 5 ac (2 ha) of local lands, and 54 ac (22 ha) of private lands. MN–1 is located 4.1 mi (6.6 km) south of the Pajaro River (SC–8), and is separated from the nearest extant population to the south, Moro Cojo Slough (not proposed as critical habitat), by 1.3 mi (2.1 km). MN–1 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172), and maintaining it will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species.

PCE 1c (a sandbar(s) across the mouth of lagoon or estuary) is not likely to occur within this unit because it has a navigable, dredged channel with a permanent open connection to the ocean that is maintained on a regular basis. However, PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

MN–2: Salinas River (466 ac (189 ha))

This unit is located in Monterey County, approximately 7.5 mi (12 km) north of the City of Seaside. The unit encompasses approximately 466 ac (189 ha), and consists of 195 ac (79 ha) of Federal lands, 33 ac (13 ha) of State lands, 1 ac (1 ha) of local lands, and 237 ac (96 ha) of private lands. Unit MN–2 is located 4.0 mi (8.0 km) south of the Bennett Slough unit (MN–1). This unit is outside the geographical area occupied by the species at the time of listing and is not known to be currently occupied; however, this unit is essential for the conservation of the species. Tidewater goby were last collected here in 1951, but were not present during surveys in 1991, 1992, and 2004 (Service 2005, p. C–16). This unit is identified in the Recovery Plan as a potential reintroduction site. This unit will provide habitat for tidewater goby that disperse from Bennett Slough and Moro Cojo Slough, either through natural means or by reintroduction, which may serve to decrease the risk of extirpation of this metapopulation through stochastic events. This unit will also allow for connectivity between tidewater goby source populations, and thereby support gene flow and metapopulation dynamics in this region. Lastly, this unit is one of only three locations in Monterey County that have harbored tidewater goby and is one of the two subpopulations in the metapopulation as described in the Recovery Plan. Therefore, this unit is especially important for ensuring the viability of the metapopulation.

Although MN–2 was not considered to be occupied at the time of listing, it does possess the PCE that could support tidewater goby. On an intermittent basis, MN–2 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SLO–1: Arroyo de la Cruz (33 ac (13 ha))

This unit is located in San Luis Obispo County, approximately 8.0 mi (13.0 km) northwest of San Simeon. The unit encompasses approximately 33 ac (13 ha), and consists of 25 ac (10 ha) of State lands and 8 ac (3 ha) of private lands. SLO–1 is located approximately 2.0 mi (3.2 km) north of the Arroyo de Corral unit (SLO–2), which is also the nearest extant population. This unit is outside the geographical area occupied by the species at the time of listing, is not known to be currently occupied, and there are no historical tidewater goby records for this location. However, this unit is essential for the conservation of the species because it provides habitat to nearby occupied units and is identified in the Recovery Plan as a potential introduction site, and could provide habitat for maintaining the tidewater goby metapopulation in the region.

This unit will provide habitat for tidewater goby that disperse from Arroyo del Corral, either through natural means or by reintroduction, which may serve to decrease the risk of extirpation of this metapopulation through stochastic events. This unit will also allow for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. Lastly, this unit is the only other location with suitable habitat within the metapopulation that is currently comprised of one subpopulation as described in the Recovery Plan. Therefore, this unit is especially important for ensuring the viability of the metapopulation because if the subpopulation within the Arroyo de Corral unit is extirpated, the entire metapopulation would be lost. Although SLO–1 is not currently occupied, it does possess the PCE that could support tidewater goby. SLO–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SLO–2: Arroyo del Corral (5 ac (3 ha))

This unit is located in San Luis Obispo County, approximately 6 mi (9.7 km) northwest of San Simeon. The unit encompasses approximately 5 ac (3 ha), and consists entirely of 4 ac (2 ha) of State lands and 1 ac (1 ha) of private lands. SLO–2 is located 2 mi (3.2 km) south of Arroyo de la Cruz (SLO–1), and is separated from the nearest extant population to the south, Oak Knoll Creek (SLO–3), by 4.3 mi (6.9 km). SLO–2 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species.

On an intermittent basis, SLO–2 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SLO–3: Oak Knoll Creek (Arroyo Laguna) (5 ac (3 ha))

This unit is located in San Luis Obispo County, approximately 2 mi (3.2 km) northwest of San Simeon. The unit encompasses approximately 5 ac (3 ha), and consists of 4 ac (2 ha) of State lands and 1 ac (1 ha) of private lands. SLO–3 is located 4.3 mi (6.9 km) south of Arroyo del Corral (SLO–2), and is separated from the nearest extant population to the south, in Arroyo de Tortuga (not proposed as critical habitat), by 0.5 mi (0.8 km). SLO–3 was occupied at the time of listing. This unit allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. On an intermittent basis, SLO–3 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SLO–4: Little Pico Creek (9 ac (4 ha))

This unit is located in San Luis Obispo County, approximately 6.7 mi (10.8 km) northwest of the Town of Cambria. The unit encompasses approximately 9 ac (4 ha), and consists of 2 ac (1 ha) of State lands and 7 ac (3 ha) of private lands. SLO–4 is located 3.7 mi (5.9 km) south of Oak Knoll Creek (SLO–3). The unit is separated from the nearest extant population to the north, in Broken Bridge Creek (not proposed as critical habitat), by 1.4 mi (2.2 km). SLO–4 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast. On an intermittent basis, SLO–4 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SLO–5: San Simeon Creek (17 ac (7 ha))

This unit is located in San Luis Obispo County, approximately 3.3 mi (5.3 km) northwest of the Town of Cambria. The unit encompasses approximately 17 ac (7 ha), and consists entirely of State lands. SLO–5 is located 3.8 mi (6.1 km) south of Little Pico Creek (SLO–4), and is separated from the nearest extant population to the south, in Santa Rosa Creek (not proposed as critical habitat), by 2.6 mi (4.2 km). SLO–5 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this unit, and is therefore important for maintaining the metapopulation in this region. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast. On an intermittent basis, SLO–5 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SLO–6: Villa Creek (15 ac (7 ha))

This unit is located in San Luis Obispo County, approximately 9.6 mi (15.4 km) southeast of Cambria. The unit encompasses 15 ac (7 ha) and consists of 14 ac (6 ha) of State lands and 1 ac (1 ha) of private lands. SLO–6 is located 12.3 mi (19.8 km) south of San Simeon Creek (SLO–5), and is separated from the nearest extant population to the south, in San Geronimo Creek (SLO–7), by 2.3 mi (3.7 km). SLO–6 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species.

On an intermittent basis, SLO–6 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SLO–7: San Geronimo Creek (1 ac (1 ha))

This unit is located in San Luis Obispo County, approximately 7.6 mi (12.2 km) northwest of the Town of Morro Bay, and approximately 1.4 mi (2.5 km) west of the Town of Cayucos. The unit encompasses approximately 1 ac (1 ha), and consists entirely of State lands. SLO–7 is located 2.3 mi (3.7 km) south of Villa Creek (SLO–6), and is separated from the nearest extant population to the south, in Cayucos Creek (not proposed as critical habitat), by 1.5 mi (2.4 km). SLO–7 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast.

On an intermittent basis, SLO–7 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SLO–8: Toro Creek (9 ac (4 ha))

This unit is located in San Luis Obispo County, approximately 2.3 mi (3.7 km) south of the Town of Cayucos. The unit encompasses approximately 9 ac (4 ha), and consists of 1 ac (1 ha) of State lands and 8 ac (3 ha) of private lands. SLO–8 is located 5 mi (8.0 km) south of San Geronimo Creek (SLO–7), and is separated from the nearest extant population to the north, in Old Creek (not proposed as critical habitat), by 1.8 mi (2.9 km). SLO–8 was occupied at the time of listing. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species. On an intermittent basis, SLO–8 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SLO–9: Los Osos Creek (73 ac (30 ha))

This unit is located in San Luis Obispo County, within the Town of Baywood. The unit encompasses approximately 73 ac (30 ha), and consists of 62 ac (25 ha) of State lands, 1 ac (1 ha) of local lands, and 10 ac (4 ha) of private lands. The unit is separated from the nearest extant population to the north, in Toro Creek (SLO–8), by 8.0 mi (12.8 km). Tidewater goby were present during surveys in 2001 (Service 2005, p. C–21). Prior to the observations in 2001, tidewater goby had not been seen here since 1981 (Service 2005, p. C–21). Therefore, SLO–9 is outside the geographical area occupied by the species at the time of listing but is currently occupied. This unit is essential for the conservation of the species because it provides habitat to nearby occupied units and is identified in the Recovery Plan as a potential introduction site, and could provide habitat for maintaining the tidewater goby metapopulation in the region. Maintaining this unit will also reduce the chance of losing the tidewater goby along this portion of the coast. Although SLO–9 was not considered to be occupied at the time of listing, it does possess the PCE that could support tidewater goby. PCE 1c (a sandbar(s) across the mouth of lagoon or estuary) is not likely to occur within this unit because it has a navigable channel with an open connection to Morro Bay, which is dredged on a regular basis. However, PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SLO–10: San Luis Obispo Creek (31 ac (12 ha))

This unit is located in San Luis Obispo County, within the Town of Avila Beach. The unit encompasses approximately 31 ac (12 ha), and consists of 3 ac (1 ha) of local lands, and 28 ac (11 ha) of private lands. The unit is separated from the nearest extant population to the south, in Pismo Creek (SLO–11), by 7.0 mi (11.2 km). SLO–10 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). On an intermittent basis, SLO–10 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SLO–11: Pismo Creek (20 ac (9 ha))

This unit is located in San Luis Obispo County, within the Town of Pismo Beach. The unit encompasses approximately 20 ac (9 ha), and consists of 14 ac (6 ha) of State lands, 1 ac (1 ha) of local lands, and 5 ac (2 ha) of private lands. SLO–11 is located 7 mi (11.2 km) south of San Luis Obispo Creek (SLO–10). The unit is separated from the nearest extant population to the south, in Arroyo Grande Creek (not proposed as critical habitat), by 2.6 mi (4.2 km). SLO–11 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast. On an intermittent basis, SLO–11 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur

throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SLO–12: Oso Flaco Lake (171 ac (69 ha))

This unit is located in San Luis Obispo County, approximately 5 mi (8.0 km) northwest of the City of Santa Maria. The unit encompasses approximately 171 ac (69 ha), and consists of 165 ac (67 ha) of State lands and 6 acre (2 ha) of private lands. The unit is separated from the nearest extant population to the south, the Santa Maria River (SB–1), by 4 mi (6.4 km). This unit is outside the geographical area occupied by the species at the time of listing, is not known to be currently occupied, and there are no historical tidewater goby records for this location. However, this unit is essential for the conservation of the species because it provides habitat to nearby occupied units and is identified in the Recovery Plan as a potential introduction site, and could provide habitat for maintaining the tidewater goby metapopulation in the region. This unit will provide habitat for tidewater goby that disperse from Arroyo Grande Creek and the Santa Maria River, either through natural means or by introduction, which may serve to decrease the risk of extirpation of this metapopulation through stochastic events. This unit would also allow for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. Lastly, tidewater goby may be precluded from this location due to water quality impairments; however, the California Regional Water Control Board is currently working with the Service to remedy these impairments. Although SLO–12 is not currently occupied, it does possess the PCE that could support tidewater goby. On an intermittent basis, SLO–12 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SB–1: Santa Maria River (474 ac (192 ha))

This unit is located in Santa Barbara County, approximately 13 mi (21 km) west of the City of Santa Maria. The unit encompasses approximately 474 ac (192 ha), and consists of 42 ac (17 ha) of local lands and 432 ac (175 ha) of private lands. SB–1 is located 4 mi (6.4 km) south of Oso Flaco Lake (SLO–12), and is separated from the nearest extant population to the south, in Shuman Canyon (not proposed as critical habitat; see *Application of Section 4(a)(3) of the Act—Vandenberg Air Force Base* section below), by 8.6 mi (13.9 km). SB–1 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species.

On an intermittent basis, SB–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SB–2: Cañada de las Agujas (1 ac (1 ha))

This unit is located in Santa Barbara County, approximately 7.2 mi (11.6 km) west of Gaviota. The unit encompasses approximately 1 ac (1 ha), and consists entirely of private lands. SB–2 is located 38.8 mi (62.5 km) south of the Santa Maria River (SB–1), and is separated from the nearest extant population to the south, in Arroyo El Bulito (not proposed as critical habitat), by 0.4 mi (0.7 km). SB–2 was occupied at the time of listing. This unit allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. Furthermore, we believe this unit, and units SB–3, SB–4, SB–5, and SB–6, likely act as a metapopulation as defined in the Background section. These units are no more than 2.0 mi (3.3 km) from each other, which facilitates higher dispersal rates between sites. Because these units are of relatively small size in area (1 to 9 ac (1 to 4 ha)), they are more susceptible to drying or shrinking due to drought conditions, which increases the likelihood of local extirpation. Lastly, because these units are small, they are likely to be dependent upon some degree of periodic exchange of tidewater goby between units for any one unit to persist over time. Therefore, designation of critical habitat at these five locations is necessary for the conservation of the tidewater goby along the Gaviota Coast in Santa Barbara County.

On an intermittent basis, SB–2 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SB–3: Cañada de Santa Anita (3 ac (1 ha))

This unit is located in Santa Barbara County, approximately 5.2 mi (8.4 km) west of Gaviota. The unit encompasses approximately 3 ac (1 ha), and consists entirely of private lands. SB–3 is located 2.0 mi (3.2 km) south of Cañada de las Agujas (SB–2), and is separated from the nearest extant population to the north, in Cañada del Agua (not proposed as critical habitat), by 0.4 mi (0.7 km). SB–3 was occupied at the time of listing. This unit is important to the conservation of the species because it allows for connectivity between tidewater goby source populations, and thereby supports gene flow and

metapopulation dynamics in this region. Furthermore, as described above in SB–2, we believe this unit, and units SB–2, SB–4, SB–5, and SB–6, likely act as a metapopulation as defined in the Background section, and that designation of critical habitat at these five locations is necessary for the conservation of the tidewater goby along the Gaviota Coast in Santa Barbara County.

On an intermittent basis, SB–3 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SB–4: Cañada de Alegria (2 ac (1 ha))

This unit is located in Santa Barbara County, approximately 3.2 mi (5.1 km) west of Gaviota. The unit encompasses approximately 2 ac (1 ha), and consists entirely of private lands. SB–1 is located 2.0 mi (3.3 km) south of Cañada de Santa Anita (SB–3), and is separated from the nearest extant population to the south, in Cañada del Agua Caliente (SB–5), by 1.1 mi (1.8 km). SB–4 was occupied at the time of listing. This unit is important to the conservation of the species because it allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. Furthermore, as described above in SB–2, we believe this unit, and units SB–2, SB–3, SB–5, and SB–6, likely act as a metapopulation as defined in the Background section, and that designation of critical habitat at these five locations is necessary for the conservation of the tidewater goby along the Gaviota Coast in Santa Barbara County.

On an intermittent basis, SB–4 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SB–5: Cañada del Agua Caliente (1 ac (1 ha))

This unit is located in Santa Barbara County, approximately 2.1 mi (3.4 km) west of Gaviota. This unit encompasses approximately 1 ac (1 ha), and consists entirely of private lands. SB–5 is located 1.1 mi (1.8 km) south of Cañada de Alegria (SB–4), which is also the nearest extant population. SB–5 was occupied at the time of listing. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). This unit helps conserve genetic diversity within the species. This unit also allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. Furthermore, as described above in SB–2, we believe this unit, and units SB–2, SB–3, SB–4, and SB–6, likely act as a metapopulation as defined in the Background section, and that designation of critical habitat at these five locations is necessary for the conservation of the tidewater goby along the Gaviota Coast in Santa Barbara County.

On an intermittent basis, SB–5 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SB–6: Gaviota Creek (11 ac (5 ha))

This unit is located in Santa Barbara County, approximately 0.8 mi (1.3 km) west of Gaviota. This unit encompasses approximately 11 ac (5 ha), and consists of 10 ac (4 ha) of State lands and 1 ac (1 ha) of private lands. SB–6 is located 1.5 mi (2.4 km) south of Cañada del Agua Caliente (SB–5), which is also the nearest extant population. SB–6 was occupied at the time of listing. This unit is important to the conservation of the species because maintaining it will reduce the chance of losing the tidewater goby along this portion of the coast. It also allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. Furthermore, as described above in SB–2, we believe this unit, and units SB–2, SB–3, SB–4, and SB–5, likely act as a metapopulation as defined in the Background section, and that designation of critical habitat at these five locations is necessary for the conservation of the tidewater goby along the Gaviota Coast in Santa Barbara County.

On an intermittent basis, SB–6 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SB–7: Arroyo Hondo (1 ac (1 ha))

This unit is located in Santa Barbara County, approximately 5.0 mi (8.0 km) east of Gaviota. This unit encompasses approximately 1 ac (1 ha), and consists entirely of private lands. SB–7 is located 5.0 mi (8.0 km) south of Gaviota Creek (SB–6), and is separated from the nearest extant population to the south, in Arroyo Quemado (not proposed as critical habitat), by 1.3 mi (2.0 km). This unit is outside the geographical area occupied by the species at the time of listing, but was subsequently found to

be occupied. This unit is essential for the conservation of the species because it provides habitat to nearby occupied units and could provide habitat for maintaining the tidewater goby metapopulation in the region. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species. Although SB–7 was not considered to be occupied at the time of listing, it does possess the PCE that support tidewater goby. On an intermittent basis, SB–7 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SB–8: Winchester/Bell Canyon (6 ac (3 ha))

This unit is located in Santa Barbara County, approximately 2.2 mi (3.5 km) west of the community of El Encanto Heights. The unit encompasses approximately 6 ac (3 ha), and consists of 1 ac (1 ha) of local lands and 5 ac (2 ha) of private lands. SB–8 is located 6.0 mi (9.6 km) north of Goleta Slough (SB–9), and is separated from the nearest extant population to the north, Tecolote Canyon (not proposed as critical habitat), by 0.3 mi (0.4 km). SB–8 was occupied at the time of listing. This unit is important to the conservation of the species because it allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region.

On an intermittent basis, SB–8 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SB–9: Goleta Slough (190 ac (76 ha))

This unit is located in Santa Barbara County, within the City of Goleta. The unit encompasses approximately 190 ac (76 ha), and consists of 164 ac (66 ha) of local lands and 26 ac (10 ha) of private lands. SB–9 is located 6.0 mi (9.6 km) south of Winchester/Bell Canyon (SB–8), and is separated from the nearest extant population to the north, Devereux Slough (not proposed as critical habitat), by 4.0 mi (6.4 km). This unit is outside the geographical area occupied by the species at the time of listing, but is currently occupied. This unit is essential for the conservation of the species because it provides habitat for the species, allows for connectivity between tidewater goby source populations from nearby units, supports gene flow, and provides for metapopulation dynamics in this region. Although SB–9 was not considered to be occupied at the time of listing, it does possess the PCE that could support tidewater goby. On an intermittent basis, SB–9 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SB–10: Arroyo Burro (3 ac (1 ha))

This unit is located in Santa Barbara County, approximately 3.6 mi (5.8 km) west of the City of Santa Barbara. The unit encompasses approximately 3 ac (1 ha), and consists entirely of local lands. SB–10 is located 4.0 mi (6.4 km) north of Mission Creek-Laguna Channel (SB–11), which is also the nearest extant population. This unit is outside the geographical area occupied by the species at the time of listing, but was subsequently found to be occupied. This unit is essential for the conservation of the species because it provides habitat for the species, allows for connectivity between tidewater goby source populations from nearby units, supports gene flow, and provides for metapopulation dynamics in this region. Although SB–10 was not considered to be occupied at the time of listing, it does possess the PCE that could support tidewater goby. On an intermittent basis, SB–10 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SB–11: Mission Creek-Laguna Channel (7 ac (3 ha))

This unit is located in Santa Barbara County, within the City of Santa Barbara. The unit encompasses approximately 7 ac (3 ha), and consists of 3 ac (1 ha) of State lands and 4 ac (2 ha) of local lands. SB–11 is located 4.0 mi (6.4 km) south of Arroyo Burro (SB–10), and is separated from the nearest extant population to the south, in Sycamore Creek (not proposed as critical habitat), by 1.0 mi (1.5 km). SB–11 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast.

On an intermittent basis, SB–11 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

SB–12: Arroyo Paredon (4 ac (3 ha))

This unit is located in Santa Barbara County, within the City of Santa Barbara. The unit encompasses approximately 4 ac (3 ha), and consists of 1 ac (1 ha) of State lands, 1 ac (1 ha) local lands, and 2 ac (1 ha) of private lands. SB–12 is located 8.0 mi (12.8 km) south of Mission Creek-Laguna Channel (SB–11), and is separated from the nearest extant population to the south, in Carpinteria Creek (not proposed as critical habitat), by 2.7 mi (4.3 km). This unit is outside the geographical area

occupied by the species at the time of listing, but was subsequently found to be occupied. This unit is essential for the conservation of the species because it provides habitat for the species, allows for connectivity between tidewater goby source populations from nearby units, supports gene flow, and provides for metapopulation dynamics in this region. Although SB–12 was not considered to be occupied at the time of listing, it does possess the PCE that could support tidewater goby. On an intermittent basis, SB–12 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

VEN–1: Ventura River (50 ac (21 ha))

This unit is located in Ventura County, within the City of Ventura. The unit encompasses approximately 50 ac (21 ha), and consists of 25 ac (10 ha) of State lands, 16 ac (7 ha) of local lands, and 9 ac (4 ha) of private lands. VEN–1 is located 4.3 mi (7.0 km) north of the Santa Clara River (VEN–2), which is also the nearest extant population. VEN–1 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. This critical habitat unit provides habitat for a tidewater goby population that is important to the conservation of one of the genetically distinct recovery units as described in the Recovery Plan (Dawson *et al.* 2001, p. 1172). Maintaining this unit will reduce the chance of losing the tidewater goby along this portion of the coast, and help conserve genetic diversity within the species.

On an intermittent basis, VEN–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

VEN–2: Santa Clara River (323 ac (130 ha))

This unit is located in Ventura County, approximately 4 mi (6.4 km) southeast of the City of Ventura. This unit encompasses approximately 323 ac (130 ha), and consists of 199 ac (80 ha) of State lands, 14 ac (6 ha) of local lands, and 110 ac (44 ha) of private lands. VEN–2 is located 4.3 mi (7.0 km) south of the Ventura River unit (VEN–1), which is also the nearest extant population. VEN–2 was occupied by tidewater goby at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. VEN–2 unit will support the recovery of the tidewater goby population along this portion of the coast. This unit is known to have tens of thousands of tidewater goby during certain times of the year (C. Dellith, Service, pers. comm. 2010), and is considered one of the largest tidewater goby populations in southern California.

On an intermittent basis, VEN–2 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

VEN–3: J Street Drain-Ormond Lagoon (121 ac (49 ha))

This unit is located in Ventura County, approximately 1 mi (1.6 km) east of Port Hueneme. This unit encompasses approximately 121 ac (49 ha), and consists of 5 ac (2 ha) of State lands, 49 ac (20 ha) of local lands, and 67 ac (27 ha) of private lands. VEN–3 is located 4.3 mi (6.9 km) south of the Santa Clara River (VEN–2), which is also the nearest extant population. VEN–3 was occupied at the time of listing. This unit allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. On an intermittent basis, VEN–3 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

VEN–4: Big Sycamore Canyon (1 ac (1 ha))

This unit is located in Ventura County, approximately 12.0 mi (19.3 km) northwest of the City of Malibu. The unit encompasses approximately 1 ac (1 ha), and consists entirely of State lands. VEN–4 is located 5.0 mi (8.0 km) north of Arroyo Sequit (LA–1), and is separated from the nearest extant population to the north, in the Calleguas Creek (not proposed as critical habitat), by 5.0 mi (8.0 km). This unit is outside the geographical area occupied by the species at the time of listing, but was subsequently found to be occupied. This unit is essential for the conservation of the species because it provides habitat for the species, allows for connectivity between tidewater goby source populations from nearby units, supports gene flow, and provides for metapopulation dynamics in this region. Although VEN–4 was not considered to be occupied at the time of listing, it does possess the PCE that could support tidewater goby. On an intermittent basis, VEN–4 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

LA–1: Arroyo Sequit (1 ac (1 ha))

This unit is located in Los Angeles County, approximately 7.5 mi (12.0 km) northwest of the City of Malibu. The unit encompasses approximately 1 ac (1 ha), and consists entirely of State lands. LA–1 is located 5.0 mi (8 km) south of Big Sycamore Canyon (VEN–4), which is the nearest extant population. This unit is outside the geographical area occupied by the species at the time of listing, is not known to be currently occupied, and there are no historical tidewater goby records for this location. However, this unit is essential for the conservation of the species because it provides habitat to nearby occupied units and is identified in the Recovery Plan as a potential introduction site, and could provide habitat for maintaining the tidewater goby metapopulation in the region. This unit will provide habitat for tidewater goby that disperse from Big Sycamore Creek and the Malibu Lagoon, either through natural means or by reintroduction, which may serve to decrease the risk of extirpation of this metapopulation through stochastic events. This unit would also allow for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region.

Although LA–1 is not currently occupied, it does possess the PCE that could support tidewater goby. On an intermittent basis, LA–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

LA–2: Zuma Canyon (5 ac (2 ha))

This unit is located in Los Angeles County, approximately 7.5 mi (12.0 km) northwest of the City of Malibu. The unit encompasses approximately 5 ac (2 ha), and consists entirely of local lands administered by Los Angeles County. LA–2 is located 6.8 mi (11 km) south of Arroyo Sequit (LA–1), and is separated from the nearest extant population to the south, in the Malibu Lagoon (LA–3), by 10.0 mi (16.0 km). LA–2 is outside the geographical area occupied by the species at the time of listing, is not known to be currently occupied, and there are no historical tidewater goby records for this location. However, this unit is essential for the conservation of the species because it provides habitat to nearby occupied units and is identified in the Recovery Plan as a potential introduction site, and could provide habitat for maintaining the tidewater goby metapopulation in the region. This unit will provide habitat for tidewater goby that disperse from Big Sycamore Creek and the Malibu Lagoon, either through natural means or by introduction, which may serve to decrease the risk of extirpation of this metapopulation through stochastic events. This unit would also allow for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region.

Although LA–2 is not currently occupied, it does possess the PCE that could support tidewater goby. On an intermittent basis, LA–2 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

LA–3: Malibu Lagoon (64 ac (27 ha))

This unit is located in Los Angeles County, approximately 0.6 mi (1 km) east of Malibu Beach. The unit encompasses approximately 64 ac (27 ha), and consists of 41 ac (27 ha) of State lands, 1 ac (1 ha) of local lands, and 22 ac (9 ha) of private lands. LA–3 is located 6.0 mi (9.6 km) north of Topanga Canyon (LA–4), which is also the nearest extant population. LA–3 was occupied at the time of listing. The tidewater goby population in this unit is likely a source population for this region, and is therefore important for maintaining the metapopulation in this region. Maintaining this unit will also reduce the chance of losing the tidewater goby along this portion of the coast. LA–3 supports one of the two remaining extant populations of tidewater goby within Los Angeles County, and both areas supporting these populations have been proposed as critical habitat.

On an intermittent basis, LA–3 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats described in Table 3. Please see *Special Management Considerations or Protection* section of this rule for a discussion of the threats to tidewater goby habitat and potential management considerations.

LA–4: Topanga Creek (6 ac (2 ha))

This unit is located in Los Angeles County, approximately 5.5 mi (8.9 km) northwest of the City of Santa Monica. The unit encompasses approximately 6 ac (2 ha), and consists of 4 ac (1 ha) of State lands and 2 ac (1 ha) of private lands. LA–4 is located 6.0 mi (9.6 km) south of Malibu Creek (LA–3), which is also the nearest extant population. This unit is outside the geographical area occupied by the species at the time of listing, but is currently occupied. Tidewater goby were first detected at this locality in 2001 (Service 2005, p. C–30). Tidewater goby in Topanga Canyon are probably derived from fish that dispersed from Malibu Creek. This unit is essential for the conservation of the species because it allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics in this region. This location is one of the two remaining locations in Los Angeles County known to be occupied by tidewater goby.

Although LA–4 was not considered to be occupied at the time of listing, it does possess the PCE that could support tidewater goby. On an intermittent basis, LA–4 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

OR–1: Aliso Creek (14 ac (5 ha))

This unit is located in Orange County, within the City of Laguna Beach. The unit encompasses approximately 14 ac (6 ha), and consists of 8 ac (3 ha) of local lands and 6 ac (2 ha) of private lands. OR–1 is located 13.5 mi (21.7 km) north of the San Mateo Creek (not proposed as critical habitat, see *Application of Section 4(a)(3) of the Act—Marine Corps Base Camp Pendleton* section below), which supports the nearest extant population. This unit is outside the

geographical area occupied by the species at the time of listing, and is not known to be currently occupied. OR–1 was last known to be occupied in 1978 (Service 2005, p. C–31). However, this unit is essential for the conservation of the species because it would allow for connectivity and dispersal between tidewater goby source populations. This unit is identified in the Recovery Plan as a potential reintroduction site. If tidewater goby become established at this location, this unit's primary functions would be to ensure necessary metapopulation dynamics of tidewater goby and contribute to maintaining the genetic diversity of the genetically unique South Coast Recovery Unit. OR–1 will support the recovery of the tidewater goby populations by serving as an area suitable for reintroduction of tidewater goby near the northern extent of the South Coast Recovery Unit, and is likely important for maintaining the tidewater goby metapopulation in the region. The reason for the extirpation of the historical population at this site is unknown.

Although OR–1 is not currently occupied, it does possess the PCE that could support tidewater goby. On an intermittent basis, OR–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

SAN–1: San Luis Rey River (56 ac (23 ha))

This unit is located in San Diego County, within the City of Oceanside. The unit encompasses approximately 56 ac (23 ha), and consists of 3 ac (1 ha) of State lands, 49 ac (20 ha) of local lands, and 4 ac (2 ha) of private lands. SAN–1 is located approximately 2.5 mi (4.0 km) south of the Santa Margarita River (not proposed as critical habitat; see *Application of Section 4(a)(3) of the Act—Marine Corps Base Camp Pendleton* section below), which supports the nearest known extant population. This unit is outside the geographical area occupied by the species at the time of listing but is currently occupied. This unit is essential for the conservation of the species because it allows for connectivity between tidewater goby source populations, and thereby supports gene flow and metapopulation dynamics of the genetically unique South Coast Recovery Unit. SAN–1 will support the recovery of the tidewater goby population along this portion of the coast and may help facilitate colonization of currently unoccupied locations to the south identified in the Recovery Plan for the species. This unit will function as one of the southern extents of the metapopulation complex that is essential for the conservation of the species. Unit SAN–1 was identified in the Recovery Plan as a potential reintroduction site. Prior to 2010, tidewater goby were last detected in this unit in 1958 (K. Lafferty, University of California Santa Barbara, pers. comm. 2010). They have since re-colonized this area, presumably from one of the occupied areas on MCB Camp Pendleton following a storm event. This unit now represents the southernmost occupied area of the species' distribution, and is important for maintaining the tidewater goby metapopulation in the region.

Although SAN–1 was not considered to be occupied at the time of listing, it does possess the PCE that could support tidewater goby. On an intermittent basis, SAN–1 possesses a sandbar across the mouth of the lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, and thereby provides relatively stable conditions (PCE 1c). PCE 1a and 1b occur throughout the unit, although their precise location during any particular time period may change in response to seasonal fluctuations in precipitation and tidal inundation.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F. 3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for tidewater goby. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the tidewater goby. These activities include, but are not limited to:

(1) Actions such as channelization and water diversion that reduce the amount of space available for individual and population growth and normal behavior, and reduce or eliminate sites for breeding, reproduction, and rearing (or development) of offspring.

(2) Actions that substantially alter the natural hydrologic regime upstream of the designated critical habitat units. These activities could include, but are not limited to, ground water pumping or surface water diversion activities, construction of impoundments or flood control structures, or the release of water in excess of levels that historically occurred. Such activities could result in an atypical reduction or excess amount of water present in the aquatic habitats that tidewater goby occupy, and alter the salinity conditions that support this species.

(3) Actions that substantially alter the channel morphology of the designated critical habitat units or the areas up-gradient from these units. Such activities may include, but are not limited to, channelization projects, road and bridge projects, removal of substrates, destruction and alteration of riparian vegetation, reduction of available floodplain, and removal of gravel or floodplain terrace materials. Such activities could increase water velocities and flush large numbers of tidewater goby into the ocean, especially during flood events.

(4) Actions that result in the discharge of agricultural and sewage effluents, or chemical or biological pollutants, into the aquatic habitats where tidewater goby occur. Such activities have the ability to degrade the water quality where tidewater goby live, introduce toxic substances that can poison individual fish, adversely affect fish immune systems, and decrease the amount of oxygen in aquatic habitats where the species occurs.

(5) Actions that cause atypical levels of sedimentation in coastal wetland habitats or remove vegetative cover that stabilizes stream banks. Such activities could include, but are not limited to, grazing or mining activities, road construction projects, off-road vehicle use, and other watershed and floodplain disturbance activities. Such activities have the potential to alter the amount and composition of the substrate in the habitats where tidewater goby occur, and thereby affect the species' ability to construct breeding burrows.

(6) Actions that result in the artificial breaching of lagoon habitats. Such activities can reduce the amount of space available for individual and population growth; strand and desiccate tidewater goby adults, fry, or eggs; and increase the risk of predation by native or non-native predators as tidewater goby become concentrated and exposed as water levels drop.

(7) Actions that create barriers that prevent tidewater goby from accessing areas they would normally be able to access. These activities, which may include, but are not limited to, water diversions, road crossings, and sills, can reduce the amount of space available for individual and population growth, and reduce the number and extent of sites for breeding, reproduction, and rearing (or development) of offspring.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed revised critical habitat designation for tidewater goby to determine if they are exempt under section 4(a)(3) of the Act.

Approved INRMPs

VAFB and MCB Camp Pendleton have approved INRMPs. The U.S. Air Force and Marine Corps (on VAFB and MCB Camp Pendleton, respectively) committed to working closely with us and California Department of Fish and Game (CDFG) (as well as CDPR) with regards to lands leased by MCB Camp Pendleton to continually refine the existing INRMPs as part of the Sikes Act's INRMP review process. Based on our review of the INRMPs for these military installations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the lands within these installations identified as meeting the definition of critical habitat are subject to the INRMPs, and that conservation efforts identified in these INRMPs will provide a benefit to the tidewater goby (see the following sections that detail this determination for each installation). Therefore, lands within these installations are exempt from critical habitat designation under section 4(a)(3)(B) of the Act. We are not including approximately 727 ac (294 ha) of habitat on Vandenberg Air Force Base, and approximately 989 ac (400 ha) of habitat on MCB Camp Pendleton, in this proposed revised critical habitat designation because of this exemption.

Table 4 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat, but are exempt from designation under section 4(a)(3)(B) of the Act.

TABLE 4—EXEMPTIONS FROM PROPOSED CRITICAL HABITAT DESIGNATION FOR THE TIDEWATER GOBY UNDER SECTION 4(a)(3) OF THE ACT

Specific area	Areas Meeting the Definition of Critical Habitat in Acres (Hectares)	Areas Exempted in Acres (Hectares)
Shuman Canyon	16 (7)	16 (7)
San Antonio Creek	63 (25)	63 (25)
Santa Ynez River	638 (258)	638 (258)
Cañada Honda	4 (2)	4 (2)
Jalama Creek	6 (2)	6 (2)
San Mateo Creek	73 (30)	73 (30)
San Onofre Creek	20 (8)	20 (8)
Las Flores/Las Pulgas Creek	36 (14)	36 (14)
Hidden Lagoon	39 (16)	39 (16)
Aliso Canyon	65 (26)	65 (26)
French Lagoon	60 (24)	60 (24)
Cockleburr Canyon	74 (30)	74 (30)
Santa Margarita River	789 (319)	789 (319)
Totals	1,833 (761)	1,833 (761)

Vandenberg Air Force Base

VAFB is headquarters for the 30th Space Wing, the Air Force's Space Command unit that operates VAFB and the Western Test Range/Pacific Missile Range. VAFB operates as an aerospace center supporting west coast launch activities for the Air Force, Department of Defense, National Aeronautics and Space Administration, and commercial contractors. The three primary operational missions of VAFB are to launch, place, and track satellites in near-polar orbit; to test and evaluate the intercontinental ballistic missile systems; and to support aircraft operations in the western range. VAFB lies on the south-central California coast, approximately 275 mi (442 km) south of San Francisco, 140 mi (225 km) northwest of Los Angeles, and 55 mi (88 km) northwest of Santa Barbara. The 99,100 ac (40,104 ha) base extends along approximately 42 mi (67 km) of Santa Barbara County coast, and varies in width from 5 to 15 mi (8 to 24 km).

The VAFB INRMP was prepared to provide strategic direction to ecosystem and natural resources management on VAFB. The long-term goal of the INRMP is to integrate all management activities in a manner that sustains, promotes, and restores the health and integrity of VAFB ecosystems using an adaptive management approach. The INRMP was designed to: (1) Summarize existing management plans and natural resources literature pertaining to VAFB; (2) identify and analyze management goals in existing plans; (3) integrate the management goals and objectives of individual plans; (4) support base compliance with applicable regulatory requirements; (5) support the integration of natural resource stewardship with the Air Force mission; and (6) provide direction for monitoring strategies.

VAFB completed an INRMP in 2011, which benefits tidewater goby by: (1) Avoiding tidewater goby and their habitat, whenever possible, in project planning; (2) scheduling activities that may affect tidewater goby outside of the peak breeding period (March to July); (3) coordinating with VAFB water quality staff to prevent degradation and contamination of aquatic habitats; and (4) prohibiting the introduction of nonnative fishes into streams on-base (VAFB 2011, Tab D, p. 15). Furthermore, VAFB's environmental staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including tidewater goby and their habitat. In addition, VAFB's INRMP protects aquatic habitats for the tidewater goby by excluding cattle from wetlands and riparian areas through the installation and maintenance of fencing.

Habitat features essential to the conservation of the tidewater goby exist on VAFB, and activities occurring on VAFB are currently being conducted in a manner that minimizes impacts to tidewater goby habitat. This military installation has an approved INRMP that provides a benefit to the tidewater goby, and VAFB has committed to work closely with the Service and the CDFG to continually refine their existing

INRMP as part of the Sikes Act's INRMP review process. Therefore, based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2011 INRMP for VAFB provide a benefit to the tidewater goby and its habitat. This includes habitat located in the following areas: Shuman Canyon, San Antonio Creek, Santa Ynez River, Cañada Honda, and Jalama Creek. Therefore, lands subject to the INRMP for VAFB, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not including approximately 727 ac (294 ha) of habitat in this proposed revised critical habitat designation because of this exemption.

Marine Corps Base Camp Pendleton

MCB Camp Pendleton is the Marine Corps' premier amphibious training installation, and its only west coast amphibious assault training center. The installation has been conducting air, sea, and ground assault training since World War II. MCB Camp Pendleton occupies over 125,000 ac (50,586 ha) of coastal southern California in the northwest corner of San Diego County. Aside from nearly 10,000 ac (4,047 ha) that are developed, most of the installation consists of undeveloped land used for training. MCB Camp Pendleton is situated between two major metropolitan areas: Los Angeles, 82 mi (132 km) to the north, and San Diego, 38 mi (61 km) to the south. Nearby communities include Oceanside to the south, Fallbrook to the east, and San Clemente to the northwest. Aside from a portion of the installation's border that is shared with the San Mateo Wilderness Area and the Fallbrook Naval Weapons Station, the surrounding land use is urban development, rural residential development, and agricultural farming and ranching. The largest single leaseholder on the installation is California State Parks, which includes a 50-year real estate lease granted on September 1, 1971, for 2,000 ac (809 ha) that encompass San Onofre State Beach.

The MCB Camp Pendleton INRMP is a planning document that guides the management and conservation of natural resources under the installation's control. The INRMP was prepared to assist installation staff and users in their efforts to conserve and rehabilitate natural resources consistent with the use of MCB Camp Pendleton to train Marines and set the agenda for managing natural resources on MCB Camp Pendleton. MCB Camp Pendleton completed its INRMP in 2001, followed by a revised and updated version in 2007 to address conservation and management recommendations within the scope of the installation's military mission, including conservation measures for tidewater goby (MCB Camp Pendleton 2007, Appendix F, Section F.22, pp. F–78–F–85). Additionally, according to the 2007 INRMP, California State Parks is required to conduct its natural resources management consistent with the philosophies and objectives of the revised 2007 INRMP (MCB Camp Pendleton 2007, Chapter 2, p. 31).

Tidewater goby receives programmatic protection from training and other installation activities within the estuarine component of its habitat, as outlined and required in both the Estuarine and Beach Ecosystem Conservation Plan and the Riparian Ecosystem Conservation Plan (MCB Camp Pendleton 2007, Appendices B and C, respectively). Management and protection measures that benefit tidewater goby identified in Appendix B of the INRMP include, but are not limited to, the following: (1) Maintaining connectivity of beach and estuarine ecosystems with riparian and upland ecosystems; (2) promoting natural hydrological processes to maintain estuarine water quality and quantity; (3) maximizing the probability of tidewater goby metapopulation existence within the lagoon complex (MCB Camp Pendleton 2007, Appendix B, pp. B5–B7). Management and protection measures that benefit tidewater goby identified in Appendix C of the INRMP include, but are not limited to, the following: (1) Eliminating nonnative invasive species (such as *Arundo donax* (giant reed)) on the installation and off the installation in partnership with upstream landowners to enhance ecosystem value; (2) providing viable riparian corridors and promoting connectivity of native riparian habitats; (3) providing for unimpeded hydrologic and sedimentary floodplain dynamics to support the maintenance and enhancement of biota; (4) maintaining natural floodplain processes and extent of these areas by avoiding and minimizing further permanent loss of floodplain habitats; (5) maintaining to the maximum extent possible natural flood regimes; (6) maintaining to the extent practicable stream and river flows needed to support riparian habitat; (7) monitoring and maintaining groundwater levels and basin withdrawals to avoid loss and degradation of habitat quality; (8) restoring areas to their original condition after disturbance, such as following project construction or fire damage; and (9) promoting increased tidewater goby populations in watersheds through perpetuation of natural ecosystem processes and programmatic instruction application for avoidance and minimization of impacts (MCB Camp Pendleton 2007, Appendix C, pp. C5–C8).

Current environmental regulations and restrictions apply to all threatened and endangered species on the installation (including tidewater goby) and are provided to all users of ranges and training areas to guide activities and protect the species and its habitat. First, specific conservation measures are applied to tidewater goby and its habitat that include: (1) Controlling nonnative animal species (such as bullfrogs) and nonnative plant species (such as *Arundo donax* and *Rorippa* spp. (watercress)); and (2) restricting military-related traffic use within riparian areas to existing roads, trails, and crossings. Second, MCB Camp Pendleton's environmental security staff review projects and enforce existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including tidewater goby and its habitat. Third, MCB Camp Pendleton provides training to personnel on environmental awareness for sensitive resources on the base, including tidewater goby and its habitat. As a result of these regulations and restrictions, activities occurring on MCB Camp Pendleton are currently conducted in a manner that minimizes impacts to tidewater goby habitat.

MCB Camp Pendleton's INRMP also benefits tidewater goby through ongoing monitoring and research efforts. The installation conducts monitoring of tidewater goby populations at least once every 3 years, and also conducts monitoring to determine impacts of relocation of effluent infiltration ponds (MCB Camp Pendleton 2007, Appendix B, p. B8). Data are provided to all necessary personnel through MCB Camp Pendleton's GIS database on sensitive resources and in their published resource atlas. Additionally, MCB Camp Pendleton collaborated with the U.S. Geological Survey's Biological Resources Division to develop and implement a rigorous science-based monitoring protocol for tidewater goby populations throughout the installation, including monitoring water quality variables at all historically occupied sites regardless of current occupation status (Lafferty 2010, pp. 10–11).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have

determined that conservation efforts identified in the 2007 INRMP for MCB Camp Pendleton provide a benefit to tidewater goby and its habitat. This includes habitat located in the following areas: San Mateo Creek, San Onofre Creek, Las Flores/Las Pulgas Creek, Hidden Lagoon, Aliso Canyon, French Lagoon, Cockleburr Canyon, and Santa Margarita River (names of areas follow those used in the Recovery Plan (Service 2005, pp. B21–22)). Therefore, lands subject to the INRMP for MCB Camp Pendleton, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3)(B) of the Act, and we are not including approximately 989 ac (400 ha) of habitat in this proposed revised critical habitat designation because of this exemption.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

On January 9, 2008, a final analysis of the potential economic effects of the November 26, 2006, proposed revised designation (71 FR 68914) was completed, taking into consideration public comments and any new information. The economic analysis considered the potential economic effects of actions relating to the conservation of the tidewater goby, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to the designation of critical habitat. It further considered the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the tidewater goby in areas containing features essential to the conservation of the species. The analysis considered both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The September 25, 2007, **Federal Register** notice (72 FR 54411) provided a detailed economics section for the areas proposed as critical habitat for the tidewater goby. The analysis estimated post-designation costs associated with conservation efforts for the tidewater goby to be approximately $25 million (undiscounted) over the next 20 years (2007 to 2026) as a result of the proposed revised designation of critical habitat. Discounted future costs were estimated to be approximately $22 million ($1.5 million annualized) at a 3 percent discount rate or approximately $20 million ($1.8 million annualized) at a 7 percent discount rate.

Appendix B of the final economic analysis estimated the potential incremental impacts of critical habitat designation for the tidewater goby. It did so by attempting to isolate those direct and indirect impacts that are expected to be triggered specifically by the critical habitat designation. The incremental conservation efforts and associated impacts included in Appendix B would not be expected to occur absent the designation of critical habitat for the tidewater goby. Total present value potential incremental impacts were estimated to be $206,000 discounted at 3 percent. All other impacts quantified in the final economic analysis were considered baseline impacts, and were not expected to be affected by the critical habitat designation.

We will announce the availability of the revised draft economic analysis for this proposal as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Ventura Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas that may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for tidewater goby are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not currently considering exercising his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for tidewater goby, and the proposed revised designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary is not currently considering exercising his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will invite these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **ADDRESSES** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

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

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

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

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

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

We will prepare a new economic analysis for this proposed revised critical habitat designation for the tidewater goby. At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

An analysis of the economic impacts of the 2006 proposed revised critical habitat designation was made available to the public on September 25, 2007 (72 FR 54411), and finalized in the final rule to designate critical habitat published in the **Federal Register** on January 31, 2008 (73 FR 5920). In our economic analysis of that designation (73 FR 5920, p. 5951), we evaluated small business entities in five categories: Water management, grazing, transportation, natural resource management, and oil and gas pipeline construction and maintenance. Based on the results of the analysis, incremental impacts are associated with additional administrative costs of section 7 consultations in water management, transportation, natural resource management, and oil and gas pipeline construction and maintenance. No additional project modification costs were expected to result from the designation. All impacts quantified in our economic analysis, other than the incremental portion of administrative costs, were forecasted to occur regardless of critical habitat designation for the tidewater goby. Additional administrative costs resulting from this designation were expected to be borne by various public agencies, including the Service, the U.S. Army Corps of Engineers, California State departments, and various California city and county governments; however, none of these qualified as small entities. Del Norte County, which was the only county containing proposed critical habitat that qualified as a small entity, was not expected to bear any incremental impacts of tidewater goby conservation from the critical habitat designation. Therefore, this analysis did not anticipate any impacts to small entities. However, the economic analysis prepared for the 2008 critical habitat designation does not accurately reflect the full range of potential economic impacts that may result from this proposed revision to tidewater goby critical habitat.

We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects

when undertaking certain actions. Based on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, along with a further analysis of the additional areas included in this revision, we have determined that this proposed rule to revise critical habitat for the tidewater goby is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) Based in part on an analysis conducted for the previous designation of critical habitat and extrapolated to this designation, we do not expect this rule to significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required. However, as we conduct our economic analysis for the revised rule, we will further evaluate this issue and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, or assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Due to current public knowledge of the species protections both within and outside of the proposed areas, we do not anticipate that property values would be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the tidewater goby may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, the elements of the features of the habitat necessary to the conservation of the species are specifically identified, and the areas that are otherwise essential for the conservation of the species are also identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial

system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the tidewater goby within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands that meet the definition of critical habitat. Therefore, we are not proposing to designate critical habitat for the tidewater goby on tribal lands.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Ventura Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Ventura Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.95(e), revise the entry for ''Tidewater Goby *(Eucyclogobius newberryi)*'' under ''FISHES'' to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Tidewater Goby *(Eucyclogobius newberryi)*

(1) Critical habitat units are depicted for Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, and San Diego Counties, California, on the maps below.

(2) Within these areas, the primary constituent element of the physical or biological features essential to the conservation of tidewater goby consists of persistent, shallow (in the range of approximately 0.3 to 6.6 ft (0.1 to 2 m)), still-to-slow-moving lagoons, estuaries, and coastal streams ranging in salinity from 0.5 ppt to 12 ppt, which provide adequate space for normal behavior and individual and population growth, that contain:

(i) Substrates (e.g., sand, silt, mud) suitable for the construction of burrows for reproduction;

(ii) Submerged and emergent aquatic vegetation, such as *Potamogeton pectinatus, Ruppia maritima, Typha latifolia,*and *Scirpus* spp., that provides protection from predators and high flow events; or

(iii) Presence of a sandbar(s) across the mouth of a lagoon or estuary during the late spring, summer, and fall that closes or partially closes the lagoon or estuary, thereby providing relatively stable water levels and salinity.

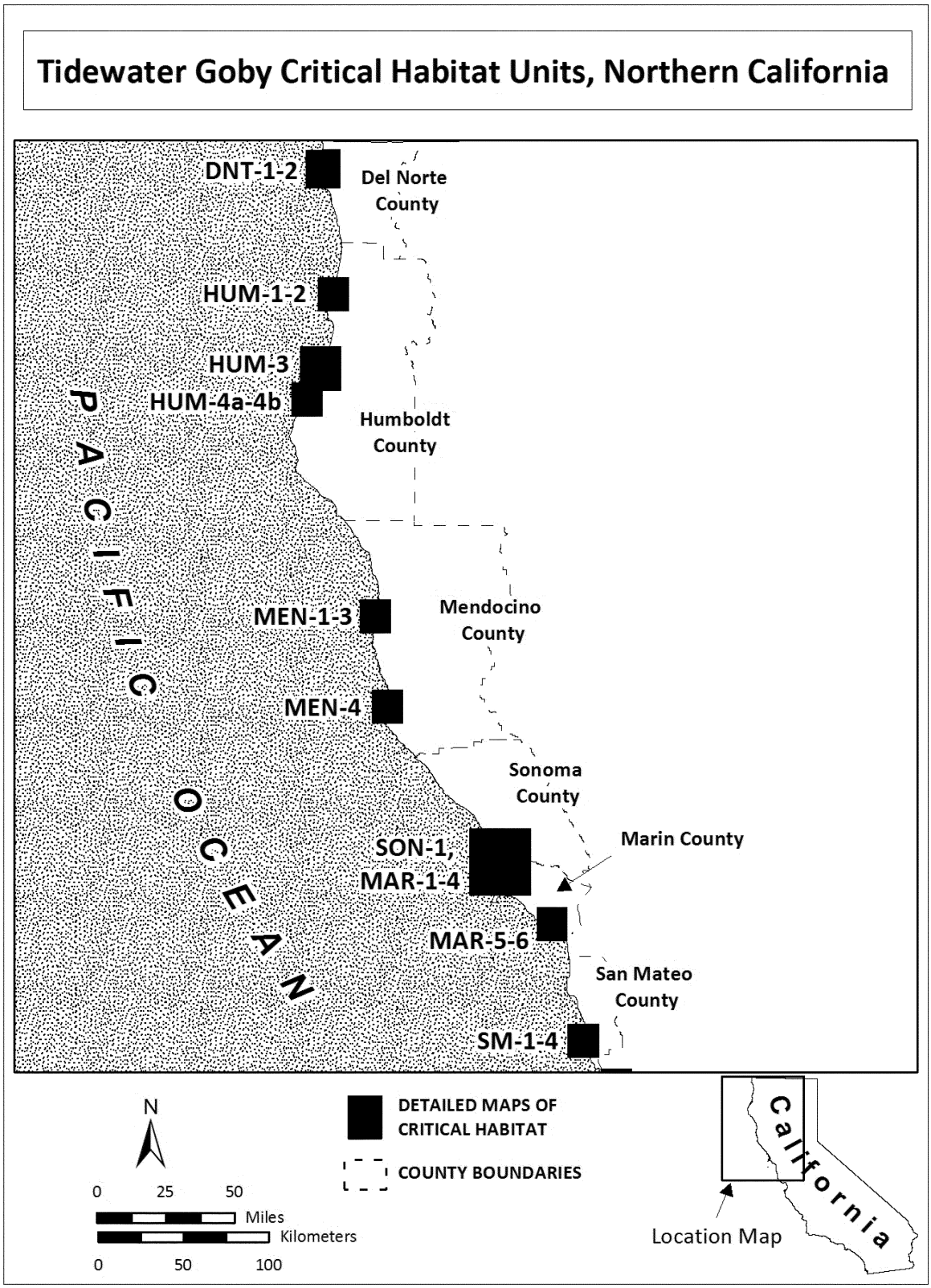
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas), and the land on which they are located, existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created for most units using National Wetlands Inventory (NWI) data (both published data available over the Internet and in-publication provisional data). Where NWI data was lacking, unit boundaries were digitized directly on imagery from the Department of Agriculture's National Aerial Imagery Program data (NAIP) acquired in 2005. NAIP and NWI data were projected to Universal Transverse Mercator (UTM), zones 10

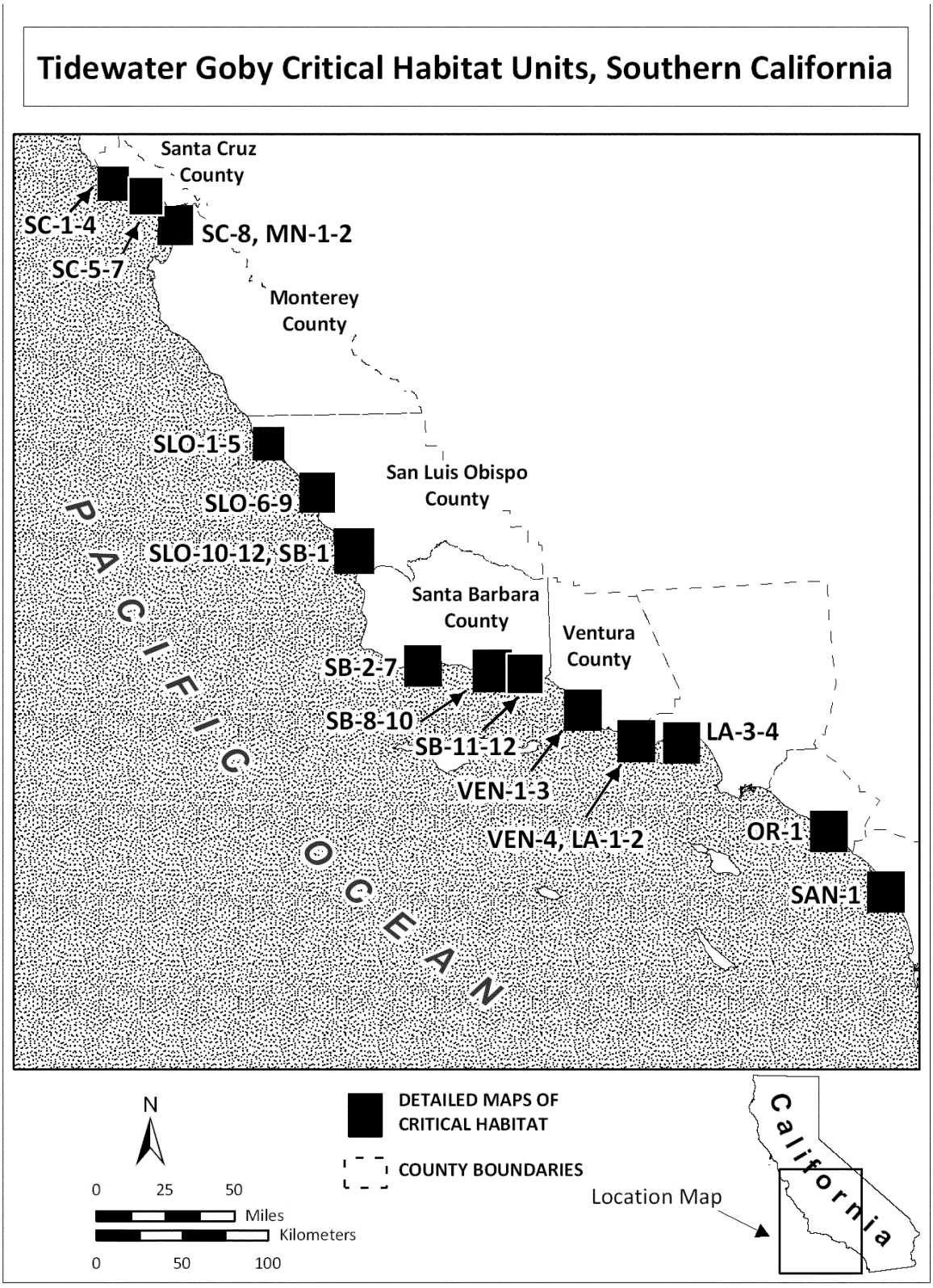
and 11, on the North American Datum of 1983.

(5) **Note:** Index map of critical habitat units for tidewater goby *(Eucyclogobius newberryi)* in Northern California, follows:

BILLING CODE 4310–55–P



(6) **Note:** Index map of critical habitat units for tidewater goby *(Eucyclogobius newberryi)* in Southern California, follows:



(7) Unit DN–1: Tillas Slough, Del Norte County, California.

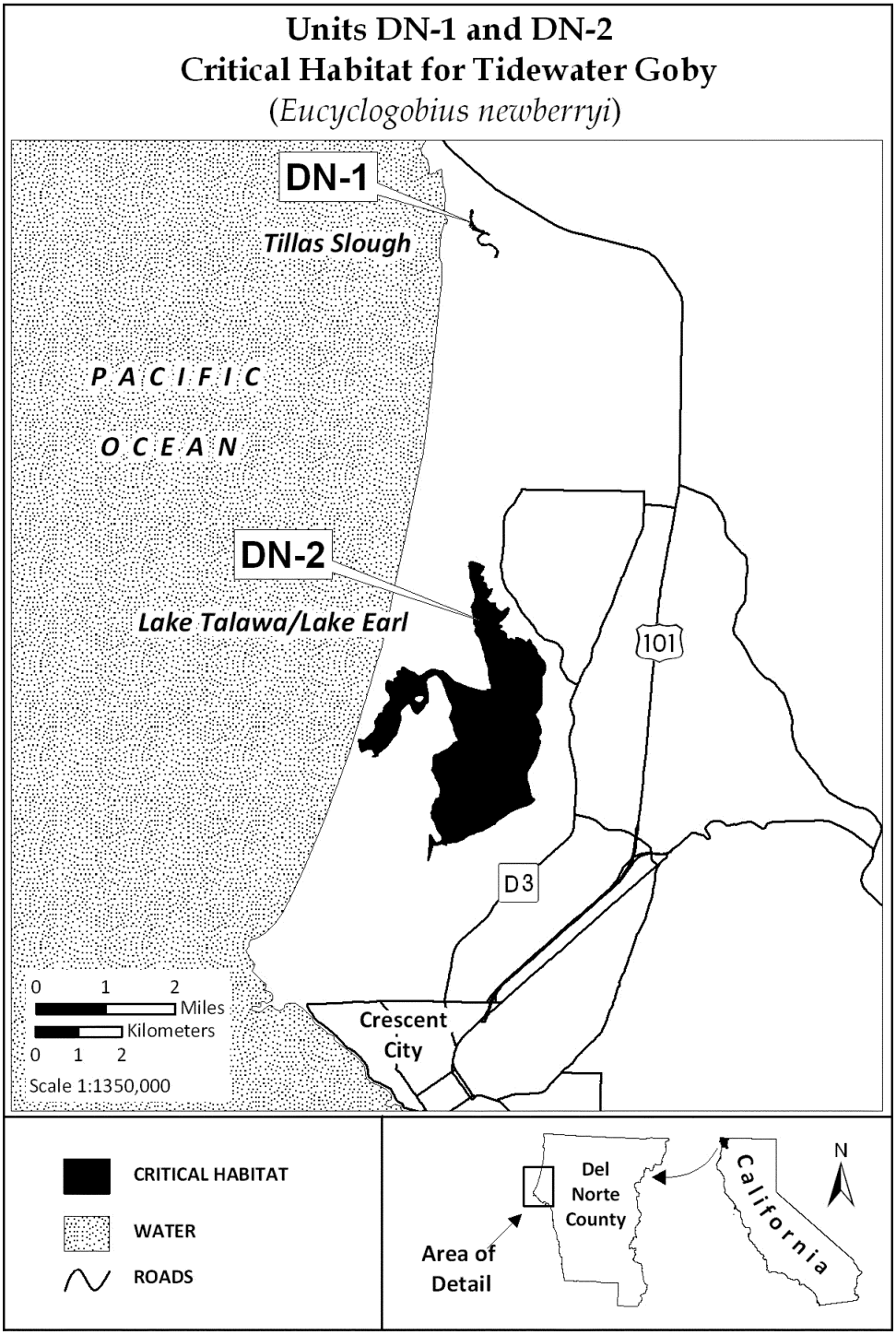
(i) [Reserved for textual description of Unit DN–1: Tillas Slough, Del Norte County, California]

(ii) **Note:** Map of Unit DN–1: Tillas Slough, Del Norte County, California, is depicted on the map in paragraph (8)(ii) of this entry.

(8) Unit DN–2: Lake Earl/Lake Tolowa, Del Norte County, California.

(i) [Reserved for textual description of Unit DN–2: Lake Earl/Lake Tolowa, Del Norte County, California]

(ii) **Note:** Map of Unit DN–1: Tillas Slough and Unit DN–2: Lake Earl/Lake Tolowa, Del Norte County, California, follows:



(9) Unit HUM–1: Stone Lagoon, Humboldt County, California.

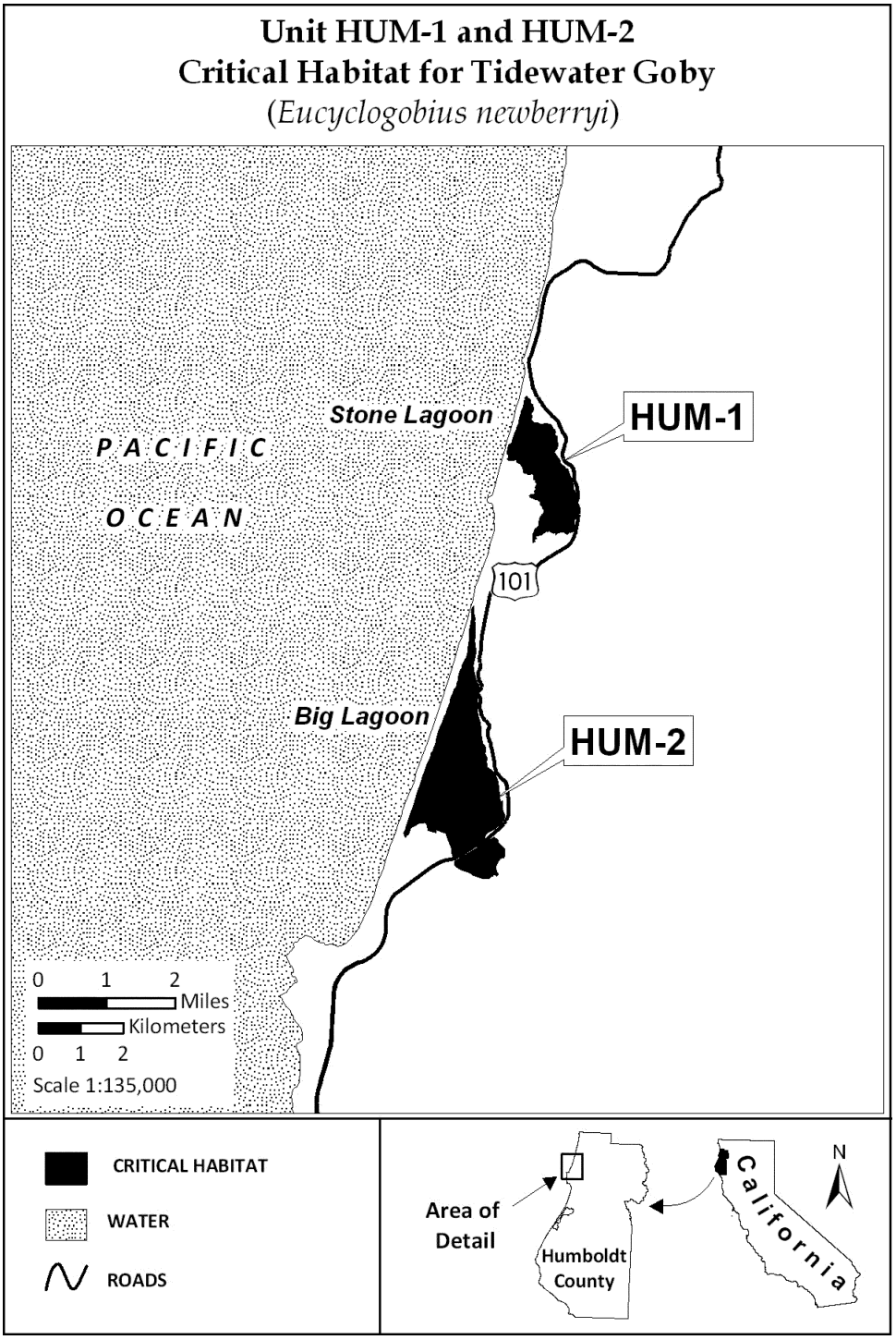
(i) [Reserved for textual description of Unit HUM–1: Stone Lagoon, Humboldt County, California]

(ii) **Note:** Map of Unit HUM–1: Stone Lagoon, Humboldt County, California, is depicted on the map in paragraph (10)(ii) of this entry.

(10) Unit HUM–2: Big Lagoon, Humboldt County, California.

(i) [Reserved for textual description of Unit HUM–2: Big Lagoon, Humboldt County, California]

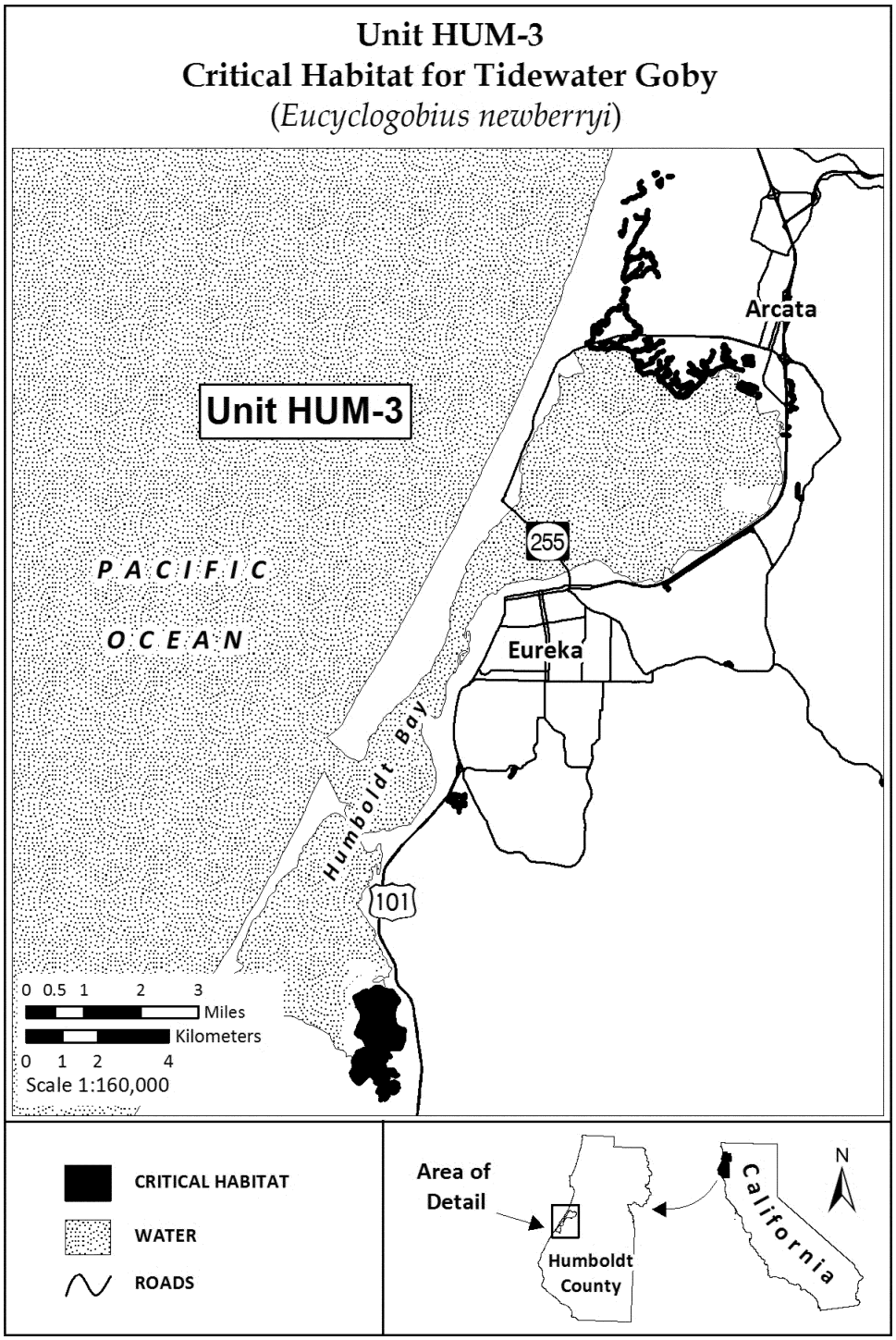
(ii) **Note:** Map of Unit HUM–1: Stone Lagoon and Unit HUM–2: Big Lagoon, Humboldt County, California, follows:



(11) Unit HUM–3: Humboldt Bay, Humboldt County, California.

(i) [Reserved for textual description of Unit HUM–3: Humboldt Bay, Humboldt County, California]

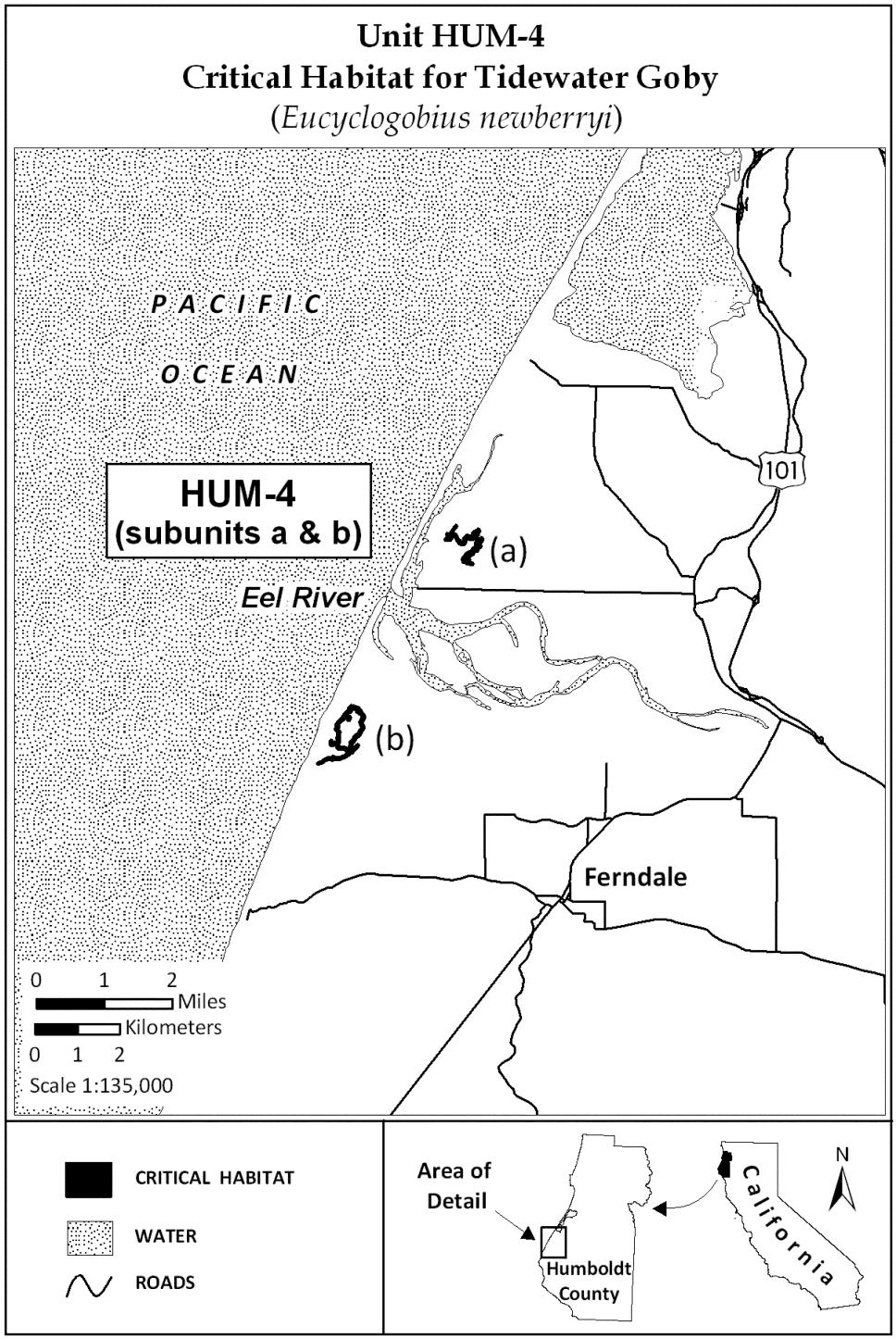
(ii) **Note:** Map of Unit HUM–3: Humboldt Bay, Humboldt County, California, follows:



(12) Unit HUM–4: Eel River, Humboldt County, California.

(i) [Reserved for textual description of Unit HUM–4: Eel River, Humboldt County, California]

(ii) **Note:** Map of Unit HUM–4: Eel River, Humboldt County, California, follows:



(13) Unit MEN–1: Ten Mile River, Mendocino County, California.

(i) [Reserved for textual description of Unit MEN–1: Ten Mile River, Mendocino County, California]

(ii) **Note:** Map of Unit MEN–1: Ten Mile River, Mendocino County, California, is depicted on the map in paragraph (15)(ii) of this entry.

(14) Unit MEN–2: Virgin Creek, Mendocino County, California.

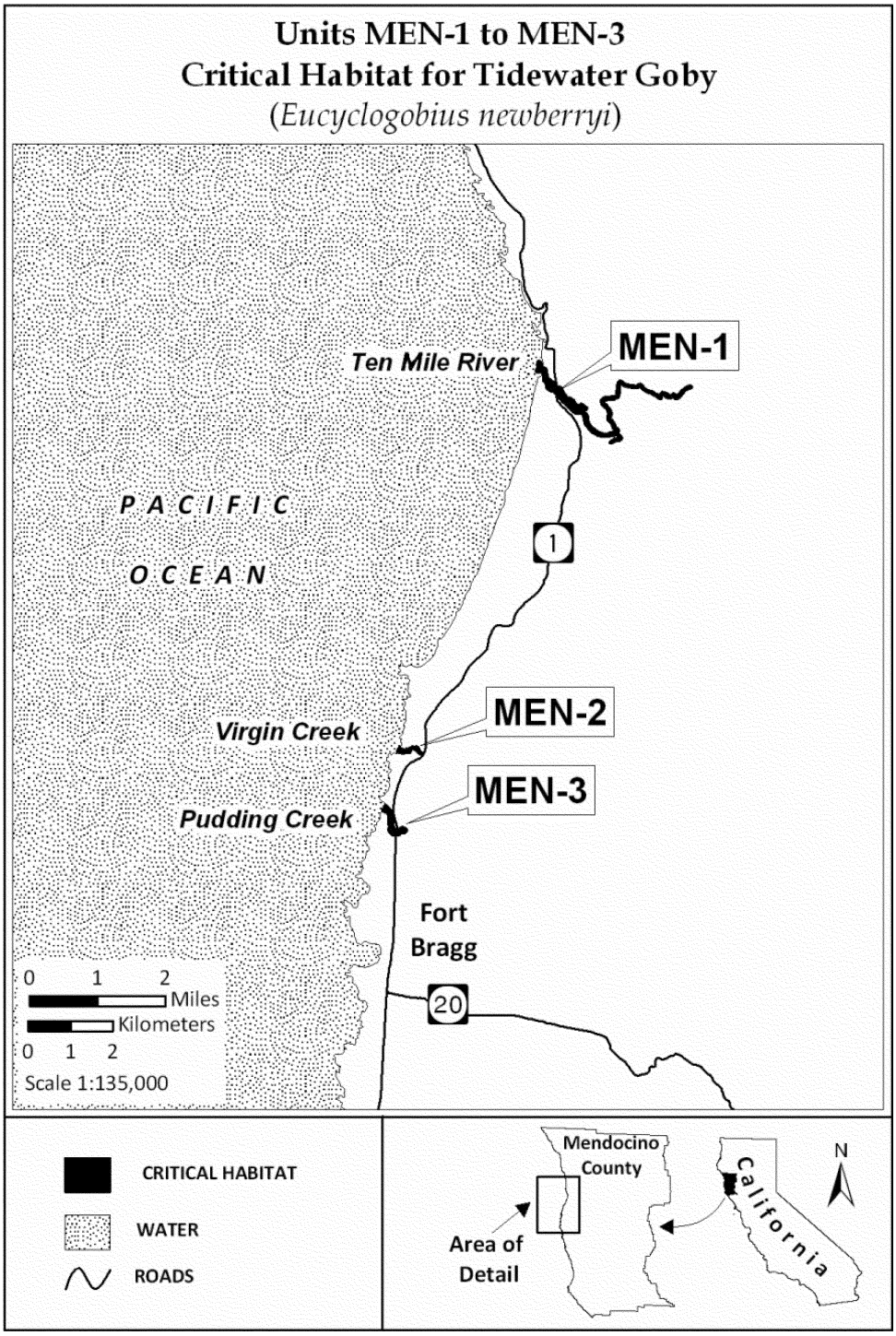
(i) [Reserved for textual description of Unit MEN–2: Virgin Creek, Mendocino County, California]

(ii) **Note:** Map of Unit MEN–2: Virgin Creek, Mendocino County, California, is depicted on the map in paragraph (15)(ii) of this entry.

(15) Unit MEN–3: Pudding Creek, Mendocino County, California.

(i) [Reserved for textual description of Unit MEN–3: Pudding Creek, Mendocino County, California]

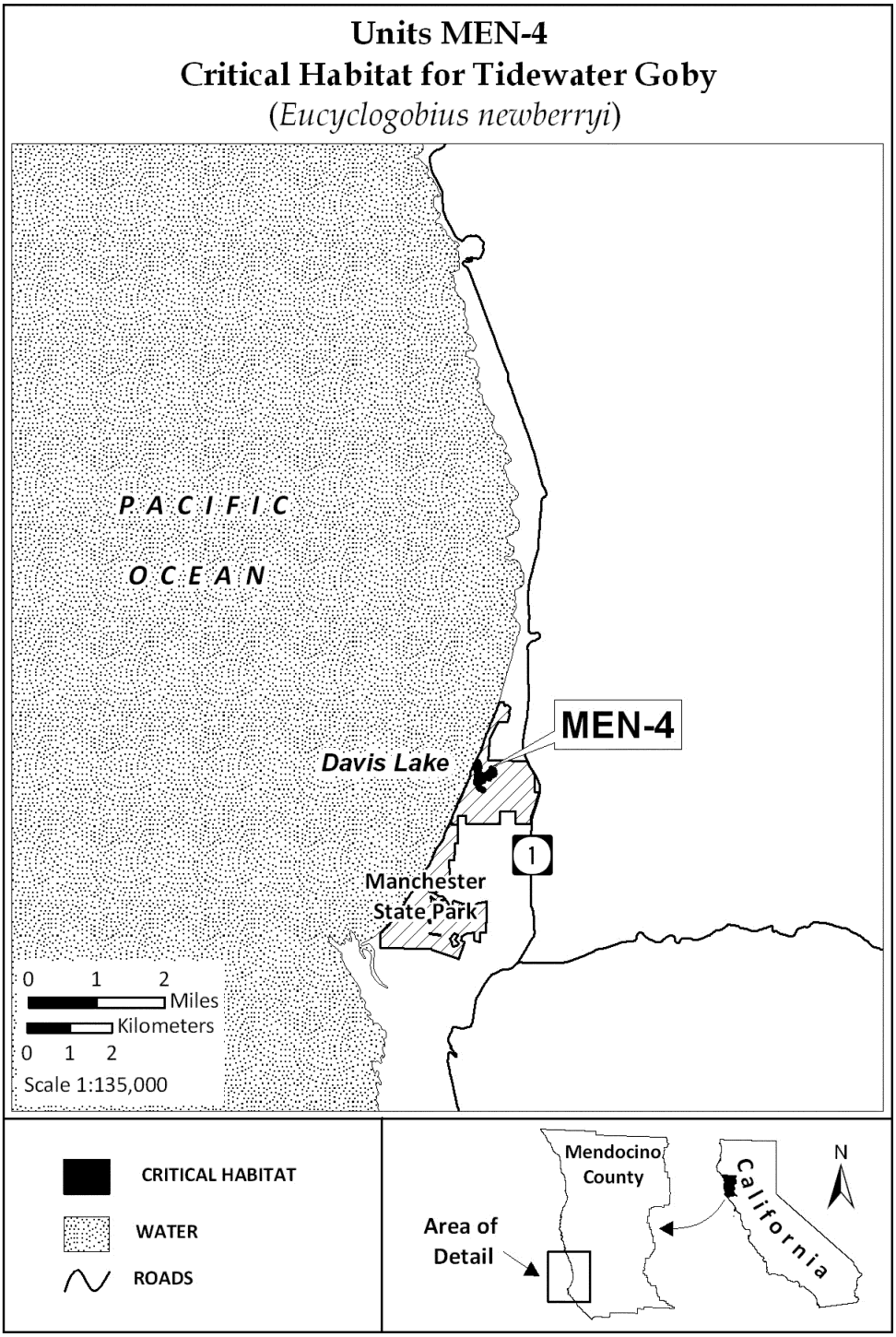
(ii) **Note:** Map of Unit MEN–1: Ten Mile River, Unit MEN–2: Virgin Creek, and Unit MEN–3: Pudding Creek, Mendocino County, California, follows:



(16) Unit MEN–4: Davis Lake/Manchester State Park Ponds, Mendocino County, California.

(i) [Reserved for textual description of Unit MEN–4: Davis Lake/Manchester State Park Ponds, Mendocino County, California]

(ii) **Note:** Map of Unit MEN–4: Davis Lake/Manchester State Park Ponds, Mendocino County, California, follows:



(17) Unit SON–1: Salmon Creek, Sonoma County, California.

(i) [Reserved for textual description of Unit SON–1: Salmon Creek, Sonoma County, California]

(ii) **Note:** Map of Unit SON–1: Salmon Creek, Sonoma County, California, is depicted on the map in paragraph (21)(ii) of this entry.

(18) Unit MAR–1: Estero Americano, Marin County, California.

(i) [Reserved for textual description of Unit MAR–1: Estero Americano, Marin County, California]

(ii) **Note:** Map of Unit MAR–1: Estero Americano, Marin County, California, is depicted on the map in paragraph (21)(ii) of this entry.

(19) Unit MAR–2: Estero De San Antonio, Marin County, California.

(i) [Reserved for textual description of Unit MAR–2: Estero De San Antonio, Marin County, California]

(ii) **Note:** Map of Unit MAR–2: Estero De San Antonio, Marin County, California, is depicted on the map in paragraph (21)(ii) of this entry.

(20) Unit MAR–3: Walker Creek, Marin County, California.

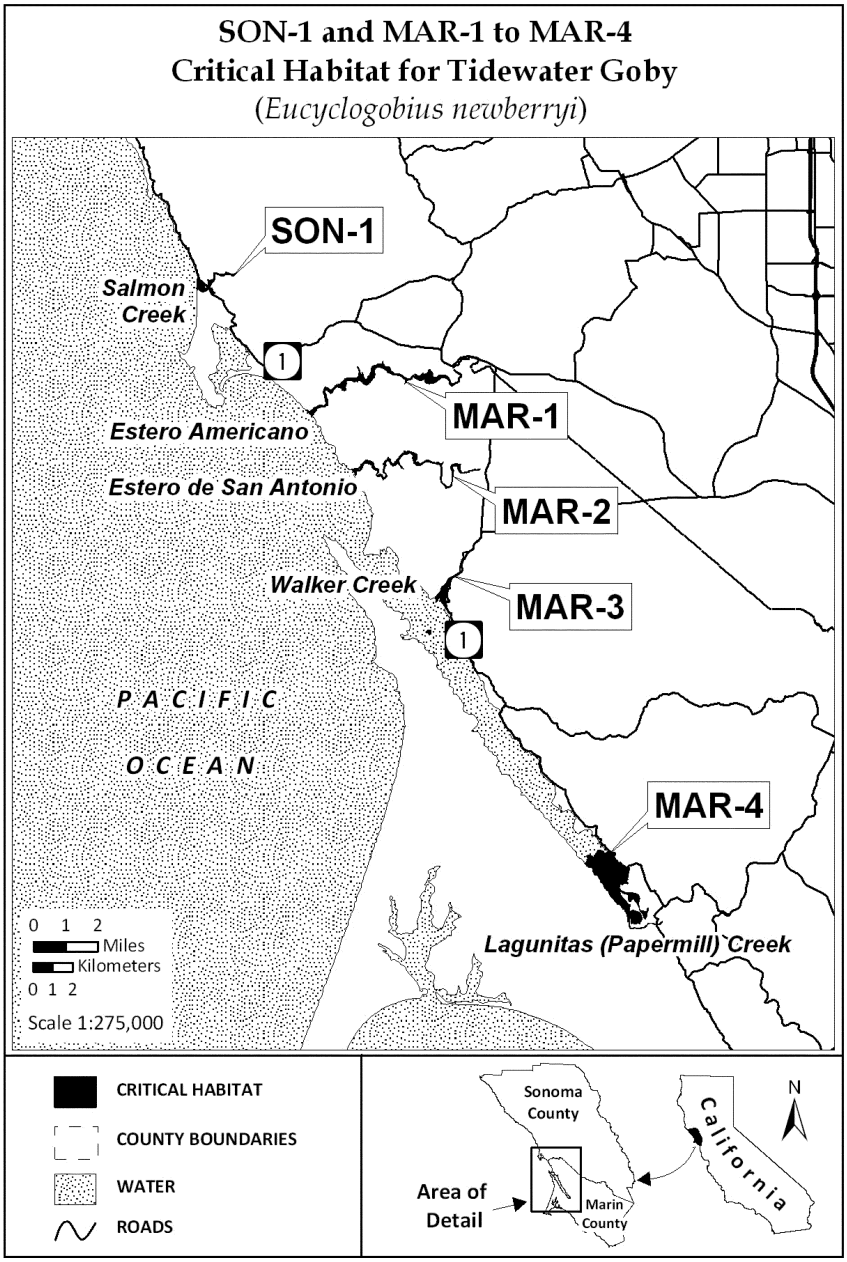
(i) [Reserved for textual description of Unit MAR–3: Walker Creek, Marin County, California]

(ii) **Note:** Map of Unit MAR–3: Walker Creek, Marin County, California, is depicted on the map in paragraph (21)(ii) of this entry.

(21) Unit MAR–4: Lagunitas (Papermill) Creek, Marin County, California.

(i) [Reserved for textual description of Unit MAR–4: Lagunitas (Papermill) Creek, Marin County, California]

(ii) **Note:** Map of Unit SON–1: Salmon Creek, Sonoma County, California, Unit MAR–1: Estero Americano, Unit MAR–2: Estero De San Antonio, Unit MAR–3: Walker Creek, and Unit MAR–4: Lagunitas Creek, Marin County, California, follows:



(22) Unit MAR–5: Bolinas Lagoon, Marin County, California.

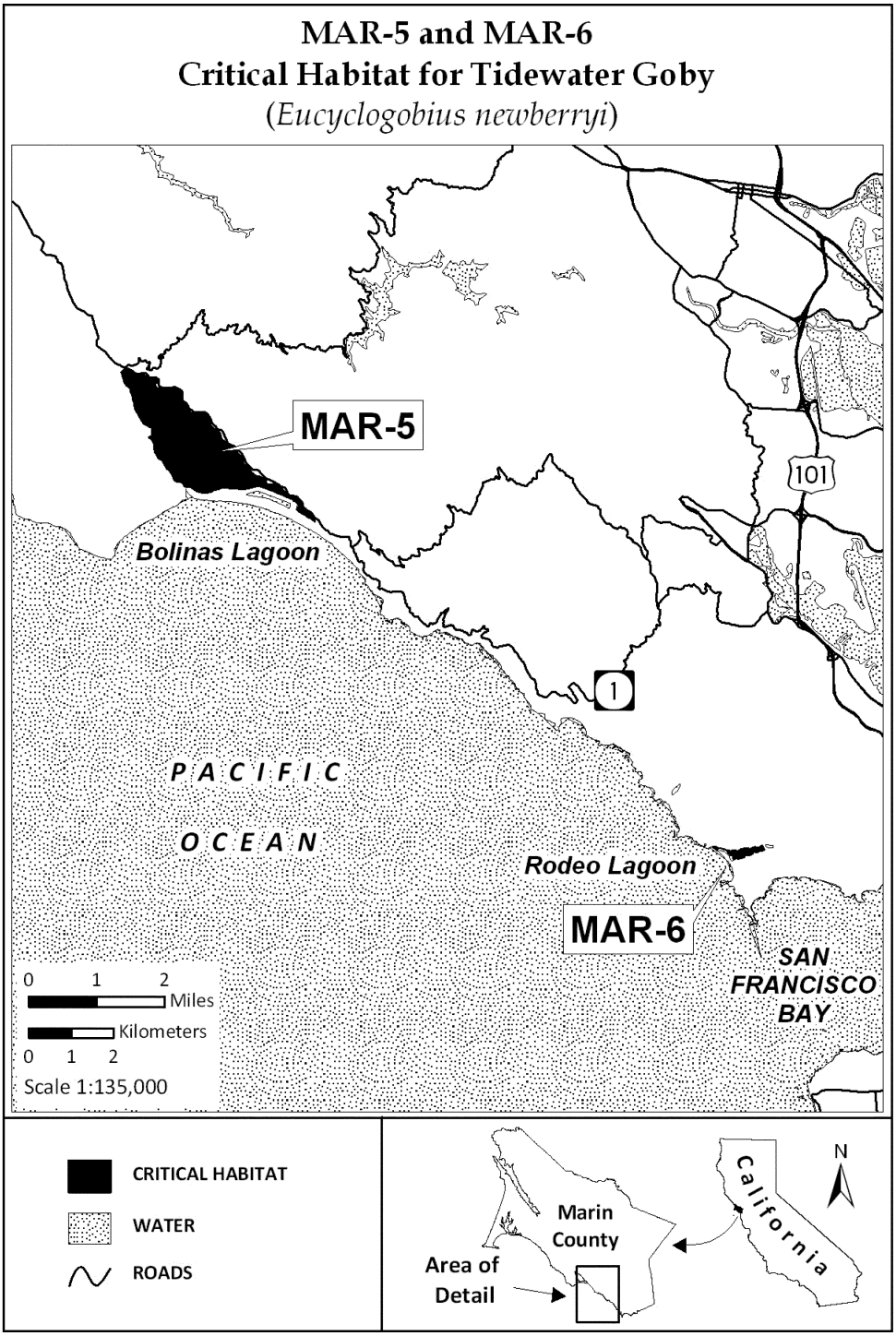
(i) [Reserved for textual description of Unit MAR–5: Bolinas Lagoon, Marin County, California]

(ii) **Note:** Map of Unit MAR–5: Bolinas Lagoon, Marin County, California, is depicted on the map in paragraph (23)(ii) of this entry.

(23) Unit MAR–6: Rodeo Lagoon, Marin County, California.

(i) [Reserved for textual description of Unit MAR–6: Rodeo Lagoon, Marin County, California]

(ii) **Note:** Map of Unit MAR–5: Bolinas Lagoon, and Unit MAR–6: Rodeo Lagoon, Marin County, California, follows:



(24) Unit SM–1: San Gregorio Creek, San Mateo County, California.

(i) [Reserved for textual description of Unit SM–1: San Gregorio Creek, San Mateo County, California]

(ii) **Note:** Map of Unit SM–1: San Gregorio Creek, San Mateo County, California, is depicted on the map in paragraph (27)(ii) of this entry.

(25) Unit SM–2: Pomponio Creek, San Mateo County, California.

(i) [Reserved for textual description of Unit SM–1: Pomponio Creek, San Mateo County, California]

(ii) **Note:** Map of Unit SM–2: Pomponio Creek, San Mateo County, California, is depicted on the map in paragraph (27)(ii) of this entry.

(26) Unit SM–3: Pescadero—Butano Creek, San Mateo County, California.

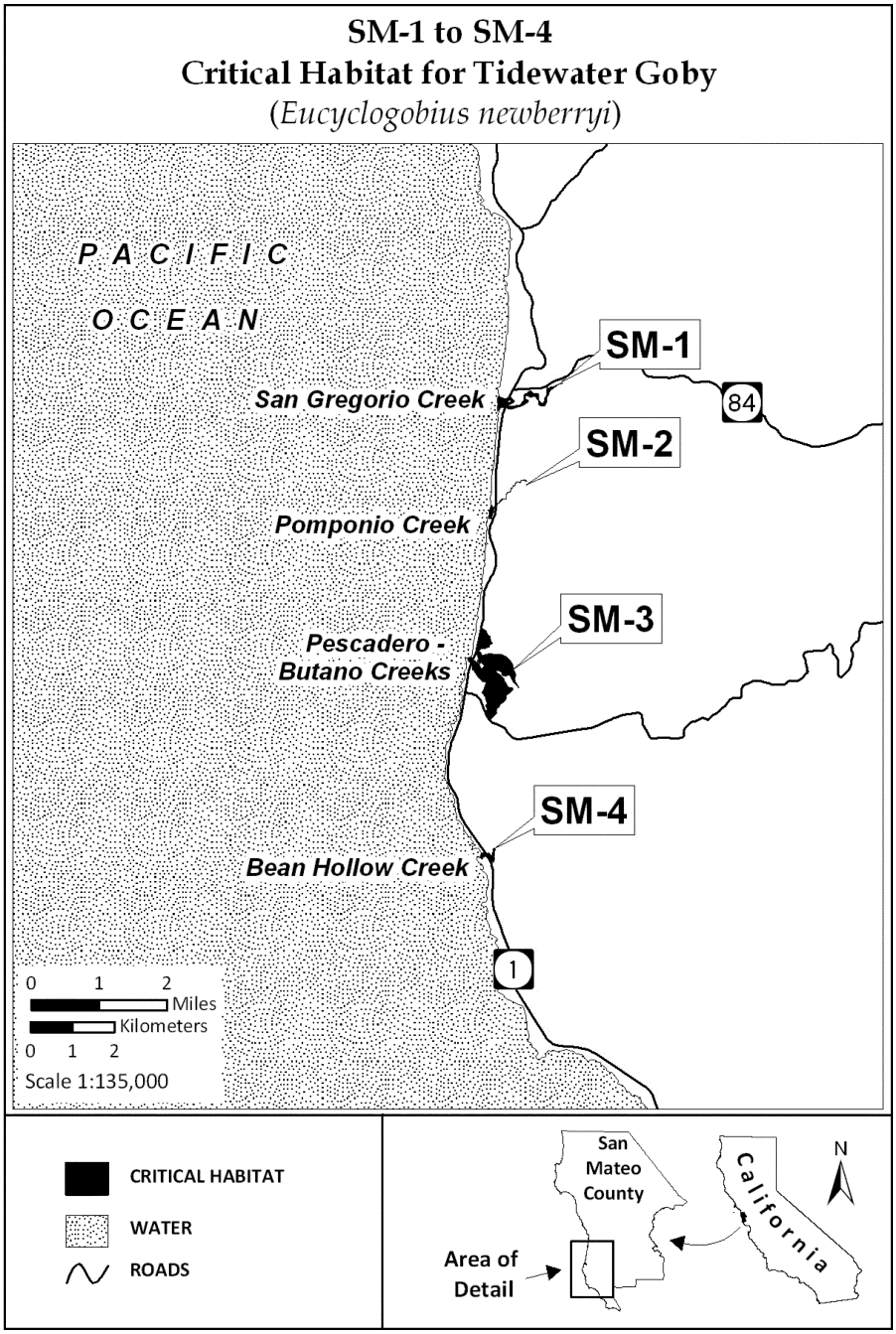
(i) [Reserved for textual description of Unit SM–3: Pescadero—Butano Creek, San Mateo County, California]

(ii) **Note:** Map of Unit SM–3: Pescadero—Butano Creek, San Mateo County, California, is depicted on the map in paragraph (27)(ii) of this entry.

(27) Unit SM–4: Bean Hollow Creek, San Mateo County, California.

(i) [Reserved for textual description of Unit SM–4: Bean Hollow Creek, San Mateo County, California]

(ii) **Note:** Map of Unit SM–1: San Gregorio Creek, Unit SM–2: Pomponio Creek, Unit SM–3: Pescadero–Butano Creek, and Unit SM–4: Bean Hollow Creek, San Mateo County, California, follows:



(28) Unit SC–1: Waddell Creek, Santa Cruz County, California.

(i) [Reserved for textual description of Unit SC–1: Waddell Creek, Santa Cruz County, California]

(ii) **Note:** Map of Unit SC–1: Waddell Creek, Santa Cruz County, California, is depicted on the map in paragraph (31)(ii) of this entry.

(29) Unit SC–2: Scott Creek, Santa Cruz County, California.

(i) [Reserved for textual description of Unit SC–2: Scott Creek, Santa Cruz County, California]

(ii) **Note:** Map of Unit SC–2: Scott Creek, Santa Cruz County, California, is depicted on the map in paragraph (31)(ii) of this entry.

(30) Unit SC–3: Laguna Creek, Santa Cruz County, California.

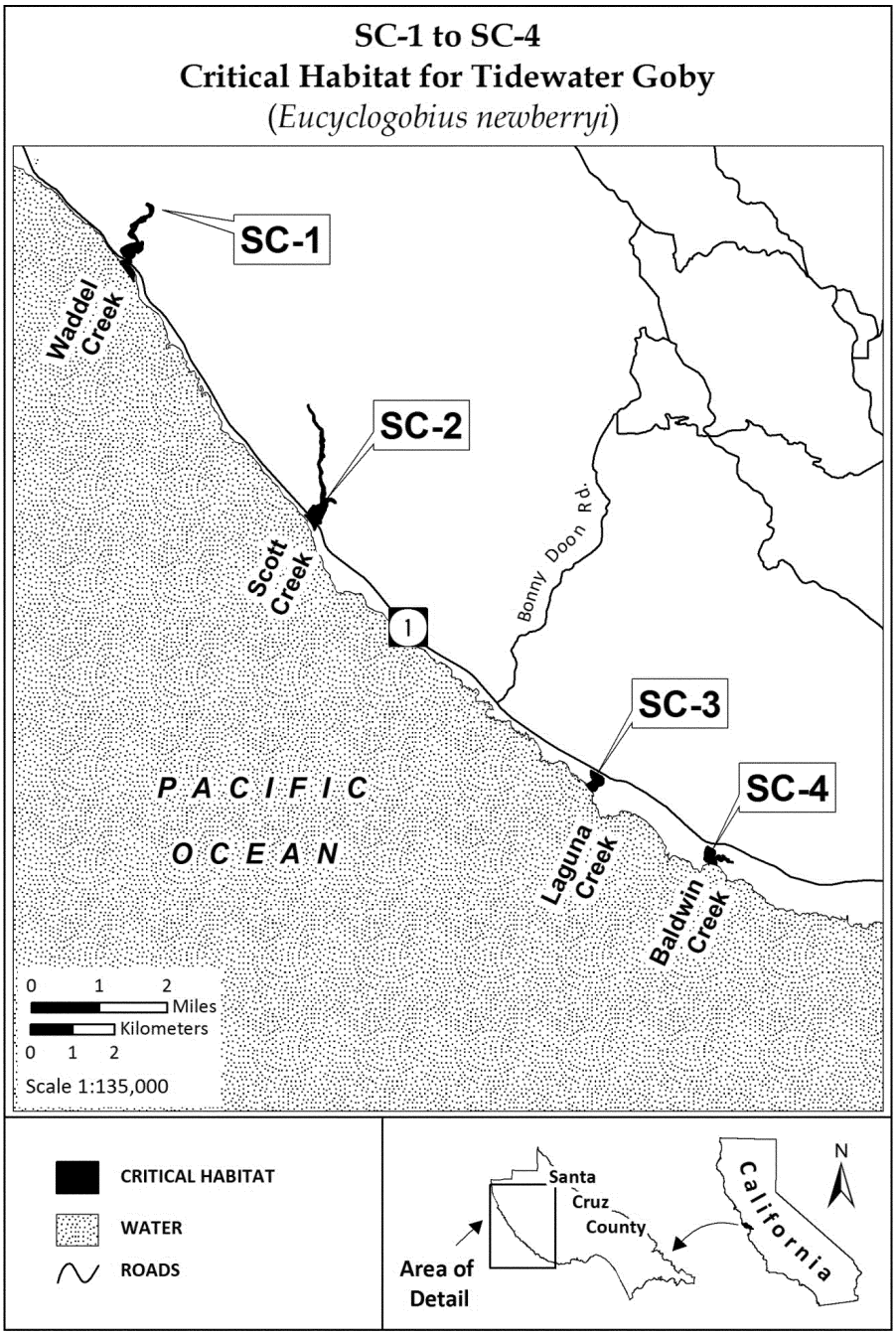
(i) [Reserved for textual description of Unit SC–3: Laguna Creek, Santa Cruz County, California]

(ii) **Note:** Map of Unit SC–3: Laguna Creek, Santa Cruz County, California, is depicted on the map in paragraph (31)(ii) of this entry.

(31) Unit SC–4: Baldwin Creek, Santa Cruz County, California.

(i) [Reserved for textual description of Unit SC–4: Baldwin Creek, Santa Cruz County, California]

(ii) **Note:** Map of Unit SC–1: Waddell Creek, Unit SC–2: Scott Creek, Unit SC–3: Laguna Creek, and Unit SC–4: Baldwin Creek, Santa Cruz County, California, follows:



(32) Unit SC–5: Moore Creek, Santa Cruz County, California.

(i) [Reserved for textual description of Unit SC–5: Moore Creek, Santa Cruz County, California]

(ii) **Note:** Map of Unit SC–5: Moore Creek, Santa Cruz County, California, is depicted on the map in paragraph (34)(ii) of this entry.

(33) Unit SC–6: Corcoran Lagoon, Santa Cruz County, California.

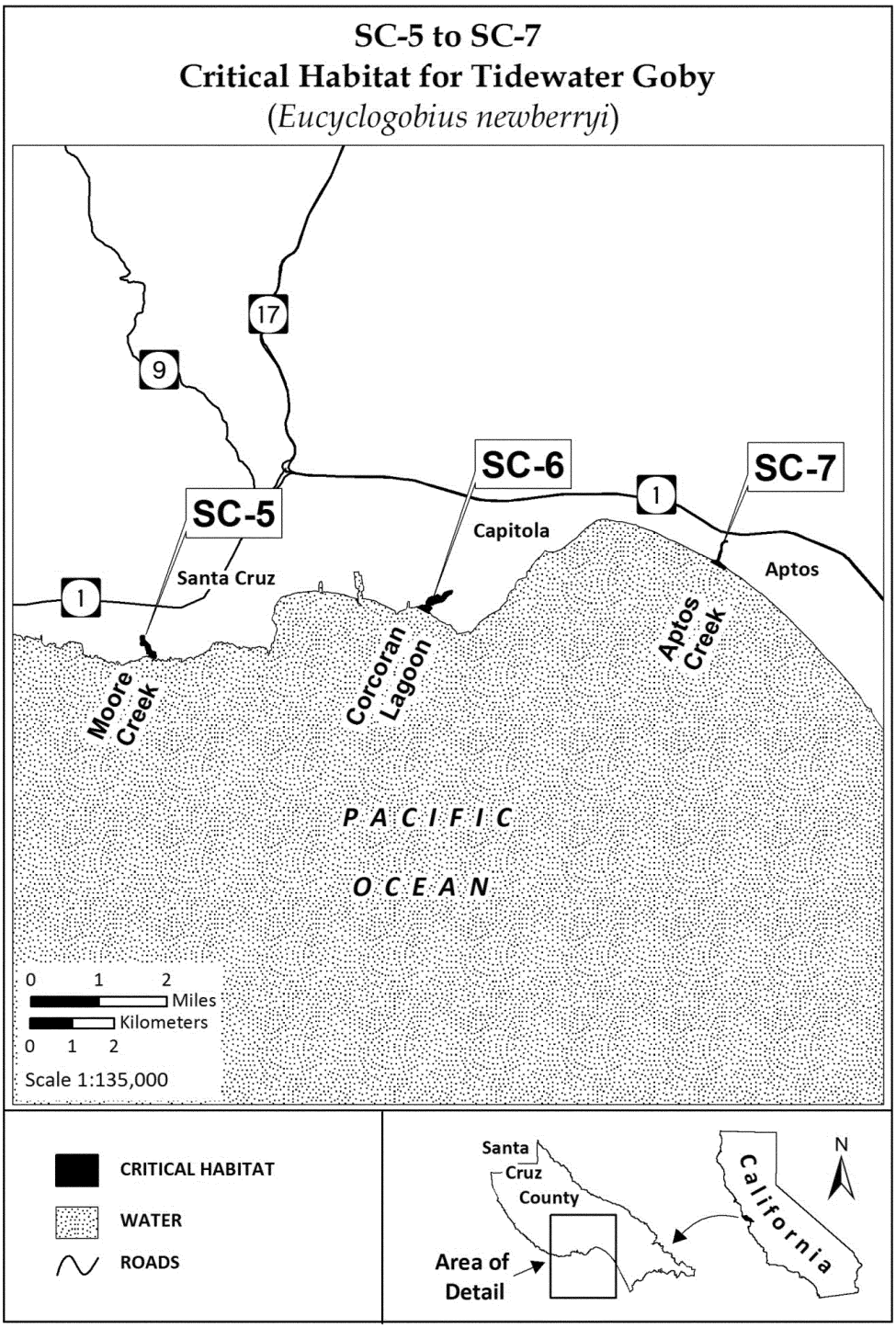
(i) [Reserved for textual description of Unit SC–6: Corcoran Lagoon, Santa Cruz County, California]

(ii) **Note:** Map of Unit SC–6: Corcoran Lagoon, Santa Cruz County, California, is depicted on the map in paragraph (34)(ii) of this entry.

(34) Unit SC–7: Aptos Creek, Santa Cruz County, California.

(i) [Reserved for textual description of Unit SC–7: Aptos Creek, Santa Cruz County, California]

(ii) **Note:** Map of Unit SC–5: Moore Creek, Unit SC–6: Corcoran Lagoon, and Unit SC–7: Aptos Creek, Santa Cruz County, California, follows:



(35) Unit SC–8: Pajaro River, Santa Cruz County, California.

(i) [Reserved for textual description of Unit SC–8: Pajaro River, Santa Cruz County, California]

(ii) **Note:** Map of Unit SC–8: Pajaro River, Santa Cruz County, California, is depicted on the map in paragraph (37)(ii) of this entry.

(36) Unit MN–1: Bennett Slough, Monterey County, California.

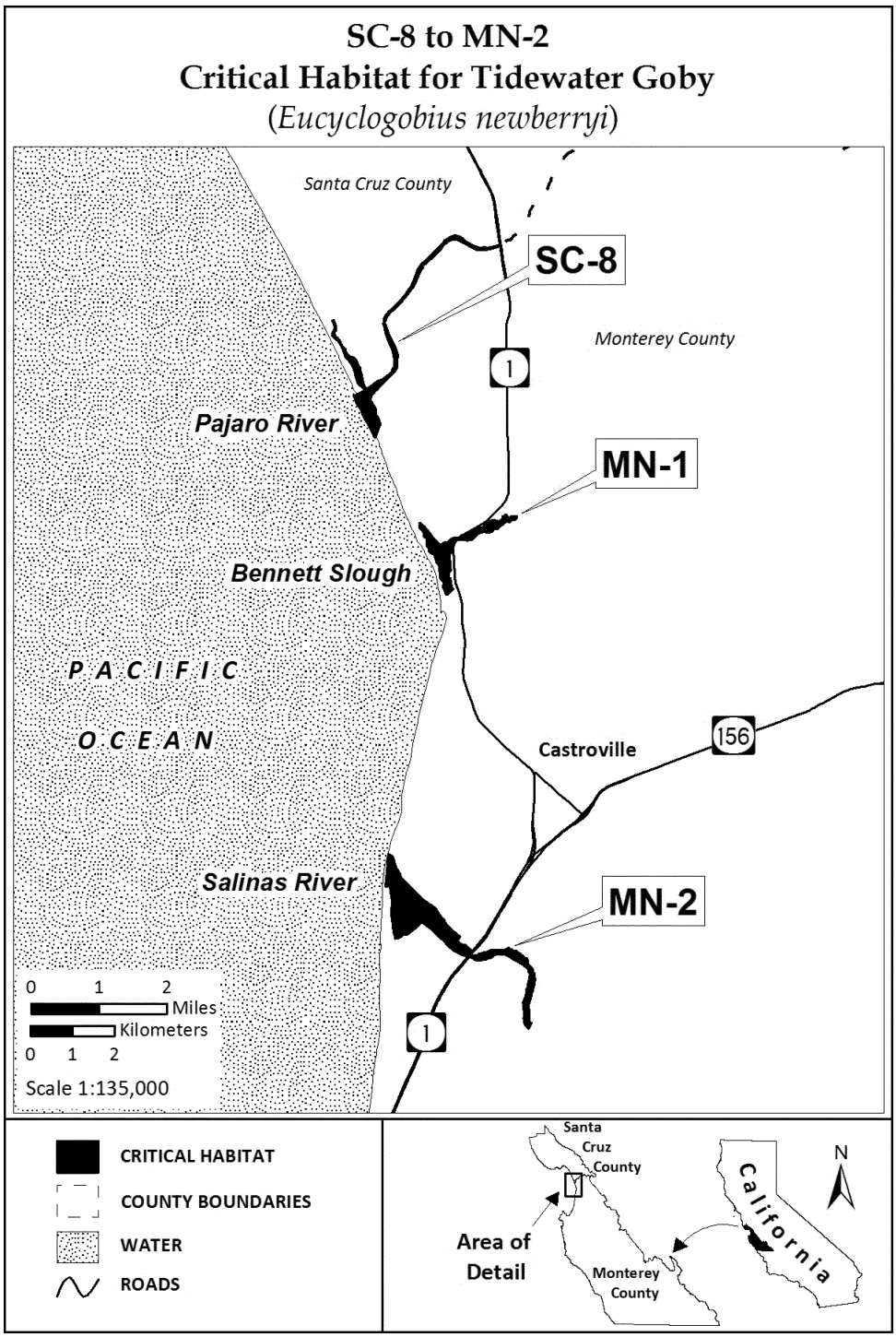
(i) [Reserved for textual description of Unit MN–1: Bennett Slough, Monterey County, California]

(ii) **Note:** Map of Unit MN–1: Bennett Slough, Monterey County, California, is depicted on the map in paragraph (37)(ii) of this entry.

(37) Unit MN–2: Salinas River, Monterey County, California.

(i) [Reserved for textual description of Unit MN–2: Salinas River, Monterey County, California]

(ii) **Note:** Map of Unit SC–8: Pajaro River, Santa Cruz County, California and Unit MN–1: Bennett Slough, and Unit MN–2: Salinas River, Monterey County, California, follows:



(38) Unit SLO–1: Arroyo de la Cruz, San Luis Obispo County, California.

(i) [Reserved for textual description of Unit SLO–1: Arroyo de la Cruz, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–1: Arroyo de la Cruz, San Luis Obispo County, California, is depicted on the map in paragraph (42)(ii) of this entry.

(39) Unit SLO–2: Arroyo del Corral, San Luis Obispo County, California.

(i) [Reserved for textual description of Unit SLO–2: Arroyo del Corral, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–2: Arroyo del Corral, San Luis Obispo County, California, is depicted on the map in paragraph (42)(ii) of this entry.

(40) Unit SLO–3: Oak Knoll Creek, San Luis Obispo County, California.

(i) [Reserved for textual description of Unit SLO–3: Oak Knoll Creek, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–3: Oak Knoll Creek, San Luis Obispo County, California, is depicted on the map in paragraph (42)(ii) of this entry.

(41) Unit SLO–4: Little Pico Creek, San Luis Obispo County, California.

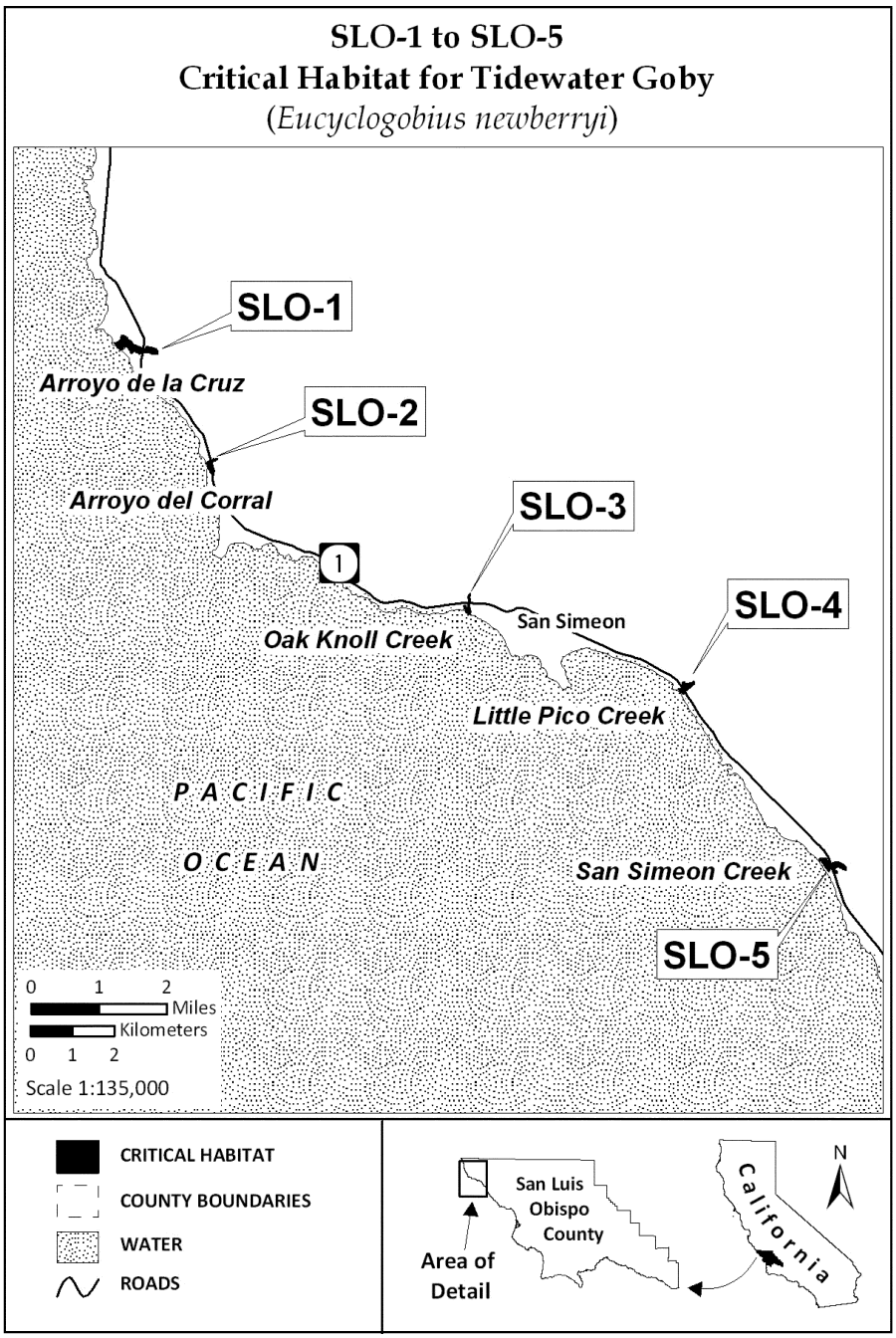
(i) [Reserved for textual description of Unit SLO–4: Little Pico Creek, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–4: Little Pico Creek, San Luis Obispo County, California, is depicted on the map in paragraph (42)(ii) of this entry.

(42) Unit SLO–5: San Simeon Creek, San Luis Obispo County, California.

(i) [Reserved for textual description of Unit SLO–5: San Simeon Creek, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–1: Arroyo de la Cruz, Unit SLO–2: Arroyo del Corral, Unit SLO–3: Oak Knoll Creek, Unit SLO–4: Little Pico Creek, and Unit SLO–5: San Simeon Creek, San Luis Obispo County, California, follows:



(43) Unit SLO–6: Villa Creek, San Luis Obispo County, California.

(i) [Reserved for textual description of Unit SLO–6: Villa Creek, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–6: Villa Creek, San Luis Obispo County, California, is depicted on the map in paragraph (46)(ii) of this entry.

(44) Unit SLO–7: San Geronimo Creek, San Luis Obispo County, California.

(i) [Reserved for textual description of Unit SLO–7: San Geronimo Creek, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–7: San Geronimo Creek, San Luis Obispo County, California, is depicted on the map in paragraph (46)(ii) of this entry.

(45) Unit SLO–8: Toro Creek, San Luis Obispo County, California.

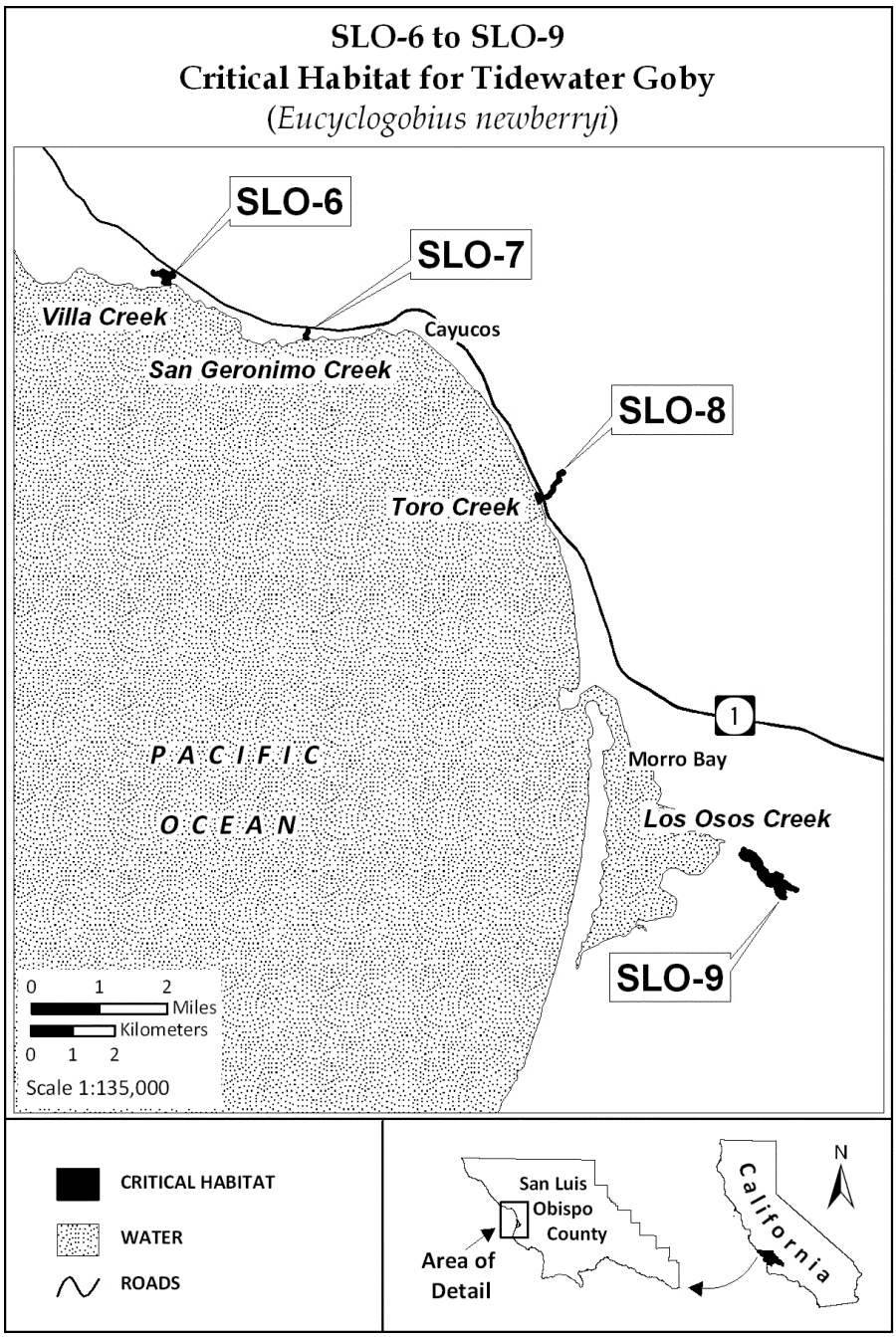
(i) [Reserved for textual description of Unit SLO–8: Toro Creek, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–8: Toro Creek, San Luis Obispo County, California, is depicted on the map in paragraph (46)(ii) of this entry.

(46) Unit SLO–9: Los Osos Creek, San Luis Obispo County, California.

(i) [Reserved for textual description of Unit SLO–9: Los Osos Creek, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–6: Villa Creek, Unit SLO–7: San Geronimo Creek, Unit SLO–8: Toro Creek, and Unit SLO–9: Los Osos Creek, San Luis Obispo County, California, follows:



(47) Unit SLO–10: San Luis Obispo Creek, San Luis Obispo County, California.

(i) [Reserved for textual description of Unit SLO–10: San Luis Obispo Creek, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–10: San Luis Obispo Creek, San Luis Obispo County, California, is depicted on the map in paragraph (50)(ii) of this entry.

(48) Unit SLO–11: Pismo Creek, San Luis Obispo County, California.

(i) [Reserved for textual description of Unit SLO–11: Pismo Creek, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–11: Pismo Creek, San Luis Obispo County, California, is depicted on the map in paragraph (50)(ii) of this entry.

(49) Unit SLO–12: Oso Flaco Lake, San Luis Obispo County, California.

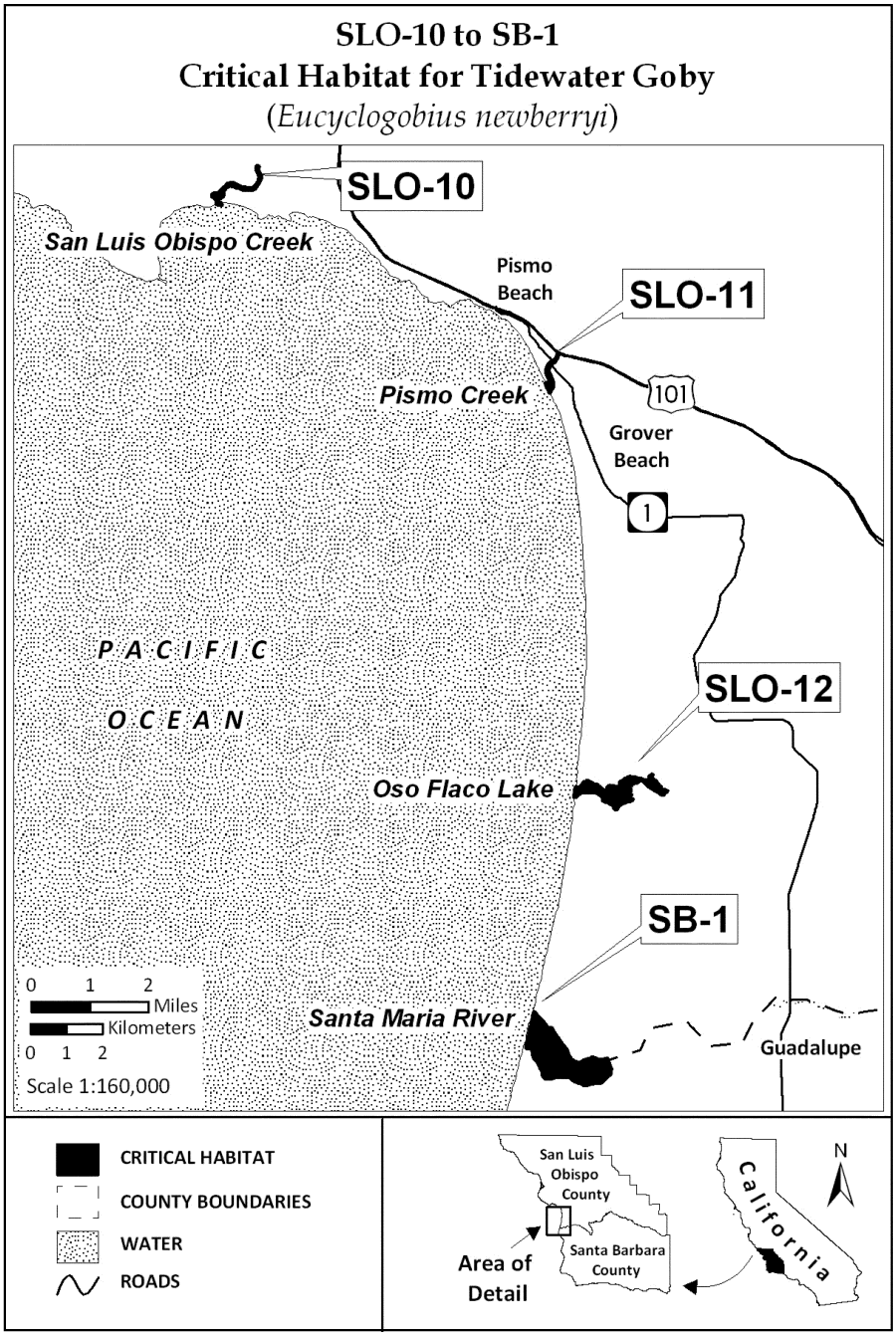
(i) [Reserved for textual description of Unit SLO–12: Oso Flaco Lake, San Luis Obispo County, California]

(ii) **Note:** Map of Unit SLO–12: Oso Flaco Lake, San Luis Obispo County, California, is depicted on the map in paragraph (50)(ii) of this entry.

(50) Unit SB–1: Santa Maria River, Santa Barbara County, California.

(i) [Reserved for textual description of Unit SB–1: Santa Maria River, Santa Barbara County, California]

(ii) **Note:** Map of Unit SLO–10: San Luis Obispo Creek, Unit SLO–11: Pismo Creek, Unit SLO–12: Oso Flaco Lake in San Luis Obispo County, and Unit SB–1: Santa Maria River, in Santa Barbara County, California, follows:



(51) Unit SB–2: Cañada de las Agujas, Santa Barbara County, California.

(i) [Reserved for textual description of Unit SB–2: Cañada de las Agujas, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–2: Cañada de las Agujas, Santa Barbara County, California, is depicted on the map in paragraph (56)(ii) of this entry.

(52) Unit SB–3: Cañada de Santa Anita, Santa Barbara County, California.

(i) [Reserved for textual description of Unit SB–3: Cañada de Santa Anita, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–3: Cañada de Santa Anita, Santa Barbara County, California, is depicted on the map in paragraph (56)(ii) of this entry.

(53) Unit SB–4: Cañada de Alegria, Santa Barbara County, California.

(i) [Reserved for textual description of Unit SB–4: Cañada de Alegria, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–4: Cañada de Alegria, Santa Barbara County, California, is depicted on the map in paragraph (56)(ii) of this entry.

(54) Unit SB–5: Cañada del Agua Caliente, Santa Barbara County, California.

(i) [Reserved for textual description of Unit SB–5: Cañada del Agua Caliente, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–5: Cañada del Agua Caliente, Santa Barbara County, California, is depicted on the map in paragraph (56)(ii) of this entry.

(55) Unit SB–6: Gaviota Creek, Santa Barbara County, California.

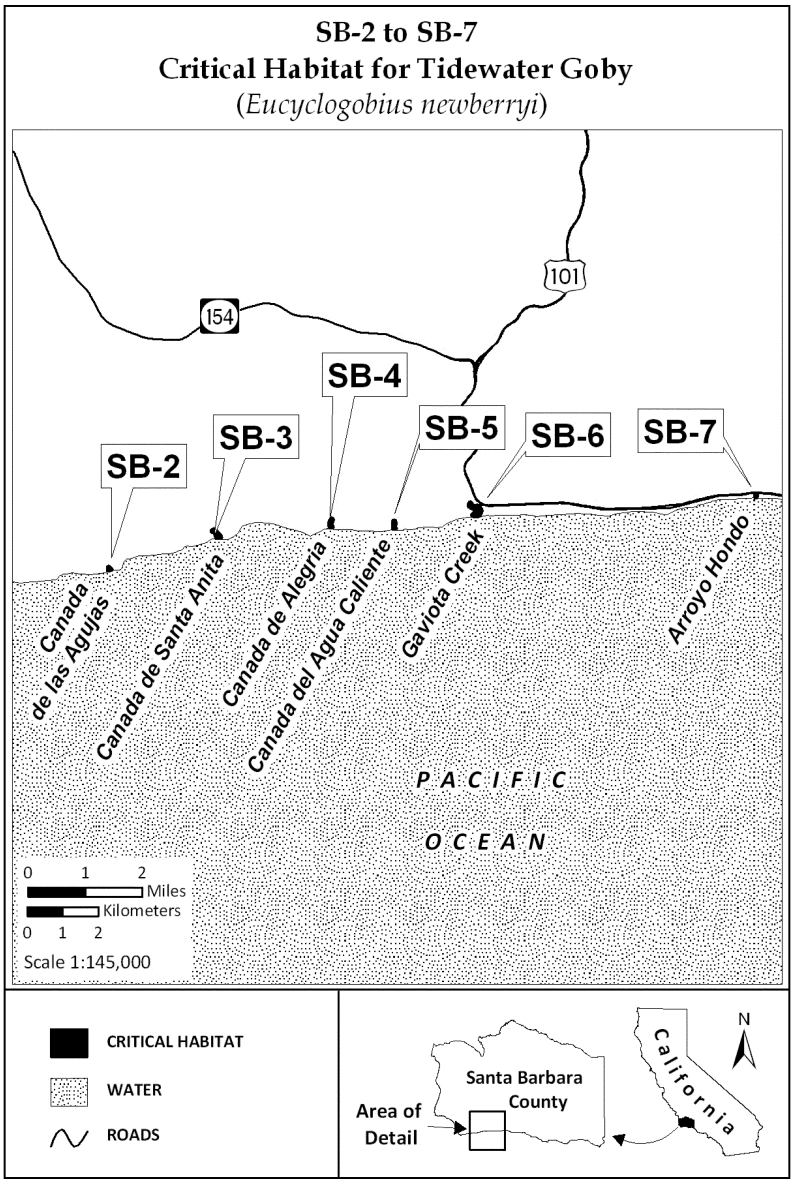
(i) [Reserved for textual description of Unit SB–6: Gaviota Creek, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–6: Gaviota Creek, Santa Barbara County, California, is depicted on the map in paragraph (56)(ii) of this entry.

(56) Unit SB–7: Arroyo Hondo, Santa Barbara County, California.

(i) [Reserved for textual description of Unit SB–7: Arroyo Hondo, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–2: Cañada de las Agujas, Unit SB–3: Cañada de Santa Anita, Unit SB–4: Cañada de Alegria, Unit SB–5: Cañada del Agua Caliente, Unit SB–6: Gaviota Creek, and Unit SB–7: Arroyo Hondo, Santa Barbara County, California, follows:



(57) Unit SB–8: Winchester/Bell Canyon, Santa Barbara County, California.

(i) [Reserved for textual description of Unit SB–8: Winchester/Bell Canyon, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–8: Winchester/Bell Canyon, Santa Barbara County, California, is depicted on the map in paragraph (59)(ii) of this entry.

(58) Unit SB–9: Goleta Slough, Santa Barbara County, California.

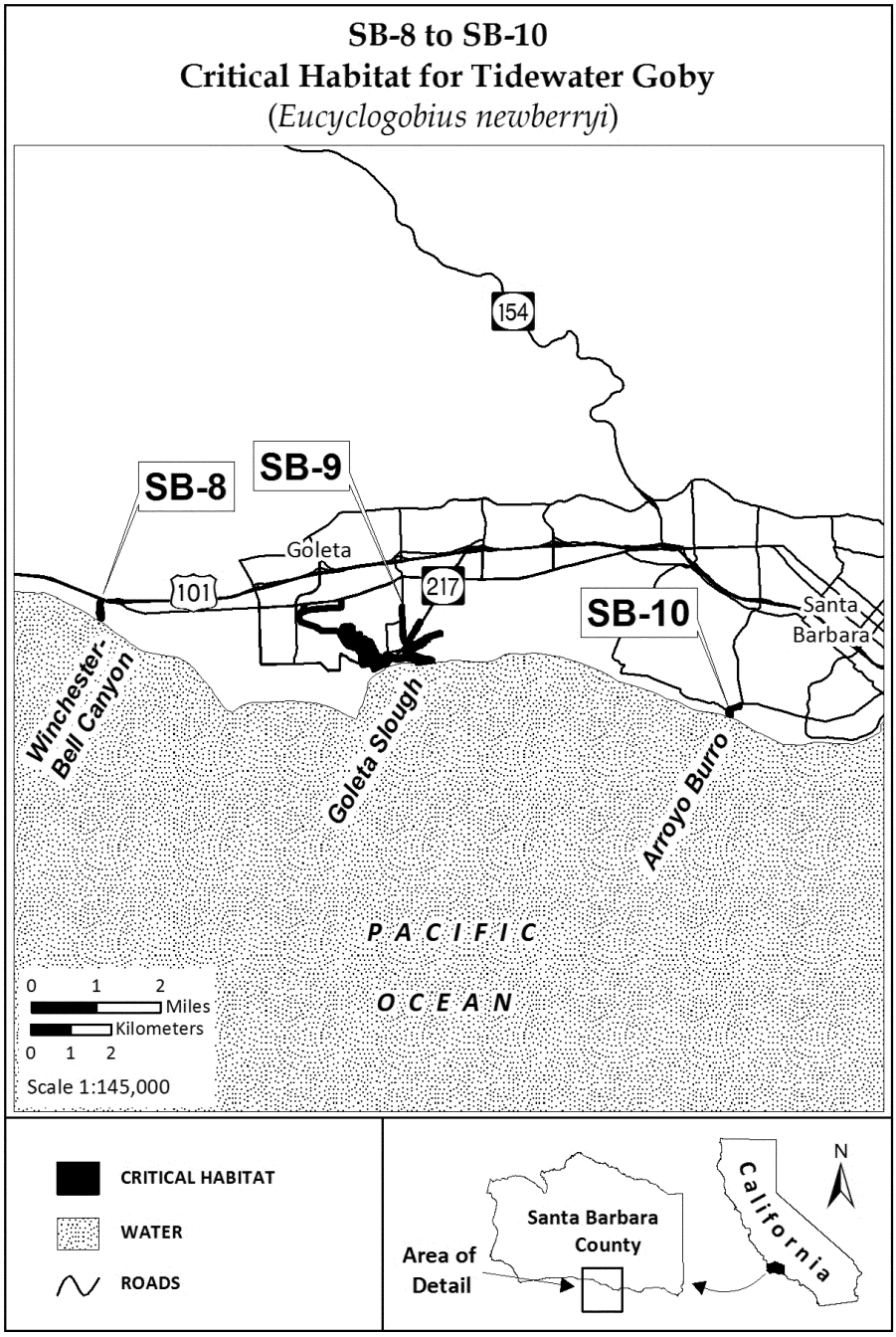
(i) [Reserved for textual description of Unit SB–9: Goleta Slough, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–9: Goleta Slough, Santa Barbara County, California, is depicted on the map in paragraph (59)(ii) of this entry.

(59) Unit SB–10: Arroyo Burro, Santa Barbara County, California.

(i) [Reserved for textual description of Unit SB–10: Arroyo Burro, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–8: Winchester/Bell Canyon, Unit SB–9: Goleta Slough, and Unit SB–10: Arroyo Burro, Santa Barbara County, California, follows:



(60) Unit SB–11: Mission Creek—Laguna Channel, Santa Barbara County, California.

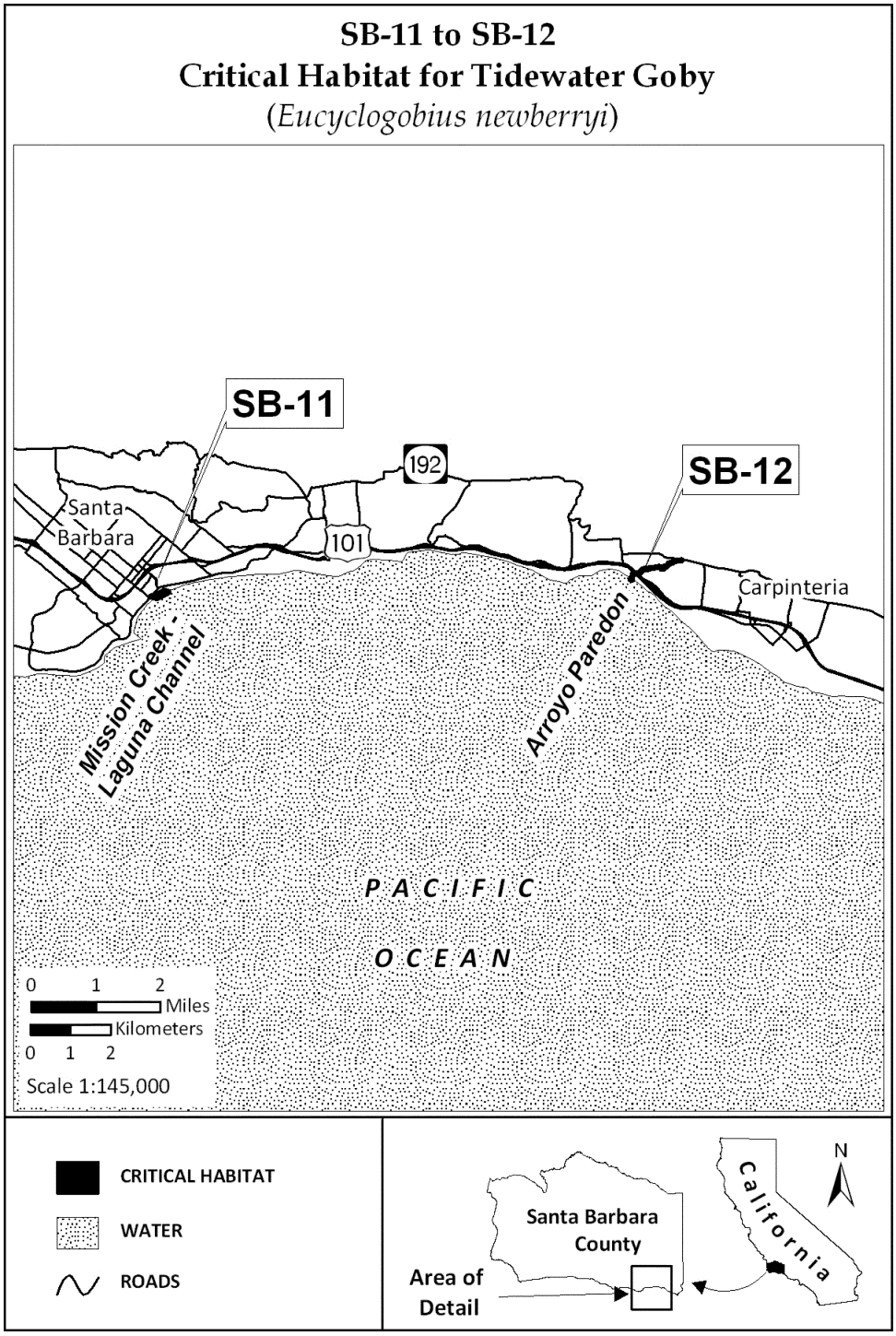
(i) [Reserved for textual description of Unit SB–11: Mission Creek—Laguna Channel, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–11: Mission Creek—Laguna Channel, Santa Barbara County, California, is depicted on the map in paragraph (61)(ii) of this entry.

(61) Unit SB–12: Arroyo Paredon, Santa Barbara County, California.

(i) [Reserved for textual description of Unit SB–12: Arroyo Paredon, Santa Barbara County, California]

(ii) **Note:** Map of Unit SB–11: Mission Creek—Laguna Channel, and Unit SB–12: Arroyo Paredon, Santa Barbara County, California, follows:



(62) Unit VEN–1: Ventura River, Ventura County, California.

(i) [Reserved for textual description of Unit VEN–1: Ventura River, Ventura County, California]

(ii) **Note:** Map of Unit VEN–1: Ventura River, Ventura County, California, is depicted on the map in paragraph (64)(ii) of this entry.

(63) Unit VEN–2: Santa Clara River, Ventura County, California.

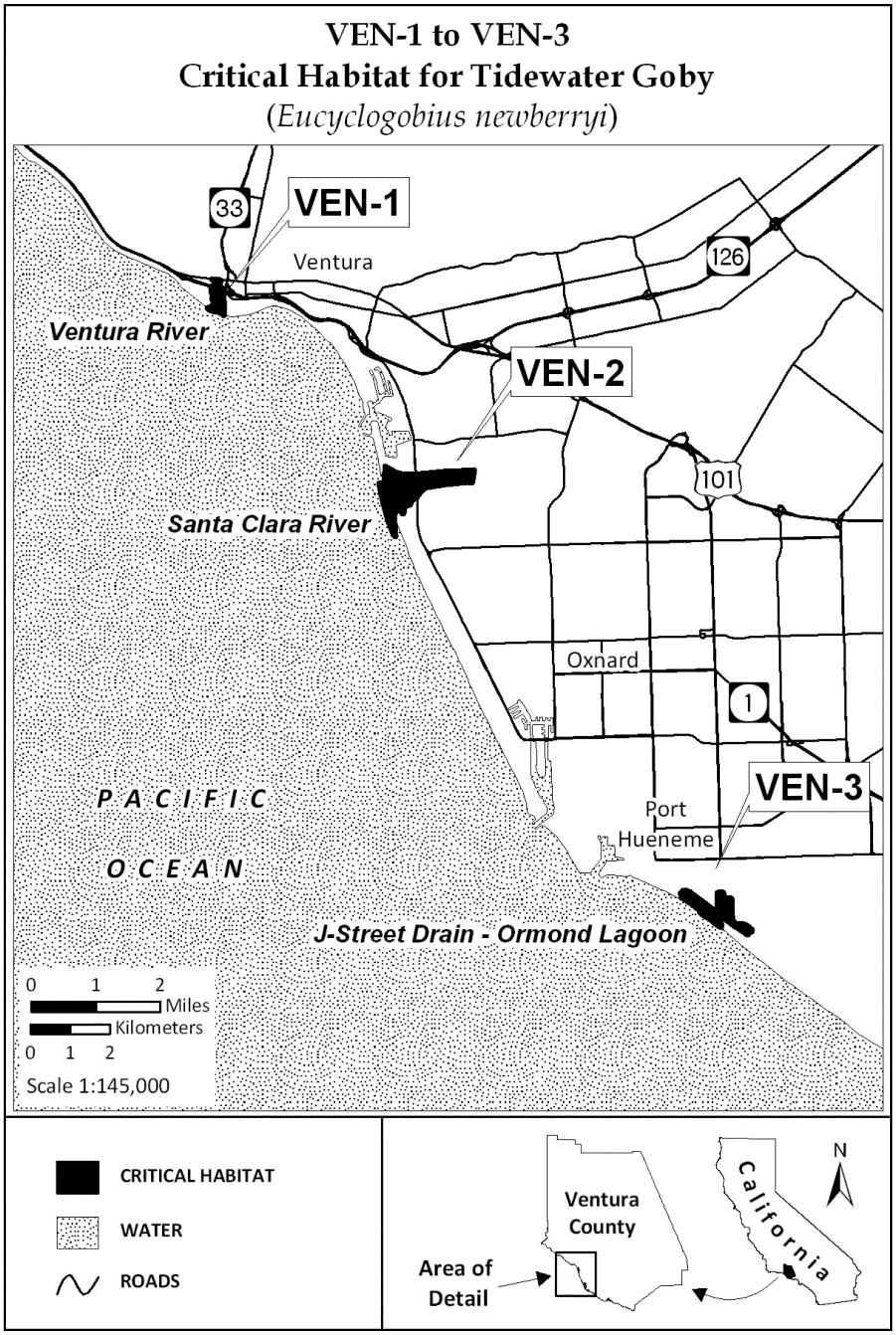
(i) [Reserved for textual description of Unit VEN–2: Santa Clara River, Ventura County, California]

(ii) **Note:** Map of Unit VEN–2: Santa Clara River, Ventura County, California, is depicted on the map in paragraph (64)(ii) of this entry.

(64) Unit VEN–3: J Street Drain—Ormond Lagoon, Ventura County, California.

(i) [Reserved for textual description of Unit VEN–3: J Street Drain–Ormond Lagoon, Ventura County, California]

(ii) **Note:** Map of Unit VEN–1: Ventura River, Unit VEN–2: Santa Clara River, and Unit VEN–3: J Street Drain—Ormond Lagoon, Ventura County, California, follows:



(65) Unit VEN–4: Big Sycamore Canyon, Ventura County, California.

(i) [Reserved for textual description of Unit VEN–4: Big Sycamore Canyon, Ventura County, California]

(ii) **Note:** Map of Unit VEN–4: Big Sycamore Canyon, Ventura County, California, is depicted on the map in paragraph (67)(ii) of this entry.

(66) Unit LA–1: Arroyo Sequit, Los Angeles County, California.

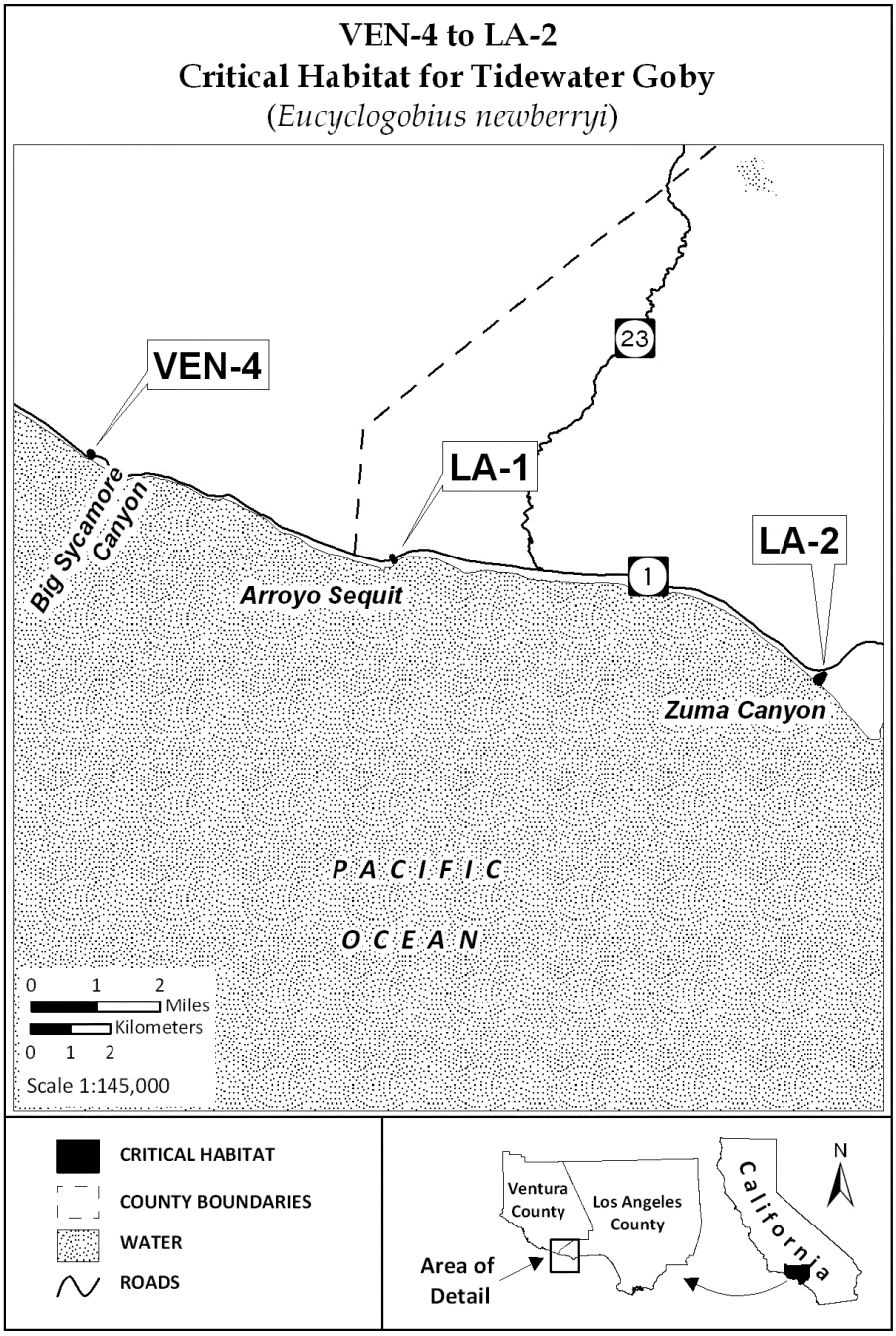
(i) [Reserved for textual description of Unit LA–1: Arroyo Sequit, Los Angeles County, California]

(ii) **Note:** Map of Unit LA–1: Arroyo Sequit, Los Angeles County, California, is depicted on the map in paragraph (67)(ii) of this entry.

(67) Unit LA–2: Zuma Canyon, Los Angeles County, California.

(i) [Reserved for textual description of Unit LA–2: Zuma Canyon, Los Angeles County, California]

(ii) **Note:** Map of Unit VEN–4: Big Sycamore Canyon, in Ventura County, and Unit LA–1: Arroyo Sequit, and Unit LA–2: Zuma Canyon, Los Angeles County, California, follows:



(68) Unit LA–3: Malibu Lagoon, Los Angeles County, California.

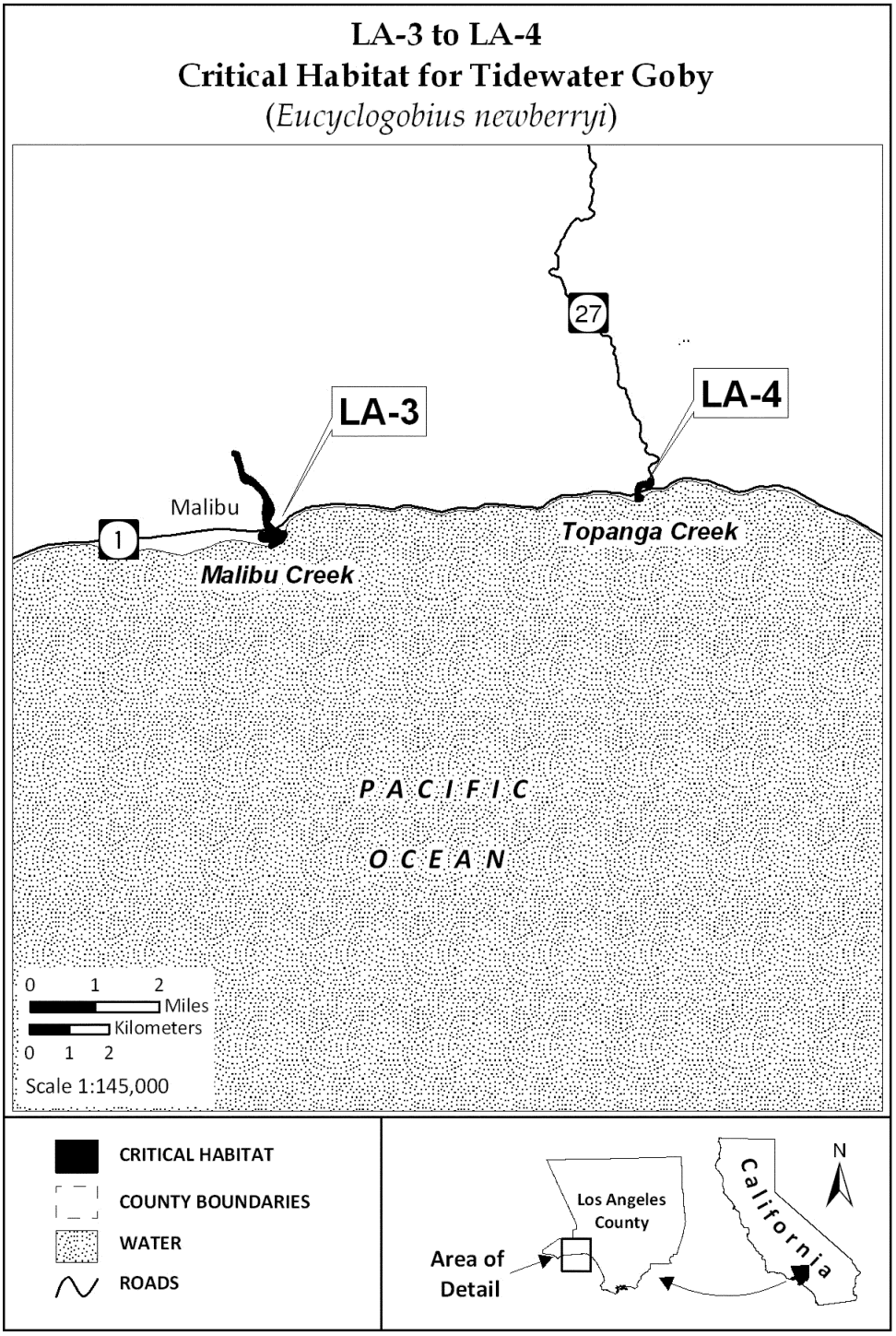
(i) [Reserved for textual description of Unit LA–3: Malibu Lagoon, Los Angeles County, California]

(ii) **Note:** Map of Unit LA–3: Malibu Lagoon, Los Angeles County, California, is depicted on the map in paragraph (69)(ii) of this entry.

(69) Unit LA–4: Topanga Creek, Los Angeles County, California.

(i) [Reserved for textual description of Unit LA–4: Topanga Creek, Los Angeles County, California]

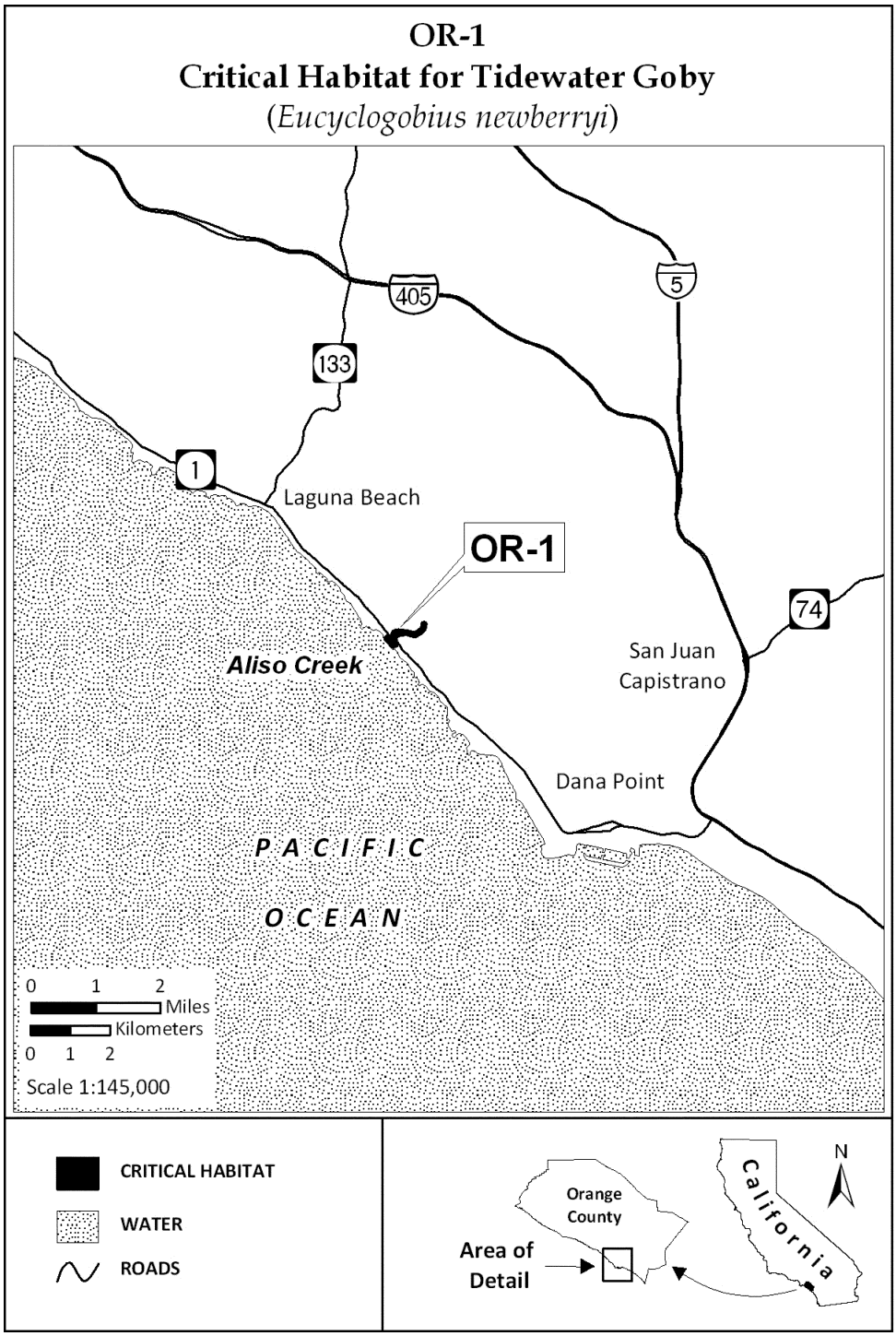
(ii) **Note:** Map of Unit LA–3: Malibu Lagoon, and Unit LA–4: Topanga Creek, Los Angeles County, California, follows:



(70) Unit OR–1: Aliso Creek, Orange County, California.

(i) [Reserved for textual description of Unit OR–1: Aliso Creek, Orange County, California]

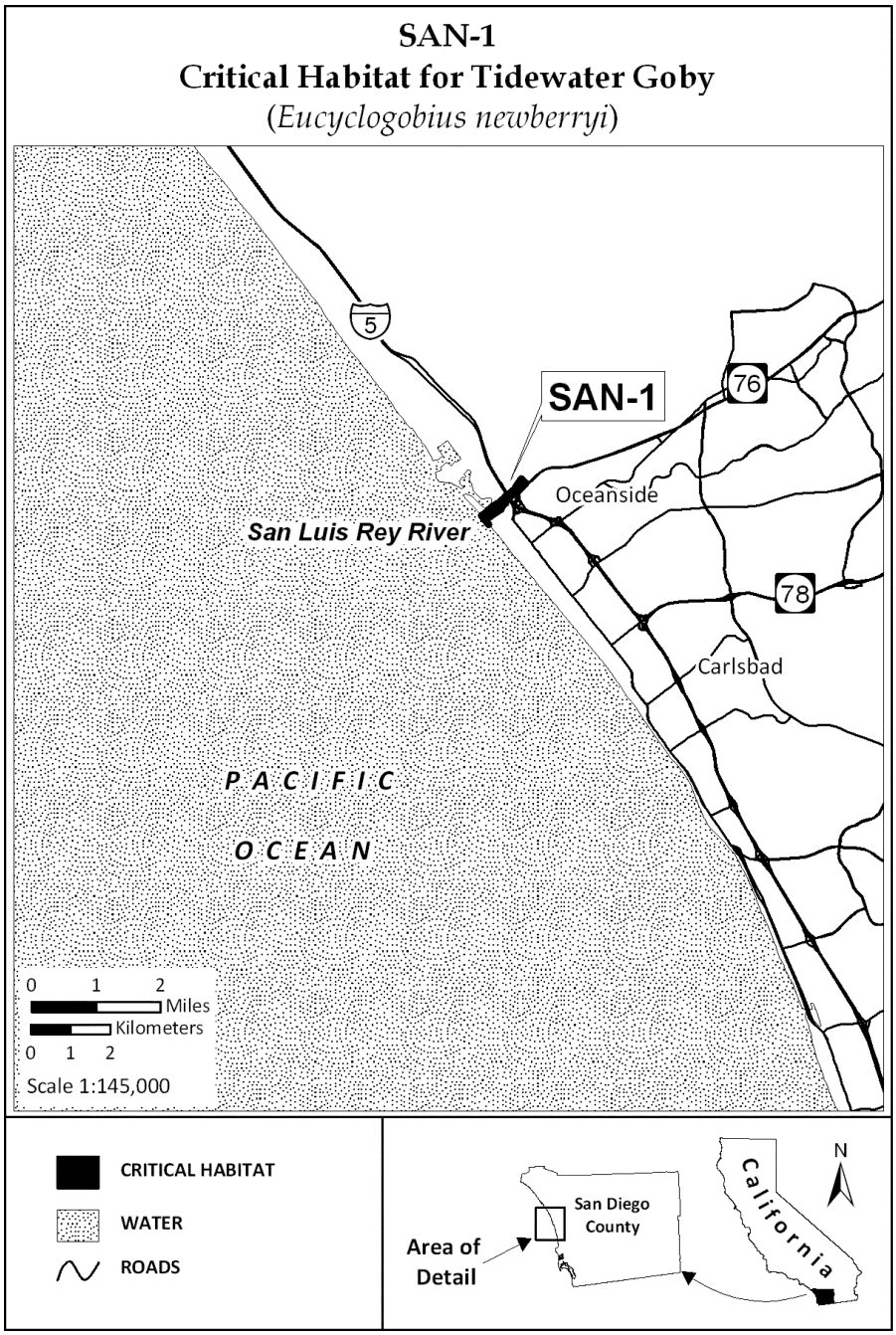
(ii) **Note:** Map of Unit OR–1: Aliso Creek, Orange County, California, follows:



(71) Unit SAN–1: San Luis Rey River, San Diego County, California.

(i) [Reserved for textual description of Unit SAN–1: San Luis Rey River, San Diego County, California]

(ii) **Note:** Map of Unit SAN–1: San Luis Rey River, San Diego County, California, follows:



* * * * *

Dated: October 4, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–26301 Filed 10–18–11; 8:45 am]

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Part III

Department of Defense

Office of the Secretary

Manual for Courts-Martial; Proposed Evidence Amendments; Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2011–OS–0112]

Manual for Courts-Martial; Proposed Evidence Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), DoD.

ACTION: Notice of Proposed Amendments to the Military Rules of Evidence in the Manual for Courts-Martial, United States (2008 ed.) (MCM) and Notice of Public Meeting.

SUMMARY: The Department of Defense is recommending changes to the *Manual for Courts-Martial, United States* (2008 Edition) (MCM). The proposed changes incorporate the restyled Federal Rules of Evidence (FRE) approved by the U.S. Supreme Court on 26 April 2011 and which will take effect, pursuant to the Rules Enabling Act, on 1 December 2011. In accordance with 10 U.S.C. 936 and Military Rule of Evidence (MRE) 1102(a), amendments to the FRE will automatically amend parallel provisions of the MRE eighteen months after the effective date of such amendments, absent contrary action by the President. The MCM and DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003, require the JSC to assist the President in fulfilling his rulemaking responsibilities under 10 U.S.C. 936. These proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters Testimony,'' June 15, 2007, and do not constitute the official position of the Department of Defense, the Military Departments, or any other Government agency.

This notice is provided in accordance with DoD Directive 5500.17, ''Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice,'' May 3, 2003. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person. This notice also sets forth the date, time and location for the public meeting of the JSC to discuss the proposed changes. For easier viewing and comparison to the federal rules, the proposed amendments to the Military Rules of Evidence described below can be viewed in a Word or Excel document at the following *Web site: http://www.dod.gov/dodgc/jsc_business.html.*

DATES: Comments on the proposed changes must be received no later than December 9, 2011, to be assured consideration by the JSC. A public meeting for comments will be held on November 17, 2011, at 10 a.m. in the Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442–0001.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. (Suggested keywords: Evidence, Rules, Joint Service Committee)
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Christopher A. Kennebeck, Executive Secretary, Joint Service Committee on Military Justice, Office of the Judge Advocate General, Criminal Law Division, 2200 Pentagon, Room 3B548, Washington DC, 32101–2200, (571) 256–8136, e-mail *c.kennebeck@conus.army.mil.*

SUPPLEMENTARY INFORMATION: The proposed amendments by Executive Order to the MCM are as follows:

Section 1. Part III of the Manual for Courts-Martial, United States, is revised to read as follows:

Rule 101. Scope

(a) Scope. These rules apply to court-martial proceedings to the extent and with the exceptions stated in Mil. R. Evid. 1101.

(b) Sources of Law. In the absence of guidance in this Manual or these rules, courts-martial will apply:

(1) First, the Federal Rules of Evidence and the case law interpreting them; and

(2) Second, when not inconsistent with subdivision (b)(1), the rules of evidence at common law.

(c) Rule of construction. Except as otherwise provided in these rules, the term ''military judge'' includes the president of a special court-martial without a military judge and a summary court-martial officer.

(d) Definition. In these rules, a ''rule prescribed by the Supreme Court'' means a rule adopted by the Supreme Court under statutory authority.

Rule 102. Purpose

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

Rule 103. Rulings on Evidence

(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error materially prejudices a substantial right of the party and:

(1) If the ruling admits evidence, a party, on the record:

(A) Timely objects or moves to strike; and

(B) States the specific ground, unless it was apparent from the context; or

(2) If the ruling excludes evidence, a party informs the military judge of its substance by an offer of proof, unless the substance was apparent from the context.

(b) Not Needing to Renew an Objection or Offer of Proof. Once the military judge rules definitively on the record admitting or excluding evidence, either before or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) Review of Constitutional Error. The standard provided in this subdivision does not apply to errors implicating the United States Constitution as it applies to members of the armed forces, unless the error arises under these rules and this subdivision provides a standard that is more advantageous to the accused than the constitutional standard.

(d) Military Judge's Statement about the Ruling; Directing an Offer of Proof. The military judge may make any statement about the character or form of the evidence, the objection made, and the ruling. The military judge may direct that an offer of proof be made in question-and-answer form.

(e) Preventing the Members from Hearing Inadmissible Evidence. In a court-martial composed of a military judge and members, to the extent practicable, the military judge must conduct a trial so that inadmissible evidence is not suggested to the members by any means.

(f) Taking Notice of Plain Error. A military judge may take notice of a plain error that materially prejudices a substantial right, even if the claim of error was not properly preserved.

Rule 104. Preliminary Questions

(a) In General. The military judge must decide any preliminary question about whether a witness is available or qualified, a privilege exists, a continuance should be granted, or evidence is admissible. In so deciding, the military judge is not bound by evidence rules, except those on privilege.

(b) Relevance that Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The military judge may admit the proposed evidence on the condition that the proof be introduced later. A ruling on the sufficiency of evidence to support a finding of fulfillment of a condition of fact is the sole responsibility of the military judge, except where these rules or this Manual provide expressly to the contrary.

(c) Conducting a Hearing so that the Members Cannot Hear It. Except in cases tried before a special court-martial without a military judge, the military judge must conduct any hearing on a preliminary question so that the members cannot hear it if:

(1) The hearing involves the admissibility of a statement of the accused under Mil. R. Evid. 301–306;

(2) The accused is a witness and so requests; or

(3) Justice so requires.

(d) Cross-Examining the Accused. By testifying on a preliminary question, the accused does not become subject to cross-examination on other issues in the case.

(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the members evidence that is relevant to the weight or credibility of other evidence.

Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes

If the military judge admits evidence that is admissible against a party or for a purpose—but not against another party or for another purpose—the military judge, on timely request, must restrict the evidence to its proper scope and instruct the members accordingly.

Rule 106. Remainder of or Related Writings or Recorded Statements

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time.

Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The military judge may judicially notice a fact that is not subject to reasonable dispute because it:

(1) Is generally known universally, locally, or in the area pertinent to the event; or

(2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The military judge:

(1) May take judicial notice whether requested or not; or

(2) Must take judicial notice if a party requests it and the military judge is supplied with the necessary information.

The military judge must inform the parties in open court when, without being requested, he or she takes judicial notice of an adjudicative fact essential to establishing an element of the case.

(d) Timing. The military judge may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the military judge takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing the Members. The military judge must instruct the members that they may or may not accept the noticed fact as conclusive.

Rule 202. Judicial Notice of Law

(a) Domestic Law. The military judge may take judicial notice of domestic law. If a domestic law is a fact that is of consequence to the determination of the action, the procedural requirements of Mil. R. Evid. 201—except Rule 201(f)—apply.

(b) Foreign Law. A party who intends to raise an issue concerning the law of a foreign country must give reasonable written notice. The military judge, in determining foreign law, may consider any relevant material or source, in accordance with Mil. R. Evid. 104. Such a determination is a ruling on a question of law.

Rule 301. Privilege Concerning Compulsory Self-Incrimination

(a) General Rule. An individual may claim the most favorable privilege provided by the Fifth Amendment to the United States Constitution, Article 31, or these rules. The privileges against self-incrimination are applicable only to evidence of a testimonial or communicative nature.

(b) Standing. The privilege of a witness to refuse to respond to a question that may tend to incriminate the witness is a personal one that the witness may exercise or waive at the discretion of the witness.

(c) Limited Waiver. An accused who chooses to testify as a witness waives the privilege against self-incrimination only with respect to the matters about which he or she testifies. If the accused is on trial for two or more offenses and on direct examination testifies on the merits about only one or some of the offenses, the accused may not be cross-examined as to guilt or innocence with respect to the other offenses unless the cross-examination is relevant to an offense concerning which the accused has testified. This waiver is subject to Mil. R. Evid. 608(b).

(d) Exercise of the Privilege. If a witness states that the answer to a question may tend to incriminate him or her, the witness cannot be required to answer unless the military judge finds that the facts and circumstances are such that no answer the witness might make to the question would tend to incriminate the witness or that the witness has, with respect to the question, waived the privilege against self-incrimination. A witness may not assert the privilege if he or she is not subject to criminal penalty as a result of an answer by reason of immunity, running of the statute of limitations, or similar reason.

(1) Immunity Requirements. The minimum grant of immunity adequate to overcome the privilege is that which under either R.C.M. 704 or other proper authority provides that neither the testimony of the witness nor any evidence obtained from that testimony may be used against the witness at any subsequent trial other than in a prosecution for perjury, false swearing, the making of a false official statement, or failure to comply with an order to testify after the military judge has ruled that the privilege may not be asserted by reason of immunity.

(2) Notification of Immunity or Leniency. When a prosecution witness before a court-martial has been granted immunity or leniency in exchange for testimony, the grant must be reduced to

writing and must be served on the accused prior to arraignment or within a reasonable time before the witness testifies. If notification is not made as required by this rule, the military judge may grant a continuance until notification is made, prohibit or strike the testimony of the witness, or enter such other order as may be required.

(e) Waiver of the Privilege. A witness who answers a self-incriminating question without having asserted the privilege against self-incrimination may be required to answer questions relevant to the disclosure, unless the questions are likely to elicit additional self-incriminating information.

(1) If a witness asserts the privilege against self-incrimination on cross-examination, the military judge, upon motion, may strike the direct testimony of the witness in whole or in part, unless the matters to which the witness refuses to testify are purely collateral.

(2) Any limited waiver of the privilege under this subdivision (e) applies only at the trial in which the answer is given, does not extend to a rehearing or new or other trial, and is subject to Mil. R. Evid. 608(b).

(f) Effect of Claiming the Privilege.

(1) No Inference To Be Drawn. The fact that a witness has asserted the privilege against self-incrimination cannot be considered as raising any inference unfavorable to either the accused or the government.

(2) Pretrial Invocation Not Admissible. The fact that the accused during official questioning and in exercise of rights under the Fifth Amendment to the United States Constitution or Article 31 remained silent, refused to answer a certain question, requested counsel, or requested that the questioning be terminated, is not admissible against the accused.

(3) Instructions Regarding the Privilege. When the accused does not testify at trial, defense counsel may request that the members of the court be instructed to disregard that fact and not to draw any adverse inference from it. Defense counsel may request that the members not be so instructed. Defense counsel's election will be binding upon the military judge except that the military judge may give the instruction when the instruction is necessary in the interests of justice.

Rule 302. Privilege Concerning Mental Examination of an Accused

(a) General Rule. The accused has a privilege to prevent any statement made by the accused at a mental examination ordered under R.C.M. 706 and any derivative evidence obtained through use of such a statement from being received into evidence against the accused on the issue of guilt or innocence or during sentencing proceedings. This privilege may be claimed by the accused notwithstanding the fact that the accused may have been warned of the rights provided by Mil. R. Evid. 305 at the examination.

(b) Exceptions.

(1) There is no privilege under this rule when the accused first introduces into evidence such statements or derivative evidence.

(2) If the court-martial has allowed the defense to present expert testimony as to the mental condition of the accused, an expert witness for the prosecution may testify as to the reasons for his or her conclusions, but such testimony may not extend to statements of the accused except as provided in (1).

(c) Release of Evidence from an R.C.M. 706 Examination. If the defense offers expert testimony concerning the mental condition of the accused, the military judge, upon motion, must order the release to the prosecution of the full contents, other than any statements made by the accused, of any report prepared pursuant to R.C.M. 706. If the defense offers statements made by the accused at such examination, the military judge, upon motion, may order the disclosure of such statements made by the accused and contained in the report as may be necessary in the interests of justice.

(d) Noncompliance by the Accused. The military judge may prohibit an accused who refuses to cooperate in a mental examination authorized under R.C.M. 706 from presenting any expert medical testimony as to any issue that would have been the subject of the mental examination.

(e) Procedure. The privilege in this rule may be claimed by the accused only under the procedure set forth in Mil. R. Evid. 304 for an objection or a motion to suppress.

Rule 303. Degrading Questions

Statements and evidence are inadmissible if they are not material to the issue and may tend to degrade the person testifying.

Rule 304. Confessions and Admissions

(a) General Rule. If the accused makes a timely motion or objection under this rule, an involuntary statement from the accused, or any evidence derived therefrom, is inadmissible at trial except as provided in subdivision (e).

(1) Definitions. As used in this rule:

(A) ''Involuntary statement'' means a statement obtained in violation of the self-incrimination privilege or due process clause of the Fifth Amendment to the United States Constitution, Article 31, or through the use of coercion, unlawful influence, or unlawful inducement.

(B) ''Confession'' means an acknowledgment of guilt.

(C) ''Admission'' means a self-incriminating statement falling short of an acknowledgment of guilt, even if it was intended by its maker to be exculpatory.

(2) Failure to deny an accusation of wrongdoing is not an admission of the truth of the accusation if at the time of the alleged failure the person was under investigation or was in confinement, arrest, or custody for the alleged wrongdoing.

(b) Evidence Derived from a Statement of the Accused. When the defense has made an appropriate and timely motion or objection under this rule, evidence derived from a statement of the accused may not be admitted unless the military judge finds by a preponderance of the evidence that:

(1) The statement was made voluntarily,

(2) The allegedly derivative evidence was not obtained by use of the accused's statement, or

(3) The evidence would have been obtained even if the statement had not been made.

(c) Corroboration of a Confession or Admission.

(1) An admission or a confession of the accused may be considered as evidence against the accused on the question of guilt or innocence only if independent evidence, either direct or circumstantial, has been admitted into evidence that corroborates the essential facts admitted to justify sufficiently an inference of their truth.

(2) Other uncorroborated confessions or admissions of the accused that would themselves require corroboration may not be used to supply this independent evidence. If the independent evidence raises an inference of the truth of some but not all of the essential facts admitted, then the confession or admission may be considered as evidence against the accused only with respect to those essential facts stated in the confession or admission that are corroborated by the independent evidence.

(3) Corroboration is not required for a statement made by the accused before the court by which the accused is being tried, for statements made prior to or contemporaneously with the act, or for statements offered under a rule of evidence other than that pertaining to the admissibility of admissions or confessions.

(4) Quantum of Evidence Needed. The independent evidence necessary to establish corroboration need not be sufficient of itself to establish beyond a reasonable doubt the truth of facts stated in the admission or confession. The independent evidence need raise only an inference of the truth of the essential facts admitted. The amount and type of evidence introduced as corroboration is a factor to be considered by the trier of fact in determining the weight, if any, to be given to the admission or confession.

(5) Procedure. The military judge alone will determine when adequate evidence of corroboration has been received. Corroborating evidence must be introduced before the admission or confession is introduced unless the military judge allows submission of such evidence subject to later corroboration.

(d) Disclosure of Statements by the Accused and Derivative Evidence. Before arraignment, the prosecution must disclose to the defense the contents of all statements, oral or written, made by the accused that are relevant to the case, known to the trial counsel, and within the control of the armed forces, and all evidence derived from such statements, that the prosecution intends to offer against the accused.

(e) Limited Use of an Involuntary Statement. A statement obtained in violation of Article 31 or Mil. R. Evid. 305(a)–(c) may be used only:

(1) To impeach by contradiction the in-court testimony of the accused; or

(2) In a later prosecution against the accused for perjury, false swearing, or the making of a false official statement.

(f) Motions and Objections.

(1) Motions to suppress or objections under this rule, or Mil. R. Evid. 302 or 305, to any statement or derivative evidence that has been disclosed must be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the objection.

(2) If the prosecution seeks to offer a statement made by the accused or derivative evidence that was not disclosed before arraignment, the prosecution must provide timely notice to the military judge and defense counsel. The defense may object at that time and the military judge may make such orders as are required in the interests of justice.

(3) The defense may present evidence relevant to the admissibility of evidence as to which there has been an objection or motion to suppress under this rule. An accused may testify for the limited purpose of denying that the accused made the statement or that the statement was made voluntarily.

(A) Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under this subdivision.

(B) When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(4) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the taking of a statement, the military judge may make any order required in the interests of justice, including authorization for the defense to make a general motion to suppress or general objection.

(5) Rulings. The military judge must rule, prior to plea, upon any motion to suppress or objection to evidence made prior to plea unless, for good cause, the military judge orders that the ruling be deferred for determination at trial or after findings. The military judge may not defer ruling if doing so adversely affects a party's right to appeal the ruling. The military judge must state essential findings of fact on the record when the ruling involves factual issues.

(6) Burden of Proof. When the defense has made an appropriate motion or objection under this rule, the prosecution has the burden of establishing the admissibility of the evidence. When the military judge has required a specific motion or objection under subdivision (f)(4), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

(7) Standard of Proof. The military judge must find by a preponderance of the evidence that a statement by the accused was made voluntarily before it may be received into evidence. When trial is by a special court-martial without a military judge, a determination by the president of the court that a statement was made voluntarily is subject to objection by any member of the court. When such objection is made, it will be resolved pursuant to R.C.M. 801(e)(3)(C).

(8) Effect of Guilty Plea. Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all privileges against self-incrimination and all motions and objections under this rule with respect to that offense regardless of whether raised prior to plea.

(g) Weight of the Evidence. If a statement is admitted into evidence, the military judge must permit the defense to present relevant evidence with respect to the voluntariness of the statement and must instruct the members to give such weight to the statement as it deserves under all the circumstances.

(h) Completeness. If only part of an alleged admission or confession is introduced against the accused, the defense, by cross-examination or otherwise, may introduce the remaining portions of the statement.

(i) Evidence of an Oral Statement. A voluntary oral confession or admission of the accused may be proved by the testimony of anyone who heard the accused make it, even if it was reduced to writing and the writing is not accounted for.

(j) Refusal To Obey an Order To Submit a Body Substance. If an accused refuses a lawful order to submit for chemical analysis a sample of his or her blood, breath, urine or other body substance, evidence of such refusal may be admitted into evidence on:

(1) A charge of violating an order to submit such a sample; or

(2) Any other charge on which the results of the chemical analysis would have been admissible.

Rule 305. Warnings About Rights

(a) General Rule. A statement obtained in violation of this rule is involuntary and will be treated under Mil. R. Evid. 304.

(1) Article 31 Rights Advisory. A statement obtained from the accused in violation of the accused's rights under Article 31 is involuntary and therefore inadmissible against the accused except as provided in subdivision (d).

(2) Fifth Amendment Right to Counsel. If a person suspected of an offense and subjected to custodial interrogation requests counsel, any statement made in the interrogation, or evidence derived from the interrogation, is inadmissible against the accused unless counsel was present for the interrogation.

(3) Sixth Amendment Right to Counsel. If an accused against whom charges have been preferred is interrogated on matters concerning the preferred charges by anyone acting in a

law enforcement capacity, or the agent of such a person, and the accused requests counsel, or if the accused has appointed or retained counsel, any statement made in the interrogation, or evidence derived from the interrogation, is inadmissible unless counsel was present for the interrogation.

(4) Definitions. As used in this rule:

(A) ''*Person subject to the code''* means a person subject to the Uniform Code of Military Justice, as defined by Article 2, and includes a knowing agent of any such person or of a military unit.

(B) ''*Interrogation''* means any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning.

(C) ''*Custodial interrogation''* means questioning that takes place while the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way.

(b) Provision of Counsel. When a person entitled to counsel under this rule requests counsel, a judge advocate or an individual certified in accordance with Article 27(b) will be provided by the United States at no expense to the person and without regard to the person's indigency before the interrogation may proceed. In addition to counsel supplied by the United States, the person may retain civilian counsel at no expense to the United States. Unless otherwise provided by regulations of the Secretary concerned, an accused or suspect does not have a right under this rule to have military counsel of his or her own selection.

(c) Waiver.

(1) Waiver of the Privilege Against Self-Incrimination. After receiving applicable warnings under this rule, a person may waive the rights described therein and in Mil. R. Evid. 301 and make a statement. The waiver must be made freely, knowingly, and intelligently. A written waiver is not required. The accused or suspect must affirmatively acknowledge that he or she understands the rights involved, affirmatively decline the right to counsel, and affirmatively consent to making a statement.

(2) Waiver of the Right to Counsel. If the right to counsel is applicable under this rule and the accused or suspect does not decline affirmatively the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

(3) Waiver After Initially Invoking the Right to Counsel.

(A) Fifth Amendment Right to Counsel. If an accused or suspect subjected to custodial interrogation requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that:

(i) The accused or suspect initiated the communication leading to the waiver; or

(ii) The accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver.

(B) Sixth Amendment Right to Counsel. If an accused or suspect interrogated after preferral of charges as described in subdivision (c)(1) requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver.

(d) Standards for Nonmilitary Interrogations.

(1) United States Civilian Interrogations. When a person subject to the code is interrogated by an official or agent of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States, or any political subdivision of such a State, Commonwealth, or possession, the person's entitlement to rights warnings and the validity of any waiver of applicable rights will be determined by the principles of law generally recognized in the trial of criminal cases in the United States district courts involving similar interrogations.

(2) Foreign Interrogations. Warnings under Article 31 and the Fifth and Sixth Amendments to the United States Constitution are not required during an interrogation conducted outside of a State, district, commonwealth, territory, or possession of the United States by officials of a foreign government or their agents unless such interrogation is conducted, instigated, or participated in by military personnel or their agents or by those officials or agents listed in subdivision (d)(1). A statement obtained from a foreign interrogation is admissible unless the statement is obtained through the use of coercion, unlawful influence, or unlawful inducement. An interrogation is not ''participated in'' by military personnel or their agents or by the officials or agents listed in subdivision (d)(1) merely because such a person was present at an interrogation conducted in a foreign nation by officials of a foreign government or their agents, or because such a person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign interrogation.

Rule 306. Statements by One of Several Accused

When two or more accused are tried at the same trial, evidence of a statement made by one of them which is admissible only against him or her or only against some but not all of the accused may not be received in evidence unless all references inculpating an accused against whom the statement is inadmissible are deleted effectively or the maker of the statement is subject to cross-examination.

Rule 311. Evidence Obtained From Unlawful Searches and Seizures

(a) General Rule. Evidence obtained as a result of an unlawful search or seizure made by a person acting in a governmental capacity is inadmissible against the accused if:

(1) The accused makes a timely motion to suppress or an objection to the evidence under this rule; and

(2) The accused had a reasonable expectation of privacy in the person, place or property searched; the accused had a legitimate interest in the property or evidence seized when challenging a seizure; or the accused would otherwise have grounds to object to the search or seizure under the Constitution of the United States as applied to members of the armed forces.

(b) Definition. As used in this rule, a search or seizure is ''unlawful'' if it was conducted, instigated, or participated in by:

(1) Military personnel or their agents and was in violation of the Constitution of the United States as applied to members of the armed forces, a federal statute applicable to trials by court-martial that requires exclusion of evidence obtained in violation thereof, or Mil. R. Evid. 312–317;

(2) Other officials or agents of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States or any political subdivision of such a State, Commonwealth, or possession, and was in violation of the Constitution of the United States, or is unlawful under the principles of law generally applied in the trial of criminal cases in the United States district courts involving a similar search or seizure; or

(3) Officials of a foreign government or their agents, and the accused was subjected to gross and brutal maltreatment. A search or seizure is not ''participated in'' by a United States military or civilian official merely because that person is present at a search or seizure conducted in a foreign nation by officials of a foreign government or their agents, or because that person acted as an interpreter or took steps to mitigate damage to property or physical harm during the foreign search or seizure.

(c) Exceptions.

(1) Impeachment. Evidence that was obtained as a result of an unlawful search or seizure may be used to impeach by contradiction the in-court testimony of the accused.

(2) Inevitable Discovery. Evidence that was obtained as a result of an unlawful search or seizure may be used when the evidence would have been obtained even if such unlawful search or seizure had not been made.

(3) Good Faith Execution of a Warrant or Search Authorization. Evidence that was obtained as a result of an unlawful search or seizure may be used if:

(A) The search or seizure resulted from an authorization to search, seize or apprehend issued by an individual competent to issue the authorization under Mil. R. Evid. 315(d) or from a search warrant or arrest warrant issued by competent civilian authority;

(B) The individual issuing the authorization or warrant had a substantial basis for determining the existence of probable cause; and

(C) The officials seeking and executing the authorization or warrant reasonably and with good faith relied on the issuance of the authorization or warrant. Good faith is to be determined using an objective standard.

(d) Motions to Suppress and Objections.

(1) Disclosure. Prior to arraignment, the prosecution must disclose to the defense all evidence seized from the person or property of the accused, or believed to be owned by the accused, or evidence derived therefrom, that it intends to offer into evidence against the accused at trial.

(2) Time Requirements.

(A) When evidence has been disclosed prior to arraignment under subdivision (d)(1), the defense must make any motion to suppress or objection under this rule prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move or object constitutes a waiver of the motion or objection.

(B) If the prosecution intends to offer evidence described in subdivision (d)(1) that was not disclosed prior to arraignment, the prosecution must provide timely notice to the military judge and to counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interest of justice.

(3) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence described in subdivision (d)(1). If defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the search or seizure, the military judge may enter any order required by the interests of justice, including authorization for the defense to make a general motion to suppress or a general objection.

(4) Challenging Probable Cause.

(A) Relevant Evidence. If the defense challenges evidence seized pursuant to a search warrant or search authorization on the grounds that the warrant or authorization was not based upon probable cause, the evidence relevant to the motion is limited to evidence concerning the information actually presented to or otherwise known by the authorizing officer, except as provided in subdivision (d)(4)(B).

(B) False Statements. If the defense makes a substantial preliminary showing that a government agent included a false statement knowingly and intentionally or with reckless disregard for the truth in the information presented to the authorizing officer, and if the allegedly false statement is necessary to the finding of probable cause, the defense, upon request, is entitled to a hearing. At the hearing, the defense has the burden of establishing by a preponderance of the evidence the allegation of knowing and intentional falsity or reckless disregard for the truth. If the defense meets its burden, the prosecution has the burden of proving by a preponderance of the evidence, with the false information set aside, that the remaining information presented to the authorizing officer is sufficient to establish probable cause. If the prosecution does not meet its burden, the objection or motion must be granted unless the search is otherwise lawful under these rules.

(5) Burden and Standard of Proof.

(A) In general. When the defense makes an appropriate motion or objection under this subdivision (d), the prosecution has the burden of proving by a preponderance of the evidence that the evidence was not obtained as a result of an unlawful search or seizure, that the evidence would have been obtained even if the unlawful search or seizure had not been made, or that the evidence was obtained by officials who reasonably and with good faith relied on the issuance of an authorization to search, seize, or apprehend or a search warrant or an arrest warrant.

(B) Statement Following Apprehension. In addition to subdivision (d)(5)(A), a statement obtained from a person apprehended in a dwelling in violation R.C.M. 302(d)(2) and (e), is admissible if the prosecution shows by a preponderance of the evidence that the apprehension was based on probable cause, the statement was made at a location outside the dwelling subsequent to the apprehension, and the statement was otherwise in compliance with these rules.

(C) Specific Grounds of Motion or Objection. When the military judge has required the defense to make a specific motion or objection under subdivision (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or objected to the evidence.

(6) Defense Evidence. The defense may present evidence relevant to the admissibility of evidence as to which there has been an appropriate motion or objection under this rule. An accused may testify for the limited purpose of contesting the legality of the search or seizure giving rise to the challenged evidence. Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under this subdivision. When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(7) Rulings. The military judge must rule, prior to plea, upon any motion to suppress or objection to evidence made prior to plea unless, for good cause, the military judge orders that the ruling be deferred for determination at trial or after findings. The military judge may not defer ruling if doing so adversely affects a party's right to appeal the ruling. The military judge must state essential findings of fact on the record when the ruling involves factual issues.

(8) Informing the Members. If a defense motion or objection under this

rule is sustained in whole or in part, the court-martial members may not be informed of that fact except when the military judge must instruct the members to disregard evidence.

(e) Effect of Guilty Plea. Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all issues under the Fourth Amendment to the Constitution of the United States and Mil. R. Evid. 311–317 with respect to the offense whether or not raised prior to plea.

Rule 312. Body Views and Intrusions

(a) General Rule. Evidence obtained from body views and intrusions conducted in accordance with this rule is admissible at trial when relevant and not otherwise inadmissible under these rules.

(b) Visual Examination of the Body.

(1) Consensual Examination. Evidence obtained from a visual examination of the unclothed body is admissible if the person consented to the inspection in accordance with Mil. R. Evid. 314(e).

(2) Involuntary Examination. Evidence obtained from an involuntary display of the unclothed body, including a visual examination of body cavities, is admissible only if the inspection was conducted in a reasonable fashion and authorized under the following provisions of the Military Rules of Evidence:

(A) Inspections and inventories under Mil. R. Evid. 313;

(B) Searches under Mil. R. Evid. 314(b) and 314(c) if there is a reasonable suspicion that weapons, contraband, or evidence of crime is concealed on the body of the person to be searched;

(C) Searches incident to lawful apprehension under Mil. R. Evid. 314(g);

(D) Searches within jails and similar facilities under Mil. R. Evid. 314(h) if reasonably necessary to maintain the security of the institution or its personnel;

(E) Emergency searches under Mil. R. Evid. 314(i); and

(F) Probable cause searches under Mil. R. Evid. 315.

(c) Intrusion into Body Cavities.

(1) Mouth, Nose, and Ears. Evidence obtained from a reasonable nonconsensual physical intrusion into the mouth, nose, and ears is admissible under the same standards that apply to a visual examination of the body under subdivision (b).

(2) Other Body Cavities. Evidence obtained from nonconsensual intrusions into other body cavities is admissible only if made in a reasonable fashion by a person with appropriate medical qualifications and if:

(A) At the time of the intrusion there was probable cause to believe that a weapon, contraband, or other evidence of crime was present;

(B) Conducted to remove weapons, contraband, or evidence of crime discovered under subdivisions (b) or (c)(2)(A) of this rule;

(C) Conducted pursuant to Mil. R. Evid. 316(c)(5)(C);

(D) Conducted pursuant to a search warrant or search authorization under Mil. R. Evid. 315; or

(E) Conducted pursuant to Mil. R. Evid. 314(h) based on a reasonable suspicion that the individual is concealing a weapon, contraband, or evidence of crime.

(d) Extraction of Body Fluids. Evidence obtained from nonconsensual extraction of body fluids is admissible if seized pursuant to a search warrant or a search authorization under Mil. R. Evid. 315. Evidence obtained from body fluid extractions made without such a warrant or authorization is admissible, not withstanding Mil. R. Evid. 315(g), only when probable cause existed at the time of extraction to believe that evidence of crime would be found and that the delay necessary to obtain a search warrant or search authorization could have resulted in the destruction of the evidence. Evidence obtained from involuntary extraction of body fluids is admissible only when executed in a reasonable fashion by a person with appropriate medical qualifications.

(e) Other Intrusive Searches. Evidence obtained from a nonconsensual intrusive search of the body, other than searches described in subdivisions (c) or (d), conducted to locate or obtain weapons, contraband, or evidence of crime is admissible only if obtained pursuant to a search warrant or search authorization under Mil. R. Evid. 315 and conducted in a reasonable fashion by a person with appropriate medical qualifications in such a manner so as not to endanger the health of the person to be searched.

(f) Intrusions for Valid Medical Purposes. Evidence or contraband obtained in the course of a medical examination or an intrusion conducted for a valid medical purpose is admissible. Such an examination or intrusion may not, for the purpose of obtaining evidence or contraband, exceed what is necessary for the medical purpose.

(g) Medical Qualifications. The Secretary concerned may prescribe appropriate medical qualifications for persons who conduct searches and seizures under this rule.

Rule 313. Inspections and Inventories in the Armed Forces

(a) General Rule. Evidence obtained from lawful inspections and inventories in the armed forces is admissible at trial when relevant and not otherwise inadmissible under these rules. Unlawful weapons, contraband, or other evidence of crime discovered during a lawful inspection or inventory may be seized and are admissible in accordance with this rule.

(b) Lawful Inspections. An ''inspection'' is an examination of the whole or part of a unit, organization, installation, vessel, aircraft, or vehicle, including an examination conducted at entrance and exit points, conducted as an incident of command the primary purpose of which is to determine and to ensure the security, military fitness, or good order and discipline of the unit, organization, installation, vessel, aircraft, or vehicle. Inspections must be conducted in a reasonable fashion and, if applicable, must comply with Mil. R. Evid. 312. Inspections may utilize any reasonable natural or technological aid and may be conducted with or without notice to those inspected.

(1) Purpose of Inspections. An inspection may include, but is not limited to, an examination to determine and to ensure that any or all of the following requirements are met: that the command is properly equipped, functioning properly, maintaining proper standards of readiness, sea or airworthiness, sanitation and cleanliness; and that personnel are present, fit, and ready for duty. An order to produce body fluids, such as urine, is permissible in accordance with this rule.

(2) Searches for Evidence. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inspection within the meaning of this rule.

(3) Examinations to Locate and Confiscate Weapons or Contraband.

(A) An inspection may include an examination to locate and confiscate unlawful weapons and other contraband provided that the criteria set forth in this subdivision (b)(3)(B) are not implicated.

(B) The prosecution must prove by clear and convincing evidence that the examination was an inspection within the meaning of this rule if a purpose of an examination is to locate weapons or contraband, and if:

(i) The examination was directed immediately following a report of a specific offense in the unit,

organization, installation, vessel, aircraft, or vehicle and was not previously scheduled;

(ii) Specific individuals are selected for examination; or

(iii) Persons examined are subjected to substantially different intrusions during the same examination.

(c) Lawful Inventories. An ''inventory'' is a reasonable examination, accounting, or other control measure used to account for or control property, assets, or other resources. It is administrative and not prosecutorial in nature; and if applicable, the inventory must comply with Mil. R. Evid. 312. An examination made for the primary purpose of obtaining evidence for use in a trial by court-martial or in other disciplinary proceedings is not an inventory within the meaning of this rule.

Rule 314. Searches Not Requiring Probable Cause

(a) General Rule. Evidence obtained from reasonable searches not requiring probable cause is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the armed forces.

(b) Border Searches. Evidence from a border search for customs or immigration purposes authorized by a federal statute is admissible.

(c) Searches Upon Entry to or Exit from United States Installations, Aircraft, and Vessels Abroad. In addition to inspections under Mil. R. Evid. 313(b), evidence is admissible when a commander of a United States military installation, enclave, or aircraft on foreign soil, or in foreign or international airspace, or a United States vessel in foreign or international waters, has authorized appropriate personnel to search persons or the property of such persons upon entry to or exit from the installation, enclave, aircraft, or vessel to ensure the security, military fitness, or good order and discipline of the command. A search made for the primary purpose of obtaining evidence for use in a trial by court-martial or other disciplinary proceeding is not authorized by this subdivision (c).

(d) Searches of Government Property. Evidence resulting from a search of government property without probable cause is admissible under this rule unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Normally a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions normally are issued for personal use, but the determination as to whether a person has a reasonable expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search.

(e) Consent Searches.

(1) General Rule. Evidence of a search conducted without probable cause is admissible if conducted with lawful consent.

(2) Who May Consent. A person may consent to a search of his or her person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property.

(3) Scope of Consent. Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property and may be withdrawn at any time.

(4) Voluntariness. To be valid, consent must be given voluntarily. Voluntariness is a question to be determined from all the circumstances. Although a person's knowledge of the right to refuse to give consent is a factor to be considered in determining voluntariness, the prosecution is not required to demonstrate such knowledge as a prerequisite to establishing a voluntary consent. Mere submission to the color of authority of personnel performing law enforcement duties or acquiescence in an announced or indicated purpose to search is not a voluntary consent.

(5) Burden and Standard of Proof. The prosecution must prove consent by clear and convincing evidence. The fact that a person was in custody while granting consent is a factor to be considered in determining the voluntariness of consent, but it does not affect the standard of proof.

(f) Searches Incident to a Lawful Stop.

(1) Lawfulness. A stop is lawful when conducted by a person authorized to apprehend under R.C.M. 302(b) or others performing law enforcement duties and when the person making the stop has information or observes unusual conduct that leads him or her reasonably to conclude in light of his or her experience that criminal activity may be afoot. The stop must be temporary and investigatory in nature.

(2) Stop and Frisk. Evidence is admissible if seized from a person who was lawfully stopped and who was frisked for weapons because he or she was reasonably believed to be armed and presently dangerous. Contraband or evidence that is located in the process of a lawful frisk may be seized.

(3) Vehicles. Evidence is admissible if seized from the passenger compartment of a vehicle in which a person lawfully stopped is the driver or a passenger and if the official who made the stop has a reasonable belief that the person stopped is dangerous and may gain immediate control of a weapon.

(g) Searches Incident to Apprehension.

(1) General Rule. Evidence is admissible if seized in a search of a person who has been lawfully apprehended or if seized as a result of a reasonable protective sweep.

(2) Search for Weapons and Destructible Evidence. A lawful search incident to apprehension may include a search for weapons or destructible evidence in the area within the immediate control of a person who has been apprehended. ''Immediate control'' means that area in which the individual searching could reasonably believe that the person apprehended could reach with a sudden movement to obtain such property.

(3) Protective Sweep for Other Persons.

(A) Area of Potential Immediate Attack. Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.

(B) Wider Protective Sweep. When an apprehension takes place at a location in which another person might be present who might endanger the apprehending officials or others in the area of the apprehension, a search incident to arrest may lawfully include a reasonable examination of those spaces where a person might be found. Such a reasonable examination is lawful under this subdivision if the apprehending official has a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(h) Searches within Jails, Confinement Facilities, or Similar Facilities. Evidence obtained from a search within a jail, confinement facility, or similar facility is admissible even if conducted without probable cause provided that it was authorized by persons with authority over the institution.

(i) Emergency Searches to Save Life or for Related Purposes. Evidence obtained from emergency searches of persons or property conducted to save life, or for a

related purpose, is admissible provided that the search was conducted in a good faith effort to render immediate medical aid, to obtain information that will assist in the rendering of such aid, or to prevent immediate or ongoing personal injury.

(j) Searches of Open Fields or Woodlands. Evidence obtained from a search of an open field or woodland is admissible provided that the search was not unlawful within the meaning of Mil. R. Evid. 311.

Rule 315. Probable Cause Searches

(a) General Rule. Evidence obtained from reasonable searches conducted pursuant to a search warrant or search authorization, or under the exigent circumstances described in this rule, is admissible at trial when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the armed forces.

(b) Definitions. As used in these rules:

(1) ''Search authorization'' means express permission, written or oral, issued by competent military authority to search a person or an area for specified property or evidence or for a specific person and to seize such property, evidence, or person. It may contain an order directing subordinate personnel to conduct a search in a specified manner.

(2) ''Search warrant'' means express permission to search and seize issued by competent civilian authority.

(c) Scope of Search Authorization. A search authorization may be valid under this rule for a search of:

(1) The physical person of anyone subject to military law or the law of war wherever found;

(2) Military property of the United States or of nonappropriated fund activities of an armed force of the United States wherever located;

(3) Persons or property situated on or in a military installation, encampment, vessel, aircraft, vehicle, or any other location under military control, wherever located; or

(4) Nonmilitary property within a foreign country.

(d) Who May Authorize. A search authorization under this rule is valid only if issued by an impartial individual in this subdivision (d)(1) and (d)(2). An otherwise impartial authorizing official does not lose the character merely because he or she is present at the scene of a search or is otherwise readily available to persons who may seek the issuance of a search authorization; nor does such an official lose impartial character merely because the official previously and impartially authorized investigative activities when such previous authorization is similar in intent or function to a pretrial authorization made by the United States district courts.

(1) Commander. A commander or other person serving in a position designated by the Secretary concerned as either a position analogous to an officer in charge or a position of command, who has control over the place where the property or person to be searched is situated or found, or, if that place is not under military control, having control over persons subject to military law or the law of war; or

(2) Military Judge or Magistrate. A military judge or magistrate if authorized under regulations prescribed by the Secretary of Defense or the Secretary concerned.

(e) Who May Search.

(1) Search Authorization. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security forces, military police, or shore patrol, or person designated by proper authority to perform guard or police duties, or any agent of any such person, may conduct or authorize a search when a search authorization has been granted under this rule or a search would otherwise be proper under subdivision (g).

(2) Search Warrants. Any civilian or military criminal investigator authorized to request search warrants pursuant to applicable law or regulation is authorized to serve and execute search warrants. The execution of a search warrant affects admissibility only insofar as exclusion of evidence is required by the Constitution of the United States or an applicable federal statute.

(f) Basis for Search Authorizations.

(1) Probable Cause Requirement. A search authorization issued under this rule must be based upon probable cause.

(2) Probable Cause Determination. Probable cause to search exists when there is a reasonable belief that the person, property, or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon hearsay evidence in whole or in part. A determination of probable cause under this rule will be based upon any or all of the following:

(A) Written statements communicated to the authorizing officer;

(B) Oral statements communicated to the authorizing official in person, via telephone, or by other appropriate means of communication; or

(C) Such information as may be known by the authorizing official that would not preclude the officer from acting in an impartial fashion. The Secretary of Defense or the Secretary concerned may prescribe additional requirements.

(g) Exigencies. Evidence obtained from a probable cause search is admissible without a search warrant or search authorization when there is a reasonable belief that the delay necessary to obtain a search warrant or search authorization would result in the removal, destruction, or concealment of the property or evidence sought. Military operational necessity may create an exigency by prohibiting or preventing communication with a person empowered to grant a search authorization.

Rule 316. Seizures

(a) General Rule. Evidence obtained from reasonable seizures is admissible at trial when the evidence when relevant and not otherwise inadmissible under these rules or the Constitution of the United States as applied to members of the armed forces.

(b) Apprehension. Apprehension is governed by R.C.M. 302.

(c) Seizure of Property or Evidence.

(1) Based on Probable Cause. Evidence is admissible when seized based on a reasonable belief that the property or evidence is an unlawful weapon, contraband, evidence of crime, or might be used to resist apprehension or to escape.

(2) Abandoned Property. Abandoned property may be seized without probable cause and without a search warrant or search authorization. Such seizure may be made by any person.

(3) Consent. Property or evidence may be seized with consent consistent with the requirements applicable to consensual searches under Mil. R. Evid. 314.

(4) Government Property. Government property may be seized without probable cause and without a search warrant or search authorization by any person listed in subdivision (e), unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein, as provided in Mil. R. Evid. 314(d), at the time of the seizure.

(5) Other Property. Property or evidence not included in paragraph (1)–(4) may be seized for use in evidence by any person listed in subdivision (e) if:

(A) Authorization. The person is authorized to seize the property or evidence by a search warrant or a search authorization under Mil. R. Evid. 315;

(B) Exigent Circumstances. The person has probable cause to seize the property or evidence and under Mil. R.

Evid. 315(g) a search warrant or search authorization is not required; or

(C) Plain View. The person while in the course of otherwise lawful activity observes in a reasonable fashion property or evidence that the person has probable cause to seize.

(6) Temporary Detention. Nothing in this rule prohibits temporary detention of property on less than probable cause when authorized under the Constitution of the United States.

(d) Who May Seize. Any commissioned officer, warrant officer, petty officer, noncommissioned officer, and, when in the execution of guard or police duties, any criminal investigator, member of the Air Force security forces, military police, or shore patrol, or individual designated by proper authority to perform guard or police duties, or any agent of any such person, may seize property pursuant to this rule.

(e) Evidence obtained from a seizure not addressed in this rule is admissible provided that its seizure was permissible under the Constitution of the United States as applied to members of the armed forces.

Rule 317. Interception of Wire and Oral Communications

(a) General Rule. Wire or oral communications constitute evidence obtained as a result of an unlawful search or seizure within the meaning of Mil. R. Evid. 311 when such evidence must be excluded under the Fourth Amendment to the Constitution of the United States as applied to members of the armed forces or if such evidence must be excluded under a federal statute applicable to members of the armed forces.

(b) When Authorized by Court Order. Evidence from the interception of wire or oral communications is admissible when authorized pursuant to an application to a federal judge of competent jurisdiction under the provisions of a federal statute.

(c) Regulations. Notwithstanding any other provision of these rules, evidence obtained by members of the armed forces or their agents through interception of wire or oral communications for law enforcement purposes is not admissible unless such interception:

(1) Takes place in the United States and is authorized under subdivision (b);

(2) takes place outside the United States and is authorized under regulations issued by the Secretary of Defense or the Secretary concerned; or

(3) is authorized under regulations issued by the Secretary of Defense or the Secretary concerned and is not unlawful under applicable federal statutes.

Rule 321. Eyewitness Identification

(a) General Rule. Testimony concerning a relevant out of court identification by any person is admissible, subject to an appropriate objection under this rule, if such testimony is otherwise admissible under these rules. The witness making the identification and any person who has observed the previous identification may testify concerning it. When in testimony a witness identifies the accused as being, or not being, a participant in an offense or makes any other relevant identification concerning a person in the courtroom, evidence that on a previous occasion the witness made a similar identification is admissible to corroborate the witness's testimony as to identity even if the credibility of the witness has not been attacked directly, subject to appropriate objection under this rule.

(b) When Inadmissible. An identification of the accused as being a participant in an offense, whether such identification is made at the trial or otherwise, is inadmissible against the accused if:

(1) The identification is the result of an unlawful lineup or other unlawful identification process, as defined in subdivision (c), conducted by the United States or other domestic authorities and the accused makes a timely motion to suppress or an objection to the evidence under this rule; or

(2) Exclusion of the evidence is required by the due process clause of the Fifth Amendment to the Constitution of the United States as applied to members of the armed forces. Evidence other than an identification of the accused that is obtained as a result of the unlawful lineup or unlawful identification process is inadmissible against the accused if the accused makes a timely motion to suppress or an objection to the evidence under this rule and if exclusion of the evidence is required under the Constitution of the United States as applied to members of the armed forces.

(c) Unlawful Lineup or Identification Process.

(1) Unreliable. A lineup or other identification process is unreliable, and therefore unlawful, if the lineup or other identification process is so suggestive as to create a substantial likelihood of misidentification.

(2) In Violation of Right to Counsel. A lineup is unlawful if it is conducted in violation of the accused's rights to counsel.

(A) Military Lineups. An accused or suspect is entitled to counsel if, after preferral of charges or imposition of pretrial restraint under R.C.M. 304 for the offense under investigation, the accused is required by persons subject to the code or their agents to participate in a lineup for the purpose of identification. When a person entitled to counsel under this rule requests counsel, a judge advocate or a person certified in accordance with Article 27(b) will be provided by the United States at no expense to the accused or suspect and without regard to indigency or lack thereof before the lineup may proceed. The accused or suspect may waive the rights provided in this rule if the waiver is freely, knowingly, and intelligently made.

(B) Nonmilitary Lineups. When a person subject to the code is required to participate in a lineup for purposes of identification by an official or agent of the United States, of the District of Columbia, or of a State, Commonwealth, or possession of the United States, or any political subdivision of such a State, Commonwealth, or possession, and the provisions of subdivision (2)(A) do not apply, the person's entitlement to counsel and the validity of any waiver of applicable rights will be determined by the principles of law generally recognized in the trial of criminal cases in the United States district courts involving similar lineups.

(d) Motions to Suppress and Objections.

(1) Disclosure. Prior to arraignment, the prosecution must disclose to the defense all evidence of, or derived from, a prior identification of the accused as a lineup or other identification process that it intends to offer into evidence against the accused at trial.

(2) Time Requirement. When such evidence has been disclosed, any motion to suppress or objection under this rule must be made by the defense prior to submission of a plea. In the absence of such motion or objection, the defense may not raise the issue at a later time except as permitted by the military judge for good cause shown. Failure to so move constitutes a waiver of the motion or objection.

(3) Continuing Duty. If the prosecution intends to offer such evidence and the evidence was not disclosed prior to arraignment, the prosecution must provide timely notice to the military judge and counsel for the accused. The defense may enter an objection at that time and the military judge may make such orders as are required in the interests of justice.

(4) Specificity. The military judge may require the defense to specify the grounds upon which the defense moves to suppress or object to evidence. If

defense counsel, despite the exercise of due diligence, has been unable to interview adequately those persons involved in the lineup or other identification process, the military judge may enter any order required by the interests of justice, including authorization for the defense to make a general motion to suppress or a general objection.

(5) Defense Evidence. The defense may present evidence relevant to the issue of the admissibility of evidence as to which there has been an appropriate motion or objection under this rule. An accused may testify for the limited purpose of contesting the legality of the lineup or identification process giving rise to the challenged evidence. Prior to the introduction of such testimony by the accused, the defense must inform the military judge that the testimony is offered under this subdivision. When the accused testifies under this subdivision, the accused may be cross-examined only as to the matter on which he or she testifies. Nothing said by the accused on either direct or cross-examination may be used against the accused for any purpose other than in a prosecution for perjury, false swearing, or the making of a false official statement.

(6) Burden and Standard of Proof. When the defense has raised a specific motion or objection under subdivision (d)(3), the burden on the prosecution extends only to the grounds upon which the defense moved to suppress or object to the evidence.

(A) Right to Counsel.

(i) Initial Violation of Right to Counsel at a Lineup. When the accused raises the right to presence of counsel under this rule, the prosecution must prove by a preponderance of the evidence that counsel was present at the lineup or that the accused, having been advised of the right to the presence of counsel, voluntarily and intelligently waived that right prior to the lineup.

(ii) Identification Subsequent to a Lineup Conducted in Violation of the Right to Counsel. When the military judge determines that an identification is the result of a lineup conducted without the presence of counsel or an appropriate waiver, any later identification by one present at such unlawful lineup is also a result thereof unless the military judge determines that the contrary has been shown by clear and convincing evidence.

(B) Unreliable Identification.

(i) Initial Unreliable Identification. When an objection raises the issue of an unreliable identification, the prosecution must prove by a preponderance of the evidence that the identification was reliable under the circumstances.

(ii) Identification Subsequent to an Unreliable Identification. When the military judge determines that an identification is the result of an unreliable identification, a later identification may be admitted if the prosecution proves by clear and convincing evidence that the later identification is not the result of the inadmissible identification.

(7) Rulings. A motion to suppress or an objection to evidence made prior to plea under this rule will be ruled upon prior to plea unless the military judge, for good cause, orders that it be deferred for determination at the trial of the general issue or until after findings, but no such determination will be deferred if a party's right to appeal the ruling is affected adversely. Where factual issues are involved in ruling upon such motion or objection, the military judge will state his or her essential findings of fact on the record.

(e) Effect of Guilty Pleas. Except as otherwise expressly provided in R.C.M. 910(a)(2), a plea of guilty to an offense that results in a finding of guilty waives all issues under this rule with respect to that offense whether or not raised prior to the plea.

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

(a) It has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) The fact is of consequence in determining the action.

Rule 402. General Admissibility of Relevant Evidence

(a) Relevant evidence is admissible unless any of the following provides otherwise:

(1) The United States Constitution as it applies to members of the armed forces;

(2) A federal statute;

(3) These rules;

(4) This Manual; or

(5) Other rules prescribed by the Supreme Court pursuant to statutory authority.

(b) Irrelevant evidence is not admissible.

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The military judge may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: Unfair prejudice, confusing the issues, misleading the members, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404. Character Evidence; Crimes or Other Acts

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Exceptions for an Accused or Alleged Victim:

(A) The accused may offer evidence of the accused's pertinent trait, and if the evidence is admitted, the prosecution may offer evidence to rebut it.

(B) Subject to the limitations in Mil. R. Evid. 412, the accused may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecution may:

(i) Offer evidence to rebut it; and

(ii) Offer evidence of the accused's same trait; and

(C) In a homicide or assault case, the prosecution may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the alleged victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Mil. R. Evid. 607, 608, and 609.

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses; Notice. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by the accused, the prosecution must:

(A) Provide reasonable notice of the general nature of any such evidence that the prosecution intends to offer at trial; and

(B) Do so before trial—or during trial if the military judge, for good cause, excuses lack of pretrial notice.

Rule 405. Methods of Proving Character

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the military judge may allow an inquiry into relevant specific instances of the person's conduct.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

(c) By Affidavit. The defense may introduce affidavits or other written statements of persons other than the accused concerning the character of the accused. If the defense introduces affidavits or other written statements under this subdivision, the prosecution may, in rebuttal, also introduce affidavits or other written statements regarding the character of the accused. Evidence of this type may be introduced by the defense or prosecution only if, aside from being contained in an affidavit or other written statement, it would otherwise be admissible under these rules.

(d) Definitions. As used in this rule:

(1) ''Reputation'' means the estimation in which a person generally is held in the community in which the person lives or pursues a business or profession.

(2) ''Community'' means a post, camp, ship, station, or other military organization regardless of size.

Rule 406. Habit; Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The military judge may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Rule 407. Subsequent Remedial Measures

(a) When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

(1) Negligence;

(2) Culpable conduct;

(3) A defect in a product or its design; or

(4) A need for a warning or instruction.

(b) The military judge may admit this evidence for another purpose, such as impeachment or—if disputed—proving ownership, control, or the feasibility of precautionary measures.

Rule 408. Compromise Offers and Negotiations

(a) Prohibited Uses. Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) Furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in order to compromise the claim; and

(2) Conduct or a statement made during compromise negotiations about the claim—except when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) Exceptions. The military judge may admit this evidence for another purpose, such as proving witness bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Offers To Pay Medical and Similar Expenses

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

Rule 410. Pleas, Plea Discussions, and Related Statements

(a) Prohibited Uses. Evidence of the following is not admissible against the accused who made the plea or participated in the plea discussions:

(1) A guilty plea that was later withdrawn;

(2) A nolo contendere plea;

(3) Any statement made in the course of any judicial inquiry regarding either of the foregoing pleas; or

(4) Any statement made during plea discussions with the convening authority, staff judge advocate, trial counsel or other counsel for the Government if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) Exceptions. The military judge may admit a statement described in subdivision (a)(3) or (a)(4):

(1) When another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or

(2) In a proceeding for perjury or false statement, if the accused made the statement under oath, on the record, and with counsel present.

(c) Request for Administrative Disposition. A ''statement made during plea discussions'' includes a statement made by the accused solely for the purpose of requesting disposition under an authorized procedure for administrative action in lieu of trial by court-martial; ''on the record'' includes the written statement submitted by the accused in furtherance of such request.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. The military judge may admit this evidence for another purpose, such as proving witness bias or prejudice or proving agency, ownership, or control.

Rule 412. Sex Offense Cases: The Alleged Victim's Sexual Behavior or Predisposition

(a) Prohibited Uses. The following evidence is not admissible in any proceeding involving an alleged sexual offense:

(1) Evidence offered to prove that an alleged victim engaged in other sexual behavior; or

(2) Evidence offered to prove an alleged victim's sexual predisposition.

(b) Exceptions. The military judge may admit the following evidence:

(1) Evidence of specific instances of an alleged victim's sexual behavior, if offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(2) Evidence of specific instances of an alleged victim's sexual behavior with respect to the accused, if offered by the accused to prove consent or if offered by the prosecution; and

(3) Evidence the exclusion of which would violate the accused's constitutional rights.

(c) Procedure to Determine Admissibility.

(1) Motion. If a party intends to offer evidence under Rule 412(b), the party must:

(A) File a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(B) Do so at least 5 days prior to entry of pleas unless the military judge, for good cause, sets a different time;

(C) Serve the motion on all parties; and

(D) Notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Hearing. Before admitting evidence under this rule, the military judge must conduct a hearing pursuant to Article 39(a) which must be closed to the public and outside the presence of the members. At this hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. The alleged victim must be afforded a reasonable opportunity to attend and be heard. Unless the military judge orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed in accordance with R.C.M. 1103A.

(3) Privacy. If the military judge determines that evidence the accused seeks to offer is relevant for a purpose under subdivision (b), the military judge

must issue an order specifically identifying the evidence that may be offered and the areas about which the alleged victim may be examined or cross-examined. Such evidence remains subject to challenge under Mil. R. Evid. 403.

(e) Definitions. As used in this rule:

(1) ''Sexual behavior'' means any sexual behavior not encompassed by the alleged offense.

(2) ''Sexual offense'' means any sexual misconduct punishable under the Uniform Code of Military Justice, federal law or state law.

(3) ''Sexual predisposition'' means an alleged victim's mode of dress, speech, or lifestyle, that may have a sexual connotation for the factfinder, but that does not directly relate to sexual activities or thoughts.

Rule 413. Similar Crimes in Sexual Offense Cases

(a) Permitted Uses. In a court-martial proceeding for a sexual offense, the military judge may admit evidence that the accused committed any other sexual offense. The evidence may be considered on any matter to which it is relevant.

(b) Disclosure to the Accused. If the prosecution intends to offer this evidence, the prosecution must disclose it to the accused, including any witnesses' statements or a summary of the expected testimony. The prosecution must do so at least 5 days prior to entry of pleas or at a later time that the military judge allows for good cause.

(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.

(d) Definition. As used in this rule, ''Sexual Offense'' means an offense punishable under the Uniform Code of Military Justice, or a crime under federal or state law (as ''state'' is defined in 18 U.S.C. § 513), involving:

(1) Any conduct prohibited by Article 120;

(2) Any conduct prohibited by 18 U.S.C. chapter 109A;

(3) Contact, without consent, between any part of the accused's body—or an object—and another person's genitals or anus;

(4) Contact, without consent, between the accused's genitals or anus and any part of another person's body;

(5) Deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or

(6) An attempt or conspiracy to engage in conduct described in subdivisions (1)–(5).

Rule 414. Similar Crimes in Child-Molestation Cases

(a) Permitted Uses. In a court-martial proceeding in which an accused is charged with an act of child molestation, the military judge may admit evidence that the accused committed any other offense of child molestation. The evidence may be considered on any matter to which it is relevant.

(b) Disclosure to the Accused. If the prosecution intends to offer this evidence, the prosecution must disclose it to the accused, including witnesses' statements or a summary of the expected testimony. The prosecution must do so at least 5 days prior to entry of pleas or at a later time that the military judge allows for good cause.

(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.

(d) Definitions. As used in this rule:

(1) ''*Child*'' means a person below the age of 16; and

(2) ''*Child molestation*'' means an offense punishable under the Uniform Code of Military Justice, or a crime under federal law or under state law (as ''state'' is defined in 18 U.S.C. 513), that involves:

(A) Any conduct prohibited by Article 120 and committed with a child;

(B) Any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child;

(C) Any conduct prohibited by 18 U.S.C. chapter 110;

(D) Contact between any part of the accused's body—or an object—and a child's genitals or anus;

(E) Contact between the accused's genitals or anus and any part of a child's body;

(F) Deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or

(G) An attempt or conspiracy to engage in conduct described in subdivisions (A)–(F).

Rule 501. Privilege in General

(a) A person may not claim a privilege with respect to any matter except as required by or provided for in:

(1) The United States Constitution as applied to members of the armed forces;

(2) A federal statute applicable to trials by courts-martial;

(3) These rules or this Manual;

(4) Rules prescribed by the Supreme Court pursuant to statutory authority; or

(5) The principles of common law generally recognized in the trial of criminal cases in the United States district courts under rule 501 of the Federal Rules of Evidence, insofar as the application of such principles in trials by courts-martial is practicable and not contrary to or inconsistent with the Uniform Code of Military Justice, these rules, or this Manual.

(b) A claim of privilege includes, but is not limited to, the assertion by any person of a privilege to:

(1) Refuse to be a witness;

(2) Refuse to disclose any matter;

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

(c) The term ''person'' includes an appropriate representative of the Federal Government, a State, or political subdivision thereof, or any other entity claiming to be the holder of a privilege.

(d) Notwithstanding any other provision of these rules, information not otherwise privileged does not become privileged on the basis that it was acquired by a medical officer or civilian physician in a professional capacity.

Rule 502. Lawyer-Client Privilege

(a) General Rule. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(1) Between the client or the client's representative and the lawyer or the lawyer's representative;

(2) Between the lawyer and the lawyer's representative;

(3) By the client or the client's lawyer to a lawyer representing another in a matter of common interest;

(4) Between representatives of the client or between the client and a representative of the client; or

(5) Between lawyers representing the client.

(b) Definitions. As used in this rule:

(1) ''*Client*'' means a person, public officer, corporation, association, organization, or other entity, either public or private, who receives professional legal services from a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(2) ''*Lawyer*'' means a person authorized, or reasonably believed by the client to be authorized, to practice law; or a member of the armed forces detailed, assigned, or otherwise provided to represent a person in a court-martial case or in any military investigation or proceeding. The term ''lawyer'' does not include a member of the armed forces serving in a capacity

other than as a judge advocate, legal officer, or law specialist as defined in Article 1, unless the member:

(A) Is detailed, assigned, or otherwise provided to represent a person in a court-martial case or in any military investigation or proceeding;

(B) Is authorized by the armed forces, or reasonably believed by the client to be authorized, to render professional legal services to members of the armed forces; or

(C) Is authorized to practice law and renders professional legal services during off-duty employment.

(3) ''*Lawyer's representative*'' means a person employed by or assigned to assist a lawyer in providing professional legal services.

(4) A communication is ''*confidential*'' if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(c) Who May Claim the Privilege. The privilege may be claimed by the client, the guardian or conservator of the client, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The lawyer or the lawyer's representative who received the communication may claim the privilege on behalf of the client. The authority of the lawyer to do so is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule under any of the following circumstances:

(1) Crime or Fraud. If the communication clearly contemplated the future commission of a fraud or crime or if services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud.

(2) Claimants through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.

(3) Breach of Duty by Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer to the client or by the client to the lawyer;

(4) Document Attested by the Lawyer. As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(5) Joint Clients. As to a communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

Rule 503. Communications to Clergy

(a) General Rule. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant, if such communication is made either as a formal act of religion or as a matter of conscience.

(b) Definitions. As used in this rule:

(1) ''*Clergyman*'' means a minister, priest, rabbi, chaplain, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting the clergyman.

(2) ''*Clergyman's assistant*'' means a person employed by or assigned to assist a clergyman in his capacity as a spiritual advisor.

(3) A communication is ''*confidential*'' if made to a clergyman in the clergyman's capacity as a spiritual adviser or to a clergyman's assistant in the assistant's official capacity and is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the purpose of the communication or to those reasonably necessary for the transmission of the communication.''

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by the guardian, or conservator, or by a personal representative if the person is deceased. The clergyman or clergyman's assistant who received the communication may claim the privilege on behalf of the person. The authority of the clergyman or clergyman's assistant to do so is presumed in the absence of evidence to the contrary.

Rule 504. Husband-Wife Privilege

(a) Spousal Incapacity. A person has a privilege to refuse to testify against his or her spouse.

(b) Confidential Communication Made During the Marriage.

(1) General Rule. A person has a privilege during and after the marital relationship to refuse to disclose, and to prevent another from disclosing, any confidential communication made to the spouse of the person while they were husband and wife and not separated as provided by law.

(2) Definition. As used in this rule, a communication is ''*confidential*'' if made privately by any person to the spouse of the person and is not intended to be disclosed to third persons other than those reasonably necessary for transmission of the communication.

(3) Who May Claim the Privilege. The privilege may be claimed by the spouse who made the communication or by the other spouse on his or her behalf. The authority of the latter spouse to do so is presumed in the absence of evidence of a waiver. The privilege will not prevent disclosure of the communication at the request of the spouse to whom the communication was made if that spouse is an accused regardless of whether the spouse who made the communication objects to its disclosure.''

(c) Exceptions.

(1) To Spousal Incapacity Only. There is no privilege under subdivision (a) when, at the time the testimony of one of the parties to the marriage is to be introduced in evidence against the other party, the parties are divorced or the marriage has been annulled.

(2) To Spousal Incapacity and Confidential Communications. There is no privilege under subdivisions (a) or (b):

(A) In proceedings in which one spouse is charged with a crime against the person or property of the other spouse or a child of either, or with a crime against the person or property of a third person committed in the course of committing a crime against the other spouse;

(B) When the marital relationship was entered into with no intention of the parties to live together as spouses, but only for the purpose of using the purported marital relationship as a sham, and with respect to the privilege in subdivision (a), the relationship remains a sham at the time the testimony or statement of one of the parties is to be introduced against the other; or with respect to the privilege in subdivision (b), the relationship was a sham at the time of the communication; or

(C) In proceedings in which a spouse is charged, in accordance with Article 133 or 134, with importing the other spouse as an alien for prostitution or other immoral purpose in violation of 18 U.S.C. § 1328; with transporting the other spouse in interstate commerce for immoral purposes or other offense in violation of 18 U.S.C. 2421–2424; or with violation of such other similar statutes under which such privilege may not be claimed in the trial of criminal cases in the United States district courts.

(D) Where both parties have been substantial participants in illegal activity, those communications between the spouses during the marriage regarding the illegal activity in which they have jointly participated are not marital communications for purposes of the privilege in subdivision (b), and are not entitled to protection under the privilege in subdivision (b).

(d) Definitions. As used in this rule:

(1) ''*A child of either*'' means a biological child, adopted child, or ward of one of the spouses and includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is:

(A) An individual under the age of 18; or

(B) An individual with a mental handicap who functions under the age of 18.

(2) ''*Temporary physical custody*'' means a parent has entrusted his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody, nor is a written agreement required. Rather, the focus is on the parent's agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of their child for recurring care or during absences due to temporary duty or deployments.

Rule 505. Classified Information

(a) General Rule. Classified information must be protected and is privileged from disclosure if disclosure would be detrimental to the national security. Under no circumstances may a military judge order the release of classified information to any person not authorized to receive such information. The Secretary of Defense may prescribe security procedures for protection against the compromise of classified information submitted to courts-martial and appellate authorities.

(b) Definitions. As used in this rule:

(1) ''*Classified information*'' means any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulations, to require protection against unauthorized disclosure for reasons of national security, and any restricted data, as defined in 42 U.S.C. 2014(y).

(2) ''*National security*'' means the national defense and foreign relations of the United States.

(3) ''*In camera hearing*'' means a session under Article 39(a) from which the public is excluded.

(4) ''*In camera review''* means an inspection of documents or other evidence conducted by the military judge alone in chambers and not on the record.

(5) ''*Ex parte''* means a discussion between the military judge and either the defense counsel or prosecution, without the other party or the public present. This discussion can be on or off the record, depending on the circumstances. The military judge will grant a request for an ex parte discussion or hearing only after finding that such discussion or hearing is necessary to protect classified information or other good cause. Prior to granting a request from one party for an ex parte discussion or hearing, the military judge must provide notice to the opposing party on the record. If the ex parte discussion is conducted off the record, the military judge should later state on the record that such ex parte discussion took place and generally summarize the subject matter of the discussion, as appropriate.

(c) Access to Evidence. Any information admitted into evidence pursuant to any rule, procedure, or order by the military judge must be provided to the accused.

(d) Declassification. Trial counsel should, when practicable, seek declassification of evidence that may be used at trial, consistent with the requirements of national security. A decision not to declassify evidence under this section is not subject to review by a military judge or upon appeal.

(e) Action Prior to Referral of Charges.

(1) Prior to referral of charges, upon a showing by the accused that the classified information sought is relevant and necessary to an element of the offense or a legally cognizable defense, the convening authority must respond in writing to a request by the accused for classified information if the privilege in this rule is claimed for such information. In response to such a request, the convening authority may:

(A) Delete specified items of classified information from documents made available to the accused;

(B) Substitute a portion or summary of the information for such classified documents;

(C) Substitute a statement admitting relevant facts that the classified information would tend to prove;

(D) Provide the document subject to conditions that will guard against the compromise of the information disclosed to the accused; or

(E) Withhold disclosure if actions under (1) through (4) cannot be taken without causing identifiable damage to the national security.

(2) An Article 32 investigating officer may not rule on any objection by the accused to the release of documents or information protected by this rule.

(3) Any objection by the accused to withholding of information or to the conditions of disclosure must be raised through a motion for appropriate relief at a pretrial conference.

(f) Actions after Referral of Charges.

(1) Pretrial Conference. At any time after referral of charges, any party may move for a pretrial conference under Article 39(a) to consider matters relating to classified information that may arise in connection with the trial. Following such a motion, or when the military judge recognizes the need for such conference, the military judge must promptly hold a pretrial conference under Article 39(a).

(2) Ex Parte Permissible. Upon request by either party and with a showing of good cause, the military judge must hold such conference ex parte to the extent necessary to protect classified information from disclosure.

(3) Matters to be Established at Pretrial Conference.

(A) Timing of Subsequent Actions. At the pretrial conference, the military judge must establish the timing of:

(i) Requests for discovery;

(ii) The provision of notice required by subdivision (i) of this rule; and

(iii) The initiation of the procedure established by subdivision (j) of this rule.

(B) Other Matters. At the pretrial conference, the military judge may also consider any matter which relates to classified information or which may promote a fair and expeditious trial.

(4) Convening Authority Notice and Action. If a claim of privilege has been made under this rule with respect to classified information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter will be reported to the convening authority. The convening authority may:

(A) Institute action to obtain the classified information for the use by the military judge in making a determination under subdivision (j);

(B) Dismiss the charges;

(C) Dismiss the charges or specifications or both to which the information relates; or

(D) Take such other action as may be required in the interests of justice.

(5) Remedies. If, after a reasonable period of time, the information is not

provided to the military judge in circumstances where proceeding with the case without such information would materially prejudice a substantial right of the accused, the military judge must dismiss the charges or specifications or both to which the classified information relates.

(g) Protective Orders. Upon motion of the trial counsel, the military judge must issue an order to protect against the disclosure of any classified information that has been disclosed by the United States to any accused in any court-martial proceeding or that has otherwise been provided to, or obtained by, any such accused in any such court-martial proceeding. The terms of any such protective order may include, but are not limited to, provisions:

(1) Prohibiting the disclosure of the information except as authorized by the military judge;

(2) Requiring storage of material in a manner appropriate for the level of classification assigned to the documents to be disclosed;

(3) Requiring controlled access to the material during normal business hours and at other times upon reasonable notice;

(4) Mandating that all persons requiring security clearances will cooperate with investigatory personnel in any investigations which are necessary to obtain a security clearance;

(5) Requiring the maintenance of logs regarding access by all persons authorized by the military judge to have access to the classified information in connection with the preparation of the defense;

(6) Regulating the making and handling of notes taken from material containing classified information; or

(7) Requesting the convening authority to authorize the assignment of government security personnel and the provision of government storage facilities.

(h) Discovery and Access by the Accused.

(1) Limitations.

(A) Government Claim of Privilege. In court-martial proceeding in which the government seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any classified information, the trial counsel must submit a declaration invoking the United States' classified information privilege and setting forth the damage to the national security that the discovery of or access to such information reasonably could be expected to cause. The declaration must be signed by the head, or designee, of the executive or military department or government agency concerned.

(B) Standard for Discovery or Access by the Accused. Upon the submission of a declaration under subdivision (h)(1)(A), the military judge may not authorize the discovery of or access to such classified information unless the military judge determines that such classified information would be noncumulative and relevant to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing. If the discovery of or access to such classified information is authorized, it must be addressed in accordance with the requirements of subdivision (h)(2).

(2) Alternatives to Full Discovery.

(A) Substitutions and Other Alternatives. The military judge, in assessing the accused's right to discover or access classified information under this subdivision, may authorize the Government:

(i) To delete or withhold specified items of classified information;

(ii) To substitute a summary for classified information; or

(iii) To substitute a statement admitting relevant facts that the classified information or material would tend to prove, unless the military judge determines that disclosure of the classified information itself is necessary to enable the accused to prepare for trial.

(B) In Camera Review. The military judge must, upon the request of the prosecution, conduct an in camera review of the prosecution's motion and any materials submitted in support thereof and must not disclose such information to the accused.

(C) Action by Military Judge. The military judge must grant the request of the trial counsel to substitute a summary or to substitute a statement admitting relevant facts, or to provide other relief in accordance with subdivision (h)(2)(A), if the military judge finds that the summary, statement, or other relief would provide the accused with substantially the same ability to make a defense as would discovery of or access to the specific classified information.

(3) Reconsideration. An order of a military judge authorizing a request of the trial counsel to substitute, summarize, withhold, or prevent access to classified information under this subdivision (h) is not subject to a motion for reconsideration by the accused, if such order was entered pursuant to an ex parte showing under this subdivision.

(i) Disclosure by the Accused.

(1) Notification to Trial Counsel and Military Judge. If an accused reasonably expects to disclose, or to cause the disclosure of, classified information in any manner in connection with any trial or pretrial proceeding involving the prosecution of such accused, the accused must, within the time specified by the military judge or, where no time is specified, prior to arraignment of the accused, notify the trial counsel and the military judge in writing.

(2) Content of Notice. Such notice must include a brief description of the classified information.

(3) Ex Parte Proffer. At the request of the defense counsel, the military judge may allow defense counsel to make an ex parte proffer of the classified information to the military judge so that the military judge can determine the relevance of the information for use by the accused.

(4) Continuing Duty to Notify. Whenever the accused learns of additional classified information the accused reasonably expects to disclose, or to cause the disclosure of, at any such proceeding, the accused must notify trial counsel and the military judge in writing as soon as possible thereafter and must include a brief description of the classified information.

(5) Limitation on Disclosure by Accused. The accused may not disclose, or cause the disclosure of, any information known or believed to be classified in connection with a trial or pretrial proceeding until:

(A) Notice has been given under this subdivision (i); and

(B) The Government has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in subdivision (j).

(6) Failure To comply. If the accused fails to comply with the requirements of this subdivision, the military judge:

(A) May preclude disclosure of any classified information not made the subject of notification; and

(B) may prohibit the examination by the accused of any witness with respect to any such information.

(j) Procedure for Use of Classified Information in Trials and Pretrial Proceedings.

(1) Hearing on Use of Classified Information.

(A) Motion for Hearing. Within the time specified by the military judge for the filing of a motion under this rule, either party may move for a hearing concerning the use at any proceeding of any classified information. Upon a request by either party, the military judge must conduct such a hearing and must rule prior to conducting any further proceedings.

(B) Request for In Camera Hearing. Any hearing held pursuant to this subdivision (or any portion of such hearing specified in the request of a

knowledgeable United States official) must be held in camera if a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration that a public proceeding may result in the disclosure of classified information.

(C) Notice to Accused. Before the hearing, trial counsel must provide the accused with notice of the classified information that is at issue. Such notice must identify the specific classified information at issue whenever that information previously has been made available to the accused by the United States. When the United States has not previously made the information available to the accused in connection with the case the information may be described by generic category, in such forms as the military judge may approve, rather than by identification of the specific information of concern to the United States.

(D) Standard for Disclosure. Classified information is not subject to disclosure under this subdivision unless the information is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence. In presentencing proceedings, relevant and material classified information pertaining to the appropriateness of, or the appropriate degree of, punishment must be admitted only if no unclassified version of such information is available.

(E) Written Findings. As to each item of classified information, the military judge must set forth in writing the basis for the determination.

(2) Alternatives to Full Disclosure.

(A) Motion by the Prosecution. Upon any determination by the military judge authorizing the disclosure of specific classified information under the procedures established by this subdivision (j), the trial counsel may move that, in lieu of the disclosure of such specific classified information, the military judge order:

(i) The substitution for such classified information of a statement admitting relevant facts that the specific classified information would tend to prove;

(ii) The substitution for such classified information of a summary of the specific classified information; or

(iii) Any other procedure or redaction limiting the disclosure of specific classified information.

(B) Declaration of Damage to National Security. The trial counsel may, in connection with a motion under this subdivision (j), submit to the military judge a declaration signed by the head, or designee, of the executive or military department or government agency concerned certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. If so requested by the trial counsel, the military judge must examine such declaration during an in camera review.

(C) Hearing. The military judge must hold a hearing on any motion under this subdivision. Any such hearing must be held in camera at the request of a knowledgeable United States official possessing authority to classify information.

(D) Standard for Use of Alternatives. The military judge must grant such a motion of the trial counsel if the military judge finds that the statement, summary, or other procedure or redaction will provide the accused with substantially the same ability to make his or her defense as would disclosure of the specific classified information.

(3) Sealing of Records of In Camera Hearings. If at the close of an in camera hearing under this subdivision (or any portion of a hearing under this subdivision that is held in camera), the military judge determines that the classified information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing must be sealed in accordance with R.C.M. 1103A and preserved for use in the event of an appeal. The accused may seek reconsideration of the military judge's determination prior to or during trial.

(4) Remedies. If the military judge determines that alternatives to full disclosure may not be used and the prosecution continues to object to disclosure of the information, the military judge must issue any order that the interests of justice require, including but not limited to, an order:

(A) Striking or precluding all or part of the testimony of a witness;

(B) Declaring a mistrial;

(C) Finding against the Government on any issue as to which the evidence is relevant and material to the defense;

(D) Dismissing the charges, with or without prejudice; or

(E) Dismissing the charges or specifications or both to which the information relates.

The Government may avoid the sanction for nondisclosure by permitting the accused to disclose the information at the pertinent court-martial proceeding.

(5) Disclosure of Rebuttal Information. Whenever the military judge determines that classified information may be disclosed in connection with a trial or pretrial proceeding, the military judge must, unless the interests of fairness do not so require, order the prosecution to provide the accused with the information it expects to use to rebut the classified information.

(A) Continuing Duty. The military judge may place the prosecution under a continuing duty to disclose such rebuttal information.

(B) Sanction for Failure to Comply. If the prosecution fails to comply with its obligation under this subdivision, the military judge:

(i) May exclude any evidence not made the subject of a required disclosure; and

(ii) May prohibit the examination by the prosecution of any witness with respect to such information.

(6) Disclosure at Trial of Previous Statements by a Witness.

(A) Motion for Production of Statements in Possession of the Prosecution. After a witness called by the trial counsel has testified on direct examination, the military judge, on motion of the accused, may order production of statements of the witness in the possession of the Prosecution which relate to the subject matter as to which the witness has testified. This paragraph does not preclude discovery or assertion of a privilege otherwise authorized.

(B) Invocation of Privilege by the Government. If the Government invokes a privilege, the trial counsel may provide the prior statements of the witness to the military judge for in camera review to the extent necessary to protect classified information from disclosure.

(C) Action by Military Judge. If the military judge finds that disclosure of any portion of the statement identified by the Government as classified would be detrimental to the national security in the degree required to warrant classification under the applicable Executive Order, statute, or regulation, that such portion of the statement is consistent with the testimony of the witness, and that the disclosure of such portion is not necessary to afford the accused a fair trial, the military judge must excise that portion from the statement. If the military judge finds that such portion of the statement is inconsistent with the testimony of the witness or that its disclosure is necessary to afford the accused a fair trial, the military judge must, upon the request of the trial counsel, consider alternatives to disclosure in accordance with this subdivision (j)(2).

(k) Introduction into Evidence of Classified Information.

(1) Preservation of Classification Status. Writings, recordings, and

photographs containing classified information may be admitted into evidence in court-martial proceedings under this rule without change in their classification status.

(A) Precautions. The military judge in a trial by court-martial, in order to prevent unnecessary disclosure of classified information, may order admission into evidence of only part of a writing, recording, or photograph, or may order admission into evidence of the whole writing, recording, or photograph with excision of some or all of the classified information contained therein, unless the whole ought in fairness be considered.

(B) Classified Information Kept Under Seal. The military judge must allow classified information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the court-martial proceeding, and may, upon motion by the Government, seal exhibits containing classified information in accordance with R.C.M. 1103A for any period after trial as necessary to prevent a disclosure of classified information when a knowledgeable United States official possessing authority to classify information submits to the military judge a declaration setting forth the damage to the national security that the disclosure of such information reasonably could be expected to cause.

(2) Testimony.

(A) Objection by Trial Counsel. During the examination of a witness, trial counsel may object to any question or line of inquiry that may require the witness to disclose classified information not previously found to be admissible.

(B) Action by Military Judge. Following an objection under this subdivision (k), the military judge must take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any classified information. Such action may include requiring trial counsel to provide the military judge with a proffer of the witness's response to the question or line of inquiry and requiring the accused to provide the military judge with a proffer of the nature of the information sought to be elicited by the accused. Upon request, the military judge may accept an ex parte proffer by trial counsel to the extent necessary to protect classified information from disclosure.

(3) Closed session. The military judge may, subject to the requirements of the United States Constitution, exclude the public during that portion of the presentation of evidence that discloses classified information.

(l) Record of Trial. If under this rule any information is withheld from the accused, the accused objects to such withholding, and the trial is continued to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as the prosecution's motion and any materials submitted in support thereof must be sealed in accordance with R.C.M. 1103A and attached to the record of trial as an appellate exhibit. Such material must be made available to reviewing authorities in closed proceedings for the purpose of reviewing the determination of the military judge. The record of trial with respect to any classified matter will be prepared under R.C.M. 1103(h) and 1104(b)(1)(D).

Rule 506. Government Information Other Than Classified Information

(a) Protection of Government Information. Except where disclosure is required by a federal statute, government information is privileged from disclosure if disclosure would be detrimental to the public interest.

(b) Scope. ''*Government information*'' includes official communication and documents and other information within the custody or control of the Federal Government. This rule does not apply to classified information (Mil. R. Evid. 505) or to the identity of an informant (Mil. R. Evid. 507).

(c) Definitions. As used in this rule:

(1) ''*In camera hearing*'' means a session under Article 39(a) from which the public is excluded.

(2) ''*In camera review*'' means an inspection of documents or other evidence conducted by the military judge alone in chambers and not on the record.

(3) ''*Ex parte*'' means a discussion between the military judge and either the defense counsel or prosecution, without the other party or the public present. This discussion can be on or off the record, depending on the circumstances. The military judge will grant a request for an ex parte discussion or hearing only after finding that such discussion or hearing is necessary to protect government information or other good cause. Prior to granting a request from one party for an ex parte discussion or hearing, the military judge must provide notice to the opposing party on the record. If the ex parte discussion is conducted off the record, the military judge should later state on the record that such ex parte discussion took place and generally summarize the subject matter of the discussion, as appropriate.

(d) Who May Claim the Privilege. The privilege may be claimed by the head, or designee, of the executive or military department or government agency concerned. The privilege for records and information of the Inspector General may be claimed by the immediate superior of the inspector general officer responsible for creation of the records or information, the Inspector General, or any other superior authority. A person who may claim the privilege may authorize a witness or the trial counsel to claim the privilege on his or her behalf. The authority of a witness or the trial counsel to do so is presumed in the absence of evidence to the contrary.

(e) Action Prior to Referral of Charges.

(1) Prior to referral of charges, upon a showing by the accused that the government information sought is relevant and necessary to an element of the offense or a legally cognizable defense, the convening authority must respond in writing to a request by the accused for government information if the privilege in this rule is claimed for such information. In response to such a request, the convening authority may:

(A) Delete specified items of government information claimed to be privileged from documents made available to the accused;

(B) Substitute a portion or summary of the information for such documents;

(C) Substitute a statement admitting relevant facts that the government information would tend to prove;

(D) Provide the document subject to conditions similar to those set forth in subdivision (g) of this rule; or

(E) Withhold disclosure if actions under (1) through (4) cannot be taken without causing identifiable damage to the public interest.

(2) Any objection by the accused to withholding of information or to the conditions of disclosure must be raised through a motion for appropriate relief at a pretrial conference.

(f) Action After Referral of Charges.

(1) Pretrial Conference. At any time after referral of charges, any party may move for a pretrial conference under Article 39(a) to consider matters relating to government information that may arise in connection with the trial. Following such a motion, or when the military judge recognizes the need for such conference, the military judge must promptly hold a pretrial conference under Article 39(a).

(2) Ex Parte Permissible. Upon request by either party and with a showing of good cause, the military judge must hold such conference ex parte to the extent necessary to protect government information from disclosure.

(3) Matters to be Established at Pretrial Conference.

(A) Timing of Subsequent Actions. At the pretrial conference, the military judge must establish the timing of:

(i) Requests for discovery;

(ii) The provision of notice required by subdivision (i) of this rule; and

(iii) The initiation of the procedure established by subdivision (j) of this rule.

(B) Other Matters. At the pretrial conference, the military judge may also consider any matter which relates to government information or which may promote a fair and expeditious trial.

(4) Convening Authority Notice and Action. If a claim of privilege has been made under this rule with respect to government information that apparently contains evidence that is relevant and necessary to an element of the offense or a legally cognizable defense and is otherwise admissible in evidence in the court-martial proceeding, the matter must be reported to the convening authority. The convening authority may:

(A) Institute action to obtain the information for use by the military judge in making a determination under subdivision (j);

(B) Dismiss the charges;

(C) Dismiss the charges or specifications or both to which the information relates; or

(D) Take such other action as may be required in the interests of justice.

(5) Remedies. If after a reasonable period of time the information is not provided to the military judge in circumstances where proceeding with the case without such information would materially prejudice a substantial right of the accused, the military judge must dismiss the charges or specifications or both to which the information relates.

(g) Protective Orders. Upon motion of the trial counsel, the military judge must issue an order to protect against the disclosure of any government information that has been disclosed by the United States to any accused in any court-martial proceeding or that has otherwise been provided to, or obtained by, any such accused in any such court-martial proceeding. The terms of any such protective order may include, but are not limited to, provisions:

(1) Prohibiting the disclosure of the information except as authorized by the military judge;

(2) Requiring storage of the material in a manner appropriate for the nature of the material to be disclosed;

(3) Requiring controlled access to the material during normal business hours and at other times upon reasonable notice;

(4) Requiring the maintenance of logs recording access by persons authorized by the military judge to have access to the government information in connection with the preparation of the defense;

(5) Regulating the making and handling of notes taken from material containing government information; or

(6) Requesting the convening authority to authorize the assignment of government security personnel and the provision of government storage facilities.

(h) Discovery and Access by the Accused.

(1) Limitations.

(A) Government Claim of Privilege. In court-martial proceeding in which the government seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any government information subject to a claim of privilege, the trial counsel must submit a declaration invoking the United States' government information privilege and setting forth the detriment to the public interest that the discovery of or access to such information reasonably could be expected to cause. The declaration must be signed by a knowledgeable United States official as described in subdivision (d) of this rule.

(B) Standard for Discovery or Access by the Accused. Upon the submission of a declaration under subdivision (h)(1)(A), the military judge may not authorize the discovery of or access to such government information unless the military judge determines that such government information would be noncumulative, relevant, and helpful to a legally cognizable defense, rebuttal of the prosecution's case, or to sentencing. If the discovery of or access to such government information is authorized, it must be addressed in accordance with the requirements of subdivision (h)(2).

(2) Alternatives to Full Disclosure.

(A) Substitutions and Other Alternatives. The military judge, in assessing the accused's right to discover or access government information under this subdivision, may authorize the Government:

(i) To delete or withhold specified items of government information;

(ii) To substitute a summary for government information; or

(iii) To substitute a statement admitting relevant facts that the government information or material would tend to prove, unless the military judge determines that disclosure of the government information itself is necessary to enable the accused to prepare for trial.

(B) In Camera Review. The military judge must, upon the request of the prosecution, conduct an in camera review of the prosecution's motion and any materials submitted in support thereof and must not disclose such information to the accused.

(C) Action by Military Judge. The military judge must grant the request of the trial counsel to substitute a summary or to substitute a statement admitting relevant facts, or to provide other relief in accordance with subdivision (h)(2)(A), if the military judge finds that the summary, statement, or other relief would provide the accused with substantially the same ability to make a defense as would discovery of or access to the specific government information.

(i) Disclosure by the Accused.

(1) Notification to Trial Counsel and Military Judge. If an accused reasonably expects to disclose, or to cause the disclosure of, government information subject to a claim of privilege in any manner in connection with any trial or pretrial proceeding involving the prosecution of such accused, the accused must, within the time specified by the military judge or, where no time is specified, prior to arraignment of the accused, notify the trial counsel and the military judge in writing.

(2) Content of Notice. Such notice must include a brief description of the government information.

(3) Ex Parte Review. At the request of the defense counsel, the military judge may allow defense counsel to make an ex parte proffer of the government information to the military judge so that the military judge can determine the relevance of the information for use by the accused.

(4) Continuing Duty to Notify. Whenever the accused learns of additional government information the accused reasonably expects to disclose, or to cause the disclosure of, at any such proceeding, the accused must notify trial counsel and the military judge in writing as soon as possible thereafter and must include a brief description of the government information.

(5) Limitation on Disclosure by Accused. The accused may not disclose, or cause the disclosure of, any information known or believed to be subject to a claim of privilege in connection with a trial or pretrial proceeding until:

(A) Notice has been given under this subdivision (i); and

(B) The Government has been afforded a reasonable opportunity to seek a determination pursuant to the procedure set forth in subdivision (j).

(6) Failure to Comply. If the accused fails to comply with the requirements of this subdivision, the military judge:

(A) May preclude disclosure of any government information not made the subject of notification; and

(B) May prohibit the examination by the accused of any witness with respect to any such information.

(j) Procedure for Use of Government Information Subject to a Claim of Privilege in Trials and Pretrial Proceedings.

(1) Hearing on Use of Government Information.

(A) Motion for Hearing. Within the time specified by the military judge for the filing of a motion under this rule, either party may move for an in camera hearing concerning the use at any proceeding of any government information that may be subject to a claim of privilege. Upon a request by either party, the military judge must conduct such a hearing and must rule prior to conducting any further proceedings.

(B) Request for In Camera Hearing. Any hearing held pursuant to this subdivision must be held in camera if a knowledgeable United States official described in subdivision (d) of this rule submits to the military judge a declaration that disclosure of the information reasonably could be expected to cause identifiable damage to the public interest.

(C) Notice to Accused. Subject to subdivision (j)(2) below, the prosecution must disclose government information claimed to be privileged under this rule for the limited purpose of litigating, in camera, the admissibility of the information at trial. The military judge must enter an appropriate protective order to the accused and all other appropriate trial participants concerning the disclosure of the information according to subdivision (g), above. The accused may not disclose any information provided under this subdivision unless, and until, such information has been admitted into evidence by the military judge. In the in camera hearing, both parties may have the opportunity to brief and argue the admissibility of the government information at trial.

(D) Standard for Disclosure. Government information is subject to disclosure at the court-martial proceeding under this subdivision if the party making the request demonstrates a specific need for information containing evidence that is relevant to the guilt or innocence or to punishment of the accused, and is otherwise admissible in the court-martial proceeding.

(E) Written Findings. As to each item of government information, the military judge must set forth in writing the basis for the determination.

(2) Alternatives to Full Disclosure.

(A) Motion by the Prosecution. Upon any determination by the military judge authorizing disclosure of specific government information under the procedures established by this subdivision (j), the prosecution may move that, in lieu of the disclosure of such information, the military judge order:

(i) The substitution for such government information of a statement admitting relevant facts that the specific government information would tend to prove;

(ii) The substitution for such government information of a summary of the specific government information; or

(iii) Any other procedure or redaction limiting the disclosure of specific government information.

(B) Hearing. The military judge must hold a hearing on any motion under this subdivision. At the request of the trial counsel, the military judge will conduct an in camera hearing.

(C) Standard for Use of Alternatives. The military judge must grant such a motion of the trial counsel if the military judge finds that the statement, summary, or other procedure or redaction will provide the accused with substantially the same ability to make his or her defense as would disclosure of the specific government information.

(3) Sealing of Records of In Camera Hearings. If at the close of an in camera hearing under this subdivision (or any portion of a hearing under this subdivision that is held in camera), the military judge determines that the government information at issue may not be disclosed or elicited at the trial or pretrial proceeding, the record of such in camera hearing must be sealed in accordance with R.C.M. 1103A and preserved for use in the event of an appeal. The accused may seek reconsideration of the military judge's determination prior to or during trial.

(4) Remedies. If the military judge determines that alternatives to full disclosure may not be used and the prosecution continues to object to disclosure of the information, the military judge must issue any order that the interests of justice require, including but not limited to, an order:

(A) Striking or precluding all or part of the testimony of a witness;

(B) Declaring a mistrial;

(C) Finding against the Government on any issue as to which the evidence is relevant and necessary to the defense;

(D) Dismissing the charges, with or without prejudice; or

(E) Dismissing the charges or specifications or both to which the information relates.

The Government may avoid the sanction for nondisclosure by permitting the accused to disclose the information at the pertinent court-martial proceeding.

(5) Disclosure of Rebuttal Information. Whenever the military judge determines that government information may be disclosed in connection with a trial or pretrial proceeding, the military judge must, unless the interests of fairness do not so require, order the prosecution to provide the accused with the information it expects to use to rebut the government information.

(A) Continuing Duty. The military judge may place the prosecution under a continuing duty to disclose such rebuttal information.

(B) Sanction for Failure to Comply. If the prosecution fails to comply with its obligation under this subdivision, the military judge may make such ruling as the interests of justice require, to include:

(i) Excluding any evidence not made the subject of a required disclosure; and

(ii) Prohibiting the examination by the prosecution of any witness with respect to such information.

(k) Appeals of Orders and Rulings. In a court-martial in which a punitive discharge may be adjudged, the Government may appeal an order or ruling of the military judge that terminates the proceedings with respect to a charge or specification, directs the disclosure of government information, or imposes sanctions for nondisclosure of government information. The Government may also appeal an order or ruling in which the military judge refuses to issue a protective order sought by the United States to prevent the disclosure of government information, or to enforce such an order previously issued by appropriate authority. The Government may not appeal an order or ruling that is, or amounts to, a finding of not guilty with respect to the charge or specification.

(l) Introduction into Evidence of Government Information Subject to a Claim of Privilege.

(1) Precautions. The military judge in a trial by court-martial, in order to prevent unnecessary disclosure of government information after there has been a claim of privilege under this rule, may order admission into evidence of only part of a writing, recording, or photograph or admit into evidence the whole writing, recording, or photograph with excision of some or all of the government information contained therein, unless the whole ought in fairness be considered.

(2) Government Information Kept Under Seal. The military judge must allow government information offered or accepted into evidence to remain under seal during the trial, even if such evidence is disclosed in the court-martial proceeding, and may, upon motion by the prosecution, seal exhibits containing government information in accordance with R.C.M. 1103A for any period after trial as necessary to prevent a disclosure of government information when a knowledgeable United States official described in subdivision (d) submits to the military judge a declaration setting forth the detriment to the public interest that the disclosure of such information reasonably could be expected to cause.

(3) Testimony.

(A) Objection by Trial Counsel. During examination of a witness, trial counsel may object to any question or line of inquiry that may require the witness to disclose government information not previously found admissible if such information has been or is reasonably likely to be the subject of a claim of privilege under this rule.

(B) Action by Military Judge. Following such an objection, the military judge must take such suitable action to determine whether the response is admissible as will safeguard against the compromise of any government information. Such action may include requiring trial counsel to provide the military judge with a proffer of the witness's response to the question or line of inquiry and requiring the accused to provide the military judge with a proffer of the nature of the information sought to be elicited by the accused. Upon request, the military judge may accept an ex parte proffer by trial counsel to the extent necessary to protect government information from disclosure.

(m) Record of Trial. If under this rule any information is withheld from the accused, the accused objects to such withholding, and the trial is continued to an adjudication of guilt of the accused, the entire unaltered text of the relevant documents as well as the prosecution's motion and any materials submitted in support thereof must be sealed in accordance with R.C.M. 1103A and attached to the record of trial as an appellate exhibit. Such material must be made available to reviewing authorities in closed proceedings for the purpose of reviewing the determination of the military judge.

Rule 507. Identity of Informants

(a) General Rule. The United States or a State or subdivision thereof has a privilege to refuse to disclose the identity of an informant. Unless otherwise privileged under these rules, the communications of an informant are not privileged except to the extent necessary to prevent the disclosure of the informant's identity.

(b) Definitions. As used in this rule:

(1) *''Informant''* means a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a person whose official duties include the discovery, investigation, or prosecution of crime.

(2) *''In camera review''* means an inspection of documents or other evidence conducted by the military judge alone in chambers and not on the record.

(c) Who May Claim the Privilege. The privilege may be claimed by an appropriate representative of the United States, regardless of whether information was furnished to an officer of the United States or a State or subdivision thereof. The privilege may be claimed by an appropriate representative of a State or subdivision if the information was furnished to an officer thereof, except the privilege will not be allowed if the prosecution objects.

(d) Exceptions.

(1) Voluntary Disclosures; Informant as a Prosecution Witness. No privilege exists under this rule:

(A) If the identity of the informant has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informant's own action; or

(B) If the informant appears as a witness for the prosecution.

(2) Informant as a Defense Witness. If a claim of privilege has been made under this rule, the military judge must, upon motion by the accused, determine whether disclosure of the identity of the informant is necessary to the accused's defense on the issue of guilt or innocence. Whether such a necessity exists will depend on the particular circumstances of each case, taking into consideration the offense charged, the possible defense, the possible significance of the informant's testimony, and other relevant factors. If it appears from the evidence in the case or from other showing by a party that an informant may be able to give testimony necessary to the accused's defense on the issue of guilt or innocence, the military judge may make any order required by the interests of justice.

(3) Informant as a Witness regarding a Motion to Suppress Evidence. If a claim of privilege has been made under this rule with respect to a motion under Mil. R. Evid. 311, the military judge must, upon motion of the accused, determine whether disclosure of the identity of the informant is required by the United States Constitution as applied to members of the armed forces. In making this determination, the military judge may make any order required by the interests of justice.

(e) Procedures.

(1) In Camera Review. If the accused has articulated a basis for disclosure under the standards set forth in this rule, the prosecution may ask the military judge to conduct an in camera review of affidavits or other evidence relevant to disclosure.

(2) Order by the Military Judge. If a claim of privilege has been made under this rule, the military judge may make any order required by the interests of justice.

(3) Action by the Convening Authority. If the military judge determines that disclosure of the identity of the informant is required under the standards set forth in this rule, and the prosecution elects not to disclose the identity of the informant, the matter must be reported to the convening authority. The convening authority may institute action to secure disclosure of the identity of the informant, terminate the proceedings, or take such other action as may be appropriate under the circumstances.

(4) Remedies. If, after a reasonable period of time disclosure is not made, the military judge, sua sponte or upon motion of either counsel and after a hearing if requested by either party, may dismiss the charge or specifications or both to which the information regarding the informant would relate if the military judge determines that further proceedings would materially prejudice a substantial right of the accused.

Rule 508. Political Vote

A person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

Rule 509. Deliberations of Courts and Juries

Except as provided in Mil. R. Evid. 606, the deliberations of courts, courts-martial, military judges, and grand and petit juries are privileged to the extent that such matters are privileged in trial of criminal cases in the United States district courts, but the results of the deliberations are not privileged.

Rule 510. Waiver of Privilege by Voluntary Disclosure

(a) A person upon whom these rules confer a privilege against disclosure of a confidential matter or communication

waives the privilege if the person or the person's predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication under such circumstances that it would be inappropriate to allow the claim of privilege. This rule does not apply if the disclosure is itself a privileged communication.

(b) Unless testifying voluntarily concerning a privileged matter or communication, an accused who testifies in his or her own behalf or a person who testifies under a grant or promise of immunity does not, merely by reason of testifying, waive a privilege to which he or she may be entitled pertaining to the confidential matter or communication.

Rule 511. Privileged Matter Disclosed Under Compulsion or Without Opportunity To Claim Privilege

(a) General Rule. Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege if disclosure was compelled erroneously or was made without an opportunity for the holder of the privilege to claim the privilege.

(b) Use of Communications Media. The telephonic transmission of information otherwise privileged under these rules does not affect its privileged character. Use of electronic means of communication other than the telephone for transmission of information otherwise privileged under these rules does not affect the privileged character of such information if use of such means of communication is necessary and in furtherance of the communication.

Rule 512. Comment Upon or Inference From Claim of Privilege; Instruction

(a) Comment or Inference Not Permitted.

(1) The claim of a privilege by the accused whether in the present proceeding or upon a prior occasion is not a proper subject of comment by the military judge or counsel for any party. No inference may be drawn therefrom.

(2) The claim of a privilege by a person other than the accused whether in the present proceeding or upon a prior occasion normally is not a proper subject of comment by the military judge or counsel for any party. An adverse inference may not be drawn therefrom except when determined by the military judge to be required by the interests of justice.

(b) Claiming a Privilege Without the Knowledge of the Members. In a trial before a court-martial with members, proceedings must be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the members. This subdivision (b) does not apply to a special court-martial without a military judge.

(c) Instruction. Upon request, any party against whom the members might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom except as provided in subdivision (a)(2).

Rule 513. Psychotherapist—Patient Privilege

(a) General Rule. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the Uniform Code of Military Justice, if such communication was made for the purpose of facilitating diagnosis or treatment of the patient's mental or emotional condition.

(b) Definitions. As used in this rule:

(1) *''Patient''* means a person who consults with or is examined or interviewed by a psychotherapist for purposes of advice, diagnosis, or treatment of a mental or emotional condition.

(2) *''Psychotherapist''* means a psychiatrist, clinical psychologist, or clinical social worker who is licensed in any state, territory, possession, the District of Columbia or Puerto Rico to perform professional services as such, or who holds credentials to provide such services from any military health care facility, or is a person reasonably believed by the patient to have such license or credentials.

(3) *''Assistant to a psychotherapist''* means a person directed by or assigned to assist a psychotherapist in providing professional services, or is reasonably believed by the patient to be such.

(4) A communication is *''confidential''* if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional services to the patient or those reasonably necessary for such transmission of the communication.

(5) *''Evidence of a patient's records or communications''* means testimony of a psychotherapist, or assistant to the same, or patient records that pertain to communications by a patient to a psychotherapist, or assistant to the same for the purposes of diagnosis or treatment of the patient's mental or emotional condition.

(c) Who May Claim the Privilege. The privilege may be claimed by the patient or the guardian or conservator of the patient. A person who may claim the privilege may authorize trial counsel or defense counsel to claim the privilege on his or her behalf. The psychotherapist or assistant to the psychotherapist who received the communication may claim the privilege on behalf of the patient. The authority of such a psychotherapist, assistant, guardian, or conservator to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) When the patient is dead;

(2) When the communication is evidence of child abuse or neglect, or in a proceeding in which one spouse is charged with a crime against the child of either spouse;

(3) When federal law, state law, or service regulation imposes a duty to report information contained in a communication;

(4) When a psychotherapist or assistant to a psychotherapist believes that a patient's mental or emotional condition makes the patient a danger to any person, including the patient;

(5) If the communication clearly contemplated the future commission of a fraud or crime or if the services of the psychotherapist are sought or obtained to enable or aid anyone to commit or plan to commit what the patient knew or reasonably should have known to be a crime or fraud;

(6) When necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission;

(7) When an accused offers statements or other evidence concerning his mental condition in defense, extenuation, or mitigation, under circumstances not covered by R.C.M. 706 or Mil. R. Evid. 302. In such situations, the military judge may, upon motion, order disclosure of any statement made by the accused to a psychotherapist as may be necessary in the interests of justice; or

(8) When admission or disclosure of a communication is constitutionally required.

(e) Procedure to Determine Admissibility of Patient Records or Communications.

(1) In any case in which the production or admission of records or communications of a patient other than the accused is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party must:

(A) File a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) Serve the motion on the opposing party, the military judge and, if practical, notify the patient or the patient's guardian, conservator, or representative that the motion has been filed and that the patient has an opportunity to be heard as set forth in subdivision (e)(2).

(2) Before ordering the production or admission of evidence of a patient's records or communication, the military judge must conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the patient, and offer other relevant evidence. The patient must be afforded a reasonable opportunity to attend the hearing and be heard at the patient's own expense unless the patient has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings may not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the motion.

(4) To prevent unnecessary disclosure of evidence of a patient's records or communications, the military judge may issue protective orders or may admit only portions of the evidence.

(5) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 1103A and must remain under seal unless the military judge or an appellate court orders otherwise.

Rule 514. Victim Advocate—Victim Privilege

(a) General Rule. An alleged victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim advocate, in a case arising under the Uniform Code of Military Justice, if such communication was made for the purpose of facilitating advice or supportive assistance to the alleged victim.

(b) Definitions. As used in this rule:

(1) *''Alleged Victim''* means any person who is alleged to have suffered direct physical or emotional harm as the result of a sexual or violent offense.

(2) *''Victim advocate''* means a person who:

(A) Is designated in writing as a victim advocate in accordance with service regulation;

(B) Is authorized to perform victim advocate duties in accordance with service regulation and is acting in the performance of those duties; or

(C) Is certified as a victim advocate pursuant to federal or state requirements.

(3) A communication is *''confidential''* if made in the course of the victim advocate—victim relationship and not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of advice or assistance to the alleged victim or those reasonably necessary for such transmission of the communication.

(4) *''Evidence of an alleged victim's records or communications''* means testimony of a victim advocate, or records that pertain to communications by an alleged victim to a victim advocate, for the purposes of advising or providing supportive assistance to the alleged victim.

(c) Who May Claim the Privilege. The privilege may be claimed by the alleged victim or the guardian or conservator of the alleged victim. A person who may claim the privilege may authorize trial counsel or a defense counsel representing the alleged victim to claim the privilege on his or her behalf. The victim advocate who received the communication may claim the privilege on behalf of the alleged victim. The authority of such a victim advocate, guardian, conservator, or a defense counsel representing the alleged victim to so assert the privilege is presumed in the absence of evidence to the contrary.

(d) Exceptions. There is no privilege under this rule:

(1) When the alleged victim is dead;

(2) When federal law, state law, or service regulation imposes a duty to report information contained in a communication;

(3) When a victim advocate believes that an alleged victim's mental or emotional condition makes the alleged victim a danger to any person, including the alleged victim;

(4) If the communication clearly contemplated the future commission of a fraud or crime, or if the services of the victim advocate are sought or obtained to enable or aid anyone to commit or plan to commit what the alleged victim knew or reasonably should have known to be a crime or fraud;

(5) When necessary to ensure the safety and security of military personnel, military dependents, military property, classified information, or the accomplishment of a military mission; or

(6) When admission or disclosure of a communication is constitutionally required.

(e) Procedure to Determine Admissibility of Alleged Victim Records or Communications.

(1) In any case in which the production or admission of records or communications of an alleged victim is a matter in dispute, a party may seek an interlocutory ruling by the military judge. In order to obtain such a ruling, the party must:

(A) File a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is sought or offered, or objected to, unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) Serve the motion on the opposing party, the military judge and, if practicable, notify the alleged victim or the alleged victim's guardian, conservator, or representative that the motion has been filed and that the alleged victim has an opportunity to be heard as set forth in subdivision (e)(2).

(2) Before ordering the production or admission of evidence of an alleged victim's records or communication, the military judge must conduct a hearing. Upon the motion of counsel for either party and upon good cause shown, the military judge may order the hearing closed. At the hearing, the parties may call witnesses, including the alleged victim, and offer other relevant evidence. The alleged victim must be afforded a reasonable opportunity to attend the hearing and be heard at the alleged victim's own expense unless the alleged victim has been otherwise subpoenaed or ordered to appear at the hearing. However, the proceedings may not be unduly delayed for this purpose. In a case before a court-martial composed of a military judge and members, the military judge must conduct the hearing outside the presence of the members.

(3) The military judge may examine the evidence or a proffer thereof in camera, if such examination is necessary to rule on the motion.

(4) To prevent unnecessary disclosure of evidence of an alleged victim's records or communications, the military judge may issue protective orders or

may admit only portions of the evidence.

(5) The motion, related papers, and the record of the hearing must be sealed in accordance with R.C.M. 1103A and must remain under seal unless the military judge or an appellate court orders otherwise.

Rule 601. Competency To Testify in General

Every person is competent to be a witness unless these rules provide otherwise.

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Mil. R. Evid. 703.

Rule 603. Oath or Affirmation To Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

Rule 604. Interpreter

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

Rule 605. Military Judge's Competency as a Witness

(a) The presiding military judge may not testify as a witness at any proceeding of that court-martial. A party need not object to preserve the issue.

(b) This rule does not preclude the military judge from placing on the record matters concerning docketing of the case.

Rule 606. Member's Competency as a Witness

(a) At the Trial by Court-Martial. A member of a court-martial may not testify as a witness before the other members at any proceeding of that court-martial. If a member is called to testify, the military judge must—except in a special court-martial without a military judge—give the opposing party an opportunity to object outside the presence of the members.

(b) During an Inquiry into the Validity of a Finding or Sentence.

(1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a finding or sentence, a member of a court-martial may not testify about any statement made or incident that occurred during the deliberations of that court-martial; the effect of anything on that member's or another member's vote; or any member's mental processes concerning the finding or sentence. The military judge may not receive a member's affidavit or evidence of a member's statement on these matters.

(2) Exceptions. A member may testify about whether:

(A) Extraneous prejudicial information was improperly brought to the members' attention;

(B) Unlawful command influence or any other outside influence was improperly brought to bear on any member; or

(C) A mistake was made in entering the finding or sentence on the finding or sentence forms.

Rule 607. Who May Impeach a Witness

Any party, including the party that called the witness, may attack the witness's credibility.

Rule 608. A Witness's Character for Truthfulness or Untruthfulness

(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. Evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) Specific Instances of Conduct. Except for a criminal conviction under Mil. R. Evid. 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. The military judge may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) The witness; or

(2) Another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

(c) Evidence of Bias. Bias, prejudice, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) For a crime that, in the convicting jurisdiction, was punishable by death, dishonorable discharge, or by imprisonment for more than one year, the evidence:

(A) Must be admitted, subject to Mil. R. Evid. 403, in a court-martial in which the witness is not the accused; and

(B) Must be admitted in a court-martial in which the witness is the accused, if the probative value of the evidence outweighs its prejudicial effect to that accused; and

(2) For any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving—or the witness's admitting—a dishonest act or false statement.

(3) In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment in excess of one year, the maximum punishment prescribed by the President under Article 56 at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) Its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) The proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:

(1) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death, dishonorable discharge, or imprisonment for more than one year; or

(2) The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:

(1) The adjudication was of a witness other than the accused;

(2) An adult's conviction for that offense would be admissible to attack the adult's credibility; and

(3) Admitting the evidence is necessary to fairly determine guilt or innocence.

(e) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending, except that a conviction by summary court-martial or special court-martial without a military judge may not be used for purposes of impeachment until review has been completed under Article 64 or Article 66, if applicable. Evidence of the pendency is also admissible.

(f) Definition. For purposes of this rule, there is a ''conviction'' in a court-martial case when a sentence has been adjudged.

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

(a) Control by the Military Judge; Purposes. The military judge should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) Make those procedures effective for determining the truth;

(2) Avoid wasting time; and

(3) Protect witnesses from harassment or undue embarrassment.

(b) Scope of Cross-Examination. Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The military judge may allow inquiry into additional matters as if on direct examination.

(c) Leading Questions. Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the military judge should allow leading questions:

(1) On cross-examination; and

(2) When a party calls a hostile witness or a witness identified with an adverse party.

(d) Remote live testimony of a child.

(1) In a case involving domestic violence or the abuse of a child, the military judge must, subject to the requirements of subdivision (3) of this rule, allow an alleged child victim or witness to testify from an area outside the courtroom as prescribed in R.C.M. 914A.

(2) Definitions. As used in this rule:

(A) ''*Child*'' means a person who is under the age of 16 at the time of his or her testimony.

(B) ''*Abuse of a child*'' means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child.

(C) ''*Exploitation*'' means child pornography or child prostitution.

(D) ''*Negligent treatment*'' means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to endanger seriously the physical health of the child.

(E) ''*Domestic violence*'' means an offense that has as an element the use, or attempted or threatened use of physical force against a person by a current or former spouse, parent, or guardian of the alleged victim; by a person with whom the alleged victim shares a child in common; by a person who is cohabiting with or has cohabited with the alleged victim as a spouse, parent, or guardian; or by a person similarly situated to a spouse, parent, or guardian of the alleged victim.

(3) Remote live testimony will be used only where the military judge makes a finding on the record that a child is unable to testify in open court in the presence of the accused, for any of the following reasons:

(A) The child is unable to testify because of fear;

(B) There is substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying;

(C) The child suffers from a mental or other infirmity; or

(D) Conduct by an accused or defense counsel causes the child to be unable to continue testifying.

(4) Remote live testimony of a child will not be used when the accused elects to absent himself from the courtroom in accordance with R.C.M. 804(d).

(5) In determining whether the impact on an alleged child victim or witness of one of the factors in subdivision (d)(3) is so substantial as to justify an order under subdivision (d)(1), the military judge may question the child in chambers, or at some comfortable place other than the courtroom, on the record for a reasonable period of time, in the presence of the child, the prosecution, the defense counsel, and the child's attorney or guardian ad litem.

Rule 612. Writing Used To Refresh a Witness's Memory

(a) Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

(1) While testifying; or

(2) Before testifying, if the military judge decides that justice requires the party to have those options.

(b) Adverse Party's Options; Deleting Unrelated Matter. An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated or privileged matter, the military judge must examine the writing in camera, delete any unrelated or privileged portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

(c) Failure to Produce or Deliver the Writing. If a writing is not produced or is not delivered as ordered, the military judge may issue any appropriate order. If the prosecution does not comply, the military judge must strike the witness's testimony or—if justice so requires—declare a mistrial.

(d) No Effect on Other Disclosure Requirements. This rule does not preclude disclosure of information required to be disclosed under other provisions of these rules or this Manual.

Rule 613. Witness's Prior Statement

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. The party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Mil R. Evid. 801(d)(2).

Rule 614. Court-Martial's Calling or Examining a Witness

(a) Calling. The military judge may—sua sponte or at the request of the members or the suggestion of a party—call a witness. Each party is entitled to cross-examine the witness. When the members wish to call or recall a witness, the military judge must determine whether the testimony would be relevant and not barred by any rule or provision of this Manual.

(b) Examining. The military judge or members may examine a witness regardless of who calls the witness.

Members must submit their questions to the military judge in writing. Following the opportunity for review by both parties, the military judge must rule on the propriety of the questions, and ask the questions in an acceptable form on behalf of the members. When the military judge or the members call a witness who has not previously testified, the military judge may conduct the direct examination or may assign the responsibility to counsel for any party.

(c) Objections. A party may object to the court-martial's calling or examining a witness either at that time or at the next opportunity when the members are not present.

Rule 615. Excluding Witnesses

At a party's request, the military judge must order witnesses excluded so that they cannot hear other witnesses' testimony, or the military judge may do so *sua sponte.* This rule does not authorize excluding:

(a) The accused;

(b) A member of an armed service or an employee of the United States after being designated as a representative of the United States by the trial counsel;

(c) A person whose presence a party shows to be essential to presenting the party's case;

(d) A person authorized by statute to be present; or

(e) An alleged victim of an offense from the trial of an accused for that offense, when the sole basis for exclusion would be that the alleged victim may testify or present information during the presentencing phase of the trial.

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) Rationally based on the witness's perception;

(b) Helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) Not based on scientific, technical, or other specialized knowledge within the scope of Mil. R. Evid. 702.

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data;

(c) The testimony is the product of reliable principles and methods; and

(d) The expert has reliably applied the principles and methods to the facts of the case.

Rule 703. Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. If the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the members of a court-martial only if the military judge finds that their probative value in helping the members evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on an Ultimate Issue

(a) In General—Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.

(b) Exception. An expert witness must not state an opinion about whether the accused did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those are matters for the trier of fact alone.

Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion

Unless the military judge orders otherwise, an expert may state an opinion—and give the reasons for it—without first testifying to the underlying facts or data. The expert may be required to disclose those facts or data on cross-examination.

Rule 706. Court-Appointed Expert Witnesses

(a) Appointment Process. The trial counsel, the defense counsel, and the court-martial have equal opportunity to obtain expert witnesses under Article 46 and R.C.M. 703.

(b) Compensation. The compensation of expert witnesses is governed by R.C.M. 703.

(c) Accused's Choice of Experts. This rule does not limit an accused in calling any expert at the accused's own expense.

Rule 707. Polygraph Examinations

(a) Prohibitions. Notwithstanding any other provision of law, the result of a polygraph examination, the polygraph examiner's opinion, or any reference to an offer to take, failure to take, or taking of a polygraph examination is not admissible.

(b) Statements Made During a Polygraph Examination. This rule does not prohibit admission of an otherwise admissible statement made during a polygraph examination.

Rule 801. Definitions That Apply to This Section; Exclusions From Hearsay

(a) Statement. ''Statement'' means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. ''*Declarant*'' means the person who made the statement.

(c) Hearsay. ''*Hearsay*'' means a statement that:

(1) The declarant does not make while testifying at the current trial or hearing; and

(2) A party offers in evidence to prove the truth of the matter asserted in the statement.

(d) Statements that Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) A Declarant-Witness's Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) Is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) Is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) Identifies a person as someone the declarant perceived earlier.

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

(A) Was made by the party in an individual or representative capacity;

(B) Is one the party manifested that it adopted or believed to be true;

(C) Was made by a person whom the party authorized to make a statement on the subject;

(D) Was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) Was made by the party's co-conspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Rule 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

(a) A federal statute;

(b) These rules; or

(c) Other rules prescribed by the Supreme Court pursuant to statutory authority.

Rule 803. Exceptions to the Rule Against Hearsay—Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) Present Sense Impression. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) Then-Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) Statement Made for Medical Diagnosis or Treatment. A statement that—

(A) Is made for—and is reasonably pertinent to—medical diagnosis or treatment; and

(B) Describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) Recorded Recollection. A record that:

(A) Is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) Was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) Accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) Records of a Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:

(A) The record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) The record was kept in the course of a regularly conducted activity of a uniformed service, business, institution, association, profession, organization, occupation, or calling of any kind, whether or not conducted for profit;

(C) Making the record was a regular practice of that activity;

(D) All these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Mil. R. Evid. 902(11) or with a statute permitting certification in a criminal proceeding in a court of the United States; and

(E) Neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

Records of regularly conducted activities include, but are not limited to, enlistment papers, physical examination papers, fingerprint cards, forensic laboratory reports, chain of custody documents, morning reports and other personnel accountability documents, service records, officer and enlisted qualification records, logs, unit personnel diaries, individual equipment records, daily strength records of prisoners, and rosters of prisoners.

(7) Absence of a Record of a Regularly Conducted Activity. Evidence that a matter is not included in a record described in paragraph (6) if:

(A) The evidence is admitted to prove that the matter did not occur or exist;

(B) A record was regularly kept for a matter of that kind; and

(C) Neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) Public Records. A record or statement of a public office if:

(A) It sets out:

(i) The office's activities;

(ii) A matter observed while under a legal duty to report, but not including a matter observed by law-enforcement personnel and other personnel acting in a law enforcement capacity; or

(iii) Against the government, factual findings from a legally authorized investigation; and

(B) Neither the source of information nor other circumstances indicate a lack of trustworthiness.

Notwithstanding (A)(ii), the following are admissible under this paragraph as a record of a fact or event if made by a person within the scope of the person's official duties and those duties included a duty to know or to ascertain through appropriate and trustworthy channels of information the truth of the fact or event and to record such fact or event: enlistment papers, physical examination papers, fingerprint cards, forensic laboratory reports, chain of custody documents, morning reports and other personnel accountability documents, service records, officer and enlisted qualification records, court-martial conviction records, logs, unit personnel diaries, individual equipment records, daily strength records of prisoners, and rosters of prisoners.

(9) Public Records of Vital Statistics. A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) Absence of a Public Record. Testimony—or a certification under Mil. R. Evid. 902—that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) The record or statement does not exist; or

(B) A matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(11) Records of Religious Organizations Concerning Personal or Family History. A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Certificates of Marriage, Baptism, and Similar Ceremonies. A statement of fact contained in a certificate:

(A) Made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) Attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) Purporting to have been issued at the time of the act or within a reasonable time after it.

(13) Family Records. A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

(14) Records of Documents that Affect an Interest in Property. The record of a document that purports to establish or affect an interest in property if:

(A) The record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) The record is kept in a public office; and

(C) A statute authorizes recording documents of that kind in that office.

(15) Statements in Documents that Affect an Interest in Property. A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose unless later dealings with the property

are inconsistent with the truth of the statement or the purport of the document.

(16) Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.

(17) Market Reports and Similar Commercial Publications. Market quotations, lists (including government price lists), directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

(18) Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:

(A) The statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) The publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice. If admitted, the statement may be read into evidence but not received as an exhibit.

(19) Reputation Concerning Personal or Family History. A reputation among a person's family by blood, adoption, or marriage—or among a person's associates or in the community—concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

(20) Reputation Concerning Boundaries or General History. A reputation in a community—arising before the controversy—concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

(21) Reputation Concerning Character. A reputation among a person's associates or in the community concerning the person's character.

(22) Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:

(A) The judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) The conviction was for a crime punishable by death, dishonorable discharge, or by imprisonment for more than a year;

(C) The evidence is admitted to prove any fact essential to the judgment; and

(D) When offered by the prosecutor for a purpose other than impeachment, the judgment was against the accused.

The pendency of an appeal may be shown but does not affect admissibility. In determining whether a crime tried by court-martial was punishable by death, dishonorable discharge, or imprisonment for more than one year, the maximum punishment prescribed by the President under Article 56 of the Uniform of Military Justice at the time of the conviction applies without regard to whether the case was tried by general, special, or summary court-martial.

(23) Judgments Involving Personal, Family, or General History, or a Boundary. A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) Was essential to the judgment; and

(B) Could be proved by evidence of reputation.

Rule 804. Exceptions to the Rule Against Hearsay—When the Declarant Is Unavailable as a Witness

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

(1) Is exempted from testifying about the subject matter of the declarant's statement because the military judge rules that a privilege applies;

(2) Refuses to testify about the subject matter despite the military judge's order to do so;

(3) Testifies to not remembering the subject matter;

(4) Cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) Is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) The declarant's attendance, in the case of a hearsay exception under subdivision (b)(1) or (b)(5);

(B) The declarant's attendance or testimony, in the case of a hearsay exception under subdivision (b)(2), (b)(3), or (b)(4); or

(6) Is unavailable within the meaning of Article 49(d)(2).

This subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) The Exceptions. The following are exceptions to the rule against hearsay, and are not excluded by that rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony that:

(A) Was given by a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) Is now offered against a party who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

Subject to the limitations in Articles 49 and 50, a record of testimony given before a court-martial, court of inquiry, military commission, other military tribunal, or pretrial investigation under Article 32 is admissible under this subdivision (b)(1) if the record of the testimony is a verbatim record.

(2) Statement under the Belief of Imminent Death. In a prosecution for any offense resulting in the death of the alleged victim, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) Statement against Interest. A statement that:

(A) A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) Is supported by corroborating circumstances that clearly indicate its trustworthiness, if it tends to expose the declarant to criminal liability and is offered to exculpate the accused.

(4) Statement of Personal or Family History. A statement about:

(A) The declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) Another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) Other Exceptions. [Transferred to Rule 807.]

(6) Statement Offered against a Party that Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused or acquiesced in wrongfully causing the declarant's unavailability as a witness, and did so intending that result.

Rule 805. Hearsay Within Hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception or exclusion to the rule.

Rule 806. Attacking and Supporting the Declarant's Credibility

When a hearsay statement—or a statement described in Mil. R. Evid. 801(d)(2)(C), (D), or (E)—has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The military judge may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Rule 807. Residual Exception

(a) In General. Under the following circumstances, a hearsay statement is not excluded by the rule against hearsay even if the statement is not specifically covered by a hearsay exception in Mil. R. Evid. 803 or 804:

(1) The statement has equivalent circumstantial guarantees of trustworthiness;

(2) It is offered as evidence of a material fact;

(3) It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and

(4) Admitting it will best serve the purposes of these rules and the interests of justice.

(b) Notice. The statement is admissible only if, before the trial or hearing, the proponent gives an adverse party reasonable notice of the intent to offer the statement and its particulars, including the declarant's name and address, so that the party has a fair opportunity to meet it.

Rule 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) Testimony of a Witness With Knowledge. Testimony that an item is what it is claimed to be.

(2) Nonexpert Opinion About Handwriting. A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) Comparison by an Expert Witness or the Trier of Fact. A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) Distinctive Characteristics and the Like. The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) Opinion About a Voice. An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) Evidence About a Telephone Conversation. For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) A particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) A particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) Evidence about Public Records. Evidence that:

(A) A document was recorded or filed in a public office as authorized by law; or

(B) A purported public record or statement is from the office where items of this kind are kept.

(8) Evidence About Ancient Documents or Data Compilations. For a document or data compilation, evidence that it:

(A) Is in a condition that creates no suspicion about its authenticity;

(B) Was in a place where, if authentic, it would likely be; and

(C) Is at least 20 years old when offered.

(9) Evidence About a Process or System. Evidence describing a process or system and showing that it produces an accurate result.

(10) Methods Provided by a Statute or Rule. Any method of authentication or identification allowed by a federal statute, a rule prescribed by the Supreme Court pursuant to statutory authority, or an applicable regulation prescribed pursuant to statutory authority.

Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) Domestic Public Documents that are Sealed and Signed. A document that bears:

(A) A seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) A signature purporting to be an execution or attestation.

(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified. A document that bears no seal if:

(A) It bears the signature of an officer or employee of an entity named in subdivision (1)(A) above; and

(B) Another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents. A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the military judge may, for good cause, either:

(A) Order that it be treated as presumptively authentic without final certification; or

(B) Allow it to be evidenced by an attested summary with or without final certification.

(4) Certified Copies of Public Records. A copy of an official record—or a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) The custodian or another person authorized to make the certification; or

(B) A certificate that complies with subdivision (1), (2), or (3) above, a federal statute, a rule prescribed by the Supreme Court pursuant to statutory authority, or an applicable regulation prescribed pursuant to statutory authority.

(4a) Documents or Records of the United States Accompanied by Attesting Certificates. Documents or records kept under the authority of the United States by any department, bureau, agency, office, or court thereof when attached to or accompanied by an attesting certificate of the custodian of the document or record without further authentication.

(5) Official Publications. A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) Newspapers and Periodicals. Printed material purporting to be a newspaper or periodical.

(7) Trade Inscriptions and the Like. An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) Acknowledged Documents. A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) Commercial Paper and Related Documents. Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) Presumptions under a Federal Statute or Regulation. A signature, document, or anything else that a federal statute, or an applicable regulation prescribed pursuant to statutory authority, declares to be presumptively or prima facie genuine or authentic.

(11) Certified Domestic Records of a Regularly Conducted Activity. The original or a copy of a domestic record that meets the requirements of Mil. R. Evid. 803(6)(A)–(C), as shown by a certification of the custodian or another qualified person that complies with a federal statute or a rule prescribed by the Supreme Court pursuant to statutory authority. Before the trial or hearing, or at a later time that the military judge allows for good cause, the proponent must give an adverse party reasonable written notice of the intent to offer the record and must make the record and certification available for inspection so that the party has a fair opportunity to challenge them.

Rule 903. Subscribing Witness's Testimony

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

Rule 1001. Definitions That Apply to This Section

In this section:

(a) A ''*writing*'' consists of letters, words, numbers, or their equivalent set down in any form.

(b) A ''*recording*'' consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A ''*photograph*'' means a photographic image or its equivalent stored in any form.

(d) An ''*original*'' of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, ''*original*'' means any printout or other output readable by sight if it accurately reflects the information. An ''*original*'' of a photograph includes the negative or a print from it.

(e) A ''*duplicate*'' means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules, this Manual, or a federal statute provides otherwise.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

Rule 1004. Admissibility of Other Evidence of Content

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(a) All the originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) An original cannot be obtained by any available judicial process;

(c) The party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) The writing, recording, or photograph is not closely related to a controlling issue.

Rule 1005. Copies of Public Records To Prove Content

The proponent may use a copy to prove the content of an official record—or of a document that was recorded or filed in a public office as authorized by law—if these conditions are met: The record or document is otherwise admissible; and the copy is certified as correct in accordance with Mil. R. Evid. 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

Rule 1006. Summaries To Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. The military judge may order the proponent to produce them in court.

Rule 1007. Testimony or Statement of a Party To Prove Content

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Rule 1008. Functions of the Military Judge and the Members

Ordinarily, the military judge determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Mil. R. Evid. 1004 or 1005. When a court-martial is composed of a military judge and members, the members determine—in accordance with Mil. R. Evid. 104(b)—any issue about whether:

(a) An asserted writing, recording, or photograph ever existed;

(b) Another one produced at the trial or hearing is the original; or

(c) Other evidence of content accurately reflects the content.

Rule 1101. Applicability of These Rules

(a) In General. Except as otherwise provided in this Manual, these rules apply generally to all courts-martial, including summary courts-martial, Article 39(a) sessions, limited factfinding proceedings ordered on review, proceedings in revision, and contempt proceedings other than contempt proceedings in which the judge may act summarily.

(b) Rules Relaxed. The application of these rules may be relaxed in presentencing proceedings as provided

under R.C.M. 1001 and otherwise as provided in this Manual.

(c) Rules on Privilege. The rules on privilege apply at all stages of a case or proceeding.

(d) Exceptions. These rules—except for Mil. R. Evid. 412 and those on privilege—do not apply to the following:

(1) The military judge's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;

(2) Pretrial investigations under Article 32;

(3) Proceedings for vacation of suspension of sentence under Article 72; and

(4) Miscellaneous actions and proceedings related to search authorizations, pretrial restraint, pretrial confinement, or other proceedings authorized under the Uniform Code of Military Justice or this Manual that are not listed in subdivision (a).

(e) Other Statutes and Rules. A federal statute, a rule prescribed by the Supreme Court pursuant to statutory authority, or a rule prescribed in regulations promulgated under statutory authority may provide for admitting or excluding evidence independently from these rules.

Rule 1102. Amendments

(a) Amendments to the Federal Rules of Evidence—other than Articles III and V—will amend parallel provisions of the Military Rules of Evidence by operation of law 18 months after the effective date of such amendments, unless action to the contrary is taken by the President.

(b) Rules Determined Not to Apply. The President has determined that the following Federal Rules of Evidence do not apply to the Military Rules of Evidence: Rules 301, 302, 415, and 902(12).

Rule 1103. Title

These rules may be cited as the ''Military Rules of Evidence.''

Section 2. These amendments shall take effect 30 days from the date of this order.

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to the effective date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

The White House

Changes to the Discussion Accompanying the Manual for Courts Martial, United States

(a) A new Discussion is added following Mil. R. Evid. 301(c) as follows:

''A military judge is not required to provide Article 31 warnings. If a witness who seems uninformed of the privileges under this rule appears likely to incriminate himself or herself, the military judge may advise the witness of the right to decline to make any answer that might tend to incriminate the witness and that any self-incriminating answer the witness might make can later be used as evidence against the witness. Counsel for any party or for the witness may ask the military judge to so advise a witness if such a request is made out of the hearing of the witness and, in a court-martial with members, the members. Failure to so advise a witness does not make the testimony of the witness inadmissible.''

(b) A new Discussion is added following Mil. R. Evid. 305(a)(1) as follows:

''Pursuant to Article 31, a person subject to the code may not interrogate or request any statement from an accused or a person suspected of an offense without first:

(1) Informing the accused or suspect of the nature of the accusation;

(2) advising the accused or suspect that the accused or suspect has the right to remain silent; and

(3) Advising the accused or suspect that any statement made may be used as evidence against the accused or suspect in a trial by court-martial.''

(c) A new Discussion is added following Mil. R. Evid. 305(a)(3) as follows:

''If a person chooses to exercise the privilege against self-incrimination, questioning must cease immediately. If a person who is subjected to interrogation under the circumstances described in subdivisions (a)(2) or (a)(3) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present.''

(d) A new Discussion is added following Mil. R. Evid. 312(b)(2)(F) as follows:

''An examination of the unclothed body under this rule should be conducted whenever practicable by a person of the same sex as that of the person being examined; however, failure to comply with this requirement does not make an examination an unlawful search within the meaning of Mil. R. Evid. 311.''

(e) A new Discussion is added following Mil. R. Evid. 312(e) as follows:

''Compelling a person to ingest substances for the purposes of locating the property described above or to compel the bodily elimination of such property is a search within the meaning of this section.''

(f) A new Discussion is added following Mil. R. Evid. 312(f) as follows:

''Nothing in this rule will be deemed to interfere with the lawful authority of the armed forces to take whatever action may be necessary to preserve the health of a servicemember.''

(g) A new Discussion is added following Mil. R. Evid. 314(c) as follows:

''Searches under subdivision (c) may not be conducted at a time or in a manner contrary to an express provision of a treaty or agreement to which the United States is a party; however, failure to comply with a treaty or agreement does not render a search unlawful within the meaning of Mil. R. Evid. 311.''

(h) A new Discussion is added following Mil. R. Evid. 314(f)(2) as follows:

''Subdivision (f)(2) requires a reasonable belief that the individual to be frisked is armed and presently dangerous. The test is whether a reasonably prudent man in similar circumstances would be warranted in a belief that his safety was in danger. The purpose of a frisk is to search for weapons or other dangerous items, including but not limited to: knives, needles, or razor blades. The purpose of the frisk is not to search for contraband; however, contraband or evidence that is located in the process of a lawful frisk may be seized.''

(i) A new Discussion is added following Mil. R. Evid. 315(a) as follows:

''Although military personnel should adhere to procedural guidance regarding the conduct of searches, violation of such procedural guidance does not render evidence inadmissible unless the search is unlawful under these rules or the Constitution of the United States as applied to members of the armed forces. For example, if the person whose property is to be searched is present during a search conducted pursuant to a search authorization granted under this rule, the person conducting the search should notify him or her of the fact of authorization and the general

substance of the authorization. Such notice may be made prior to or contemporaneously with the search. Property seized should be inventoried at the time of a seizure or as soon thereafter as practicable. A copy of the inventory should be given to a person from whose possession or premises the property was taken. Failure to provide notice, make an inventory, furnish a copy thereof, or otherwise comply with this guidance does not render a search or seizure unlawful within the meaning of Mil. R. Evid. 311.''

(j) A new Discussion is added following Mil. R. Evid. 315(c)(4) as follows:

''If nonmilitary property within a foreign country is owned, used, occupied by, or in the possession of an agency of the United States other than the Department of Defense, a search should be conducted in coordination with an appropriate representative of the agency concerned, although failure to obtain such coordination would not render a search unlawful within the meaning of Mil. R. Evid. 311. If other nonmilitary property within a foreign country is to be searched, the search should be conducted in accordance with any relevant treaty or agreement or in coordination with an appropriate representative of the foreign country, although failure to obtain such coordination or noncompliance with a treaty or agreement would not render a search unlawful within the meaning of Mil. R. Evid. 311.''

(k) A new Discussion is added following Mil. R. Evid. 317(b) as follows:

''Pursuant to 18 U.S.C. 2516(1), the Attorney General, or any Assistant Attorney General specially designated by the Attorney General may authorize an application to a federal judge of competent jurisdiction for, and such judge may grant in conformity with 18 U.S.C. 2518, an order authorizing or approving the interception of wire or oral communications by the Department of Defense, the Department of Homeland Security, or any Military Department for purposes of obtaining evidence concerning the offenses enumerated in 18 U.S.C. 2516(1), to the extent such offenses are punishable under the Uniform Code of Military Justice.''

(l) A new Discussion is added following Mil. R. Evid. 412(c)(3) as follows:

''After hearing all relevant evidence, the military judge should carefully tailor an order that protects both the alleged victim's privacy interests and the accused's constitutional rights, bearing in mind that the alleged victim's privacy interests cannot preclude the admission of constitutionally required evidence. Finally, in making the order, the military judge should conduct the balancing test under Mil. R. Evid. 403.''

(m) A new Discussion is added following Mil. R. Evid. 312(f) as follows: 505(k)(3)

''In addition to the sixth amendment right of an accused to a public trial, the Supreme Court has held that the press and general public have a constitutional right under the first amendment to access to criminal trials. *United States* v. *Hershey,* 20 M.J. 433 (C.M.A. 1985) citing *Richmond Newspapers, Inc.* v. *Virginia,* 448 U.S. 555 (1980). The test that must be met before closure of a criminal trial to the public is set out in *Press-Enterprise Co.* v. *Superior Court,* 464 U.S. 501 (1984), to wit: the party seeking closure must advance an overriding interest that is likely to be prejudiced; the closure must be narrowly tailored to protect that interest; the trial court must consider reasonable alternatives to closure; and it must make adequate findings supporting the closure to aid in review.''

Dated: October 12, 2011.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–26896 Filed 10–18–11; 8:45 am]

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H.R. 771/P.L. 112–38
To designate the facility of the United States Postal Service located at 1081 Elbel Road in Schertz, Texas, as the "Schertz Veterans Post Office". (Oct. 12, 2011; 125 Stat. 399)

H.R. 1632/P.L. 112–39
To designate the facility of the United States Postal Service located at 5014 Gary Avenue in Lubbock, Texas, as the "Sergeant Chris Davis Post Office". (Oct. 12, 2011; 125 Stat. 400)

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