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U.S. GOVERNMENT
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Federal Register

2–1–10 Monday
Vol. 75 No. 20 Feb. 1, 2010

Pages 4973–5224

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1309

[Docket No. DEA–294F]

RIN 1117–AB09

Registration Requirements for Importers and Manufacturers of Prescription Drug Products Containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: The Drug Enforcement Administration (DEA) is amending its registration regulations to ensure that a registration is obtained for every location where ephedrine, pseudoephedrine, or phenylpropanolamine, or drug products containing one of these chemicals, are imported or manufactured. These amendments will make it possible to establish the system of quotas and assessment of annual needs for the importation and manufacture of these chemicals that Congress mandated in the Combat Methamphetamine Epidemic Act of 2005.

DATES: This rule is effective March 3, 2010.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; telephone: (202) 307–7297.

SUPPLEMENTARY INFORMATION:

DEA's Legal Authority

DEA implements 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. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1316. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, and industrial purposes and to deter the diversion of controlled substances to illegal purposes. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity. The CSA as amended also requires DEA to regulate the manufacture, distribution, import, and export of chemicals that may be used to manufacture controlled substances illegally. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances (21 U.S.C. 802(34)). Those classified as List II chemicals may be used to manufacture controlled substances (21 U.S.C. 802(35)).

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177). Much of CMEA is self-implementing; the provisions related to importation of ephedrine, pseudoephedrine, and phenylpropanolamine, import quotas, manufacturing quotas, and procurement quotas became effective on March 9, 2006.

CMEA Requirements and Impact on Registration

CMEA amended the CSA to include ephedrine, pseudoephedrine, and phenylpropanolamine in 21 U.S.C. 826 (Production quotas for controlled substances) and 21 U.S.C. 952(a) (Importation of controlled substances). Congress essentially imposed the same requirements for importation of ephedrine, pseudoephedrine, and phenylpropanolamine as are imposed on narcotic raw materials—crude opium, poppy straw, concentrate of poppy straw, and coca leaves. That is, imports of ephedrine, pseudoephedrine, and phenylpropanolamine are prohibited except for such amounts as the Attorney General (DEA by delegation) finds to be necessary to provide for medical, scientific, or other legitimate purposes. Congress also imposed the same requirements on the manufacture of ephedrine, pseudoephedrine, and phenylpropanolamine as are established for Schedule I and II controlled substances. That is, Congress mandated the establishment of a total need for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. These requirements apply equally to products containing these three List I chemicals as they do to the List I chemicals themselves.

Until the passage of CMEA, chemical importers were required to notify DEA of imports of ephedrine, pseudoephedrine, and phenylpropanolamine before or at the time of importation under 21 U.S.C. 971. DEA had no authority to limit the importation or manufacture of ephedrine, pseudoephedrine, and phenylpropanolamine, except for the ability to suspend a proposed import under 21 U.S.C. 971(c) on the ground that it may be diverted to the clandestine manufacture of a controlled substance. Most of the ephedrine, pseudoephedrine, and phenylpropanolamine used in the United States is imported rather than manufactured domestically.

Ephedrine, pseudoephedrine, and phenylpropanolamine are used to produce drug products lawfully marketed under the Federal Food, Drug and Cosmetic Act (FFD&CA), many of which are prescription drugs. DEA has not subjected these prescription drug products to all List I chemical regulatory requirements because they are available only in response to a prescription and are stored in and dispensed at pharmacies. These chemicals are also used in over-the-counter (OTC) drug products (lawfully marketed and distributed under the FFD&CA as a non-

prescription drug). These products have been widely used in the illegal manufacture of methamphetamine and amphetamine. CMEA defined these OTC drug products as scheduled listed chemical products (21 U.S.C. 802(45)(A)). DEA has regulated the distribution, import, and export of scheduled listed chemical products.

There are firms manufacturing drug products lawfully marketed under the FFD&CA containing ephedrine, pseudoephedrine, or phenylpropanolamine that are not registered with DEA at all because those firms do not handle controlled substances and the only products those firms produce containing the three chemicals are prescription drugs. There are also firms that manufacture scheduled listed chemical products, but only distribute or dispense controlled substances. Because those firms are registered as controlled substance distributors or dispensers, those firms are not currently required to register as chemical manufacturers. Finally, there may be some firms that are not registered that import prescription drug products that contain the three chemicals.

Note: For a more detailed discussion of the history of the regulation of ephedrine, pseudoephedrine, and phenylpropanolamine see the preamble to the Notice of Proposed Rulemaking published on January 18, 2008 (73 FR 3432).

Because of the new CMEA mandates for importation, import quotas, and production quotas for ephedrine, pseudoephedrine, and phenylpropanolamine, DEA is revising its registration provisions. As discussed in the NPRM, the changes made by the CMEA render current DEA regulations inadequate for two reasons. First, although DEA registers bulk manufacturers of the three chemicals in the United States and importers of the bulk chemicals, some of those chemicals are distributed to non-registered companies that process them into prescription drugs. Under 21 U.S.C. 826, production quotas are available only to registered manufacturers. DEA cannot meet the CMEA mandate to establish an annual need and import quotas, and then issue individual quotas for each of the chemicals unless all persons manufacturing or procuring the chemicals and manufacturing drug products that contain the chemicals are registered as manufacturers, even if the distribution of the final drug products is not regulated. DEA also must know the quantity of prescription drug products containing the three chemicals being imported; without this information, DEA would not be able to determine an assessment of annual need for the chemicals. Any person importing prescription drug products containing any of the three chemicals must register although the distribution of these products would not be subject to DEA regulation.

The second inadequacy is that the existing language allows a controlled substance distributor or dispenser to avoid registration as a chemical manufacturer if that person manufactures scheduled listed chemical products or other products containing a List I chemical that is described and included in the definition of "regulated transaction" in 21 CFR 1300.02(b)(28)(i)(D). [DEA notes that there may be a limited number of drug products containing List I chemicals other than ephedrine, pseudoephedrine, and phenylpropanolamine which meet this description.] Therefore, this provision is being changed so that controlled substance registrants will not need to obtain a chemical registration only if they engage in the same activity for both drug products containing List I chemicals and controlled substances as is already the case for bulk manufacture, imports, and exports. In this way, any registrant that must obtain a quota to manufacture or procure one or more of the chemicals will be a registered manufacturer, as required by the CSA.

DEA recognizes that this change requires some manufacturers and locations to register that had not previously been subject to DEA regulations; other registrants are required to obtain separate registrations for chemicals and controlled substances. The new requirements, however, are both consistent with the statutory language on registration and the CMEA amendments and with the intent of the CMEA requirements to establish a system of quotas for the manufacture of these three chemicals and the products that contain them. Without these changes, DEA would not be able to meet the CMEA mandates. In addition, without these changes, companies that manufacture and import prescription drug products containing the three chemicals would not be able to purchase the chemicals legally nor would the assessment of annual needs reflect their requirements.

Explanation of DEA Categories of Registration and Effect of This Rule Regarding DEA Registration

The CSA defines the term "manufacture" to include the physical manufacture of a chemical or product, as well as the packaging, labeling, repackaging, and relabeling of that product (21 U.S.C. 802(15)). Thus, under the CSA, "manufacture" is defined to include all of the following:

- The manufacturing of a substance or chemical in bulk, either by extraction from raw materials, chemical synthesis, or a combination of extraction and chemical synthesis.
- The processing of the substance or chemical into products, such as drugs in dosage form.
- The packaging or repackaging of the processed substances or chemicals or labeling or relabeling of containers holding the chemicals.

After this final rule takes effect, persons who manufacture or import ephedrine, pseudoephedrine, or phenylpropanolamine, or who manufacture or import a product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or who plan to engage in such activities, will be required to register with DEA if they are not already registered for the appropriate business activity. As required by the CSA, registration is location-specific; a person must obtain a registration for each principal place of business at one general physical location where controlled substances or List I chemicals are manufactured, distributed, imported, or exported. If a person manufactures controlled substances at one location and drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine at another location, the person will be required to obtain a separate registration for each location. Under the waiver previously described in this rulemaking (21 CFR 1309.24(b)), persons who are currently registered as controlled substances manufacturers at a location where drug products containing these List I chemicals are also manufactured will not be required to register separately to conduct the same activity, manufacturing, with these List I chemicals. A controlled substances registration for that one physical location will cover both the manufacturing of controlled substances and drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, at that location. Those controlled substances manufacturers will, however, be required to identify to DEA the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine they handle as part of their next registration renewal. DEA notes that the manufacture of bulk List I chemicals requires a separate chemical registration; this is not a change from existing regulations.

However, if a person manufactures a drug product containing ephedrine,

pseudoephedrine, or phenylpropanolamine at a location, but is registered to conduct other (nonmanufacturing) activities with controlled substances at that location (e.g., distribution), the person will need to obtain a List I chemical manufacturing registration for the location. The following table indicates the changes in registration requirements for various business activities.

Previous	Final rule
Chemical Manufacturers (no Controlled Substances)	
All bulk manufacturers of List I chemicals must register unless all of the chemical produced is consumed internally and is not available for use in products.	No change.
Manufacturers of scheduled listed chemical products must register if they also distribute. Manufacturers of prescription products ** containing List I chemicals do not register	All manufacturers of drug products containing List I chemicals * must register.
Chemical Distributors	
Distributors of List I chemicals and scheduled listed chemical products must register. Distributors of prescription products ** containing List I chemicals do not register	No change.
Chemical Importers and Exporters	
Importers of List I chemicals and scheduled listed chemical products must register. Importers of prescription products ** containing List I chemicals do not register if they import controlled substances	Importers of List I chemicals and all drug products containing List I chemicals * must register.
Exporters of List I chemicals and scheduled listed chemical products must register. Exporters of prescription products ** containing List I chemicals do not register	No change.
Manufacturers and Distributors of Controlled Substances and Drug Products Containing List I Chemicals	
Manufacturers of both controlled substances and drug products containing List I chemicals may register as only controlled substance manufacturers.	No change.
Manufacturers of drug products containing any List I chemical * who distribute or dispense controlled substances may register for only their controlled substance activity. A separate registration for the chemical activity is permissible.	Manufacturers of controlled substances and drug products containing any List I chemical * must register as controlled substances manufacturers. If they manufacture drug products containing any List I chemical * and only distribute or dispense controlled substances at the same location, they must register separately for each activity.
Distributors of both controlled substances and drug products containing List I chemicals may register as only controlled substance distributors.	No change.
Importers/Exporters of Controlled Substances and Drug Products Containing List I Chemicals	
Importers of both controlled substances and drug products containing List I chemicals must register as controlled substance importers.	No change.
Exporters of both controlled substances and drug products containing List I chemicals must register as controlled substance exporters.	No change.
Manufacturers, Distributors, Importers, and Exporters of Bulk List I Chemicals	
Manufacturers, distributors, importers, and exporters of bulk List I chemicals must register, regardless of whether they handle controlled substances.	No change.

* "drug products containing List I chemicals" refers to scheduled listed chemical products or other products containing a List I chemical that is described and included in the definition of "regulated transaction" in 21 CFR 1300.02(b)(28)(i)(D). Such drug products must be in packaged/labeled form as required under the FFD&CA for lawful marketing.

** "Prescription products," for purposes of this table, refers to "any transaction in a List I chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act * * *" (21 U.S.C. 802(39)(A)(iv)). To comply with the marketing and distribution requirements of the FFD&CA for prescription drugs, such drugs must be packaged and labeled in accordance with the FFD&CA as prescription drugs.

Notice of Proposed Rulemaking

On January 18, 2008, DEA published a Notice of Proposed Rulemaking (NPRM) (73 FR 3432) proposing that persons who manufacture or import a prescription drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine be required to register with DEA, even if the distribution of the final drug product is not regulated. Further, the rule proposed clarification that controlled substance registrants need not obtain a separate chemical registration only if they engage in the same activity for both

drug products containing List I chemicals and controlled substances.

Discussion of Comments

DEA received three comments on the proposed rule. Commenters included two individuals and one DEA-registered manufacturer.

Support for proposed rule: One commenter strongly supported any amendments to the regulations necessary to help regulate the importation and manufacture of chemicals used in the illicit manufacture of methamphetamine.

DEA Response: DEA appreciates the support for this rulemaking. As noted previously, this regulation is necessary to fully implement the provisions of the CMEA related to quotas for the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine.

Opposition to NPRM: Another commenter stated that the proposed rule was shortsighted and ill-equipped to meet the goal of the CMEA. The commenter believed that market demand, not a governmental agency, should determine how much ephedrine, pseudoephedrine, and phenylpropanolamine should be imported.

DEA Response: This regulation addresses neither the establishment of procedures for the implementation of quotas nor the quotas themselves. Rather, this rule revises DEA regulations to require certain persons to obtain a DEA registration so that they may apply for quota. As discussed previously, the CMEA amended the CSA to require production quotas for manufacturers handling the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. CMEA also authorized the Attorney General (DEA by delegation), to establish import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. The CSA requires that quotas be issued to registrants. Were DEA not to issue this rule, it would have no mechanism to permit the registration of persons handling prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine. If these persons were not permitted to register, there would be no mechanism by which they would be permitted to apply for import or production quotas. Therefore, these persons would have no means by which to acquire the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine necessary for them to conduct business.

Registration of analytical laboratories and researchers: The third commenter requested DEA clarification of the scope of the proposed revision to 21 CFR 1309.24(c). The commenter believed that DEA intended to include controlled substances analytical laboratories in the waiver for controlled substances importer registrants who are permitted to import drug products regulated pursuant to 21 U.S.C. 802(39)(A)(iv). The commenter indicated its support for an allowance to permit controlled substances analytical laboratory registrants to be able to import List I chemical product samples for testing purposes.

DEA Response: DEA believes that the commenter has misunderstood the waiver of the requirement of registration provided in 21 CFR 1309.24(c), as well as the authority granted to controlled substances researchers and persons permitted to conduct chemical analysis to import certain substances.

As proposed to be revised in the NPRM, 21 CFR 1309.24(c) states:

> The requirement of registration is waived for any person who imports or exports a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of "regulated transaction" in § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to engage in the same activity with a controlled substance.[1]

The definition of "regulated transaction" describes the following: "Any transaction in a listed chemical that is contained in a drug other than a scheduled listed chemical product that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, * * *" (21 U.S.C. 802(39)(A)(iv), 21 CFR 1300.02(b)(28)(i)(D)).

A scheduled listed chemical product is defined as a product that contains ephedrine, pseudoephedrine, or phenylpropanolamine that may be marketed or distributed lawfully in the United States under the FFD&CA as a nonprescription drug (21 U.S.C. 802(45)(A), 21 CFR 1300.02(b)(34)(i))).

As discussed previously, for a drug to be "marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act," such drug product must be in packaged/labeled form as required under the FFD&CA. Thus, regardless of whether the product being imported or exported is a scheduled listed chemical product or another drug product containing a List I chemical, for a person to use the waiver granted in 21 CFR 1309.24(c) to import a drug containing a List I chemical, that drug must be in a packaged/labeled form in compliance with the marketing and distribution requirements of the FFD&CA.

Thus, the waiver pertains only to those products which are fully formulated and packaged pursuant to the FFD&CA, not to the importation of bulk chemical, which would include any product not fully formulated, packaged, and labeled as required to meet the terms of the waiver, as well as any chemical in an unfinished form (*e.g.,* bulk powder, bulk liquid). DEA questions whether any person conducting research or chemical analysis involving a List I chemical or a product containing a List I chemical would choose to import a product meeting the marketing/distribution requirements of the FFD&CA. As has been discussed previously, if a person were to import a List I chemical, or a product containing a List I chemical, which did not meet the criteria for lawful distribution or marketing under the FFD&CA, then that person would be required to obtain a separate registration as a chemical importer to conduct the importation.

The commenter appears to believe that controlled substances research and chemical analysis registrants are permitted to import List I chemicals based on their controlled substance research or chemical analysis registration. For Schedule I researchers, the regulations provide the following regarding coincident activities: "A researcher may manufacture or import the basic class of substance or substances for which registration was issued, provided that such manufacture or import is set forth in the protocol required in § 1301.18 * * *" (21 CFR 1301.13(e)(1)(v)). That coincident activity clearly limits the importation authority only to those controlled substances set forth in the researcher protocol, and does not grant any authority related to importation of List I chemicals for any purpose, including research. Thus, a Schedule I researcher would be required to obtain a separate chemical importer registration to import any List I chemical for any purpose, regardless of whether that chemical was lawfully marketed or distributed under the FFD&CA.

For Schedule II–V researchers, the regulations provide the following regarding coincident activities: "May

[1] Prior to the proposed revision, 21 CFR 1309.24(c) stated: "The requirement of registration is waived for any person who imports or exports a product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to engage in the same activity with a controlled substance." The revision DEA proposed sought merely to provide specificity regarding those products regulated pursuant to 21 CFR 1300.02(b)(28)(i)(D) and did not change the requirements regarding to whom the waiver of the requirement of registration applied.

conduct chemical analysis with controlled substances in those schedules for which registration was issued; * * * import such substances for research purposes; * * *" (21 CFR 1301.13(e)(1)(vi)). Again, the importation of the substances is based on the activity of research, not on the importation activity itself.

For persons conducting chemical analysis, the regulations provide the following regarding coincident activities:

> May manufacture and import controlled substances for analytical or instructional activities; may distribute such substances to persons registered or authorized to conduct chemical analysis, instructional activities, or research with such substances and to persons exempted from registration pursuant to § 1301.24; may export such substances to persons in other countries performing chemical analysis or enforcing laws related to controlled substances or drugs in those countries; and may conduct instructional activities with controlled substances. (21 CFR 1301.13(e)(1)(x))

Again, the importation of the substances is based on the activity of chemical analysis, not on the importation activity itself.

Conversely, the language of 21 CFR 1309.24(c) contemplates that the person importing the product containing the List I chemical is "registered with the Administration to engage in the same activity [importation] with a controlled substance." The activity of a controlled substances researcher is not the same as the activity of a controlled substances importer. Nor is the activity of a controlled substances chemical analyst the same as the activity of a controlled substances importer. As discussed above, researchers have very limited authority to import controlled substances, based specifically on the research being conducted. Those conducting chemical analysis have similarly limited authority related solely to the analysis of controlled substances.

Based on the comment received, and to clarify that the waiver of the requirement of registration in 21 CFR 1309.24(c) is intended for importers and exporters of controlled substances, DEA is revising the language of 21 CFR 1309.24(c) to state that:

> The requirement of registration is waived for any person who imports or exports a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of "regulated transaction" in § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to import or export a controlled substance.

DEA notes that if a controlled substances researcher or registrant permitted to conduct chemical analysis receives the List I chemicals from another registrant, *e.g.,* a person registered to import, manufacture, or distribute List I chemicals, and if the researcher or chemical analyst does not further distribute the List I chemicals, that researcher or chemical analyst would be considered to be a List I chemical end-user and would not be required to be registered with DEA to receive the List I chemicals.

Requirements of This Final Rule

DEA is requiring that a person who manufactures or imports a prescription drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine must comply with the following:

Registration. Any person who manufactures or imports a drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or who proposes to engage in the manufacture or importation of a drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, is required to obtain a registration under the CSA (21 U.S.C. 822 and 958). Regulations describing registration for List I chemical handlers are set forth in 21 CFR Part 1309.

A separate registration is required for manufacturing, distributing, importing, and exporting, except that a person registered to manufacture or import a List I chemical or a product containing ephedrine, pseudoephedrine, or phenylpropanolamine may distribute that List I chemical or drug product without obtaining a separate registration to do so. A separate registration is required for each principal place of business at one general physical location where the List I chemicals are manufactured, distributed, imported, or exported by a person (21 CFR 1309.23).

As a result of the change, any person manufacturing or importing a prescription drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine is subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who are newly subject to the registration requirement to complete and submit an application for registration and for DEA to issue registrations for those activities immediately. Therefore, to allow continued legitimate commerce, DEA is establishing in 21 CFR 1309.25 a temporary exemption from the registration requirement for persons desiring to engage in manufacturing or importing prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, provided that DEA receives a properly completed application for registration on or before March 3, 2010. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, will remain in effect. Additionally, the temporary exemption does not suspend applicable Federal criminal laws relating to these chemicals, nor does it supersede State or local laws or regulations. All manufacturers and importers of ephedrine, pseudoephedrine, or phenylpropanolamine, or any product containing any of these three List I chemicals, must comply with applicable State and local requirements in addition to the CSA regulatory controls.

DEA notes that warehouses are exempt from the requirement of registration and may lawfully possess List I chemicals, if the possession of those chemicals is in the usual course of business (21 U.S.C. 822(c)(2), 21 U.S.C. 957(b)(1)(B)). For purposes of this exemption, the warehouse must receive the List I chemical from a DEA registrant and shall only distribute the List I chemical back to the DEA registrant and registered location from which it was received. All other activities conducted by a warehouse do not fall under this exemption; a warehouse that distributes List I chemicals to persons other than the registrant and registered location from which they were obtained is conducting distribution activities and is required to register as such (21 CFR 1309.23(b)(1)).

Importation. All persons importing ephedrine, pseudoephedrine, or phenylpropanolamine, or drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine are required to comply with all requirements regarding importation.

Records and Reports. The CSA (21 U.S.C. 830) requires certain records to be kept and reports to be made involving listed chemicals. Regulations describing recordkeeping and reporting requirements are set forth in 21 CFR Part 1310. A record must be made and maintained for two years after the date of a regulated transaction involving a List I chemical. Each regulated bulk manufacturer of a regulated mixture must submit manufacturing, inventory, and use data on an annual basis (21 CFR 1310.05(d)). Bulk manufacturers producing the chemicals solely for internal consumption are not required to submit this information; internal consumption does not include using the

chemical to produce drug products. Existing standard industry reports containing the required information are acceptable, provided the information is readily retrievable from the report.

Under 21 CFR 1310.05, regulated persons are required to report to DEA any regulated transaction involving an extraordinary quantity, an uncommon method of payment or delivery, or any other circumstance that the regulated person believes may indicate that the listed chemical will be used in violation of the CSA. Regulated persons are also required to report to DEA any proposed regulated transaction with a person whose description or other identifying information has been furnished to the regulated person. Finally, regulated persons are required to report any unusual or excessive loss or disappearance of a listed chemical.

Security. All applicants and registrants must provide effective controls against theft and diversion of chemicals as described in 21 CFR 1309.71.

Administrative Inspection. Places, including factories, warehouses, or other establishments and conveyances, where regulated persons may lawfully hold, manufacture, distribute, dispense, administer, or otherwise dispose of ephedrine, pseudoephedrine, or phenylpropanolamine, or products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or where records relating to those activities are maintained, are controlled premises as defined in 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR Part 1316, Subpart A.

Section by Section Description of Final Rule Changes

DEA is revising the authority citation for 21 CFR part 1309 to add 21 U.S.C. 802, definitions, and 21 U.S.C. 952, importation of controlled substances, to the authority for that part.

DEA is amending 21 CFR 1309.11 and 1309.12 to replace "manufacture for distribution" with "manufacture." In addition, in both sections, DEA is removing references to retail distributors. In amendments to 21 U.S.C. 823(h) the CMEA expressly stated that distributors of scheduled listed chemical products at retail are not required to register under the CSA. To avoid confusion, DEA decided to address all registration revisions related to CMEA implementation in this rulemaking.

Section 1309.21 is revised to state that every person who manufactures or proposes to manufacture a List I chemical or a drug product containing a List I chemical must register. The change requires manufacturers of prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine to register even though they are not required to register to distribute or export the products. DEA is also adding a table to the section, similar to the table in 21 CFR 1301.13 on controlled substance registration requirements, to summarize the requirements for each business activity. As discussed above, this revision does not alter the registration requirements for bulk manufacturers of List I chemicals and for manufacturers of scheduled listed chemical products.

Section 1309.22 is revised to remove retail distributing as a registration activity and to add manufacturing. As explained above, CMEA explicitly states that retail distributors of scheduled listed chemical products are not required to register. DEA is also adding a new paragraph to state that a person registered to manufacture a List I chemical is authorized to distribute that chemical under the manufacturing registration. The registrant may not distribute, under a manufacturer's registration, any List I chemical that is not covered in the manufacturing registration. This limitation parallels the existing limitation for importers.

In 21 CFR 1309.24, paragraph (b) is revised to clarify that a person who manufactures or distributes a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of "regulated transaction" in 21 CFR 1300.02(b)(28)(i)(D) is exempted from registration only if registered to conduct the same activity with controlled substances. Paragraph (c) is revised to clarify that a person who imports or exports a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of "regulated transaction" in 21 CFR 1300.02(b)(28)(i)(D) is exempted from registration only if registered to conduct the same activity with controlled substances. Paragraph (e) waiving registration for retail distributors is removed because CMEA statutorily does not require them to register. The remaining paragraphs (f) through (l) are redesignated as (e) through (k). DEA notes that the waiver of the requirement of registration continues for bulk manufacturers who manufacture and consume all of the List I chemical internally.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612). CMEA amended the CSA to require production quotas for manufacturers handling the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. CMEA also authorized the Attorney General, DEA by delegation, to establish import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. The CSA requires that quotas be issued to registrants. Were DEA not to issue this rule, it would have no mechanism to permit the registration of persons handling prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine. If these persons were not permitted to register, there would be no mechanism by which they would be permitted to apply for production or import quotas. Therefore, these persons would have no means by which to acquire the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine necessary for them to conduct business.

This rule codifies provisions necessary for implementation of the Combat Methamphetamine Epidemic Act. As discussed further below, DEA has examined the potential impacts of this rule. DEA has no basis for estimating the number of firms that may be small, but given the definition of small entities, it is likely that a substantial number of the new registrants will be small. The cost of compliance, however, will not impose a significant economic burden. The only cost is the $2,293 registration fee for manufacturers, and the $1,147 registration fee for importers, respectively. The recordkeeping and reporting requirements can be met using existing business and manufacturing records. The security provisions are general and require the registrant to provide effective controls and procedures to guard against theft and diversion of List I chemicals. Any manufacturer approved by the FDA and complying with good manufacturing practices or currently registered to handle controlled substances will have internal controls that meet this requirement. The smallest pharmaceutical firms (with 1 to 4 employees) had an average value of shipments of $824,000 in 2002 ($886,000 in 2007 dollars, based on GDP). Even for these firms, which are unlikely to be producing the covered drug products, the $2,293 registration

fee will represent less than 0.3 percent of sales and, therefore, is not a significant burden. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 § 1(b). It has been determined that this is "a significant regulatory action." Therefore, this action has been reviewed by the Office of Management and Budget. As discussed above, this action is necessary to implement statutory provisions. DEA has, nonetheless, reviewed the potential costs.

DEA has a limited basis for determining the number of manufacturers of prescription drug products that will need to obtain a DEA registration for the first time. DEA reviewed a list of pseudoephedrine products and ephedrine prescription drug products and identified 230 firms based on their labeler codes. Of all firms identified, 164 do not appear to be registered with DEA as manufacturers and 95 are not registered as either manufacturers or controlled substance distributors. The firms currently registered to manufacture controlled substances may not manufacture List I chemical drugs at the same locations. Seventy firms are currently registered as controlled substance distributors. There may be some firms that import prescription drug products that are not now registered to import either controlled substances or List I chemicals. DEA estimates that approximately 200 firms may have to obtain a new DEA registration. As noted above, the only cost imposed by the rule is the registration fee of $2,293 for the registration of each manufacturing location, and $1,147 for each importing location. The total cost of these rule changes will be less than $500,000. The cost to individual firms is relatively small, compared with their revenues. The benefit of the rule is that it will make it possible for DEA to meet the statutory mandate to assess the annual need for the chemicals accurately and provide manufacturers with the quotas they need to continue to produce drug products containing the three chemicals. As DEA noted previously, the CSA provides that quotas may only be issued to registrants. Were DEA not to issue this rule, it would have no mechanism to permit the registration of persons handling prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine. If these persons were not permitted to register, there would be no mechanism by which they would be permitted to apply for production or import quotas. Therefore, these persons would have no means by which to acquire the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine necessary for them to conduct business.

Paperwork Reduction Act

This Final Rule requires that certain persons who were not previously registered with DEA obtain a registration to handle the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. Specifically, persons manufacturing prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine were not previously required to register, but now are required to obtain a registration so that they may be eligible to apply for individual quotas for these List I chemicals. Additionally, importers of prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine who were not previously registered as List I chemical importers now are required to register so that they may be eligible to apply for import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. DEA estimates that approximately 200 firms will have to obtain a new DEA registration. DEA assumes that these firms will complete the registration application electronically, with each application taking 15 minutes to complete. The receipt of these additional applications increases the hour burden by 50 hours annually. Therefore, DEA is revising an existing approved information collection, "Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration Under Domestic Chemical Diversion Control Act of 1993" (OMB # 1117–0031), to reflect the increase in population associated with this rule.

Further, DEA is amending the forms associated with the existing approved information collection "Application for Registration (DEA Form 225) and Application for Registration Renewal (DEA Form 225a)" (OMB # 1117–0012) to include a listing of all List I chemicals on the application forms. Currently, controlled substances registrant applicants, who use these forms to apply for DEA registration, are not required to identify the List I chemicals they handle. Without this identification, it is not possible for these persons to apply for individual quotas for these chemicals. The addition of the List I chemicals will allow persons to identify which chemicals they handle. New applicants are required to identify the List I chemicals they handle upon their initial application; persons renewing their registration will identify the chemicals at the time of their renewal. This information must merely be verified for each succeeding renewal. Thus, the addition of this list will not have a measurable effect on the time needed to complete the application. Therefore, DEA is not revising the collection itself, but rather is making changes only to the application forms themselves.

The Department of Justice, Drug Enforcement Administration, submitted an information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The proposed information collection was published in the NPRM to obtain comments from the public and affected agencies. No comments were received.

Overview of Information Collection 1117–0031

(1) *Type of information collection:* Revision of an existing collection.

(2) *Title of form/collection:* Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration Under Domestic Chemical Diversion Control Act of 1993.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Forms 510 and 510a.

Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: business or other for-profit.

Other: Not-for-profit, government agencies.

Abstract: The Domestic Chemical Diversion Control Act requires that manufacturers, distributors, importers, and exporters of List I chemicals which may be diverted in the United States for the production of illicit drugs must register with DEA. Registration provides a system to aid in the tracking of the distribution of List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 1,805 persons respond to this collection annually. DEA estimates that it takes 30

minutes for an average respondent to respond when completing the application on paper, and 15 minutes for an average respondent to respond when completing an application electronically. This application is submitted annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection has a public burden of 612 hours annually.

	Respondents	Burden (hours)	Total hour burden
DEA–510 (paper)	60	0.5	30
DEA–510 (electronic)	325	0.25	81.25
DEA–510a (paper)	580	0.5	290
DEA–510a (electronic)	840	0.25	210
Total	1,805		611.25

Executive Order 12988

This regulation meets the applicable standards set forth in 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1309

Administrative practice and procedure; Drug traffic control; Exports; Imports; Security measures.

■ For the reasons set out above, 21 CFR part 1309 is amended as follows:

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS AND EXPORTERS OF LIST I CHEMICALS

■ 1. The authority citation for part 1309 is revised to read as follows:

Authority: 21 U.S.C. 802, 821, 822, 823, 824, 830, 871(b), 875, 877, 886a, 952, 958.

■ 2. Section 1309.11 is revised to read as follows:

§ 1309.11 Fee amounts.

(a) For each application for registration or reregistration to manufacture the applicant shall pay an annual fee of $2,293.

(b) For each application for registration or reregistration to distribute, import, or export a List I chemical, the applicant shall pay an annual fee of $1,147.

■ 3. Section 1309.12 is revised to read as follows:

§ 1309.12 Time and method of payment; refund.

(a) For each application for registration or reregistration to manufacture, distribute, import, or export, the applicant shall pay the fee when the application for registration or reregistration is submitted for filing.

(b) Payments should be made in the form of a credit card; a personal, certified, or cashier's check; or a money order made payable to "Drug Enforcement Administration." Payments made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. These application fees are not refundable.

■ 4. Section 1309.21 is revised to read as follows:

§ 1309.21 Persons required to register.

(a) Unless exempted by law or under §§ 1309.24 through 1309.26 or §§ 1310.12 through 1310.13 of this chapter, the following persons must annually obtain a registration specific to the List I chemicals to be handled:

(1) Every person who manufactures or imports or proposes to manufacture or import a List I chemical or a drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(2) Every person who distributes or exports or proposes to distribute or export any List I chemical, other than those List I chemicals contained in a product exempted under § 1300.02(b)(28)(i)(D) of this chapter.

(b) Only persons actually engaged in the activities are required to obtain a registration; related or affiliated persons who are not engaged in the activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation distributing List I chemicals is not required to obtain a registration.)

(c) The registration requirements are summarized in the following table:

SUMMARY OF REGISTRATION REQUIREMENTS AND LIMITATIONS

Business activity	Chemicals	DEA forms	Application fee	Registration period (years)	Coincident activities allowed
Manufacturing	List I, Drug products containing ephedrine, pseudoephedrine, phenylpropanolamine.	New—510 Renewal—510a	$2,293 2,293	1	May distribute that chemical for which registration was issued; may not distribute any chemical for which not registered.

SUMMARY OF REGISTRATION REQUIREMENTS AND LIMITATIONS—Continued

Business activity	Chemicals	DEA forms	Application fee	Registration period (years)	Coincident activities allowed
Distributing	List I, Scheduled listed chemical products.	New—510 ..... Renewal—510a	1,147 1,147	1	
Importing	List I, Drug Products containing ephedrine, pseudoephedrine, phenylpropanolamine.	New—510 ..... Renewal—510a	1,147 1,147	1	May distribute that chemical for which registration was issued; may not distribute any chemical for which not registered.
Exporting	List I, Scheduled listed chemical products.	New—510 ..... Renewal—510a	1,147 1,147	1	

■ 5. Section 1309.22 is revised to read as follows:

§ 1309.22 Separate registration for independent activities.

(a) The following groups of activities are deemed to be independent of each other:

(1) Manufacturing of List I chemicals or drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(2) Distributing of List I chemicals and scheduled listed chemical products.

(3) Importing List I chemicals or drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(4) Exporting List I chemicals and scheduled listed chemical products.

(b) Except as provided in paragraphs (c) and (d) of this section, every person who engages in more than one group of independent activities must obtain a separate registration for each group of activities, unless otherwise exempted by the Act or §§ 1309.24 through 1309.26.

(c) A person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import.

(d) A person registered to manufacture any List I chemical shall be authorized to distribute that List I chemical after manufacture, but no other chemical that the person is not registered to manufacture.

■ 6. In § 1309.23, paragraph (a) is revised to read as follows:

§ 1309.23 Separate registration for separate locations.

(a) A separate registration is required for each principal place of business at one general physical location where List I chemicals are manufactured, distributed, imported, or exported by a person.

* * * * *

■ 7. Section 1309.24 is revised to read as follows:

§ 1309.24 Waiver of registration requirement for certain activities.

(a) The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if the agent or employee is acting in the usual course of his or her business or employment.

(b) The requirement of registration is waived for any person who manufactures or distributes a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of "regulated transaction" in § 1300.02(b)(28)(i)(D) of this chapter, if that person is registered with the Administration to engage in the same activity with a controlled substance.

(c) The requirement of registration is waived for any person who imports or exports a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of "regulated transaction" in § 1300.02(b)(28)(i)(D) of this chapter, if that person is registered with the Administration to engage in the same activity with a controlled substance.

(d) The requirement of registration is waived for any person who only distributes a prescription drug product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter.

(e) The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to another location operated by the same firm solely for internal end-use, or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

(f) The requirement of registration is waived for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer, in reusable rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2,500 gallons in a single container).

(g) The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited solely to the distribution of Lugol's Solution (consisting of 5 percent iodine and 10 percent potassium iodide in an aqueous solution) in original manufacturer's packaging of one fluid ounce (30 ml) or less.

(h) The requirement of registration is waived for any manufacturer of a List I chemical, if that chemical is produced solely for internal consumption by the manufacturer and there is no subsequent distribution or exportation of the List I chemical.

(i) If any person exempted under paragraph (b), (c), (d), (e), or (f) of this section also engages in the distribution, importation, or exportation of a List I chemical, other than as described in such paragraph, the person shall obtain a registration for the activities, as required by § 1309.21.

(j) The Administrator may, upon finding that continuation of the waiver would not be in the public interest, suspend or revoke a waiver granted under paragraph (b), (c), (d), (e), or (f) of this section pursuant to the procedures set forth in §§ 1309.43 through 1309.46 and §§ 1309.51 through 1309.55. In considering the revocation or suspension of a person's waiver granted pursuant to paragraph (b) or (c) of this section, the Administrator shall also consider whether action to revoke or suspend the person's controlled substance registration pursuant to section 304 of the Act (21 U.S.C. 824) is warranted.

(k) Any person exempted from the registration requirement under this section must comply with the security requirements set forth in §§ 1309.71 through 1309.73 and the recordkeeping and reporting requirements set forth under Parts 1310, 1313, 1314, and 1315 of this chapter.

■ 8. Section 1309.25 is amended by adding a new paragraph (c) to read as follows:

§ 1309.25 Temporary exemption from registration for chemical registration applicants.

* * * * *

(c) Each person required by sections 302 or 1007 of the Act (21 U.S.C. 822 or 957) to obtain a registration to manufacture or import prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before March 3, 2010. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied the application. This exemption applies only to registration; all other chemical control requirements set forth in this part and parts 1310, 1313, and 1315 of this chapter remain in full force and effect.

Dated: January 22, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2010–1968 Filed 1–29–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

28 CFR Part 0

[Docket No. DEA–315F]

Redelegation of Functions; Delegation of Authority to Drug Enforcement Administration Official

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

ACTION: Final rule.

SUMMARY: Under delegated authority, the Administrator of the Drug Enforcement Administration (DEA), Department of Justice, is amending the appendix to the Justice Department regulations to redelegate certain functions and authority which were vested in the Attorney General by the Controlled Substances Act and subsequently delegated to the Administrator of DEA.

DATES: *Effective Dates:* This Final Rule is effective February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: DEA implements 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 (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), parts 1300 to 1399. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, research, and industrial purposes and to deter the diversion of controlled substances to illegal purposes. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity. The CSA, as amended, also requires DEA to regulate the manufacture and distribution of chemicals that may be used to manufacture controlled substances illegally. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

Retail Sales Provisions of the Combat Methamphetamine Epidemic Act of 2005

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177). Among other things, the CMEA amended the CSA to change the regulations for selling nonprescription products that contain ephedrine, pseudoephedrine, and phenylpropanolamine, their salts, optical isomers, and salts of optical isomers. CMEA created a new category of products called scheduled listed chemical products. A scheduled listed chemical product is defined as a product that contains ephedrine, pseudoephedrine, or phenylpropanolamine that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act as a nonprescription drug (21 U.S.C. 802(45)(A), 21 CFR 1300.02(b)(34)(i))).

CMEA established provisions regarding the retail sale of these scheduled listed chemical products by regulated sellers (i.e., retail distributors including mobile retail vendors) and distributors required to submit reports under 21 U.S.C. 830(b)(3) (*i.e.,* mail order distributors). These requirements, which were promulgated in 21 CFR, part 1314, include, but are not limited to:

- Packaging requirements for nonliquid forms of scheduled listed chemical products (*i.e.,* blister packs, with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches) (21 CFR 1314.05).
- Daily sales limits (21 CFR 1314.20).
- Product placement (i.e., placing the product so that customers do not have direct access before the sale is made, referred to as "behind the counter" placement, including circumstances in which the product is stored in a locked cabinet located in an area of the facility where customers do have direct access) (21 CFR 1314.25(b)).
- Recordkeeping (*i.e.,* logbook provisions) (21 CFR 1314.30).
- Employee training (21 CFR 1314.35).
- Self-certification (21 CFR 1314.40).

Redelegation of Authority

The Attorney General has delegated his functions under the CSA to the Administrator of the Drug Enforcement Administration (21 U.S.C. 871(a) and 28 CFR 0.100(b)). The Attorney General has also authorized the Administrator to redelegate any of his functions under the CSA to any subordinates (28 CFR 0.104). To further enhance the administration of the CSA and its regulations, the Administrator is redelegating to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, and the authority to exercise all necessary functions with respect to the promulgation and implementation of regulations in 21 CFR, part 1314. This redelegation will empower the Deputy Assistant Administrator, among other things, to exercise signing authority for any rules, regulations, or procedures which he may deem necessary for the efficient execution of the retail sales provisions contained in part 1314. Final orders in connection with the suspension or revocation of a regulated seller's or mail order distributor's right to sell scheduled listed chemical products shall continue to be made by the Deputy

Administrator of the Drug Enforcement Administration.

The redelegation of signature authority for the regulations in part 1314 is consistent with the signature authority already redelegated to the Deputy Assistant Administrator of the Office of Diversion Control pertaining to the promulgation of regulations related to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances and List I chemicals in parts 1301 and 1309, respectively (28 CFR Appendix to Subpart R, 7(a), 7(h)).

Regulatory Certifications

Congressional Review Act

The DEA has determined that this action pertains to DEA management and is a rule relating to DEA organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties, and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Administrative Procedure Act

This rule redelegates signature authority for the promulgation of certain regulations related to the retail sale of scheduled listed chemical products from the Deputy Administrator of the DEA to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration. Since the rule relates to agency organization, procedure, or practice, it is excepted from the general notice requirements of the Administrative Procedure Act (5 U.S.C. 553(b) pursuant to 5 U.S.C. 553(b)(A). The redelegation of signature authority for the regulations in part 1314 is consistent with the signature authority already redelegated to the Deputy Assistant Administrator, Office of Diversion Control, pertaining to the promulgation of regulations related to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances and List I chemicals in parts 1301 and 1309, respectively (28 CFR Appendix to Subpart R, 7(a), 7(h)).

Further, the Administrative Procedure Act permits an agency to make this rule effective upon the date of publication as provided by the agency for good cause found and published with the rule (5 U.S.C. 553(d)(3)). As this rule merely redelegates signature authority for certain regulations and has no impact on regulated entities, DEA finds good cause to make this rule effective upon publication.

Regulatory Flexibility Act

The Acting Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule will not have a significant economic impact on a substantial number of small entities because it pertains to administrative matters affecting the DEA. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule because DEA was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

The Acting Administrator certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 § 1(b). This rule is limited to agency organization, management and personnel as described by Executive Order 12866 section (3)(d)(3) and, therefore, is not a "regulation" or "rule" as defined by that Executive Order. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organizations and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

■ For the reasons set forth above, and pursuant to the authority vested in the Administrator of the Drug Enforcement Administration by 28 CFR 0.100 and 0.104, and 21 U.S.C. 871, 28 CFR, part 0 is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. Section 7 of the Appendix to subpart R is amended by adding a new paragraph (m) to read as follows:

Appendix to Subpart R of Part 0—Redelegation of Functions

* * * * *

Sec. 7. Promulgation of regulations.

* * * * *

(m) Part 1314, incident to the retail sale of scheduled listed chemical products by regulated sellers and distributors required to submit reports under section 310(b)(3) of the Act (21 U.S.C. 830(b)(3)), except that final orders in connection with suspension or revocation of the regulated seller's or mail order distributor's right to sell scheduled listed chemical products shall be made by the Deputy Administrator of the Drug Enforcement Administration.

* * * * *

Dated: January 21, 2010.

Michele M. Leonhart,

Acting Administrator.

[FR Doc. 2010–1967 Filed 1–29–10; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2008–0918; FRL–8438–4]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 15 chemical substances which were the subject of premanufacture notices (PMNs). Three of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture,

import, or process any of these 15 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: The effective date of this rule is April 2, 2010 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before March 3, 2010. This rule shall be promulgated for purposes of judicial review at 1 p.m. (e.s.t.) on February 16, 2010.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before March 3, 2010, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30–day period for public comment.

Significant new use designations for a chemical substance are legally established as of the date of publication of this direct final rule February 1, 2010. See the discussion in Unit VII. for more specific details.

Any persons intending to import or export a chemical substance that is the subject of this rule on or after March 3, 2010 are subject to the TSCA section 13 import certification requirements and the export notification provisions of TSCA section 12(b). See the discussion in Unit I.A. and Unit II.C. for more specific details.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0918, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0918. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0918. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Tracey Klosterman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2209; e-mail address: *klosterman.tracey@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR

127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule on or March 3, 2010 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under § 721.5.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Chemical importers are subject to the TSCA section 13 (15 U.S.C. 1612) import certification requirements promulgated at 19 CFR 12.118 through 12.127, and 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemical substances subject to a final SNUR must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance identified in a final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2612 (b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the 15 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, and the four factors listed in TSCA section 5(a)(2) and this unit.

IV. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for 15 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- CAS number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for non-section 5(e) SNURs, the basis for the SNUR (i.e., SNURs without TSCA section 5(e) consent orders).
- Toxicity concerns.
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (i.e., limits on manufacture and importation volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes 3 PMN substances that are subject to "risk-based" consent orders under TSCA section 5(e)(1)(A)(ii)(I) where EPA determined that activities associated with the PMN substances may present unreasonable risk to human health or the environment. Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called "5(e) SNURs" on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The 5(e) SNURs designate as a "significant new use" the absence of the protective measures required in the corresponding consent orders.

This rule also includes SNURs on 12 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). EPA, however, does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a "significant new use." These so-called "non-5(e) SNURs" are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a "significant new use" in all non-5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, "(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified" for the PMN substance.

PMN Number P–03–141

Chemical name: Cyclopentane, methoxy-.

CAS number: 5614–37–9.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an industrial solvent. Based on test data on the PMN substance, EPA has identified concerns for systemic toxicity and neurotoxicity. For the use described in the PMN, significant worker exposure is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that the results of the following tests would help characterize the human health effects of the PMN substance: A 90–day oral toxicity test in rodents (OPPTS Harmonized Test Guideline 870.3100); a flammability test (OPPTS Harmonized Test Guideline 830.6315); a sediment and soil adsorption/desorption isotherm test (OPPTS Harmonized Test Guideline 835.1220); and a standard practice for determination of odor and taste threshold by a forced-choice ascending concentration series method of limits (American Society for Testing and Materials (ASTM) E679–04 test guideline).

CFR citation: 40 CFR 721.10169.

PMN Number P–03–197

Chemical name: Polyoxyethylene polyalkylarylphenylether sulfate ammonium salt (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a surface active agent for emulsion polymerization. Based on test data on analogous anionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 5 parts per billion (ppb) of the PMN substance in surface waters. For the use described in the PMN, releases of the substance are not expected to result in surface waters concentrations that exceed 5 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Harmonized Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Harmonized Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. All aquatic toxicity testing should be performed using the flow-through method with measured concentrations. Further, a certificate of analysis should be provided for the test substance.

CFR citation: 40 CFR 721.10170.

PMN Number P–03–285

Chemical name: 1H-benz(e)indolium, 1,1,2,3-tetramethyl-, 4-methylbenzenesulfonic acid (1:1).

CAS number: 141914–99–0.

Basis for action: The PMN states that the substance will be used as a chemical intermediate for the manufacture of a dye in imaging media/products. Based on test data on the PMN substance, EPA identified concerns for acute lethality from inhalation of the PMN substance. As described in the PMN, worker inhalation exposure will be minimal due to the use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance without the use of a National Institute for Occupational Safety and Health (NIOSH)-approved respirator with an assigned protection factor (APF) of at least 10 where there is a potential for inhalation exposure, or exceedance of the 11,000 kilogram annual manufacture and import volume may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that the results of a repeated dose 28–day oral toxicity in rodents (OPPTS Harmonized Test Guideline 870.3050 or Organisation for Economic Co-operation and Development (OECD) 407 test guideline) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10171.

PMN Number P–03–633
Chemical name: Alkylamide derivative (generic).
CAS number: Not available.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a raw material for the manufacture of photosensitive materials. Based on test data on analogous substances, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Harmonized Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Harmonized Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnia testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. Further, a certificate of analysis should be provided for the test substance.
CFR citation: 40 CFR 721.10172.

PMN Number P–03–793
Chemical name: Silanamine,1,1,1-triethoxy-N,N-diethyl-.
CAS number: 35077–00–0.
Basis for action: The PMN states that the substance will be used as an external donor for olefin polymerization. Based on submitted test data, EPA has identified health concerns for corrosion. Also, based on test data on analogous alkoxysilanes and aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb of the PMN substance in surface waters. As described in the PMN, significant worker exposure is unlikely and releases to surface waters are not expected. Therefore, EPA has not determined that the proposed import, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture of the substance could result in exposures which may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(3)(i) and (b)(4)(ii).
Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Harmonized Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Harmonized Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal toxicity testing should be performed using the static method with measured concentrations. No human health testing is recommended at this time. Further, a certificate of analysis should be provided for the test substance.
CFR citation: 40 CFR 721.10173.

PMN Number P–04–139
Chemical name: 1-Propanaminium, 3-amino-N-(carboxymethyl)-N,N-dimethyl-, N-peanut-oil acyl derivs., inner salts.
CAS number: 691401–28–2.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an oil well additive. Based on test data on analogous substances, EPA identified concerns for irritation, possible corrosion, and developmental toxicity. For the use described in the PMN, worker inhalation exposure is not expected and worker dermal exposures will be minimal due to the use of adequate personal protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance without the use of impervious gloves where there is a potential for dermal exposure, or use of the substance other than as described in the PMN may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).
Recommended testing: EPA has determined that the results of a prenatal developmental toxicity test (OPPTS Harmonized Test Guideline 870.3700) would help characterize the human health effects of the PMN substance.
CFR citation: 40 CFR 721.10174.

PMN Number P–04–141
Chemical name: 1-Propanaminium, N-(3-aminopropyl)-2-hydroxy-N,N-dimethyl-3-sulfo-, N-(C12-18 and C18-unsatd. acyl) derivs., inner salts.
CAS number: 691400–36–9.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be used as an additive for various cleaners. Based on test data on analogous amphoteric surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 6 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 6 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).
Recommended testing: EPA has determined that the results of a porous pot test (OPPTS Harmonized Test Guideline 835.3220); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Harmonized Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. Further, a certificate of analysis should be provided for the test material.
CFR citation: 40 CFR 721.10175.

PMN Number P–04–144
Chemical name: Amides, peanut-oil, N-[3-(dimethylamino)propyl].
CAS number: 691400–76–7.
Basis for action: The PMN states that the generic (non-confidential) use of the substance will be used as a chemical intermediate. Based on test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed

1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in release to surface waters may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of the following tests would help characterize the environmental effects of the PMN substance: A fish acute toxicity test, freshwater and marine (OPPTS Harmonized Test Guideline 850.1075); a fish acute toxicity test mitigated by humic acid (OPPTS Harmonized Test Guideline 850.1085) with the chloride salt adjusted to a pH of 7; an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Harmonized Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400). All aquatic toxicity testing should be performed using the static method with measured concentrations. Further, a certificate of analysis should be provided for the test substance.

CFR citation: 40 CFR 721.10176.

PMN Number P–04–153

Chemical name: Phosphoric acid, yttrium(3+) salt (1:1).

CAS number: 13990–54–0.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a phosphor. Based on test data on analogous inorganic phosphates and soluble yttrium compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 6 ppb. Therefore, EPA has not determined that the proposed import, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture or any use of the substance resulting in surface water concentrations exceeding 6 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Harmonized Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Harmonized Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. All aquatic toxicity testing should be performed using the static method with measured concentrations of yttrium. Further, a certificate of analysis should be provided for the test substance.

CFR citation: 40 CFR 721.10177.

PMN Number P–04–319

Chemical name: Distillates (Fischer-Tropsch), hydroisomerized middle, C10-13-branched alkane fraction.

CAS number: 642928–30–1.

Basis for action: The PMN states that the substance will be used as industrial/commercial paint and ink formulations; indoor industrial heating oil; and solvent blend for industrial cleaning. Based on test data on structurally similar chemicals with a carbon chain range of C5 to C21, EPA has identified health concerns for liver toxicity, kidney toxicity, developmental toxicity, mutagenicity, cancer, neurotoxicity, skin sensitization, hydrocarbon pneumonia, and irritation to mucous membranes. Also, based on test data on analogous neutral organic compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, worker dermal and inhalation exposure will be minimal due to the use of adequate personal protective equipment, and releases to water are not expected. Therefore, EPA has not determined that the proposed import, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance without the use of impervious gloves where there is the potential for dermal exposure, use of the substance without the use of a NIOSH-approved respirator with an APF of at least 100 where there is potential for inhalation exposure, domestic manufacturing, or any use of the substance resulting in release to surface waters, may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of the following tests would help characterize the human health and environmental effects of the PMN substance: A prenatal developmental toxicity test (OPPTS Harmonized Test Guideline 870.3700), using one species via the oral route; a fish early-life stage toxicity test (OPPTS Harmonized Test Guideline 850.1400) with fathead minnows, a daphnid chronic toxicity test (OPPTS Harmonized Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400). Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Dilution water total organic carbon (TOC) concentration should be less than 2.0 mg TOC per liter. Algal testing should be performed using the static method with measured concentrations. Further, a certificate of analysis should be provided for the test substance.

CFR citation: 40 CFR 721.10178.

PMN Numbers P–04–346 and P–04–347

Chemical name: Copolymers of phenol and aromatic hydocarbon (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: November 15, 2004.

Basis for TSCA section 5(e) consent order: The consolidated PMN states that the generic (non-confidential) use of the substances will be as binder components. The order was issued under sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) of TSCA, based on a finding that these substances may present an unreasonable risk of injury to the environment. To protect against this risk, the consent order requires the company to not manufacture or import the PMN substances unless the average molecular weight is greater than 500 daltons. To ensure compliance, the consent order also requires that the substances be analyzed both at the time of initial commencement and annually thereafter. The SNUR designates as a "significant new use" the absence of these protective measures.

Toxicity concern: Based on test data on analogous phenols, EPA predicts toxicity to aquatic organisms varies with the average number molecular weight of the PMN substances. As the average number molecular weight decreases, the aquatic toxicity of the substances increases. When the average molecular weight is 366 daltons, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters. The PMN substances with a molecular weight greater than 500 daltons are of lower concern for toxicity because the expected water solubility is estimated to be less than 1 ppb.

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Harmonized Test Guideline 850.1400), a daphnid chronic toxicity test (OPPTS Harmonized Test Guideline 850.1300);

and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400) would help characterize possible environmental effects of the PMN substances. Fish and daphnid testing should be performed using the flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. EPA should be consulted to determine what form of the chemical substances should be tested. The order does not require submission of the testing at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, use and disposal of the chemical substances will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10179.

PMN Number P–04–692

Chemical name: Trifunctional acrylic ester (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: December 6, 2004.

Basis for TSCA section 5(e) consent order: The PMN states that the substance will be used in lacquer/dry film manufacture. The order was issued under sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to the environment. To protect against this risk, the consent order requires the company to not manufacture or import the PMN substance unless the mean number of moles of the ethoxy group is greater than or equal to 8. To ensure compliance, the consent order also requires that the substance be analyzed both at the time of initial commencement and annually thereafter. The SNUR designates as a "significant new use" the absence of these protective measures.

Toxicity concern: Based on test data on analogous esters, EPA predicts toxicity to aquatic organisms varies with the average number of moles of the ethoxy group. As the number of moles of ethoxy group decreases, the aquatic toxicity of the substance increases. For the PMN substance with an average of 3 moles of ethoxy, EPA predicts toxicity to aquatic organisms at concentrations that exceed 40 ppb of the PMN substance in surface waters.

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Harmonized Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Harmonized Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. Fish and daphnid testing should be performed using flow-through method with measured concentrations. Algal testing should be performed using the static method with measured concentrations. EPA should be consulted to determine what form of the chemical substance should be tested. The order does not require submission of the testing at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, use and disposal of the chemical substance will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10180.

PMN Number P–07–453

Chemical name: Halide salt of an alkylamine (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a solder adjuvant, an open, non-dispersive use. Based on test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms at concentrations that exceed 20 ppb of the PMN substance in surface waters. For the use described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 20 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN could result in release to surface waters which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Harmonized Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Harmonized Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Harmonized Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance. All aquatic toxicity testing should be performed using the static method with nominal concentrations. Further, a certificate of analysis should be provided for the test substance.

CFR citation: 40 CFR 721.10181.

PMN Number P–07–601

Chemical name: 1-Propene, 2,3,3,3-tetrafluoro-.

CAS number: 754–12–1.

Basis for action: The PMN states that the substance will be used as a motor vehicle air conditioning (MVAC) refrigerant in new passenger cars and vehicles (i.e., as defined in 40 CFR 82.32 (c) and (d)). Initial charging of MVAC units with the PMN substance will be done by the motor vehicle original equipment manufacturer. All servicing, maintenance, and disposal involving the PMN substance will be done only by Clean Air Act (CAA) section 609 certified technicians using CAA section 609 certified refrigerant handling equipment. Based on test data on the PMN substance, EPA identified health concerns for developmental toxicity and lethality to workers and consumers if they were exposed to a significant amount of the PMN substance via inhalation. The PMN substance has an ozone depletion potential of zero, and based on test data, has a low global warming potential (GWP_{100} of about 4). For the use scenario described in the PMN, significant industrial or commercial worker exposure is unlikely due to the use of CAA section 609 certified refrigerant handling equipment and other protective measures. Potential consumer (vehicle passenger) exposure from refrigerant leaks into the passenger compartment of a vehicle is not expected to present significant risk of serious health effects. Flammability concerns with the PMN substance are being addressed through regulatory actions by EPA's Office of Air and Radiation (see the following paragraph). Further, "do-it-yourself" consumer exposures are not expected because the PMN substance only will be sold or distributed in 20-pound containers or larger. Therefore, EPA has not determined that the manufacturing, processing, or use of the substance as described in the PMN may present an unreasonable risk. EPA has determined, however, that (1) use of the substance other than as a MVAC refrigerant in new passenger cars and vehicles as defined in 40 CFR 82.32 (c) and (d), (2) initial charging of MVAC units with the PMN substance by any person other than CAA section 609 certified technicians without using CAA section 609 certified refrigerant handling equipment, (3) servicing, maintenance, and disposal involving the PMN substance by persons other than CAA section 609 certified technicians without using CAA section 609 certified refrigerant

handling equipment, or (4) sale or distribution of the PMN substance in containers smaller than 20-pounds (net weight) may cause serious health effects in accordance with 40 CFR 721.170(b)(3)(i).

This SNUR is intended to complement recently proposed and forthcoming regulations on the PMN substance under the CAA in that this SNUR addresses health risk issues of the subject refrigerant. On October 19, 2009, EPA published a proposed rule on the PMN substance entitled "Protection of Stratospheric Ozone: New Substitute in the Motor Vehicle Air Conditioning Sector under the Significant New Alternatives Policy (SNAP) Program" (74 FR 53445) (FRL–8969–7). The SNAP Program, mandated under section 612 of the CAA, requires EPA to develop a program for evaluating alternatives to ozone-depleting substances and to create lists of substitutes for specific uses that do not present greater overall risk to human health and the environment than other alternatives that are available. In the October 19, 2009, action, EPA proposed to find HFO-1234yf acceptable, subject to certain use conditions, as a substitute for CFC-12 in new motor vehicle air conditioning systems (passenger cars and trucks). The proposed use conditions include incorporation of engineering strategies and/or devices to mitigate flammability risks for this substance (see Unit V. of the proposed rule). Use of most flammable refrigerants, including the PMN substance, in existing MVAC systems as a retrofit has previously been determined by EPA to be unacceptable. The proposed rule would require a petition and a new SNAP submission specifically for the use of the PMN substance in existing MVAC equipment as a retrofit before EPA would consider allowing such use (see Unit VI. of the proposed rule). EPA also intends to promulgate a follow-on rulemaking under section 609 of the CAA to address service equipment, technician certification, and end-of-life disposal specifications.

Recommended testing: EPA has determined that the results of an acute inhalation toxicity study (OPPTS Harmonized Test Guideline 870.1300 or OECD 403 test guideline) with rabbits would help characterize the human health effects of the PMN substance. Exposure concentrations of 10,000, 50,000, and 100,000 parts per million (ppm) should be used. Further, rabbits should be exposed for 1 hour, and pregnant rabbits should be exposed on Gravid Day 12.

CFR citation: 40 CFR 721.10182.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for 3 of the 15 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160.

In the other 12 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

- EPA will receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.
- EPA will ensure that all manufacturers, importers, and processors of the same chemical substance that is subject to a TSCA section 5(e) consent order are subject to similar requirements.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the Internet at *http://www.epa.gov/opptintr/newchems/pubs/invntory.htm*.

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is April 2, 2010 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before March 3, 2010.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before March 3, 2010, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30–day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. TSCA section 5(e) consent orders have been issued for 3 chemical substances and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA concludes that the uses are not ongoing. However, EPA recognizes that prior to the effective date of the rule, when chemical substances identified in this SNUR are added to the TSCA Inventory, other persons may engage in a significant new use as defined in this rule before the effective date of the rule. However, 6 of the 15 chemical substances contained in this rule have

CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions (per §§ 720.25 and 721.11), the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

As discussed in the **Federal Register** of April 24, 1990, EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of this direct final rule rather than as of the effective date of the rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became effective, and then argue that the use was ongoing before the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires (see Unit III.).

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person meets the conditions of advance compliance under § 721.45(h), the person is considered exempt from the requirements of the SNUR.

VIII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data before submission of a SNUN, except where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)). Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. lists those tests. Unit IV. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Many OPPTS Harmonized Test Guidelines are now available on the Internet. Please go to *http://www.epa.gov/oppts* and select "Test Methods and Guidelines" on the left-side navigation menu. The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org*. The American Society for Testing and Materials (ASTM) test guidelines are available at *http://www.astm.org/standard/index.shtml*.

In the TSCA section 5(e) consent orders for several of the chemical substances regulated under this rule, EPA has established production volume limits in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These limits cannot be exceeded unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by these chemical substances. Under recent TSCA section 5(e) consent orders, each PMN submitter is required to submit each study at least 14 weeks (earlier TSCA section 5(e) consent orders required submissions at least 12 weeks) before reaching the specified production limit. Listings of the tests specified in the TSCA section 5(e) consent orders are included in Unit IV. The SNURs contain the same production volume limits as the TSCA section 5(e) consent orders. Exceeding these production limits is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a SNUN at least 90 days in advance of commencement of non-exempt commercial manufacture, import, or processing.

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior PMN or SNUN submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.
- Potential benefits of the chemical substances.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This rule cross-references § 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the chemical substance subject to a SNUR is CBI. This procedure is cross-referenced in each SNUR that includes specific significant new uses that are CBI.

Under these procedures a manufacturer, importer, or processor may request EPA to determine whether a proposed use would be a significant new use under the rule. The manufacturer, importer, or processor must show that it has a *bona fide* intent to manufacture, import, or process the chemical substance and must identify the specific use for which it intends to manufacture, import, or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture, import, or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since many of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers, importers, and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, i.e., the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture, import, or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns,

EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

As stated in Unit II.C., according to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be mailed to the Environmental Protection Agency, OPPT Document Control Office (7407M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Information must be submitted in the form and manner set forth in EPA Form No. 7710–25. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 (see §§ 721.25 and 720.40). Forms and information are also available electronically at *http://www.epa.gov/opptintr/newchems/pubs/pmnforms.htm*.

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This rule establishes SNURs for several new chemical substances that were the subject of PMNs or TSCA section 5(e) consent orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of these SNURs will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is discussed in this unit. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,000 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted from 2006–2008, only one appears to be from a small entity. In addition, the estimated reporting cost for submission of a SNUN (see Unit XI.) is minimal regardless of the size of the firm. Therefore, EPA believes that the potential economic impacts of complying with these SNURs are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this rule. As such, EPA has determined that this rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This rule does not have Tribal implications because it is not expected

to have substantial direct effects on Indian Tribes. This does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This action is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use and because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

XIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, 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 rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 13, 2010.

Wendy C. Hamnett,

Acting Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by adding the following sections in numerical order under the undesignated center heading "Significant New Uses of Chemical Substances" to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
Significant New Uses of Chemical Substances	
* * * * *	
721.10169	2070–0012
721.10170	2070–0012
721.10171	2070–0012
721.10172	2070–0012
721.10173	2070–0012
721.10174	2070–0012
721.10175	2070–0012
721.10176	2070–0012
721.10177	2070–0012
721.10178	2070–0012
721.10179	2070–0012
721.10180	2070–0012
721.10181	2070–0012
721.10182	2070–0012
* * * * *	

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add § 721.10169 to subpart E to read as follows:

§ 721. 10169 Cyclopentane, methoxy-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cyclopentane, methoxy- (PMN P–03–141; CAS No. 5614–37–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 5. Add § 721.10170 to subpart E to read as follows:

§ 721.10170 Polyoxyethylene polyalkylarylphenylether sulfate ammonium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyoxyethylene polyalkylarylphenylether sulfate ammonium salt (PMN P–03–197) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 6. Add § 721.10171 to subpart E to read as follows:

§ 721.10171 1H-benz(e)indolium, 1,1,2,3-tetramethyl-, 4-methylbenzenesulfonic acid (1:1).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 1H-benz(e)indolium, 1,1,2,3-tetramethyl-, 4-methylbenzenesulfonic acid (1:1) (PMN P–03–285; CAS No. 141914–99–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(4), (a)(5), (b) (concentration set at 1 percent), and (c). Respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 10. The following NIOSH-approved respirators with an APF of 10–25 meet the minimum requirements for § 721.63(a)(4): Air-purifying, tight-fitting respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters (either half- or full-face); powered air-purifying respirator equipped with a loose-fitting hood or helmet and High Efficiency Particulate Air (HEPA) filters; powered air-purifying respirator equipped with a tight-fitting facepiece (either half- or full-face) and HEPA filters; supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (either half- or full-face).

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(s) (11,000 kilograms).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 7. Add § 721.10172 to subpart E to read as follows:

§ 721.10172 Alkylamide derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as alkylamide derivative (PMN P–03–633) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N =1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 8. Add § 721.10173 to subpart E to read as follows:

§ 721.10173 Silanamine,1,1,1-triethoxy-N,N-diethyl-.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as silanamine,1,1,1-triethoxy-N,N-diethyl- (PMN P–03–793; CAS No. 35077–00–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 9. Add § 721.10174 to subpart E to read as follows:

§ 721.10174 1-Propanaminium, 3-amino-N-(carboxymethyl)-N,N-dimethyl-, N-peanut-oil acyl derivs., inner salts.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 1-Propanaminium, 3-amino-N-(carboxymethyl)-N,N-dimethyl-, N-peanut-oil acyl derivs., inner salts (PMN P–04–139; CAS No. 691401–28–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (b) (concentration set at 1 percent), and (c).

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 10. Add § 721.10175 to subpart E to read as follows:

§ 721.10175 1-Propanaminium, N-(3-aminopropyl)-2-hydroxy-N,N-dimethyl-3-sulfo-, N-(C12-18 and C18-unsatd. acyl) derivs., inner salts.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as 1-Propanaminium, N-(3-aminopropyl)-2-hydroxy-N,N-dimethyl-3-sulfo-, N-(C12-18 and C18-unsatd. acyl) derivs., inner salts (PMN P–04–141; CAS No. 691400–36–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) (N=6).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 11. Add § 721.10176 to subpart E to read as follows:

§ 721.10176 Amides, peanut-oil, N-[3-(dimethylamino)propyl].

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as amides, peanut-oil, N-[3-(dimethylamino)propyl] (PMN P–04–144; CAS No. 691400–76–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 12. Add § 721.10177 to subpart E to read as follows:

§ 721.10177 Phosphoric acid, yttrium(3+) salt (1:1).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as phosphoric acid, yttrium(3+) salt (1:1) (PMN P–04–153; CAS No. 13990–54–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(ii) *Release to water*. Requirements as specified in § 721.90 (b)(4) and (c)(4) (N=6).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 13. Add § 721.10178 to subpart E to read as follows:

§ 721.10178 Distillates (Fischer-Tropsch), hydroisomerized middle, C10-13-branched alkane fraction.

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified as distillates (Fischer-Tropsch), hydroisomerized middle, C10-13-branched alkane fraction (PMN P–04–319; CAS No. 642928–30–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(3), (a)(4), (a)(5), (b) (concentration set at 0.1 percent), and (c). Respirators must provide a National Institute for Occupational Safety and Health (NIOSH) assigned protection factor (APF) of at least 100. The following NIOSH-approved respirator meets the minimum requirements for § 721.63(a)(4): Supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a tight-fitting full facepiece.

(ii) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f).

(iii) *Release to water*. Requirements as specified in § 721.90 (b)(1) and (c)(1).

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 14. Add § 721.10179 to subpart E to read as follows:

§ 721.10179 Copolymers of phenol and aromatic hydocarbon (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substances identified generically as copolymers of phenol and aromatic hydocarbon (PMNs P–04–346 and P–04–347) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(k) (no manufacture or import of the PMN substances unless the average molecular weight is greater than 500 daltons). Representative samples of the PMN substances must be analyzed and determined to comply with these requirements both at the time of initial commencement and annually thereafter.

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 15. Add § 721.10180 to subpart E to read as follows:

§ 721.10180 Trifunctional acrylic ester (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as trifunctional acrylic ester (PMN P–04–692) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirement as specified in § 721.80(k) (no manufacture or import of the PMN substance unless the mean number of moles of the ethoxy group is greater than or equal to 8). Representative samples of the PMN substance must be analyzed and determined to comply with these requirements both at the time of initial commencement and annually thereafter.

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The provisions of § 721.185 apply to this section.

■ 16. Add § 721.10181 to subpart E to read as follows:

§ 721.10181 Halide salt of an alkylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting*. (1) The chemical substance identified generically as halide salt of an alkylamine (PMN P–07–453) is subject

to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 17. Add § 721.10182 to subpart E to read as follows:

§ 721.10182 1-Propene, 2,3,3,3-tetrafluoro-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1-propene, 2,3,3,3-tetrafluoro- (PMN P–07–601; CAS No. 754–12–1; also known as HFO–1234yf) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (use as a motor vehicle air conditioning (MVAC) refrigerant in new passenger cars and vehicles as defined in 40 CFR 82.32 (c) and (d). The initial charging of MVAC units with the PMN substance will be done by the motor vehicle original equipment manufacturer. All servicing, maintenance, and disposal involving the PMN substance will be done only by Clean Air Act (CAA) section 609 certified technicians using CAA section 609 certified refrigerant handling equipment. The PMN substance only will be sold or distributed in 20–pound (net weight) containers or larger).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2010–1936 Filed 1–29–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA–2009–0127]

RIN 2126–AA98

Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver), in interstate commerce for direct compensation comply with the safety regulations regardless of the distance traveled. Specifically, this rule makes certain FMCSRs applicable to the operation of such vehicles when they are operated within a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. Motor carriers, drivers, and the vehicles operated by them will be subject to the same safety requirements imposed upon such vehicles when they are operated beyond a 75-air-mile radius. This action is required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

DATES: *Effective:* This rule is effective May 3, 2010. *Compliance:* Motor carriers must be in compliance with this rule no later than June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Bitner, Chief, Commercial Passenger Carrier Safety Division, Office of Enforcement and Compliance; (202) 385–2428; *loretta.bitner@dot.gov*.

Docket: For access to the docket to read background documents including those referenced in this document go to *http://www.regulations.gov* at any time or visit the U.S. Department of Transportation Dockets located on the ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Section 4136 of SAFETEA–LU [Pub. L. 109–59, 119 Stat. 1144, 1745, August 10, 2005] (set out as a note to 49 U.S.C. 31136) states that "[t]he Federal motor carrier safety regulations that apply to interstate operations of commercial motor vehicles designed to transport between 9 and 15 passengers (including the driver) shall apply to all interstate operations of such carriers regardless of the distance traveled."

The FMCSA notes that the legislative history of this provision of SAFETEA–LU is sparse and, in some respects, inconsistent with the mandate of section 4136. The Senate bill (S. 1567, 109th Cong. 1st Sess. (July 29, 2005)) that contained the provisions relating to motor carrier safety that became part of SAFETEA–LU included the following provisions, in section 106(2): "The Secretary of Transportation shall * * * ensure that Federal motor carrier safety regulations that apply to interstate operations of commercial motor vehicles designed to transport between 9 and 15 passengers (including the driver) apply to all interstate operations of such carries [sic] regardless of the distance traveled."

The committee report accompanying this bill said that this provision "would ensure that the Secretary enforces Federal motor carrier safety regulations that apply to interstate CMVs designed to transport between 9 and 15 passengers, regardless of the distance traveled." Sen. Report No. 109–120 (109th Cong. 1st Sess., July 29, 2005), at 20.

In the House of Representatives, similar language was found in section 4130 of an early version H.R. 3 (109th Cong, 1st Sess., 2005), which stated "[t]he Federal motor carrier safety regulations (other than regulations relating to commercial drivers license and drug and alcohol testing requirements) shall apply to all interstate operations of commercial motor vehicles used to transport between 9 and 15 passengers (including the driver), regardless of the distance traveled." House Report 109–12 (109th Cong., 1st Sess., March 7, 2005), at 306.

The House committee report described the purpose of this provision as follows:

- "This section directs the Secretary to extend the Federal motor carrier safety regulations found in 49 Code of Federal Regulations, Parts 387, 390 through 399 to all operations of commercial motor vehicles designed to transport between nine and

fifteen passengers (including the driver), regardless of their operational distance. This section amends the final rule issued by DOT on August 12, 2003.

• The Committee intends the Secretary to address this situation through the rulemaking process. As part of the rulemaking, the Secretary shall amend the final rule addressing commercial motor vehicles transporting nine to fifteen passengers to specifically exclude vanpool operations as defined by section 132(f) of the Internal Revenue Code. The rulemaking also exempts stretch sedan limousines that are designed to seat nine to fifteen passengers. The rulemaking does not exempt SUV stretch limousines, or super stretch sedan limousines that are designed to seat sixteen or more passengers (including the driver)."

House Report 109–12, at 441.

The House and Senate conferees included in section 4136 of SAFETEA–LU (as quoted above) a provision very similar to both the Senate and House bills. But it reconciled the obviously different underlying intentions of the two bodies with the following: "The conference adopts the identical House and Senate language applying the Federal Motor Carrier Safety Regulations to interstate van operations. Further, the conference agrees to exempt vanpool operations."

House Conference Report No. 109–203 (109th Cong., 1st Sess., 2005) at 1003. It appears from this history that the central, albeit narrow, purpose of the statutory language ultimately adopted (which varied little from the similar House and Senate proposals) was to apply, *regardless of the distance traveled,* all FMCSRs applicable to operations of vehicles designed to transport between 9 and 15 passengers (including the driver). Other than the change relating to the distance traveled, other criteria determining the applicability of the FMCSRs to such vehicles are unaffected by section 4136. The effect of this central purpose on FMCSA's current regulations, and the changes necessary to put it into effect, are discussed in more detail below.

However, it also appears the House committee's desire to exempt "vanpool operations as defined in section 132(f) of the Internal Revenue Code" and "stretch sedan limousines" from the rule required by section 4136 was not accepted by the conference between the two chambers, and was not included in the final statutory language.[1] Moreover, it is not clear if the reference in the Conference Report to "vanpool operations" was intended to refer to the same type of operations described in the House report, and again the statutory language of section 4136 does not include any exception or exemption for "vanpool operations."

It is important to note that the Agency, like the courts, does not have the authority to implement any of the exemptions contemplated by the Conference Report or other legislative history. "[I]n the absence of a clearly expressed legislative intention to the contrary, the language of the statute itself must ordinarily be regarded as conclusive. * * * Unless exceptional circumstances dictate otherwise, [w]hen we find the terms of a statute unambiguous, judicial inquiry is complete." *Burlington Northern R. Co.* v. *Oklahoma Tax Comm.,* 481 U.S. 454, 461 (1984) (internal quotations and citations omitted). In this case, the unambiguous language of section 4136 is conclusive, and there is no evidence of exceptional circumstances that would support a different view as to the reach of the statute.

Background

On August 12, 2003 (68 FR 47860), FMCSA published a final rule making the FMCSRs applicable to all motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce for direct compensation when the vehicle is operated beyond a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. These requirements were based on the Agency's: (1) understanding of the requirements of section 212 of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106–159, 113 Stat. 1764, December 9, 1999]; (2) analysis of comments submitted in response to previous rulemaking actions concerning the passenger vehicle component of the CMV definition at 49 U.S.C. 31132(1). (See section 4008(a)(2) of the Transportation Equity Act for the 21st Century [Pub. L. 105–178, 112 Stat. 107, June 9, 1998]); and (3) analysis of crash data concerning large vans. The Agency indicated that it believed this approach would be more effective than other alternatives for responding to congressional and public safety concerns about what is commonly referred to as long-haul van operations for direct compensation throughout the United States, including for-hire vans operated by foreign-based motor carriers into and out of the United States for direct compensation. The 2003 final rule recounted and reviewed the several legislative changes and regulatory actions that preceded that final rule.

All of the requirements adopted in that final rule applicable to the operations of these smaller passenger-carrying vehicles for direct compensation beyond a 75-air-mile radius are now made applicable by this final rule, regardless of the distance traveled. This final rule does not make any other changes in the applicability of the FMCSRs to small-passenger-carrying vehicles. This means, for example, that operators of such vehicles for indirect compensation are not subject to the safety-related operational regulations in 49 CFR parts 390–399, and are only subject to the provisions specifically included in amended 49 CFR 390.3(f)(6).

Similarly, this final rule would not apply to commuter vanpools which FMCSA has previously indicated it did not believe Congress intended for the Agency to regulate. Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle, 64 FR 48510, 48514 (Sept. 3, 1999) (IFR). The Agency stated in that IFR that the use of the phrase "for compensation" in the definition of "commercial motor vehicle" in 49 U.S.C. 31132(1)(B) meant that Congress intended for regulation to "be limited to vans operated in the furtherance of a commercial enterprise, which is generally not the case for commuter vanpools * * * [T]he agency does not intend to regulate commuter vanpools that are not operated in the furtherance of a commercial enterprise." During its subsequent consideration of regulations for small passenger-carrying vehicles, the Agency did not indicate any change in this view of the scope of its regulatory authority. Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle (CMV); Requirements for Operators of Small Passenger-Carrying CMVs, 66 FR 2756, 2761, 2763 (Jan. 11, 2001) (final rule); Safety Requirements for Operators of Small Passenger-Carrying Vehicles Used in Interstate Commerce, 66 FR 2767, 2769 (Jan. 11, 2001) (notice of proposed rulemaking); and 68 FR 47860 (Aug. 12, 2003) (final rule). Therefore, the FMCSRs were and are still not applicable to "commuter vanpools," and enactment of section 4136 of SAFETEA–LU did not change this regulatory status.

On the other hand, the statute does have the effect of now applying all of the operational FMCSRs to vanpools operated in furtherance of a commercial enterprise within the 75 air-mile limit adopted in 2003. Such operations would have been excluded from the application of the FMCSRs only because of the distance traveled, and section 4136 has set aside that limitation.

[1] It is also not clear that the statutory language that passed the House, which says nothing about any exceptions or exemptions, would have been sufficient to require the implementation of the two desired exemptions.

Finally, FMCSA also must point out that, as explained in the 1999 interim final rule, the operation of a van by an individual who receives money from other participants in the vanpool is not considered to be an operation in furtherance of a commercial enterprise. The Agency "does not believe that this type of arrangement should be considered 'for compensation' and does not intend to regulate such operations." 64 FR 48514.

In summary, certain types of vanpool operations currently are not subject to the FMCSRs for reasons other than the distance traveled. Notwithstanding the absence of explicit statutory language in section 4136 concerning the apparent intention of the conference committee to exempt "vanpool operations," FMCSA believes that many types of vanpool operations have not been subject to the FMCSRs, and that the operative language of section 4136 does not change that situation.

Effect of the Final Rule

The FMCSA amends the FMCSRs to require that motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce for direct compensation comply with the regulations contained in 49 CFR parts 390, 391, 392, 393, 395 and 396, regardless of the distance traveled.

These motor carriers must comply with the general requirements under part 390, including but not limited to vehicle marking requirements. Motor carriers must ensure that every self-propelled CMV they operate is marked as specified in paragraphs (b), (c), and (d) under 49 CFR 390.21, including among other things, the requirement to mark the vehicle with the USDOT Number and the legal name or a single trade name of the motor carrier operating the vehicle. The final rule eliminates the exception under § 390.3(f)(6)(ii) which permitted small passenger-carrying vehicles operated within a 75 air-mile radius of the normal work reporting location to be marked only with the USDOT Number and to exclude the legal or trade name.

These motor carriers are required to ensure that each of their drivers meets all of the minimum qualifications for interstate CMV drivers prescribed in part 391, including physical qualifications and maintaining records to document compliance.

The rules in part 392 regarding driving of CMVs also are applicable. Part 392 requirements include general prohibitions against the use of alcohol, drugs and other substances while operating a CMV or operating a CMV while ill or fatigued. The motor carrier must ensure that its drivers comply with rules governing operation of CMVs at railroad grade crossings, practices to ensure a CMV is safely stopped, fueling precautions, and other general prohibited practices such as transporting unauthorized persons, towing or pushing loaded buses.

Motor carriers must meet all applicable requirements in part 393 concerning parts and accessories necessary for safe operation of a CMV. Applicable requirements include, among other things, lamps, reflective devices, and electrical wiring; brakes; glazing and window construction; fuel systems; and emergency equipment.

Under part 395, motor carriers must ensure that their drivers comply with the applicable hours-of-service requirements for motor carriers of passengers. Most, if not all, operators of small-passenger carrying vehicles within the 75 air-mile limit and their drivers will be covered by the short-haul operations provisions of 49 CFR § 395.1(e)(1). If the driver operates within a 100 air-mile radius of the normal work-reporting location and the driver returns to that location and is released from work within 12 consecutive hours after starting work, then the driver must not drive more than 10 hours after 8 hours off duty and must have at least 8 consecutive hours off duty separating each 12 hours on duty. Drivers covered by these short-haul provisions are not required to maintain a record-of-duty status (log book). However, the employer must maintain for 6 months records of each driver's time of both reporting for and being released from duty, and the number of hours on duty each day.

In accordance with 49 CFR 395.5, any drivers who operate beyond a 100 air-mile radius from the normal work-reporting location must not drive more than 10 hours after 8 consecutive hours off duty or operate CMVs after being on duty more than 15 hours, following 8 consecutive hours off duty. Furthermore, drivers must not drive after being on duty 60 hours in any 7 consecutive days if the motor carrier does not operate CMVs every day of the week (60-hour rule), or after being on duty 70 hours in any eight consecutive days if the motor carrier operates CMVs every day of the week (70-hour rule). In addition, 49 CFR 395.8 requires these drivers to document the number of hours on duty and the number of hours driving and record his/her duty status.

Although these hours-of-service requirements will now be applicable to operators within the 75 air-mile limit, FMCSA does not believe that they will impose any additional cost burdens, for purposes of assessing either the costs of this final rule or the burden of information collection. These operators are most likely not currently allowing drivers to drive more than 10 hours or to be on duty more than 12 or 15 hours. The information collection requirements are usually and customarily met by maintenance of payroll records by the operators in the ordinary course of business for drivers covered by the short-haul operations provisions.

In addition to the requirements described in the preceding paragraphs, each motor carrier is required under part 396 to have a systematic inspection, repair, and maintenance program for the CMVs it operates, and to ensure that vehicles are in safe and proper operating condition at all times. They are also required to maintain records to document compliance with these rules. Motor carriers are required to ensure that each vehicle is inspected at least once every 12 months by a qualified inspector/mechanic and that any motor carrier employee who is responsible for the adequacy of any brake-related inspection, repair, or maintenance work meets certain minimum qualifications. They must also maintain records to document compliance with these rules.

The FMCSA is *not* making the commercial driver's license and controlled substances and alcohol testing requirements applicable to operators of small passenger-carrying CMVs, because section 4136 does not change the existing non-application of those requirements that results from the statutory definition of CMV in 49 U.S.C. 31301(4) used for those programs. Consequently, the passenger-carrying threshold for CDL and controlled substances and alcohol testing requirements remains at 16 passengers (including the driver).

New Entrant Program

The 2003 final rule required all motor carriers that operate CMVs designed or used to transport between 9 and 15 passengers for direct compensation to complete a motor carrier identification report (Form MCS–150), and to obtain a USDOT Number. This included carriers operating within the 75 air-mile exclusion. 49 CFR 390.3(f)(6). All such carriers that have fulfilled the requirements of the 2003 final rule would already be included in FMCSA's census of motor carriers and would have been considered new entrants and subject to a limited new entrant review to ensure their compliance with the very limited requirements of the rule (i.e., maintaining an accident register and marking of their CMVs).

Any carriers that have already registered will be subject to safety requirements such as driver qualifications and hours of service and be required to have appropriate safety management controls in place to ensure compliance with the FMCSRs. However, any carriers not previously registered will be considered new entrant motor carriers. Those carriers will be covered by the revised New Entrant Safety Assurance Process recently adopted by the Agency. 73 FR 76472 (Dec. 16, 2008).

Applicability of Safety Fitness Procedures to Operators of Small Passenger-Carrying CMVs

Part 385 of the FMCSRs establishes procedures to determine the safety fitness of motor carriers, to assign safety ratings, to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "Unsatisfactory" from operating a CMV. As a result of this final rule, motor carriers operating small passenger-carrying CMVs within a 75 air-mile radius of the driver's normal work-reporting location are now covered by the same safety fitness procedures and standards used to evaluate other interstate motor carriers. This means that motor carriers affected by this rulemaking are subject to compliance reviews and will receive safety ratings. Those that receive an "Unsatisfactory" safety rating will be prohibited from operating CMVs to transport passengers in interstate commerce. In addition, these motor carriers will be ineligible to contract or subcontract with any Federal agency for transportation of passengers in interstate commerce.

Implementation Schedule

The FMCSA is requiring that subject motor carriers comply with the safety requirements 30 days after the effective date of the final rule. This means that motor carriers have approximately 120 days after the date of publication of this rule to comply with the safety regulations. The Agency believes this is sufficient time for the motor carriers that will be affected to establish and implement safety management controls to achieve compliance with the FMCSRs.

Estimated Costs and Benefits of Imposing Safety-Related Requirements

The FMCSA has attempted to evaluate the potential costs of the final rule. The Agency has considered currently available data concerning the number of affected motor carriers, CMVs, and drivers.

The FMCSA estimates that approximately 12,200 motor carriers currently have active authority to operate 9- to 15-passenger vehicles for direct compensation. These 12,200 motor carriers operate approximately 43,200 small passenger vehicles and employ roughly 57,900 drivers, all of which could potentially be affected by this rule. The cost to complete medical examinations and certifications for drivers, create and maintain driver qualification files, and inspect, repair and maintain affected vehicles is estimated at $29 million for the first year and $22 million for each additional year the rule is in effect. A regulatory evaluation has been prepared and is available in the docket for this rulemaking.

The FMCSA estimates there are 558 fatal crashes each year involving large vans with between 9 and 15 passengers aboard at the time of the crash (at a cost of $6.315 million per crash). The Agency estimates there are 2,234 injury crashes each year involving 9- to 15-passenger vehicles (at a cost of $0.336 million per crash). Therefore, the annual reduction in crashes necessary for the benefits of the proposal to outweigh the costs is only two-thirds of one percent (0.67%) of all such crashes for the first year and one-half of one percent (0.51%) for each additional year thereafter. The Agency believes the increased focus on passenger carrier operations brought about by this rulemaking will help to accomplish an improvement in safety.

Rulemaking Analyses and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an Agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest.

In this case, notice and comment are unnecessary. The final rule amends FMCSA's regulations to make them consistent with section 4136 of SAFETEA–LU, a provision which makes the FMCSRs applicable to the operation of 9- to 15-passenger vehicles when such vehicles are operated for direct compensation, in interstate commerce, regardless of the distance traveled.

Because the statutory language does not provide FMCSA any discretion in adopting the necessary changes to its regulations, FMCSA finds good cause under 5 U.S.C. 553(b) that prior notice and comment on this final rule is unnecessary.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this rulemaking action is a not a significant regulatory action within the meaning of Executive Order 12866 and is not significant within the meaning of Department of Transportation regulatory policies and procedures because there has not been substantial public interest concerning the extension of the applicability of the FMCSRs to a larger population of for-hire motor carriers of passengers.

This final rule requires that for hire operators of vehicles designed or used to carry between 9 and 15 passengers (including the driver) in interstate commerce comply with applicable provisions of 49 CFR parts 325 and 350–399 when the commercial vehicle is operated within a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. These regulations include, but are not limited to, 49 CFR part 391, Qualifications of drivers; 49 CFR part 392, Driving of commercial motor vehicles; 49 CFR part 393, Parts and accessories necessary for safe operation; 49 CFR part 395, Hours of service of drivers; and 49 CFR part 396, Inspection, repair, and maintenance.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations and proposed regulations on the basis that the benefits justify the costs. Based upon the information above, the agency anticipates that the economic impact associated with this rulemaking action will be $29 million for the first year, and $22 million for each subsequent year. The benefits of reducing fatal and injury crashes by 0.51% annually (0.67% in the first year) would outweigh the estimated costs of the rule.

For purposes of Executive Order 12866, this rulemaking does *not* impose an economic burden greater than $100 million on these motor carriers. Therefore, a full regulatory evaluation is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has considered the effects of this regulatory action on small entities and determined that this final rule would not affect a substantial number of small entities, but would have a significant impact on those affected.

The FMCSA is requiring that all motor carriers operating CMVs designed or used to transport between 9 and 15 passengers in interstate commerce be

made subject to the safety-related operational FMCSRs when they are directly compensated for such services. This includes carriers operating such vehicles within a 75 air-mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. These motor carriers would be required to comply with 49 CFR parts 390, 391, 392, 393, 395, and 396.

If most or all of these businesses are classified as small businesses by the Small Business Administration (SBA), the rule could potentially affect up to approximately 12,200 small entities. However, some of these small entities may be foreign-based motor carriers that the agency is not required to include in the Regulatory Flexibility Act analysis. To avoid underestimating the potential impact on small entities, FMCSA is using an estimate of 12,200.

As indicated earlier, FMCSA estimates that the sum of all estimated costs of requiring operators of small passenger-carrying CMVs to comply with 49 CFR parts 391, 393, and 396 is approximately $29 million for the first year and $22 million per year thereafter. If the costs of the rulemaking are distributed evenly among these 12,200 motor carriers, the costs per carrier would be approximately $2,400 for the first year the requirements are in effect, and about $1,800 per year thereafter. A summary of the estimated costs per motor carrier is presented below.

SUMMARY OF COSTS PER MOTOR CARRIER TO COMPLY WITH THE FMCSRS

Cost of	First year	Each year
Medical Exam and Certification	$1,556	$1,019
Create Driver Qualification Files	62	40
Inspection, Repair, Maintenance Process	751	751
Grand Total Cost	2,369	1,810

The FMCSA has reviewed data from the SBA to determine the typical revenues for a motor carrier in the intercity and rural bus transportation segment of the industry. This category description appeared to be similar to the types of motor carrier operations that would be covered by this rulemaking. The SBA's 1997 tables on "Employer Firms, Employment and Estimated Receipts by Employment Size of Firm" separated the firms into three groups: Those with less than 20 employees, those with less than 500 employees, and those with 500 or more employees.

The FMCSA focused on the group with less than 20 employees to be consistent with the Agency's estimate of the number of drivers employed by each of the 12,200 motor carriers likely to be affected by this rule. The SBA data indicated there are 145 firms in this category with combined revenues of $41,793,000. For the purpose of this analysis, the revenues for the businesses in this group were divided by the number of firms resulting in an estimate of $288,227 in revenues per year for each carrier [($41,793,000/145 firms)].

The costs per carrier associated with this rule would, on average, be approximately four-fifths of one percent (0.82%) of their revenues [($2,369 costs per carrier)/($288,227 revenues per carrier)] for the first year (and about three-fifths of one percent in any subsequent year (0.0063 = $1,810/$288,227).

Given the cost per carrier of this rulemaking, it is important to remember that the new rule, by reducing crashes, could also lower the costs of operation—and for the average small business, a reduction of just one *injury* crash every 142 years ($336,220/$2,369 = 142) would be enough for the benefits to outweigh the cost of this rulemaking.

The Agency believes the estimates presented above are reasonable given the limited information available about this segment of the motor carrier industry. Therefore, the Agency has made a determination that this rule would *not* affect a substantial number of small entities. Accordingly, FMCSA has considered the economic impacts of the requirements on small entities and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that this final rule will impact three currently-approved information collections.

OMB Control No. 2126–0003—Inspection, Repair and Maintenance

Motor carriers operating CMVs designed or used to transport between 9 and 15 passengers for direct compensation will be required to maintain records of inspection, repair, and maintenance for their CMVs in accordance with 49 CFR part 396. The information collection requirements related to inspection, repair and maintenance have been approved by the OMB under the provisions of the PRA and assigned OMB Control No. 2126–0003, which expires on May 31, 2012.

The FMCSA estimates that it will take a total annual expenditure of 11 hours and 53 minutes per year per CMV to complete the required recordkeeping related to vehicular inspection, repair, and maintenance (48 minutes per vehicle per year for systematic inspection, repair, and maintenance; 5 minutes per year per vehicle for periodic inspection; and 11 hours per year per vehicle for driver vehicle inspection reports). The driver vehicle inspection report component requires 2 minutes 35 seconds to complete and review one report per work day when a driver finds no defects, and 3 minutes 20 seconds to complete and review one report and certify that repairs have been made when a driver finds a defect. FMCSA assumes that defects are discovered in 5 percent of driver inspections. On average, the annual burden per vehicle for driver inspection is 11 hours [250 working days per year × ((95% no defects × 2 minutes 35 seconds) + (5% defects × 3 minutes 20 seconds) ÷ 60 minutes per hour) = 10.92 hours = 11 hours rounded].

Evidence of a person's qualifications to perform periodic vehicle inspections must be retained by the motor carrier. Evidence of a person's qualifications to be a brake inspector must also be retained. The creation of these two types of qualification evidence involves an estimated one-time, non-recurring expenditure of 5 minutes by a safety

director, driver supervisor, or equivalent position for each type of inspector. Based on an estimate of 12,200 motor carriers that will be subject to the final rule and on the assumption that each motor carrier has at least one employee who is a qualified periodic vehicle inspector and one employee who is a qualified brake inspector, the estimated total time burden related to the inspector qualifications requirement is approximately 2,034 hours [(5 minutes for each periodic vehicle inspector certification × 12,200 motor carriers = 1,016.66 hours = 1,017 hours rounded) + (5 minutes for each brake inspector certification × 12,200 motor carriers = 1,016.66 hours = 1,017 hours rounded) ÷ 60 minutes per hour].

The FMCSA estimates that the total inspection, repair, and maintenance recordkeeping burden is approximately 515,394 hours in Year 1 [(43,200 CMVs × 11 hours 53 minutes per year per CMV) ÷ 60 minutes per hour = 513,360 hours + (2,034 hours in the first year for inspector qualifications) = 515,394 hours] and 513,360 hours in subsequent years. [515,394 hours − 2,034 hours (one-time, non-recurring requirement) = 513,360]. FMCSA has submitted the amended, inspection, repair, and maintenance information collection to the OMB for review and approval.

OMB Control No. 2126–0004, Driver Qualification Files

The FMCSA estimates that there are currently 7,000,000 CMV drivers subject to the FMCSRs. This new regulation governing 9–15 passenger vans will subject approximately 57,900 additional CMV drivers, and their motor carriers, to the rules pertaining to the driver qualification file, or "DQ file," for the first time.

The regulations pertinent to the qualifications of CMV drivers are contained in 49 CFR part 391. The evidence of each driver's qualifications is housed in a DQ file under that driver's name. This file must be made available to FMCSA investigators during a compliance review of the motor carrier. The creation, collection and maintenance of this evidence impose numerous paperwork burdens. FMCSA has prepared detailed descriptions of the burden of each of the paperwork-related tasks. These descriptions are included in the supporting statement FMCSA has filed with the OMB (OMB Control 2126–0004) contemporaneously with publication of this final rule. That document provides a full explanation of the paperwork burden imposed on the 9–15 passenger van industry today and details its small increase in the overall paperwork burden of the DQ file requirements. Because current drivers will not have to re-apply for their positions, the burden associated with certain aspects of the application process will not be incurred when the rule becomes effective, but will be incurred in subsequent years as driver positions become vacant and will need to be filled. Conversely, current drivers will require driver record and safety performance investigations when the rule becomes effective, but the annual review of these qualifications will only occur in subsequent years.

The various tasks of the DQ file requirements fall into 3 categories: Driver hiring, annual review of driving record, and safety history responsibilities. Driver hiring includes the driver's employment application, which FMCSA estimates requires 15 minutes on average for the driver to complete, plus 1 minute for the motor carrier to review. Driver hiring also includes obtaining a copy of the official driving record of the driver from the appropriate jurisdiction(s). FMCSA estimates that this takes an average of 5 minutes. FMCSA estimates that the background investigation of the driver by the motor carrier takes an average of 20 minutes, and that the carrier's notification of the driver of his or her right to review and rebut elements of the investigation takes 1 minute per driver. The small percentage of CMV drivers who choose to review their history will, the Agency estimates, take an average of 5 minutes to do so. The total revised paperwork burden of these driver hiring tasks is 2,241,491 hours in the first year.

The annual review of driving record includes the certificate of violations of traffic laws in the past year that is completed by the CMV driver. This task requires an average of 2 minutes. The motor carrier's request for the official driving record of the driver, its review of the record when received, and filing it, takes an average of 5 minutes. For multiple-employer drivers, the Agency estimates only 1 minute is necessary because there is no requirement to obtain the official driving record on these drivers. When the driver is furnished to a motor carrier by the driver's regular employer, the Agency estimates that this task takes 3 minutes. The total revised paperwork burden of all the tasks related to the review of driving record is 838,834 hours in the first year.

Certain tasks related to the CMV driver's safety performance history must be performed by the CMV driver, as well as some performed by the hiring motor carrier, when a driver seeks to rebut the history that previous employers have provided to the hiring motor carrier. First, the driver-applicant consumes 3 minutes in drafting his or her request for a copy of the safety performance history. Second, the hiring motor carrier consumes an average of 3 minutes per request in providing that record to the driver. Finally, those CMV drivers who choose to formally rebut all or portions of the safety performance history consume approximately 30 minutes in drafting and forwarding the necessary information. The total revised paperwork burden of all the tasks related to these driver history tasks is 198,380 hours in the first year.

As stated, the additional DQ file paperwork burden in year one will differ from that in all subsequent years. The only initial burden during the first year will be 24,125 hours to obtain driver records (5 minutes) and safety performance histories (20 minutes) on the 57,900 current 9–15-passenger van drivers. In subsequent years, there will be 18,341 hours of additional burden related to hiring drivers to fill current positions that have become vacant; an additional 6,939 associated with the annual review of driver qualifications; and an additional 1,641 hours for other tasks associated with the safety performance history. In sum, the additional paperwork burden incurred by the 9–15 passenger drivers and motor carriers with respect to DQ files will be 26,921 hours (18,341 + 6,939 + 1,641) in subsequent years. When 24,125 hours are added to the currently-approved DQ file paperwork burden of 3,254,580 hours, the estimated paperwork burden of the DQ requirements increases to 3,278,705 burden hours, an increase of less than 1 percent in the first year.

OMB Control No. 2126–0006, Medical Qualification Requirements

Drivers of CMVs designed or used to transport between 9 and 15 passengers for direct compensation will be required to meet the medical examination and certification requirements at 49 CFR part 391, subpart E. The information collection requirements related to medical qualification requirements have been approved by OMB under the provisions of the PRA and assigned OMB Control No. 2126–0006, which expires on May 31, 2012.

Under this final rule, approximately 57,900 additional drivers will be subject to FMCSA physical qualification standards. A medical certificate usually is valid for 2 years after the date of examination. However, drivers with certain medical conditions must be certified more frequently than every 2 years. In addition, some employers require newly hired drivers to obtain a new medical certification even if the

driver's current certificate is still valid. As a result of these exceptions to the biennial medical certification schedule, the Agency estimates that the actual number of medical certifications conducted annually is 31 percent greater than would be the case if all drivers were only examined biennially. Biennial examinations would result in approximately 28,950 medical examinations per year, but the Agency estimates that approximately 37,925 examinations are conducted annually [28,950 regular medical examinations × 1.31 (31% out-of-cycle medical examinations + 28,950 regular medical examinations) = 37,925].

It takes a medical examiner approximately 20 minutes to complete, document, and file the medical examination report and 1 minute to complete the medical examiner's certificate and furnish one copy to the person who was examined and one copy to the motor carrier who employs him or her. It takes a motor carrier approximately 1 minute to file the medical certificate. Therefore, the annual time burden for the medical examination and certificate requirement is approximately 13,906 hours per year [(37,925 certificates × 22 minutes per certificate per year) ÷ 60 minutes per hour = 13,905.83 hours = 13,906 rounded]. FMCSA has submitted the amended, medical qualification information collection to the OMB for review and approval.

The total estimated additional time burden imposed by this final rule will be 553,425 hours in Year 1 and 554,187 hours in subsequent years as illustrated in the following table:

OMB control No.	Currently approved annual burden hours	Additional burden hours associated with the final rule in Year 1	Additional burden hours associated with the final rule in subsequent years
2126–0003	59,214,494	515,394	513,360
2126–0004	3,254,580	24,125	26,921
2126–0006	1,682,701	13,906	13,906
Total	64,151,775	553,425	554,187

National Environmental Policy Act

The FMCSA has analyzed this rulemaking in accordance with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). A copy of the final environmental assessment is included in the docket for this rulemaking.

Unfunded Mandates Reform Act of 1995

This final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141.3 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this rulemaking does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. This final rule does not impose additional costs or burdens on the States.

List of Subjects in 49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, FMCSA amends part 390 of title 49, Code of Federal Regulations, as follows:

PART 390—[AMENDED]

■ 1. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745 and 49 CFR 1.73.

§ 390.3 [Amended]

■ 2. In § 390.3, remove paragraph (f)(6)(ii) and redesignate paragraph (f)(6)(i) as paragraph (f)(6).

Issued on: January 26, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–1955 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 75, No. 20
Monday, February 1, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2423

Unfair Labor Practice Proceedings

AGENCY: Office of the General Counsel, Federal Labor Relations Authority.

ACTION: Notice of proposed rulemaking.

SUMMARY: The General Counsel of the Federal Labor Relations Authority (FLRA) proposes to revise portions of its regulations regarding unfair labor practice (ULP) proceedings (Part 2423, subpart A). In keeping with the Chairman's focus on the revitalization of the mission of the FLRA, the purpose of the proposed revisions is to clarify the Office of the General Counsel's (OGC) role in facilitating the resolution of disputes and in providing training and educating the FLRA's customers about their rights and responsibilities under the Federal Service Labor-Management Relations Statute (Statute). The revisions also clarify certain administrative matters relating to the filing and investigation of ULP charges. These revisions establish the OGC's leadership role in providing guidance on Alternative Dispute Resolution (ADR) techniques to union and agency representatives to strengthen labor-management relationships that will aid in resolving disputes short of litigation. These amended regulations are also consistent with the purposes underlying Executive Order 13522 (EO 13522) on Creating Labor-Management Forums to Improve Delivery of Government Services, issued on December 9, 2009, by President Obama. EO 13522 provides a platform from which a cooperative and productive form of labor-management relations throughout the executive branch of the Federal government will be established. The FLRA will play a prominent role in providing services, *i.e.,* training; materials and guidances; and facilitation, which are needed to accomplish the objectives of EO 13522. With renewed attention to customer service, the OGC will use its expertise to foster successful labor-management relations through the training of union representatives and agency personnel in dispute resolution and cooperative methods of labor-management relations. Implementation of the proposed regulatory changes will also enhance the purposes and policies of the Statute by promoting the resolution of disputes at an early stage, thereby preventing ULPs and/or reducing the need to file ULP charges, which will lower costs to the public.

DATES: Comments must be received on or before March 3, 2010.

ADDRESSES: Mail or deliver written comments to the Office of the General Counsel, Federal Labor Relations Authority, 1400 K Street, NW., Second Floor, Washington, DC 20424. Comments may also be e-mailed to *dwalsh@flra.gov.*

FOR FURTHER INFORMATION CONTACT: Dennis P. Walsh, Deputy General Counsel, at the address for the Office of the General Counsel or by telephone number (202) 218–7741, facsimile number (202) 482–6608.

SUPPLEMENTARY INFORMATION: The OGC of the FLRA proposes modifications to the existing rules and regulations in subpart A of title 5 of the Code of Federal Regulations regarding the prevention of ULPs. On February 19, 2008, after the OGC effectively provided critical ADR, training and education services for over 10 years, these regulations were revised to prohibit offering any type of pre-investigation or pre-complaint assistance to the parties. The major purpose of these revisions is to restore the ADR, training and education program. The General Counsel offers the OGC staff's services to assist the parties in working collaboratively to resolve labor-management relations disputes. These regulations are consistent with internal OGC policies concerning the prevention and resolution of ULP disputes and the investigation of ULP charges.

Sectional Analyses

Sectional analyses of the revisions to Part 2423—Unfair Labor Practice Proceedings are as follows:

Part 2423—Unfair Labor Practice Proceedings

Section 2423.0

This part is applicable to any charge of an alleged ULP pending or filed with the Authority on or April 1, 2010.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

Section 2423.1

Paragraph (a) has been revised to reflect that the OGC may, in appropriate circumstances, make Regional Office staff available to assist parties in identifying issues and interests with a goal of resolving disputes before they ripen into ULP charges. The OGC does not believe that its position of neutrality is compromised by providing the parties with pre-charge assistance in the settlement of disputes.

Paragraph (b) is new. The rationale for the revision to paragraph (a), to assist the parties in resolving disputes before a charge has been filed, also pertains to paragraph (b), which concerns the resolution of ULP disputes after a charge has been filed.

Section 2423.2

This section is revised to restore the ADR services provision of this regulation that was in effect before February 18, 2008. The OGC has historically been successful in assisting employees, labor organizations, and agencies in avoiding and resolving labor-management conflict. The use of a problem-solving approach, along with intervention, training, and education services, provides the participants in the Federal sector labor-management relations program with an alternative to adversarial and costly litigation. As stated in the Summary above, the provision of these services supports the purpose underlying EO 13522.

Section 2423.3

This section, which identifies who may file a ULP charge, is unchanged.

Section 2423.4

This section, describing the content of a ULP charge, is substantially unchanged. Paragraph (b) is revised to track more closely the statutory provision regarding the timeliness of a ULP charge.

Section 2423.5

This section, which is reserved, is unchanged.

Section 2423.6

This section is unchanged.

Section 2423.7

This section, which is reserved, is unchanged.

Section 2423.8

This section, which provides for the investigation of charges, is substantially unchanged. The proposed revision deletes the reference to the neutral and unbiased nature of unfair labor practice investigations that was incorporated in the February 18, 2008 revision of this regulation. As a public prosecutor, the Office of the General Counsel always strives to complete unfair labor practice investigations in a neutral and unbiased manner. Therefore, any additional reference is unnecessary.

Section 2423.9

This section is unchanged.

Section 2423.10

This section is unchanged.

Section 2423.11

The proposed revision to paragraph (a) clarifies that the Regional Director retains discretion concerning the notification of the parties when a decision has been made to dismiss a charge. Because the Charging Party bears the burden of presenting evidence to support its ULP allegation(s), the Region will first inform the Charging Party of the Regional Director's decision and will afford the Charging Party an opportunity to request withdrawal of the charge. The proposed regulations no longer require that the Regional Director must inform the Charged Party of the determination to dismiss the charge before the Charging Party has been afforded the opportunity to withdraw the charge. The OGC does not believe that its position of neutrality is comprised by providing the Charging Party with this opportunity before informing the Charged Party of the decision to dismiss the charge.

Section 2423.12

Paragraph (a) of this section has been deleted. As referenced above with regard to section 2423.2, the OGC's involvement in the provision of ADR services is not restricted to a point in time after a Regional Director has determined to issue a complaint.

Paragraph (b) of this section is revised and redesignated as paragraph (a). The words "but after a merit determination by the Regional Director" are unnecessary and therefore have been deleted.

Paragraph (c) of this section is redesignated as paragraph (b) and is revised to add the grounds for granting an appeal of a Regional Director's approval of a unilateral settlement agreement and to reference the applicable paragraphs of section 2423.11 concerning the process for obtaining review of a Regional Director's approval of a unilateral settlement agreement.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the General Counsel of the FLRA has determined that this regulation, as amended, will not have a significant impact on a substantial number of small entities, because this rule applies to federal employees, federal agencies, and labor organizations representing federal employees.

Unfunded Mandates Reform Act of 1995

This rule change 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 it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulations contain no additional information collection or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

List of Subjects in 5 CFR Part 2423

Administrative practice and procedure, Government employees, Labor management relations.

For these reasons, the General Counsel of the Federal Labor Relations Authority proposes to amend 5 CFR Part 2423 as follows:

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. Section 2423.0 is revised to read as follows:

§ 2423.0 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices pending or filed with the Authority on or after April 1, 2010.

3. Subpart A of Part 2423 is revised to read as follows:

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

Sec.

2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.
2423.2 Alternative Dispute Resolution (ADR) services.
2423.3 Who may file charges.
2423.4 Contents of the charge; supporting evidence and documents.
2423.5 [Reserved]
2423.6 Filing and service of copies.
2423.7 [Reserved]
2423.8 Investigation of charges.
2423.9 Amendment of charges.
2423.10 Action by the Regional Director.
2423.11 Determination not to issue complaint; review of action by the Regional Director.
2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.
2423.13–2423.19 [Reserved]

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

§ 2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.

(a) *Resolving unfair labor practice disputes prior to filing a charge.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the collaborative efforts of all persons covered by that law. The General Counsel encourages all persons to meet and, in good faith, attempt to resolve unfair labor practice disputes prior to filing unfair labor practice charges. If requested, or agreed to by both parties, a representative of the Regional Office, in appropriate circumstances, may participate in these meetings to assist the parties in identifying the issues and

their interests and in resolving the dispute. Attempts by the parties to resolve unfair labor practice disputes prior to filing an unfair labor practice charge do not toll the time limitations for filing a charge set forth at 5 U.S.C. 7118(a)(4).

(b) *Resolving unfair labor practice disputes after filing a charge.* The General Counsel encourages the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to a determination on the merits of the charge by a Regional Director. A representative of the appropriate Regional Office, as part of the investigation, may assist the parties in informally resolving their dispute.

§ 2423.2 Alternative Dispute Resolution (ADR) services.

(a) *Purpose of ADR services.* The Office of the General Counsel furthers its mission and implements the agency-wide Federal Labor Relations Authority Collaboration and Alternative Dispute Resolution Program by promoting stable and productive labor-management relationships governed by the Federal Service Labor-Management Relations Statute and by providing services that assist labor organizations and agencies, on a voluntary basis to:

(1) Develop collaborative labor-management relationships;

(2) Avoid unfair labor practice disputes; and

(3) Informally resolve unfair labor practice disputes.

(b) *Types of ADR Services.* Agencies and labor organizations may jointly request, or agree to, the provision of the following services by the Office of the General Counsel:

(1) *Facilitation.* Assisting the parties in improving their labor-management relationship as governed by the Federal Service Labor-Management Relations Statute;

(2) *Intervention.* Intervening when parties are experiencing or expect significant unfair labor practice disputes;

(3) *Training.* Training labor organization officials and agency representatives on their rights and responsibilities under the Federal Service Labor-Management Relations Statute and how to avoid litigation over those rights and responsibilities, and on using problem-solving and ADR skills, techniques, and strategies to resolve informally unfair labor practice disputes; and

(4) *Education.* Working with the parties to recognize the benefits of, and establish processes for, avoiding unfair labor practice disputes, and resolving any unfair labor practice disputes that arise by consensual, rather than adversarial, methods.

(c) *ADR services after initiation of an investigation.* As part of processing an unfair labor practice charge, the Office of the General Counsel may suggest to the parties, as appropriate, that they may benefit from these ADR services.

§ 2423.3 Who may file charges.

(a) *Filing charges.* Any person may charge an activity, agency or labor organization with having engaged in, or engaging in, any unfair labor practice prohibited under 5 U.S.C. 7116.

(b) *Charging Party.* Charging Party means the individual, labor organization, activity or agency filing an unfair labor practice charge with a Regional Director.

(c) *Charged Party.* Charged Party means the activity, agency or labor organization charged with allegedly having engaged in, or engaging in, an unfair labor practice.

§ 2423.4 Contents of the charge; supporting evidence and documents.

(a) *What to file.* The Charging Party may file a charge alleging a violation of 5 U.S.C. 7116 by completing a form prescribed by the General Counsel, or on a substantially similar form, that contains the following information:

(1) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charging Party;

(2) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charged Party;

(3) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charging Party's point of contact;

(4) The name, address, telephone number, facsimile number (where facsimile equipment is available), and e-mail address of the Charged Party's point of contact;

(5) A clear and concise statement of the facts alleged to constitute an unfair labor practice, a statement of how those facts allegedly violate specific section(s) and paragraph(s) of the Federal Service Labor-Management Relations Statute and the date and place of occurrence of the particular acts; and

(6) A statement whether the subject matter raised in the charge:

(i) Has been raised previously in a grievance procedure;

(ii) Has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, or the Office of the Special Counsel for consideration or action;

(iii) Involves a negotiability issue raised by the Charging Party in a petition pending before the Authority pursuant to part 2424 of this subchapter; or

(iv) Has been the subject of any other administrative or judicial proceeding.

(7) A statement describing the result or status of any proceeding identified in paragraph (a)(6) of this section.

(b) When to file. Under 5 U.S.C. 7118(a)(4), a charge alleging an unfair labor practice must normally be filed within six (6) months of its occurrence unless one of the two (2) circumstances described under paragraph (B) of 5 U.S.C. 7118(a)(4) applies.

(c) *Declarations of truth and statement of service.* A charge shall be in writing and signed, and shall contain a declaration by the individual signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that individual's knowledge and belief.

(d) *Statement of service.* A charge shall also contain a statement that the Charging Party served the charge on the Charged Party, and shall list the name, title and location of the individual served, and the method of service.

(e) *Self-contained document.* A charge shall be a self-contained document describing the alleged unfair labor practice without a need to refer to supporting evidence and documents submitted under paragraph (f) of this section.

(f) *Submitting supporting evidence and documents and identifying potential witnesses.* When filing a charge, the Charging Party shall submit to the Regional Director, any supporting evidence and documents, including, but not limited to, correspondence and memoranda, records, reports, applicable collective bargaining agreement clauses, memoranda of understanding, minutes of meetings, applicable regulations, statements of position and other documentary evidence. The Charging Party also shall identify potential witnesses with contact information (telephone number, e-mail address, and facsimile number) and shall provide a brief synopsis of their expected testimony.

§ 2423.5 [Reserved]

§ 2423.6 Filing and service of copies.

(a) *Where to file.* A Charging Party shall file the charge with the Regional Director for the region in which the

alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director in any of those regions.

(b) *Filing date.* A charge is deemed filed when it is received by a Regional Director. A charge received in a Region after the close of the business day will be deemed received and docketed on the next business day. The business hours for each of the Regional Offices are set forth at *http://www.FLRA.gov.*

(c) *Method of filing.* A Charging Party may file a charge with the Regional Director in person or by commercial delivery, first class mail, facsimile or certified mail. If filing by facsimile transmission, the Charging Party is not required to file an original copy of the charge with the Region. A Charging Party assumes responsibility for receipt of a charge. Supporting evidence and documents must be submitted to the Regional Director in person, by commercial delivery, first class mail, certified mail, or by facsimile transmission.

(d) *Service of the charge.* The Charging Party shall serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, the charge may be served by facsimile transmission in accordance with paragraph (c) of this section. The Region routinely serves a copy of the charge on the Charged Party, but the Charging Party remains responsible for serving the charge in accordance with this paragraph.

§ 2423.7 [Reserved]

§ 2423.8 Investigation of charges.

(a) *Investigation.* The Regional Director, on behalf of the General Counsel, conducts an investigation of the charge as deemed necessary. During the course of the investigation, all parties involved are afforded an opportunity to present their evidence and views to the Regional Director.

(b) *Cooperation.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the timely submission of all potentially relevant information from all potential sources during the course of the investigation. All persons shall cooperate fully with the Regional Director in the investigation of charges. A failure to cooperate during the investigation of a charge may provide grounds to dismiss a charge for failure to produce evidence supporting the charge. Cooperation includes any of the following actions, when deemed appropriate by the Regional Director:

(1) Making union officials, employees, and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation;

(2) Producing documentary evidence pertinent to the matters under investigation; and

(3) Providing statements of position on the matters under investigation.

(c) *Investigatory subpoenas.* If a person fails to cooperate with the Regional Director in the investigation of a charge, the General Counsel, upon recommendation of a Regional Director, may decide in appropriate circumstances to issue a subpoena under 5 U.S.C. 7132 for the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel or training within an agency or between an agency and the Office of Personnel Management.

(1) A subpoena shall be served by any individual who is at least 18 years old and who is not a party to the proceeding. The individual who served the subpoena must certify that he or she did so:

(i) By delivering it to the witness in person;

(ii) By registered or certified mail; or

(iii) By delivering the subpoena to a responsible individual (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the Regional Director and the General Counsel.

(2) Any person served with a subpoena who does not intend to comply shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke shall be served on the General Counsel.

(3) The General Counsel shall revoke the subpoena if the witness or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The General Counsel shall state the procedural or other grounds for the ruling on the petition to revoke. The petition to revoke shall become part of the official record if there is a hearing under subpart C of this part.

(4) Upon the failure of any person to comply with a subpoena issued by the General Counsel, the General Counsel shall determine whether to institute proceedings in the appropriate district court for the enforcement of the subpoena. Enforcement shall not be sought if to do so would be inconsistent with law, including the Federal Service Labor-Management Relations Statute.

(d) *Confidentiality.* It is the General Counsel's policy to protect the identity of individuals who submit statements and information during the investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of ensuring the General Counsel's continuing ability to obtain all relevant information. After issuance of a complaint and in preparation for a hearing, however, identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements in § 2423.23.

§ 2423.9 Amendment of charges.

Prior to the issuance of a complaint, the Charging Party may amend the charge in accordance with the requirements set forth in § 2423.6.

§ 2423.10 Action by the Regional Director.

(a) *Regional Director action.* The Regional Director, on behalf of the General Counsel, may take any of the following actions, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Dismiss a charge;

(3) Approve a written settlement agreement in accordance with the provisions of § 2423.12;

(4) Issue a complaint; or

(5) Withdraw a complaint.

(b) *Request for appropriate temporary relief.* Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel may initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority to seek such appropriate temporary relief is final and shall not be appealed to the Authority.

(c) *General Counsel requests to the Authority.* When a complaint issues and the Authority approves the General Counsel's request to seek appropriate temporary relief (including a restraining

order) under 5 U.S.C. 7123(d), the General Counsel may make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Temporary relief may be sought if it is just and proper and the record establishes probable cause that an unfair labor practice is being committed. Temporary relief shall not be sought if it would interfere with the ability of the agency to carry out its essential functions.

(d) *Actions subsequent to obtaining appropriate temporary relief.* The General Counsel shall inform the district court which granted temporary relief pursuant to 5 U.S.C. 7123(d) whenever an Administrative Law Judge recommends dismissal of the complaint, in whole or in part.

§ 2423.11 Determination not to issue complaint; review of action by the Regional Director.

(a) *Opportunity to withdraw a charge.* If the Regional Director determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the Charging Party to withdraw the charge.

(b) *Dismissal letter.* If the Charging Party does not withdraw the charge within a reasonable period of time, the Regional Director will, on behalf of the General Counsel, dismiss the charge and provide the parties with a written statement of the reasons for not issuing a complaint.

(c) *Appeal of a dismissal letter.* The Charging Party may obtain review of the Regional Director's decision to dismiss a charge by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision. A Charging Party shall serve a copy of the appeal on the Regional Director. The General Counsel shall serve notice on the Charged Party that an appeal has been filed.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of a complaint;

(2) The Regional Director's decision is based on a finding of a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement or application of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's dismissal of the charge, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds listed in paragraph (e) of this section for denying or granting the appeal, and is served on all the parties. Absent a timely motion for reconsideration, the decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary circumstances in its moving papers. The motion shall be filed within 10 days after the date on which the General Counsel's final decision is postmarked. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The decision of the General Counsel on a motion for reconsideration is final.

§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.

(a) *Bilateral informal settlement agreement.* Prior to issuing a complaint, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(b) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to a bilateral settlement agreement, which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the Regional Director may choose to approve a unilateral settlement between the Regional Director and the Charged Party. The Regional Director, on behalf of the General Counsel, shall issue a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel may grant an appeal when the Charging Party has shown that the Regional Director's approval of a unilateral settlement agreement does not effectuate the purposes and policies of the Federal Service Labor-Management Relations Statute. The General Counsel shall take action on the appeal as set forth in § 2423.11(b), (c), (d), (f), and (g).

§§ 2423.13–2423.19 [Reserved]

Dated: January 26, 2010.

Julia Akins Clark,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 2010–2047 Filed 1–29–10; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0710; Airspace Docket No. 09–ASO–16]

Establishment of Class D and E Airspace; Panama City, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D and E airspace at Panama City, FL, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) for the new Northwest Florida-Panama City International Airport. This action would enhance the safety and management of instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before March 18, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–

647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2009–0710; Airspace Docket No. 09–ASO–16, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Those wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2009–0710; Airspace Docket No. 09–ASO–16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class D and E airspace at Panama City, FL. Class D airspace extending upward from the surface to 2,500 feet MSL within a 4.7-mile radius of the Northwest Florida-Panama City International Airport, and Class E airspace extending from 700 feet above the surface within a 7.2-mile radius of the airport is necessary for the safety and management of SIAPs at the new Northwest Florida-Panama City International Airport. There will be separate rulemaking action removing the existing airspace surrounding the old Panama City-Bay County Airport prior to closing the airport.

Designations for Class D and E airspace areas are published in Paragraph 5000 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

1. The authority citation for Part 71 will continue to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Panama City, FL [New]

Northwest Florida-Panama City International Airport, FL
(Lat. 30°21′28″ N., long. 85°47′56″ W.)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.7-mile radius of the Northwest Florida-Panama City International Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ASO FL E5 Panama City, FL [New]

Northwest Florida-Panama City International Airport, FL
(Lat. 30°21′28″ N., long. 85°47′56″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 7.2-mile radius of the Northwest Florida-Panama City International Airport.

* * * * *

Issued in College Park, Georgia, on January 21, 2010.

Michael Vermuth,

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

[FR Doc. 2010–2005 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57 and 75

RIN 1219–AB65

Proximity Detection Systems for Underground Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for information.

SUMMARY: The Mine Safety and Health Administration (MSHA) is requesting information regarding whether the use of proximity detection systems would reduce the risk of accidents where mobile equipment pins, crushes, or strikes miners in underground mines and, if so, how. MSHA is also requesting information to determine if the Agency should consider regulatory action and, if so, what type of regulatory action would be appropriate.

DATES: Comments must be received by midnight Eastern Standard Time on April 2, 2010.

ADDRESSES: Comments must be identified with "RIN 1219–AB65" and may be sent to MSHA by any of the following methods:

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Electronic mail: zzMSHA-Comments@dol.gov.* Include "RIN 1219–AB65" in the subject line of the message.
- *Facsimile:* 202–693–9441. Include "RIN 1219–AB65" in the subject line of the message.
- *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.
- *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at *silvey.patricia@dol.gov* (e-mail), 202–693–9440 (voice), or 202–693–9441 (Facsimile).

SUPPLEMENTARY INFORMATION:

I. Availability of Information

MSHA will post all comments on the Internet without change, including any personal information provided. Access comments electronically at *http://www.msha.gov* under the "Rules and Regs" link. Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register.** To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

Information on MSHA-approved proximity detection systems is available on the Internet at *http://www.msha.gov/Accident_Prevention/NewTechnologies/ProximityDectection/ProximitydetectionSingleSource.asp.*

II. Background

A. Review of Proximity Detection Technology and Proximity Detection Systems

Proximity detection is a technology that uses electronic sensors to detect motion or the location of one object relative to another object. Although the technology is not new, application of this technology to mobile equipment in underground mines is new.

MSHA conducted tests in collaboration with proximity detection manufacturers and mine operators at mine sites from 2002 to 2006. The National Institute for Occupational Safety and Health (NIOSH) has conducted research on proximity detection technologies independently at various times since the mid 1990s to present day. The technologies include radio, ultrasonic, radar, infrared, and electromagnetic field based systems. After reviewing the different types of systems, MSHA determined that the electromagnetic field based system offers the greatest potential for reducing pinning, crushing, and striking hazards to: (1) Remote control continuous mining machine (RCCM) operators and (2) other miners working near RCCMs.

An electromagnetic field based system consists of a combination of electromagnetic field generators and field detecting devices. One example of an electromagnetic field based system uses electromagnetic field generators that are installed on an RCCM and electronic sensing devices that are worn by persons operating the RCCM or working near the RCCM. Another electromagnetic field based system uses field generators worn by the operator of the RCCM and persons working near the RCCM and the sensing devices are installed on the RCCM. These electromagnetic field based systems can be programmed to provide warnings to affected miners or stop the RCCM, or both, when the RCCM operator or other miners get within the predefined danger zone of the RCCM.

In 1998, MSHA studied accidents involving RCCMs and determined that a proximity detection system has the potential to prevent accidents that occur when an RCCM operator or another miner gets within the predefined danger zone of the RCCM. In 2002, in response to an increase in accidents involving RCCMs, MSHA initiated a project in cooperation with a proximity detection system manufacturer and an underground coal mine operator. The Agency's goal was to have the manufacturer develop and test an electromagnetic field based system on an RCCM in an underground coal mine. In 2004, MSHA assisted a second manufacturer with the development of an electromagnetic field based system. The field tests of these two systems focused on addressing hazards to the RCCM operator, but the systems could be adapted to address hazards to other miners working near the RCCM.

MSHA approved both of these systems in 2006 and a third system in 2009 under existing regulations in 30 CFR part 18. These approvals ensure that the systems will not introduce an ignition hazard when operated in potentially explosive atmospheres. The three approved systems are:

- The Frederick Mining Controls, LLC, HazardAvert™ System,

- The Nautilus International, Coal-Buddy System, and
- The Matrix Design Group, M3–1000 Proximity Monitoring System.

B. Review of Proximity Detection Systems and RCCMs in Underground Coal and Metal/Nonmetal Mines

MSHA's experience with proximity detection systems relates to RCCMs. Approximately 95 percent of the continuous mining machines used in underground coal and metal/nonmetal mines are remote controlled, and most RCCMs do not have an operator's compartment. The RCCM operator controls the machine using a remote control unit that directs movement and other functions of the machine. The remote control unit communicates with the RCCM using radio waves or a cable.

Moving an RCCM through a mine requires that the RCCM operator observe, plan, and use judgment with respect to the surrounding area. The RCCM operator must move the machine through the underground mine in areas with limited clearance. To observe the area around the machine, RCCM operators are often inadvertently exposed to pinning, crushing, or striking hazards. RCCM operators cannot always monitor the entire area surrounding the machine or communicate with other miners that work near it.

MSHA evaluated pinning, crushing, and striking accidents involving RCCMs that have occurred since 1983. Although the evaluation revealed that work practices were contributing factors in all of the accidents, the Agency believes that proximity detection systems may provide a necessary and additional margin of safety to RCCM operators and other miners who work near RCCMs.

In 2004, MSHA implemented a Remote Control Continuous Mining Machine Special Initiative to inform underground mine operators and miners about the dangers of pinning, crushing, or striking hazards while working near RCCMs. This initiative included outreach efforts to educate the mining community about these hazards through webcasts, special alerts, videos, and bulletins. Despite these outreach efforts, accidents involving RCCMs are still occurring. The Agency believes that training and outreach alone may be insufficient to prevent these accidents.

MSHA is working with the West Virginia Mine Safety Technology Task Force (Task Force) and NIOSH to evaluate proximity detection systems that use electromagnetic field based technology. The Task Force, with assistance from NIOSH, developed a field testing protocol that includes design considerations, implementation plans, and field testing criteria. The Task Force, NIOSH, and MSHA began field testing of proximity detection systems using this protocol in July 2009. The test protocol was not able to be implemented in July 2009 because of problems with the proximity detection systems. Manufacturer improvements were necessary before tests could be re-initiated. Due to the results of the tests, manufacturers made refinements to the equipment. Additional tests will be scheduled in the near future.

C. Review of Accidents

Review of Accidents With Fatalities Involving RCCMs in Underground Coal and Metal/Nonmetal Mines

Since 1983, 31 miners have been killed in accidents where an RCCM has pinned, crushed, or struck the RCCM operator or another miner working near the RCCM. Thirty of these fatalities occurred in underground coal mines and one occurred in an underground metal/nonmetal mine. MSHA reviewed these fatalities and found that 24 involved RCCM operators. Of these 24, 17 involved operators moving the machine; four involved operators performing maintenance; two involved operators performing non-maintenance tasks, such as positioning the boom or trimming the mine floor; and one involved an operator whose machine was struck by another RCCM. The remaining seven fatalities involved other miners in or around the RCCM: Four miners handling the machine's trailing cable; two miners performing maintenance on the machine; and one miner who approached the RCCM without the operator's knowledge (this fatality occurred in a metal and nonmetal mine). Of the 31 fatalities, five involved a remote control unit that malfunctioned or had a safety mechanism deliberately overridden. In addition, poor work practices were contributing factors in all of these fatal accidents.

Based on MSHA's experience gained from: The field testing of proximity detection systems; the accident investigations; and communications with manufacturers and NIOSH, the Agency believes that a safety program based on sound risk management principles should include proximity detection systems, or some other engineering control that addresses the hazard at the source. MSHA's analysis of the 31 fatal accident investigation reports showed that, in most cases, a miner was in an area where a proximity detection system might have provided a warning or stopped the machine. In the remaining cases, a proximity detection system might have prevented the RCCM from starting to move when miners got within the predefined danger zone, such as when a miner was on the machine performing maintenance.

Review of Non-Fatal Accidents Involving RCCMs

MSHA reviewed 67 non-fatal accidents that occurred in underground coal mines from 1999 through 2004. In these accidents, the RCCM pinned, crushed, or struck a miner during routine mining activities, such as: Production; moving the RCCM in the same production area; moving the RCCM from one production area to another; cleaning up loose material; and performing maintenance on the RCCM. Approximately half of the accidents occurred while the RCCM was being moved from one location to another.

MSHA determined that other factors may have also contributed to these accidents: Improper or complete lack of communication between coworkers resulting in the machine operator not being aware of the location of other miners in the surrounding area; and inadequate training, since many of the accidents involved experienced miners (miners with five or more years of total mining experience) who had less than one year of experience at the mine where the accident occurred, and who may not have been adequately trained in their tasks or the hazards at the new mine. Proximity detection systems might have helped prevent many of these non-fatal accidents by providing an additional margin of safety.

Review of Accidents Involving Underground Mobile Equipment Other Than RCCMs

Some fatal and non-fatal pinning, crushing, or striking accidents involved other equipment used in underground mining including shuttle cars, scoops, belt drives, feeders, loaders/muckers, track equipment, trucks, roof bolting machines, and mobile bridge conveyors. Based on conversations with proximity detection system manufacturers, MSHA is aware that they are adapting proximity detection technology to underground mobile equipment other than RCCMs. Proximity detection systems might help prevent accidents involving these types of underground equipment.

III. Information Request

MSHA is requesting information from the mining community regarding whether the use of proximity detection systems would reduce injuries and fatalities in underground mines and, if so, how. MSHA is particularly

interested in comments addressing pinning, crushing and striking hazards to miners working near RCCMs. The Agency is also interested in whether the application of this technology to other underground equipment might help reduce the risk of injuries and fatalities and, if so, how.

Please provide sufficient detail in your responses to enable proper Agency review and consideration. Where possible, include specific examples to support the rationale for your position. Please identify the relevant information on which you rely. Include experiences, data, models, calculations, studies and articles, and standard professional practices.

Proximity Detection Systems

Proximity detection systems must perform reliably and effectively to successfully prevent accidents. MSHA is requesting information to assess whether this technology can perform effectively with underground mining equipment to improve safety in underground mines. The information requested will be useful in determining whether regulatory action is needed and, if so, what type of regulatory action would be appropriate. MSHA does not anticipate the need for new approval regulations to address the design of proximity detection systems.

1. Please provide information on the most effective protection to miners that you believe proximity detection systems could provide, *e.g.,* warning, stopping the equipment, or other protection. Include your rationale.

2. Other than electromagnetic field based systems, please address other methods for effectively achieving MSHA's goal for reducing pinning, crushing, and striking hazards in underground mines.

3. In general, reliability is defined as the ability of a system to perform when needed. Please provide information on how to determine the reliability of a proximity detection system. The Agency would appreciate information that describes reliability testing, how reliability is measured, and supporting data.

4. Manufacturers should design their systems to be fail-safe. Please provide information on how miners would know when a proximity detection system is not working properly. Include suggestions for what works best, including your experience, if applicable.

5. Please describe procedures that might be appropriate for testing and evaluating whether a proximity detection system is functioning properly. Include details such as the frequency of tests and the qualifications of persons performing tests; include specific rationale for your suggestions.

6. Some proximity detection systems provide a warning before the equipment shuts down. An excessive number of warnings can cause miners to become complacent and routinely ignore them as nuisance alarms. Please describe any experience you have had with nuisance alarms and how you addressed these alarms to assure an appropriate level of safety for miners. In addition, please provide suggestions for minimizing nuisance alarms.

7. How should the size and shape of the area around equipment that a proximity detection system monitors be determined? What specific criteria should be used to identify this area, *e.g.,* width of entry, seam height, section type, size of equipment, procedures for moving equipment, speed of equipment, and related information? Please provide any additional criteria that you believe would be useful in identifying the area to be protected.

8. Proximity detection systems can be programmed and installed to provide different zones of protection depending on equipment function. For example, a proximity detection system could monitor a larger area around the RCCM when it is being moved and a smaller area when the machine operator is performing a specific task, such as cutting and loading material. How should a proximity detection system be programmed and installed for each equipment function?

9. Since 1983, six fatalities occurred while miners performed maintenance on RCCMs. The fatalities involved three miners crushed in the machine and three miners pinned between the machine and mine wall or roof. Please provide specific information, including experience, on how a proximity detection system might be used to protect miners during maintenance activities and why the system would be effective in each situation.

10. Some proximity detection systems include an override function that allows the system to be temporarily deactivated. Please provide information on whether an override function is appropriate and, if so, please provide information on the circumstances under which such a function should be used. Please provide information on the types of procedures or safety precautions that could be used to prevent unauthorized deactivation of a proximity detection system.

11. MSHA found, in its field testing experience, that the use of some new technology for controlling motor speed, like variable frequency drives, could result in nuisance or false alarms (shutdowns) from the proximity detection system. Please provide information on other sources of interference, if any, that might affect the successful performance of proximity detection systems in underground mines. In addition, please provide information on whether a proximity detection system might adversely affect other electronic devices, such as atmospheric monitoring systems, used in underground mines. Please provide specific circumstances including: (1) Types of equipment; (2) adverse effect; and (3) how the adverse effect could be minimized.

Application to RCCMs

MSHA's experience with proximity detection technology and proximity detection systems has focused on RCCMs. An RCCM often has auxiliary equipment, such as roof bolting machines and mobile bridge conveyors, attached to it. The interconnection of this equipment can introduce additional pinning, crushing, or striking hazards.

12. Commenters who have experience with RCCMs, please describe: (1) any experience with pinning, crushing, and striking hazards, including accidents and near misses; and (2) any unique experience with an RCCM with auxiliary equipment attached.

13. How should the area that a proximity detection system monitors be determined on an RCCM interconnected with auxiliary equipment?

Applications to Underground Equipment Other Than RCCMs

MSHA requests information on whether proximity detection technology might be applicable to reducing the risk of accidents involving other types of underground equipment.

14. Describe whether there are safety benefits from applying proximity detection systems to underground equipment other than RCCMs. Describe your experience with pinning, crushing, or striking accidents and near-misses involving other underground equipment. Please provide examples identifying the specific types of equipment involved and how proximity detection systems may help provide an additional margin of safety to miners. Also describe any experience you have with respect to obtaining MSHA or other agency approval for systems designed for underground equipment other than RCCMS.

15. How might a proximity detection system for remote controlled equipment be different than one for non-remote controlled equipment?

16. Manufacturers are evaluating the use of proximity detection systems on

multiple pieces of equipment that operate near each other, such as RCCMs and shuttle cars. In your experience, what are the safety considerations of coordinating proximity detection systems between various types of underground equipment?

17. Describe your experience with the state-of-the-art of proximity warning technology. Include any experience related to whether the current technology is able to accurately locate and protect workers from all recognized hazards.

Training

18. What knowledge or skills would be necessary for miners to safely operate equipment that uses a proximity detection system? What knowledge or skills would other miners working near the equipment need?

19. Please provide suggestions on how to effectively train miners on the use and dangers of equipment that uses a proximity detection system. Please include information on the type of training (*e.g.,* task training) that could be used and on any evaluations conducted on the effectiveness of outreach and/or training in the area of proximity detection (*e.g.,* red zone warning materials). How often should miners receive such training?

Benefits and Costs

MSHA requests comment on the following questions concerning the costs, benefits, and the technological and economic feasibility of using proximity detection systems in underground mines. Benefits would include an increased margin of safety for miners working near machines equipped with proximity detection systems resulting in the reduction in pinning, crushing, and striking accidents. Your answers to these questions will help MSHA evaluate options and determine a course of action.

20. Please provide information on the benefits of using proximity detection systems with RCCMs. Please be specific in your response and, if appropriate, include the benefits of using proximity detection systems with other types of underground equipment. Include information on your experience related to whether proximity detection systems cause a change in the behavior of an RCCM operator. For example, would the operator need to operate the machine from a different location, such as one that might introduce additional hazards, to remain outside of a predefined danger zone? Please explain your answer in detail and provide examples as appropriate.

21. Please provide information on the costs for installing, maintaining, and calibrating proximity detection systems on underground equipment. What are the feasibility issues, if any, related to retrofitting certain types of equipment with proximity detection systems?

22. What is the expected useful life of a proximity detection system? Please provide suggested criteria for servicing or replacing proximity detection systems, including rationale for your suggestions.

23. Some proximity detection systems automatically record (data logging) information about the system and the equipment. Are there safety benefits to having a proximity detection system automatically record certain information? If so, please provide specific details on: (1) Safety benefits to be derived; (2) information that should be recorded; and (3) how information should be kept.

24. Please provide information on whether small mines or mines with special mining conditions, such as low seam or mine entry height, have particular needs related to the use of proximity detection systems. Please be specific and include information on possible alternatives.

25. What factors (*e.g.,* cost, nuisance alarms) have impeded the mining industry from voluntarily installing proximity detection systems on mining equipment?

Dated: January 27, 2010.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2010–1999 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 41

[Docket No.: PTO–P–2009–0021]

RIN 0651–AC37

Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Extension of Comment Period on Potential Modifications to Final Rule

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of extension of comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) published an advance notice of proposed rule making, with request for comments, considering potential modifications to rules governing practice before the Board of Patent Appeals and Interferences (BPAI) in ex parte patent appeals. The USPTO is extending the period for public comment on the potential modifications to the final rule until February 26, 2010.

DATES: The deadline for receipt of written comments on potential modifications to the final rule is 5 p.m., Eastern Standard Time, on February 26, 2010.

ADDRESSES: Written comments on potential modifications to the final rule should be sent by electronic mail message over the Internet addressed to *BPAI.Rules@uspto.gov.* Comments on potential modifications to the final rule may also be submitted by mail addressed to: Mail Stop Interference, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of "Linda Horner, BPAI Rules." Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The written comments will be available for public inspection at the Board of Patent Appeals and Interferences, located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site (address: *http://www.uspto.gov/web/offices/dcom/bpai/*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Linda Horner, Administrative Patent Judge, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797, or by mail addressed to: Mail Stop Interference, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Linda Horner.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO or Office) published an advance notice of proposed rule making on potential modifications to rules governing practice before the Board of Patent Appeals and Interferences (BPAI) in ex parte patent appeals (74 FR 67987 (Dec. 22, 2009)). The notice also announced a public roundtable that was held on January 20, 2010. A link to the Web cast of the roundtable may be found at *http://www.uspto.gov/ip/boards/bpai/roundtable_info.jsp.* In the notice, the public was invited to submit

written comments on potential modifications to the final rule that were to be received on or before February 12, 2010. The USPTO is now extending the period for submission of public comments until February 26, 2010. Any comments that have already been received are under consideration and need not be resubmitted.

Dated: January 26, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–2029 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–16–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket No. 07–244; DA 09–2569]

Local Number Portability Porting Interval and Validation Requirements; Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Wireline Competition Bureau seeks comment on two proposals submitted to the Commission regarding what data fields are necessary in order to complete simple wireline-to-wireline and intermodal ports within the one business day porting interval mandated by the Federal Communications Commission.

DATES: Comments are due on or before February 16, 2010, and reply comments are due on or before February 22, 2010. 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 April 2, 2010.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–244, 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://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Include the docket number(s) in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *Hand Delivery/Courier:* FCC Headquarters building located at 445 12th Street, SW., Room TW–A325, Washington, DC 20554.
- *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.

All submissions received must include the agency name and docket numbers for this rulemaking, WC Docket No. 07–244. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs.* For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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 FURTHER INFORMATION CONTACT: Marilyn Jones, Wireline Competition Bureau, (202) 418–2357. 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 at 202–418–0214.

SUPPLEMENTARY INFORMATION: In the Commission's May 13, 2009 *Porting Interval Order and Further Notice,* it sought comment, *inter alia,* on whether different or additional information fields are necessary for completing simple ports. On November 2, 2009, the North American Numbering Council (NANC) Local Number Portability Administration Working Group submitted in this docket a non-consensus recommendation for Standard Local Service Request Data Fields, which accompanied the NANC's Recommended Plan for Implementation of FCC Order 09–41. The recommendation proposes a set of 14 standard fields required to complete simple ports within the one business day porting interval for simple wireline-to-wireline and intermodal ports mandated by the Commission in the *Porting Interval Order and Further Notice.* On November 19, 2009, the National Cable & Telecommunication Association (NCTA), Cox Communications, and Comcast Corporation submitted an alternative proposal of eight standard fields to complete simple ports within the one business day porting interval. We seek comment on these proposals. Specifically, we seek comment on what fields are necessary in order to complete simple ports—wireline-to-wireline and intermodal—within the one business day interval. As we previously clarified, entities subject to our LNP obligations may not demand information beyond what is required to validate a port request and accomplish a port. Thus, commenters should focus on the minimum amount of information needed to complete a port in considering what number of fields is appropriate.

The Commission concluded that nine months after the NANC submits its recommendation is sufficient time for parties to implement changes needed to implement one business day porting for simple wireline-to-wireline and intermodal port requests. Thus, to expedite the Commission's further consideration of the recommendations and facilitate implementation within this time frame, interested parties may file comments on or before February 16, 2010, and reply comments on or before February 22, 2010.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of the proceeding, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking numbers. All filings concerning this Public Notice should refer to WC Docket No. 07–244. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in

the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at the FCC Headquarters building located at 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

—The filing hours at this location 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 mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Documents in WC Docket No. 07–244 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St., SW., Room CY–A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, e-mail *fcc@bcpiweb.com.*

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).

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 presentations 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 requirements pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collections 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 April 2, 2010.

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; and (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. 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: 3060–0742.

Title: Sections 52.21 through 52.33, Telephone Number Portability (47 CFR part 52, subpart C) and CC Docket No. 95–116.

Form No.: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 3,616 respondents; 10,001,890 responses.

Estimated Time per Response: 4 minutes (average).

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 672,516 hours.

Total Annual Costs: $13,424,320.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: This collection does not address information of a confidential nature.

Needs and Uses: Section 251(b)(2) of the Communications Act of 1934, as amended (the Act), requires local exchange carriers (LECs) to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Through the local number portability (LNP) process, consumers have the ability to retain their phone number when switching telecommunications service providers, enabling them to choose a provider that best suits their needs and enhancing competition. In the *Porting Interval Order and Further* Notice, the Commission mandated a one business day porting interval for simple wireline-to-wireline and intermodal port requests. The information collected in the standard local service request data fields is necessary to complete simple wireline-to-wireline and intermodal ports within the one business day porting interval mandated by the Commission and will be used to comply with Section 251 of the Telecommunications Act of 1996.

Part 52, Subpart C implements the statutory requirements that LECs and Commercial Mobile Radio Service (CMRS) providers provide LNP as set forth in Sections 1, 2, 4, 251, and 332 of the Telecommunications Act of 1996. The Commission requires the following information to be collected from various entities: (1) Requests for long-term number portability; (2) petitions to extend implementation deadline; (3) tariffs and cost support materials; and (4) recordkeeping requirement.

(1) Long-term number portability must be provided by LECs and CMRS providers in switches for which another carrier has made a specific request for number portability, according to the Commission's deployment schedule. Wireline carriers began providing LNP in 1998. In a *Memorandum Opinion and Order,* FCC 02–215, CC Docket No. 95–116, the Commission extended the deadline for CMRS providers to offer LNP. CMRS providers began offering LNP in 2003.

(2) Carriers that are unable to meet the deadlines for implementing a long-term number portability solution are required to file with the Commission at least 60 days in advance of the deadline a petition to extend the time by which

implementation in its network will be completed.

(3) Incumbent LECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Commission certain number portability charges. See 47 CFR 52.33. Incumbent LECs are required to include many details in their cost support that are unique to the number portability proceeding pursuant to the *Cost Classification Order.* For instance, incumbent LECs must demonstrate that any incremental overhead costs claimed in their cost support are actually new cost incremental to and resulting from the provision of long-term number portability. See the *Cost Classification Order.*

(4) Incumbent LECs are required to maintain records that detail both the nature and specific amount of these carrier-specific costs that are directly related to number portability, and those carrier-specific costs that are not directly related to number portability. The information collected and required by the Commission will be used to comply with Section 251 of the Telecommunications Act of 1996.

Federal Communications Commission.

Sharon E. Gillett,

Chief, Wireline Competition Bureau.

[FR Doc. 2010–2045 Filed 1–29–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–109; MB Docket No. 10–19; RM–11589]

Television Broadcasting Services; Oklahoma City, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Griffin Licensing, L.L.C. ("Griffin"), the licensee of KWTV–DT, channel 9, Oklahoma City, Oklahoma. Griffin requests the substitution of channel 39 for channel 9 at Oklahoma City.

DATES: Comments must be filed on or before February 16, 2010, and reply comments on or before February 26, 2010.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: David A. O'Conner, Esq., Wilkinson Barker Knauer, LLP, 2300 N Street, NW., Suite 700, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 10–19, adopted January 20, 2010, and released January 21, 2010. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site at *http://www.BCPIWEB.com.* 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).

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622(i) [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Oklahoma, is amended by adding channel 39 and removing channel 9 at Oklahoma City.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. 2010–2050 Filed 1–29–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

RIN 0648–AX06

Endangered and Threatened Species; Public Hearing Notification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings.

SUMMARY: NMFS will hold two public hearings in Carlsbad, CA, and San Jose, CA, in February 2010 to answer questions and receive public comments on the proposed rule to revise the critical habitat designation for the endangered leatherback sea turtle, which was published in the **Federal Register** on January 5, 2010.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates, times and locations of the public hearings. Comments and information regarding this proposed rule must be received by March 8, 2010.

ADDRESSES: Written comments on the proposed rule may be submitted, identified by RIN 0648–AX06, and addressed to: David Cottingham, Chief, Marine Mammal and Sea Turtle Conservation Division, by any of the following methods:

- Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal: *http://www.regulations.gov*;

• Facsimile (fax): 301–713–4060, Attn: David Cottingham;

• Mail: Chief, Marine Mammal and Sea Turtle Conservation Division, NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD, 20910.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. NMFS may elect not to post comments that contain obscene or threatening content. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The proposed rule and supporting documents, including the biological report, economic report, IRFA analysis, and 4(b)(2) report, are also available electronically at *http://www.nmfs.noaa.gov/pr/species/turtles/leatherback.htm#documents*.

FOR FURTHER INFORMATION CONTACT: Sara McNulty, NMFS, Office of Protected Resources, 301–713–2322; Elizabeth Petras, NMFS Southwest Region, 562–980–3238; Steve Stone, NMFS Northwest Region, 503–231–2317.

SUPPLEMENTARY INFORMATION: The dates, times and locations of the hearings are as follows:

1. Wednesday, February 17, 2010, 3:00 p.m. to 5:00 p.m., Carlsbad, CA: U.S. Fish and Wildlife Service Carlsbad Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; Conference Room 1.

2. Thursday, February 18, 2010, 3:00 p.m. to 5:00 p.m., San Jose, CA: San Jose Marriott, 301 South Market Street, San Jose, CA 95113; Blossom Hill Salons I and II.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sara McNulty, NMFS, Office of Protected Resources, 301–713–2322, at least five business days prior to the hearing date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: January 26, 2010.

Helen Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–2004 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0910051338–0034–01]

RIN 0648–AY29

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 44

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comment.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment 44 (FW 44) to the Northeast Multispecies Fishery Management Plan (FMP), and specifications for the FMP for fishing years (FY) 2010–2012. FW 44 measures and specifications, if approved, would be implemented in conjunction with approved measures in Amendment 16 to the FMP, as well as with approved sector operations plans authorized under the FMP. Specifically, FW 44 would modify the Gulf of Maine (GOM) cod and pollock trip limits proposed in Amendment 16; provide the Regional Administrator (RA) authority to implement inseason trip limits and/or differential day-at-sea (DAS) counting for any groundfish stock in order to prevent catch from exceeding the Annual Catch Limit (ACL); and specify Overfishing Levels (OFLs), Acceptable Biological Catch levels (ABCs), and ACLs for all 20 groundfish stocks in the FMP for fishing years 2010 through 2012, as well as the Total Allowable Catches (TACs) for transboundary Georges Bank (GB) stocks. NMFS also proposes in this rule, pursuant to current Regional Administratory authority under the FMP, to allocate zero trips to the Closed Area II Yellowtail Flounder Special Access Program (SAP); limit the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels; delay the opening of the Eastern U.S./Canada Management Area for trawl vessels; and implement a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). Finally, this rule would make technical corrections to proposed Amendment 16 regulations.

DATES: Comments must be received by March 1, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY29, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-rulemaking portal: *http://www.regulations.gov*.

• *Mail:* Paper, disk, or CD–ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: "Comments on FW 44 Proposed Rule."

• *Fax:* (978) 281–9135, Attn: Tom Warren

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), which is contained in the Classification section of this proposed rule. Copies of the Environmental Assessment (EA) prepared for this rule may be found at the following internet address: *http://www.nero.noaa.gov/nero/regs/frdoc/10/10MultiFW44EA.pdf*.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Pursuant to the biennial adjustment process of the FMP, the New England Fishery Management Council (Council) developed Amendment 16 to implement a wide range of revisions to management measures based on the results of the most recent stock assessment (Groundfish Assessment Review Meeting; GARM III; August 2008). A notice of availability for Amendment 16, including the Final Environmental Impact Statement, as submitted by the Council for review by

the Secretary of Commerce (Secretary), was published in the **Federal Register** on October 23, 2009 (74 FR 54773). A proposed rule for Amendment 16 was published on December 31, 2009 (74 FR 69382). Based on GARM III estimates of fishing mortality and stock size (biomass) in 2007, and subsequent estimates of fishing mortality, Amendment 16 proposes a suite of management measures to continue the rebuilding of groundfish stocks; an expanded sector management program; and a process for biennial specification of OFLs, ABCs, and ACLs. The analysis accompanying Amendment 16 indicates that the proposed management measures would achieve these objectives.

However, notwithstanding the Amendment 16 analysis, NMFS, based upon industry concerns regarding the effectiveness of Amendment 16 common pool measures, requested that the Council reconsider these measures at its September 2009 meeting. Specifically, industry expressed concern that assumptions inherent in Amendment 16 may be invalid, and therefore the Amendment 16 proposed measures may not be restrictive enough to prevent the ACLs from being exceeded (particularly for GOM cod and pollock). In particular, industry members noted that fishery participants may modify their effort behavior, for example by dropping out of sectors prior to the start of the fishing year and deciding to fish instead in the common pool, if there is the perception that common pool measures provide better fishing opportunities than sectors. Industry members also raised the possibility that Amendment 16 trip limit levels may result in over-harvest of ACLs for these stocks. For example, based on preliminary information, a relatively large number of DAS may be allocated to the common pool (3,601 DAS), compared to the relatively low proposed GOM cod ACL for the common pool (337 mt; 742,937 lb). Moreover, the Amendment 16 trip limits for GOM cod are relatively high, at 2,000 lb (907.2 kg)/DAS, up to 12,000 lb (5,443.2 kg)/trip for GOM cod. As a result of these allocations, it may be possible for GOM cod ACL to be exceeded by the common pool participants. Based upon this concern, and because it is not possible to determine with certainty in advance whether the analytical assumptions in Amendment 16 will be determined to be valid, the Council developed more restrictive management measures in FW 44 at its November 2009 meeting.

The measures in and authority for FW 44 are based in large part on Amendment 16 being implemented. In addition, FW 44 would modify proposed Amendment 16 measures. For that reason, if it is approved, FW 44 cannot be implemented until Amendment 16 (if approved) becomes effective. Moreover, FW 44 measures also affect fishing activities of the many new sector operations being proposed in concurrent actions. If approved, FW 44 will become effective at the same time and in conjunction with Amendment 16, and therefore would be in place when new sector fishing operations begin on May 1, 2010. FW 44 proposes the following management measures and specifications:

Management Measures

1. Regional Administrator Authority

Under FW 44, the NMFS RA, Northeast Region, would be given the authority to modify landing limits for any Northeast (NE) multispecies stock and/or DAS counting rates at any time during the FY to reduce the likelihood that ACLs of allocated NE multispecies stocks would be exceeded, or to facilitate the harvesting of ACLs. For example, if, based on available information regarding catch of a particular stock, NMFS projects that the ACL will be exceeded prior to the end of the fishing year, the RA may implement a more restrictive landing limit for that stock that would be effective for the remainder of the fishing year, unless further modified. Alternatively, for the same stock, the RA could instead decide to implement a more restrictive DAS counting rate in the geographic area that pertains to the stock (or implement a change to both a possession limit and DAS counting rate). A modification to the DAS counting rate, under this example, would apply to one or more of the differential DAS counting areas proposed in Amendment 16 that correspond to the pertinent stock(s) (*e.g.,* Inshore GOM Differential DAS Area; Offshore GOM Differential DAS Area; Inshore GB Differential DAS Area; Offshore GB Differential DAS Area; and Southern New England/Mid-Atlantic (SNE/MA) Differential DAS Area). This inseason adjustment could be implemented by the RA even on the first day of the fishing year. Thus, beginning in FY 2011, the RA could adjust the inseason DAS counting rate, in addition to the adjustment to the DAS counting rate that would be triggered under Amendment 16 as an accountability measure (AM), in response to exceeding an ACL during the previous FY.

Although NMFS is not proposing the RA use this new authority at the beginning of FY 2010, NMFS is nonetheless concerned that the ACLs for certain stocks may be exceeded in FY 2010, which would trigger accountability measures in FY 2011. To address the concern for stocks such as GOM winter flounder and GB cod (stocks for which the proposed ACLs are substantially less than recent catch levels), NMFS will monitor catch rates closely and be prepared to implement effort restrictions early in FY 2010, if necessary.

2. Modification to Amendment 16 Proposed Possession Limits

FW 44 would modify the proposed Amendment 16 GOM cod trip limit and replace it with the current, status quo trip limit for GOM cod. Specifically, for limited access DAS vessels, FW 44 would replace the proposed Amendment 16 GOM cod limit of 2,000 lb (907.2 kg) up to 12,000 lb (5,443.2 kg)/trip, with the status quo GOM cod trip limit of 800 lb (362.9 kg)/DAS, up to 4,000 lb (1,818.4 kg)/trip. For vessels with a limited access Handgear A or open access Handgear B permit, FW 44 would also replace the proposed Amendment 16 cod limits of 750 lb (340.2 kg) and 200 lb (90.7 kg), respectively, with the status quo trip limits of 300 lb (136.1 kg) and 75 lb (34 kg) per trip. In addition, FW 44 would implement a new trip limit for pollock of 1,000 lb (453.6 kg)/DAS, up to 10,000 lb (4,536.0 kg)/trip. Currently there is no trip limit for pollock, nor is there one proposed in Amendment 16. The proposed FW 44 trip limits are intended to reduce the likelihood of exceeding the GOM cod and pollock ACLs.

3. Requirement for Limited Access Scallop Vessels To Land Yellowtail Flounder

In conjunction with the allocations of yellowtail flounder to the scallop fishery (described below under "specifications"), vessels with a Federal limited access scallop permit are required to land all legal-sized yellowtail flounder to reduce discarding. This provision may also provide an incentive for scallop vessels to minimize the catch of yellowtail flounder, if landing yellowtail flounder is not cost-effective.

Specifications

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1361–1423h, requires ACLs to be implemented in FY 2010 for stocks determined to be subject to overfishing, and in FY 2011 for all other stocks. Amendment 16 proposes a biennial

process for specification of ACLs (and OFLs and ABCs) for all stocks as of FY 2010. Pursuant to the Amendment 16 proposed process, for FY 2010–2012 FW 44 would specify OFLs, ABCs, and ACLs, as well as incidental catch TACs for all stocks covered by the Northeast Multispecies FMP. In addition, pursuant to current FMP requirements, the Council, in this rule, recommends annual specifications of U.S./Canada Management Area TACs. Therefore, as described in further detail below, FW 44 proposes to specify U.S./Canada TACs; delay the opening of the Eastern U.S./Canada Management Area for trawl vessels for FY 2010; allocate zero trips for the CA II Yellowtail Flounder SAP, limit the Eastern U.S./Canada Haddock SAP to the use of Category A DAS for common pool vessels, and implement a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). The Regional Administrator has authority to modify management measures for the U.S./Canada Management Area, as well as modify certain SAP regulations.

FW 44 proposes the following specifications:

1. OFLs and ABCs

Table 1 contains FW 44 proposed OFLs and ABCs for FY 2010–2012, based on GARM III stock assessments (2008), for all stocks with the exception of GB yellowtail flounder, for which the ABC is based on the Transboundary Resource Assessment Committee stock assessment of 2009. It is anticipated that the FY 2011 and 2012 values of the GB yellowtail flounder ABC will be revised during 2010 and 2011, respectively, based on new transboundary stock assessments. The OFLs and ABCs for FY 2012 will likely be revised during the next biennial adjustment process (during 2011), but are being specified at this time in the event that the next biennial adjustment process does not result in the timely implementation of revised 2012 catch specifications.

The OFL value for a stock is calculated using the estimated stock size for a particular year, and represents the amount of catch associated with Fmsy, i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield (MSY). The ABCs are those recommended by the Council's Scientific and Statistical Committee (SSC), and are lower than the OFLs in order to take into account scientific uncertainty in setting catch limits. The ABC value for a stock is calculated using the estimated stock size for a particular year, and for all stocks, with the exception of SNE/MA winter flounder, represents the amount of catch associated with 75 percent of Fmsy, or the F rate required to rebuild the stock within the defined rebuilding time period (Frebuild), whichever is lower. For SNE/MA winter flounder, the ABC was calculated using the F expected to result from management measures designed to achieve an F as close to zero as practicable. This ABC is consistent with the SSC recommendation that for stocks that cannot rebuild to Bmsy in the specified rebuilding period, even with no fishing, the ABC should be based on incidental bycatch, including a reduction in bycatch rate (*i.e.,* the proportion of the stock caught as bycatch).

According to FW 44, for all stocks, with the exception of those with index-based stock assessments (where no information was provided), the probability that the ABC catch would result in overfishing (F>Fmsy) is less than 20 percent. The highest probability of overfishing is associated with GB winter flounder (0.184, 0.191, and 0.199 for 2010, 2011, and 2012, respectively). The ABC values for GB cod and GB haddock for FY 2011 and 2012 are maximum values, because no Canadian catch has been deducted from the overall ABC, and therefore will likely be specified again in conjunction with the 2011 and 2012 U.S./Canada TACs. The FY 2011 and 2012 U.S. ABCs for GB cod and GB haddock will therefore be lower than the values in Table 1 in order to take into account Canadian catch. For example, for FY 2010, the amount of reduction to the overall ABC for GB cod and GB haddock was 1,012 mt and 17,612 mt, respectively, which represent the Canadian portion of the shared TACs (Table 7).

TABLE 1—OVERFISHING LEVELS AND ACCEPTABLE BIOLOGICAL CATCHES FOR 2010–2012

** Stock	OFL			U.S. ABC		
	2010	2011	2012	2010	2011	2012
GB cod	6,272	7,311	8,090	3,800	*5,616	*6,214
GOM cod	11,089	11,715	11,742	8,530	9,012	9,018
GB hadk	80,007	59,948	51,150	44,903	*46,784	*39,846
GOM hadk	1,617	1,536	1,296	1,265	1,206	1,013
GB ytail	5,148	6,083	7,094	1,200	1,081	1,226
SNE ytail	1,553	2,174	3,166	493	687	1,003
CC ytail	1,124	1,355	1,508	863	1,041	1,159
Plaice	4,110	4,483	4,727	3,156	3,444	3,632
Witch	1,239	1,792	2,141	994	1,369	1,639
GB winter	2,660	2,886	3,297	2,052	2,224	2,543
GOM winter	441	570	685	238	238	238
SNE winter	1,568	2,117	2,830	644	897	1,198
Redfish	9,899	10,903	12,036	7,586	8,356	9,224
White hake	4,130	4,805	5,306	2,832	3,295	3,638
Pollock	5,085	5,085	5,085	3,293	3,293	3,293
N. window	225	225	225	169	169	169
S. window	317	317	317	237	237	237
Ocean pout	361	361	361	271	271	271
Halibut	119	130	143	71	78	85
Wolffish	92	92	92	83	83	83

** GB = Georges Bank; GOM = Gulf of Maine; hadk = haddock; ytail = yellowtail flounder; SNE = Southern New England/Mid-Atlantic; CC = Cape Cod/GOM; plaice = American plaice; witch = witch flounder; winter = winter flounder; N = north; S = south; window = windowpane flounder.
* Preliminary.

2. ACLs

Pursuant to Magnuson-Stevens Act requirements and Amendment 16, the Council recommended ACLs that are lower than the ABCs, in order to account for management uncertainty. The total ACL for a stock represents the catch limit for a particular year, considering both biological and management uncertainty, and the limit includes all sources of catch (landed and discards) and all fisheries (commercial and recreational groundfish fishery, state-waters catch, and non-groundfish fisheries). The division of a single ABC value for each stock (for a particular FY) into sub-ACLs, and ACL-subcomponents, accomplishes three objectives: (1) The ABC is sub-divided to account for all components of the fishery and sources of fishing mortality; (2) allocations are made for certain fisheries; and (3) management uncertainty is taken into account.

For FW 44 the ABC was sub-divided into fishery components on a stock-specific manner, prior to the consideration of management uncertainty. The following components of the fishery are reflected in the total ABC: Canadian share/allowance (expected Canadian catch); U.S. ABC (available to the U.S. fishery after accounting for Canadian catch); state waters (portion of ABC expected to be caught from state waters outside Federal management); other sub-components (expected catch by other non-groundfish fisheries); scallop fishery; mid-water trawl fishery; commercial groundfish fishery; and recreational groundfish fishery. The commercial groundfish sub-ACL is further divided into the non-sector (common pool vessels) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors as of September 1, 2009, and the cumulative Potential Sector Contributions (PSCs) associated with those sectors, as explained in Amendment 16 and the proposed rule for sector operations in FY 2010.

As indicated in the proposed rule for sector operations for FY 2010 (74 FR 68015, December 22, 2009), sector rosters will not be finalized until May 1, 2010, because sectors have until April 30, 2010, to drop out of a sector and fish in the common pool. Therefore, it is likely that the FY 2010 sector sub-ACL, which is comprised of the cumulative PSCs of all enrolled sector members, will be reduced and the common pool sub-ACL will increase after publication of the final rule specifying ACLs.

Despite such changes, the groundfish sub-ACL (common pool sub-ACL plus the sector sub-ACL) would not change. Based on the final rosters, NMFS intends to publish a rule in early May 2010 to modify these sub-ACLs, and notify the public if these numbers change. It is almost certain that all of the FY 2011 and 2012 sub-ACLs for the common pool and sectors will change and be re-specified prior to FY 2011 and 2012 due to likely annual changes to the sector rosters. Furthermore, due to the need to re-specify the U.S. ABCs for GB cod and GB haddock as described above, all sub-components of the ABCs for GB cod and GB haddock will be re-specified for FY 2011 and 2012, when information on the Canadian TACs is available.

The numbers in this proposed rule are based on the sector rosters submitted to NMFS as of September 1, 2009, as indicated in the EA. In contrast, the proposed Annual Catch Entitlements (ACE) for sectors are based on rosters as of November 30, 2009. The average difference in the common pool sub-ACLs between this proposed rule and the sector proposed rule is 36 percent. The common pool sub-ACLs in the sector proposed rule are lower than in this proposed rule due to an increase in sector members between September 1 and November 30, 2009.

The concept of management uncertainty for the purpose of developing ACLs in Amendment 16, was characterized as the likelihood that management measures will result in a level of catch that is greater than the catch objective. In FW 44, management uncertainty was evaluated for each stock, considering the following elements of the fishery and the FMP: enforceability; monitoring adequacy; precision of management tools; latent effort; and catch of groundfish in non-groundfish fisheries. For most stocks and components of the fishery (ABC components), the default adjustment (reduction) to the catch level for a fishery component was 5 percent. For stocks with less management uncertainty, the adjustment was 3 percent, and for those stocks or components with more management uncertainty, the adjustment was 7 percent.

For example, the 2010 pollock ABC set by the SSC was 3,813 mt. Excluding the estimated Canadian pollock catch of 520 mt, the U.S. ABC in 2010 for pollock amounts to 3,293 mt (Table 1). Approximately 6 percent of the U.S. ABC is used to account for anticipated state-waters catch (200 mt), 6 percent accounts for anticipated pollock catch by non-groundfish fisheries (other sub-components), and the remaining 2,893 mt is allocated to the groundfish fishery (3,293 − 200 − 200 = 2,893 mt). To account for management uncertainty, this amount was reduced by 5 percent (144 mt) from 2,893 mt,, resulting in a groundfish sub-ACL of 2,748 mt (2,893 − 144 = 2,748 mt) (Table 3).

Several components of the FW 44 ABCs are notable, because they are atypical. For example, an allocation of yellowtail flounder to the scallop fishery is proposed in recognition of the importance of yellowtail flounder to the prosecution of the scallop fishery. For FY 2010, the scallop fishery would be allocated 100 percent of the estimated yellowtail flounder (for GB and CC/GOM stocks) that is associated with the projected scallop catch in FY 2010, although this allocation is not a "hard" TAC. For FY 2011 and 2012, NMFS proposes in FW 44 to allocate to the scallop fishery 90 percent of the yellowtail flounder the scallop fishery is projected to catch (Table 2). Allocating to the scallop fishery only 90 percent of the yellowtail flounder that the fishery is expected to catch is intended to incentivize the scallop fishermen to reduce its bycatch of yellowtail flounder.

At the January 27, 2010 Council meeting, the Council is expected to review and possibly reconsider Framework Adjustment 21 (FW 21) to the Atlantic Sea Scallop FMP (FW 21), which includes measures that determine the amount of scallops that would be caught during FY 2010. Because the FW 44 yellowtail flounder allocation to the scallop fishery is based on the amount of projected scallop harvest, a modification to FW 21 could affect the proposed FW 44 allocation of yellowtail flounder to both the scallop and the NE multispecies fisheries. The outcome of the Council's January 2010, review of FW 21 is unknown at the time this document was going to publication. However, even if the yellowtail flounder allocations are not changed in FW 44, a modification of the scallop management program could change the impacts of the yellowtail flounder allocations, such that they are different than analyzed in the FW 44 EA.

The FW 44 EA contains a brief discussion of the potential effects on the environment, including the human environment, of modifying the scallop management program. If necessary, the FW 44 EA will be revised by including supplemental analyses, and the FW 44 final rule would reflect the revised specifications. For FY 2010, a change in the Scallop FMP that would allow additional scallop effort, and a recommendation for a larger allocation of yellowtail flounder, would result in increased revenue to the scallop fishery

due to the additional yellowtail landed by scallop vessels. Conversely, with respect to the groundfish fishery, allocating additional yellowtail flounder to the scallop fleet would result in lost revenue for the NE multispecies fishery. Based on FW 21 information, the total amount of GB and SNE/MA yellowtail flounder allocated to the scallop fishery could be up to 146 mt and 135 mt, respectively. These amounts would increase, by 36 mt and 24 mt for GB and SNE/MA yellowtail, respectively the currently proposed allocations to the scallop fishery. The EA estimates that the value of each metric ton of yellowtail flounder to the NE multispecies fishery ranges from a low of $3,296 to a high of $41,176. Further, the specified allocations of yellowtail flounder for the scallop fishery may be revised for FY 2011 or 2012, based on updated scallop and yellowtail flounder stock information, or on future scallop fishery access area measures.

No specific allocation of CC/GOM yellowtail flounder would be made to the scallop fishery because the incidental catches of this stock by the scallop fishery are relatively low. Catches of this stock will be considered part of the "other sub-component" of the ACL.

The FY 2010 yellowtail flounder allocations to the scallop fishery are characterized as ACL sub-components (no short-term associated AMs), and the FY 2011 and 2012 allocations are characterized as sub-ACLs. Under the current Atlantic Sea Scallop FMP, if the scallop fishery harvests in excess of the yellowtail flounder sub-components specified for the fishery for FY 2010 (110 mt and 111 mt for GB and SNE/MA, respectively), no scallop management measures will be triggered. The Council has decided to develop AMs for the Atlantic Sea Scallop FMP that would be responsive to yellowtail flounder catches in excess of the sub-ACL, beginning in FY 2011. The precise mechanism and scope of future scallop AMs, is unknown. Current regulations set a cap on the amount of yellowtail flounder that may be harvested from the scallop access areas from the SNE/MA and GB yellowtail flounder stock areas. Specifically, current regulations cap yellowtail flounder harvest from scallop access areas at 10 percent of the "total TAC" for each of the stock areas. In light of the proposed ACL components, "total TAC" means "total ACL", i.e., 10 percent of 1,169 mt (117 mt) and 468 mt (47 mt) for FY 2010 for GB and SNE/MA yellowtail flounder, respectively (see Table 3).

Under this action, the mid-water trawl fishery would be allocated 0.2 percent of the U.S. ABC for GB and GOM haddock. The values for the allocations to the mid-water trawl fishery listed in Table 2 are slightly less than 0.2 percent, due to the 7 percent reduction of these allocations to account for management uncertainty for this stock. To determine the mid-water trawl fishery's allocation of GB haddock, therefore, the ABC of 44,903 mt was multiplied by 0.002, and then reduced by 6.3 mt (44,903 mt X .002 = 89.8 mt; 89.8 mt − 6.3 mt = 83.5 mt). For GOM haddock, the ABC of 1,265 mt was multiplied by 0.002, and then reduced by 0.18 (1,265 mt X .002 = 2.53 mt; 2.53 mt − 0.18 mt = 2.4 mt). All the haddock allocations to the mid-water trawl fishery are characterized as sub-ACLs (associated with AMs, as explained below). A percentage of the U.S. ABC for GOM haddock and GOM cod would be allocated to the recreational fishery, based on a split of ABC among commercial and recreational components of the fishery (72.5 percent and 27.5 percent for haddock; 66.3 percent and 33.7 percent for cod, respectively)(Table 2). All the recreational allocations to the groundfish fishery are characterized as sub-ACLs.

TABLE 2—ALLOCATIONS TO THE SCALLOP FISHERY, MID-WATER TRAWL FISHERY, AND RECREATIONAL GROUNDFISH FISHERY (MT)

	FY 2010	FY 2011	FY 2012
Scallop Fishery			
Yellowtail flounder stock:			
GB	110	197	308
SNE/MA	111	80	126
Mid-Water Trawl Fishery			
Haddock stock:			
GB	84	87	74
GOM	2	2	2
Recreational Groundfish Fishery			
GOM stock:			
GOM cod	2,673	2,824	2,826
GOM haddock	324	308	259

For most stocks the percentage of the ABC deducted for anticipated catch from state waters is between 1 and 10 percent, with the exception of Atlantic halibut and GOM winter flounder, for which 50 percent and 35 percent, respectively, are deducted from the ABC.

Amendment 16 would implement a system in which a sub-ACL has an AM that would be triggered if the catch exceeds the specified amount. In contrast, an ACL-subcomponent does not have an automatic short-term AM that is triggered if the catch exceeds the specified amount, although there would be accountability through the evaluation of the catch of all sub-components during the next biennial adjustment to determine if the size of the ACL-subcomponents needs to be adjusted for subsequent fishing years. However, if the total catch exceeds the total ACL, AMs would be triggered, as explained in detail in the Amendment 16 proposed rule. Tables 3, 4, and 5 contain the total ACLs, sub-ACLs, and ACL-subcomponents for FY 2010, 2011, and 2012, respectively (with the exception of the scallop and mid-water trawl components in Table 2). The sector sub-ACLs for five stocks are zero, because no

possession of these stocks is allowed for either common-pool or sector vessels.

TABLE 3—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2010 (MT) *

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GB cod	3,620	3,430	174	3,256	38	152
GOM cod	8,088	7,240	337	4,230	566	283
GB hadk	42,768	40,440	1,127	39,313	449	1,796
GOM hadk	1,197	1,149	39	786	9	37
GB ytail	1,169	999	65	934	0	60
SNE ytail	468	322	91	241	5	20
CC ytail	822	779	52	727	9	35
Plaice	3,006	2,848	184	2,665	32	126
Witch	899	852	42	810	9	38
GB winter	1,955	1,852	55	1,797	0	103
GOM winter	230	158	26	132	60	12
SNE winter	605	520	520	0	53	32
Redfish	7,226	6,848	234	6,613	76	303
White hake	2,697	2,566	121	2,435	28	113
Pollock	3,148	2,748	118	2,630	200	200
N. window	161	110	110	0	2	49
S. window	225	154	154	0	2	69
Ocean pout	253	239	239	0	3	11
Halibut	69	30	30	0	36	4
Wolffish	77	73	73	0	1	3

* See Table 2 for allocations to scallop, mid-water trawl, and recreational fisheries.

TABLE 4—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2011 (MT) *

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GB cod	5,349	5,068	257	4,812	56	225
GOM cod	8,545	7,649	356	4,469	597	299
GB hadk	44,560	42,134	1,174	40,959	468	1,871
GOM hadk	1,141	1,095	37	749	9	35
GB ytail	1,050	799	52	747	0	54
SNE ytail	641	527	144	383	7	27
CC ytail	992	940	63	867	10	42
Plaice	3,280	3,108	200	2,908	34	138
Witch	1,304	1,236	61	1,174	14	55
GB winter	2,118	2,007	60	1,948	0	111
GOM winter	230	158	26	132	60	12
SNE winter	842	726	726	0	72	45
Redfish	7,959	7,541	257	7,284	84	334
White hake	3,138	2,566	141	2,833	33	132
Pollock	3,148	2,974	118	2,630	200	200
N. window	161	110	110	0	2	49
S. window	225	154	154	0	2	69
Ocean pout	253	239	239	0	3	11
Halibut	76	33	33	0	39	4
Wolffish	77	73	73	0	1	3

* See Table 2 for allocations to scallop, mid-water trawl and recreational fisheries.

TABLE 5—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2012 (MT) *

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GB cod	5,919	5,608	284	5,324	62	249
GOM cod	8,551	7,654	356	4,472	598	299
GB hadk	37,952	35,885	1,000	34,885	398	1,594
GOM hadk	959	920	31	630	7	29
GB ytail	1,191	822	53	769	0	61
SNE ytail	936	760	208	552	10	40
CC ytail	1,104	1,046	70	976	12	46
Plaice	3,459	3,278	211	3,067	36	145
Witch	1,561	1,479	73	1,406	16	66
GB winter	2,422	2,295	68	2,227	0	127

TABLE 5—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2012 (MT) *—Continued

Stock	Total ACL	Groundfish sub-ACL	Preliminary common-pool sub-ACL	Preliminary sector sub-ACL	State waters ACL-sub-component	Other ACL-subcompo-nents
GOM winter	230	158	26	132	60	12
SNE winter	1,125	969	969	0	96	60
Redfish	8,786	8,325	284	8,041	92	369
White hake	3,465	3,283	156	3,128	36	146
Pollock	3,148	2,748	118	2,630	200	200
N. window	161	110	110	0	2	49
S. window	225	154	154	0	2	69
Ocean pout	253	239	239	0	3	11
Halibut	83	36	36	0	43	4
Wolffish	77	73	73	0	1	3

* See Table 2 for allocations to scallop, mid-water trawl, and recreational fisheries.

3. Revisions to Incidental Catch TACs and Allocations to Special Management Programs

This proposed rule specifies incidental catch TACs applicable to the NE multispecies Special Management Programs for FY 2010–2012, based on the proposed ACLs and the FMP. Incidental catch TACs are specified for certain stocks of concern for common pool vessels fishing in the Special Management Programs, in order to limit the amount of catch of stocks of concern that can be caught under such programs. A stock of concern is defined as a stock that is in an overfished condition or subject to overfishing. The Incidental Catch TACs proposed below are consistent with the proposed Amendment 16 changes to the allocation of incidental catch TACs among Special Management Programs. Pursuant to Amendment 16, new incidental catch TACs are required for GOM winter flounder and pollock, because they are now considered stocks of concern. Although American plaice is technically no longer a stock of concern, Amendment 16 retains the incidental catch TAC for this stock because the stock is far from rebuilt. The incidental catch TACs apply to catch (landings and discards) caught under Category B DAS (either Regular or Reserve B DAS) on trips that end on a Category B DAS. The catch of stocks for which incidental catch TACs are specified on trips that start under a Category B DAS and then flip to a Category A DAS do not accrue toward such TACs. Due to the need to re-specify the U.S. ABC for GB cod, as described above, the incidental catch TAC for GB cod will be re-specified for FY 2011 and 2012, when information on the Canadian TACs are available. The incidental catch TACs by stock based on the common pool sub-ACL are shown in Table 6 below.

TABLE 6—INCIDENTAL CATCH TACS BY STOCK FOR FY 2010–2012 (MT)

Stock	Percentage of sub-ACL	2010 incidental catch TAC	2011 incidental catch TAC	2012 incidental catch TAC
GB cod	2	3.5	5.1	5.7
GOM cod	1	3.4	3.6	3.6
GB yellowtail	2	1.3	1.0	1.1
CC/GOM yellowtail	1	0.5	0.6	0.7
SNE/MA yellowtail	1	0.9	1.4	2.1
Plaice	5	9.2	10.0	10.6
Witch flounder	5	2.1	3.1	3.7
SNE/MA winter flounder	1	5.2	7.3	9.7
GB winter	2	1.1	1.2	1.4
White hake	2	2.4	2.8	3.1
Pollock	2	2.4	2.4	2.4

TABLE 7—ALLOCATION OF INCIDENTAL CATCH TACS AMONG SPECIAL MANAGEMENT PROGRAMS

Stock	Regular B DAS program %	Closed area I hook gear haddock SAP %	Eastern U.S./ Canada had-dock SAP %
GB cod	50	16	34
GOM cod	100	na	na
GB yellowtail	50	na	50
CC/GOM yellowtail	100	na	na
SNE/MA yellowtail	100	na	na
Plaice	100	na	na
Witch flounder	100	na	na
SNE/MA winter flounder	100	na	na
GB winter	50	na	50
White hake	100	na	na
Pollock	50	16	34

TABLE 8—INCIDENTAL CATCH TACS FOR SPECIAL MANAGEMENT PROGRAMS BY STOCK FOR FY 2010–2012 (MT)

Stock	Regular B DAS program			Closed area I hook gear haddock SAP			Eastern U.S./Canada haddock SAP		
	2010	2011	2012	2010	2011	2012	2010	2011	2012
GB cod	1.7	2.6	2.8	0.6	0.8	0.9	1.2	1.7	1.9
GOM cod	3.4	3.6	3.6	.....	.....	.....	.....	.....	.....
GB yellowtail	0.6	0.5	0.5	.....	.....	.....	0.6	0.5	0.5
CC/GOM yellowtail	0.5	0.6	0.7	.....	.....	.....	.....	.....	.....
SNE/MA yellowtail	0.9	1.4	2.1	.....	.....	.....	.....	.....	.....
Plaice	9.2	10.0	10.6	.....	.....	.....	.....	.....	.....
Witch flounder	2.1	3.1	3.7	.....	.....	.....	.....	.....	.....
SNE/MA winter flounder	1.1	1.2	1.4	.....	.....	.....	.....	.....	.....
GB winter	1.2	1.4	1.6	.....	.....	.....	1.2	1.4	1.6
White hake	5.2	7.3	9.7	.....	.....	.....	.....	.....	.....
Pollock	1.2	1.2	1.2	0.4	0.4	0.4	0.8	0.8	0.8

6. Annual Specifications for U.S./Canada Management Area

The FMP specifies a procedure for setting annual hard TAC levels (i.e., the fishery or area closes when a TAC is reached) for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area. The regulations governing the annual development of TACs were authorized by Amendment 13 to the FMP in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the Northeast Region of NMFS and the Maritimes Region of the Department of Fisheries and Ocean of Canada (DFO) that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

Annual TACs are determined through a process involving the Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee. In September 2009, the TMGC approved the 2009 Guidance Document for Eastern GB cod and Eastern GB haddock, which included recommended U.S. TACs for these stocks. Although the TMGC also approved the Guidance Document for GB yellowtail flounder, the TMGC was not able to agree on a shared TAC for GB yellowtail flounder.

The U.S. delegation proposed 1,500 mt for the shared GB yellowtail flounder TAC, based on the SSC recommendation. The Canadians supported a larger shared TAC of 2,700 m. Due to the Magnuson-Stevens Act and FMP rebuilding plan for GB yellowtail flounder, the United States was constrained to the lower level it proposed, and the TMGC was unable to reach a consensus on an appropriate shared catch for GB yellowtail, and acknowledged this lack of consensus.

The recommended FY 2010 TACs were based on the most recent stock assessments (TRAC Status Reports for 2009), and the fishing mortality strategy shared by NMFS, the Department of Fisheries and DFO. The shared strategy has two parts: (1) To maintain a low to neutral (less than 50-percent) risk of exceeding the F limit reference (Fref = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively); and (2) when stock conditions are poor, F should be further reduced to promote rebuilding.

The TMGC concluded that the most appropriate combined U.S./Canada TAC for Eastern GB cod for FY 2010 is 1,350 mt. A 2010 TAC of 1,350 mt corresponds to the average of the pertinent two models for a neutral (50-percent) risk of biomass decline. This corresponds to a low risk (less than 25-percent) or neutral risk (50-percent) of exceeding the Fref of 0.18 (i.e., Fmsy) in FY 2010. The annual allocation shares between countries for FY 2010 are based on a combination of historical catches (10 percent weighting) and resource distribution based on trawl surveys (90 percent weighting). Combining these factors entitles the United States to 25 percent of the shared TAC and Canada to 75-percent, resulting in a quota of 338 mt for the United States and 1,012 mt for Canada.

For Eastern GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2010 is 29,600 mt. While this technically corresponds to the risk-neutral level (of exceeding F ref of 0.26), which assumes the entire TAC will be caught in FY 2009, realistically, it represents a low to neutral risk level, because the anticipated catch in FY 2009 will likely be less than the TAC. The annual allocation share recommendations between countries for FY 2010 are based on a combination of historical catches (10-percent weighting) and resource distribution based on trawl surveys (90-percent weighting). Combining these factors results in recommended allocations of 40.5 percent of the shared TAC to the United States, and 59.5 percent to Canada, or a quota of 11,988 mt for the U.S. and 17,612 mt for Canada.

On September 23, 2009, the Council approved, consistent with the 2009 Guidance Document, the following U.S. TACs recommended by the TMGC: 338 mt of Eastern GB cod and 11,988 mt of Eastern GB haddock. The Council recommended a U.S. TAC of 1,200 mt for GB yellowtail, based upon the SSC recommendation of 1,500 mt, minus the anticipated Canadian catch, estimated at 300 mt. The 300 mt is approximately the 3-year average of Canadian catch (2008, 2007, 2006; 151 mt, 132 mt, 590 mt, respectively), based upon TMGC information. The FY 2010 TACs for the U.S./Canada Management Area represent substantial decreases for cod (36 percent) and yellowtail flounder (43 percent), and an increase for haddock, compared to the FY 2009 TACs for those species. The final GB yellowtail flounder sub-ACL proposed for the groundfish fishery (999 mt; Table 3) is lower than the 1,200-mt U.S. TAC, as discussed above, due to the allocation to the scallop fishery and consideration of management uncertainty.

TABLE 9—2010 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES

[In parentheses]

	Eastern GB Cod	Eastern GB Haddock	* GB Yellowtail Flounder
Total Shared TAC	1,350	29,600	1,500
U.S. TAC	338 (25%)	11,988 (40.5%)	1,200
Canada TAC	1,012 (75%)	17,612 (59.5%)	na

* Developed unilaterally by the Council.

The regulations related to the Understanding, promulgated by the final rule implementing Amendment 13, state that "any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year." Therefore, if an analysis of the catch of the shared stocks by U.S. vessels indicates that an over-harvest occurred during FY 2009, the pertinent components of the ACL would be adjusted downward in order to be consistent with the FMP and Understanding (including the scallop ACL-subcomponent for GB yellowtail flounder). Although it is very unlikely, it is possible that a very large over-harvest could result in an adjusted TAC of zero. If an adjustment to one of the FY 2010 TACs of cod, haddock, or yellowtail flounder is necessary, it will be done consistent with the Administrative Procedure Act and the fishing industry will also be notified.

7. U.S./Canada Management Area Initial Measures for FY 2010.

NMFS also proposes to implement, in conjunction with FW 44, and using existing authority granted to the Regional Administrator under the FMP, measures to optimize the harvest of the transboundary stocks managed under the Understanding . The regulations in 50 CFR 648.85(a)(3)(iv)(D) provide the RA the authority to implement inseason adjustments to various measures in order to prevent over-harvesting, or to facilitate achieving the TAC.

Although this measure is not included in FW 44, pursuant to the authority cited above, the Council in November 2009 voted to direct the RA to postpone the opening of the Eastern U.S./Canada Area for both sector and non-sector vessels fishing with trawl gear in FY 2010 from May 1, 2010 to August 1, 2010. Therefore, this action proposes such a delay. The objective of this measure is to prevent trawl fishing in the Eastern U.S./Canada Area during the time period when cod bycatch is likely to be very high, and to prolong access to this area in order to maximize the catch of available cod, haddock, and yellowtail flounder. To further constrain fishing mortality on GB cod, NMFS proposes that, in a manner similar to FYs 2008 and 2009, common pool vessels fishing with non-trawl gear in the Eastern U.S./Canada Area prior to August 1, 2010, be limited to a cod catch of 5 percent of the Eastern GB cod TAC, or 16.9 mt of cod. This measure was successful in FYs 2008 and 2009 in slowing the annual catch rate of cod during the early part of the year.

Second, NMFS is proposing to implement, in conjunction with FW 44, a possession limit of 2,500 lb (1,125 kg) per trip for GB yellowtail flounder for common pool vessels to prevent the common pool sub-ACL from being exceeded. Although the proposed Amendment 16 regulations would not implement any default initial possession limit for GB yellowtail flounder (*i.e.,* unlimited at the start of the fishing year), NMFS is proposing this initial possession limit under its existing authority, in order to moderate catch to ensure fishing limits are not exceeding allow harvesting of the sub-ACL by the common pool, and decrease the likelihood that further restrictions during the FY would be needed to slow the catch. This possession limit is based on a recommendation of the Council's Groundfish Plan Development Team for a low GB yellowtail flounder trip limit, as well as a projected catch analysis for FY 2010, using current information on vessels that will fish in the common pool in FY 2010. If necessary, NMFS may modify this proposed trip limit based upon new information regarding the vessel composition of the common pool, or revised analytical assumptions.

8. Special Management Program Status for FY 2010

The Regional Administrator has existing authority to allocate trips into the Closed Area (CA) II Yellowtail Flounder SAP and, for other special management programs (Regular B DAS Program; CA I Hook Gear Haddock SAP; and Eastern U.S./Canada Haddock SAP), has authority to close the program if the program would undermine achieving the objectives of the FMP or the SAP.

Therefore, in conjunction with FW 44, NMFS proposes that for FY 2010, zero trips be allocated to the CA II Yellowtail Flounder Special Access Program, based on a determination that the available TAC of GB yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II SAP. The Regional Administrator has the authority to determine the allocation of the total number of trips into the CA II SAP based on several criteria, including the GB yellowtail flounder TAC level and the amount of GB yellowtail flounder caught outside of the SAP. As implemented in 2005 by Framework Adjustment 40B (FW 40B) (70 FR 31323, June 1, 2005), zero trips to this SAP should be allocated if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., 150 trips of 15,000 lb/trip = 2,250,000 lb (1,021 mt) needed). This calculation takes into account the projected catch from the area outside of the SAP. Based on the proposed groundfish sub-ACL, of 2,202,355 lb (999 mt), even if the projected catch from outside the SAP area is zero, there is still insufficient GB yellowtail flounder available to allow the SAP to proceed (i.e., 2,202,355 lb (999 mt) available < 2,250,000 (1,021 mt) needed).

NMFS also proposes, in conjunction with FW 44, to disallow the use of Category B DAS in the Eastern U.S./Canada Haddock SAP for common pool vessels in FY 2010, based on the Regional Administrator's existing authority to close the SAP if the program would undermine the achievement of the objectives of the SAP or the FMP. All of the FY 2010 incidental catch TACs proposed for the SAP are very small (GB cod: 2,646 lb (1.2 mt); GB yellowtail flounder: 1,323 lb (0.6 mt); pollock: 1,724 lb (0.8 mt); and GB winter flounder: 2,646 lb (1.2 mt)), and would therefore be difficult to monitor. Concurrent trips by several vessels into the SAP, or even a single trip, could result in the incidental

TAC(s) being exceeded quickly. Based on historical information of the amount of GB cod caught (5,276 lb (2.4 mt)) on SAP trips that ended on a Category B DAS, the SAP would provide little opportunity to target haddock, with a high likelihood of the SAP closing upon reaching the incidental catch TAC for cod. Furthermore, past participation in this SAP was extremely low (*e.g.,* eight trips in FY 2008). For these reasons, the use of Category B DAS in the SAP would be inconsistent with the objective of the SAP to allow access to haddock while avoiding or minimizing impacts on stocks of concern. Under proposed Amendment 16 rules, sector vessels would not be restricted by the incidental catch TAC, and could fish in the SAP, provided they have adequate ACE for Eastern GB haddock (and other stocks).

9. Haddock TAC for CA I Hook Gear Haddock SAP

FW 44 proposes specification of a haddock TAC for the CA I Hook Gear Haddock SAP based on the GARM III stock assessment and a formula implemented in FW 42. The haddock TAC in a particular year is based on the TAC that was specified for the SAP in 2004 (1,130 mt), and scaled according to the size of the exploitable biomass of western GB haddock compared to the biomass size in 2004 (27,313 mt). The size of the western component of the GB haddock stock is estimated as 35 percent of the size of the total GB haddock stock. Therefore, if the 2010 exploitable biomass of haddock is projected to be 291,682 mt, the formula and resultant TAC is as follows: $(.35)(291{,}682)/27{,}313) \times 1{,}130 = 4{,}223.7$ mt. Table 10 contains the proposed CA I Hook Gear Haddock SAP TACs and pertinent information for FY 2010–2012.

TABLE 10—CA I HOOK GEAR HADDOCK SAP TACS FY 2010–2012.

Year	GB Haddock exploitable biomass (mt)	Western GB Haddock exploitable biomass	Biomass (yr)/ biomass 2004	TAC (mt, live weight)
2004	78,037	27,313		
2010	291,682	102,089	3.738	4,223.7
2011	218,054	76,319	2.794	3,157.5
2012	177,978	62,292	2.281	2,577.2

10. Revised Stock Areas for GB Yellowtail Flounder and GB Winter Flounder

In 2004, Framework Adjustment 40A (FW 40A) (69 FR 67780, November 19, 2004) established the Regular B DAS Program to provide opportunities for vessels to use Category B Regular DAS to selectively harvest healthy stocks of haddock, while avoiding stocks of concern (i.e., stocks that were overfished and subject to overfishing). That action specified stock areas that would be closed if quarterly incidental TACs for stocks of concern were caught. The proposed rule to implement measures in Amendment 16 (74 FR 69382, December 31, 2009) revised these areas to specify that they would also be used to identify the stock areas in which possession limits are applied, and to specify areas in which sector allocations of ACE would apply.

The Northeast Fisheries Science Center (Center) recently compared the stock areas used in stock assessments with those to be used to monitor the catch of ACLs in the NE multispecies fishery beginning in FY 2010. The stock areas identified by the Center differed slightly from the stock areas previously specified for the Regular B DAS Program under FW 40A, and the stock areas proposed in Amendment 16 for trip limits and sector ACEs. In particular, the stock areas identified by the Center for GB yellowtail flounder and GB winter flounder included statistical areas 522, 525, 542, 543, 561, and 562, while the stock areas for GB yellowtail flounder and GB winter flounder originally implemented under FW 40A and revised by the Amendment 16 were limited to statistical areas 522, 525, 561, and 562 (i.e., only the U.S./Canada Management Area), and did not include 542 and 543. To ensure that the areas used to attribute catch to stock areas for the purposes of monitoring ACLs correspond to the stock areas used in assessments, this proposed rule modifies the GB yellowtail flounder and GB winter flounder stock areas listed at 50 CFR 648.85(b)(6)(v)(H) and (I) in the Amendment 16 proposed rule to include statistical areas 542 and 543.

Classification

At this time, NMFS has made a preliminary determination that the measures this proposed rule would implement are consistent with the FMP, MSA and other applicable laws. In making the final determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This proposed rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

An IRFA was prepared, which is expanded upon and incorporated herein, as required by section 603 of the Regulatory Flexibility Act (RFA). Below is a summary of the IRFA, which describes the economic impact this proposed rule, if adopted, would have on small entities. A detailed description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule, and in the Executive Summary and Section 3.2 of the EA prepared for this action.

The preferred alternative would modify the Gulf of Maine (GOM) cod and pollock trip limits proposed in Amendment 16 by: (1) Reducing the GOM cod limit proposed in Amendment 16 (2,000 lb (907.2 kg)/DAS up to 12,000 lb (5,443.2 kg/trip) to the status quo level (800 lb (362.9 kg)/DAS up to 4,000 lb (1,814.4 kg)/trip); (2) reducing the GOM cod trip limit for vessels fishing under a Handgear A or Handgear B permit to 300 lb (136.1 kg)/trip and 75 (34.0 kg)lb/trip, respectively; and (3) imposing a trip limit for pollock to of 1,000 lb (453.6 kg)/DAS up to 10,000 lb (4,536 kg)/trip (Amendment 16 has no proposed possession limit for pollock). This alternative would also: (1) Grant the RA the authority to implement inseason trip limits and/or differential DAS counting for any groundfish stock in order to prevent catch from exceeding the ACL; (2) specify OFLs, ABCs, and ACLs for all 20 groundfish stocks in the FMP for FY 2010 through 2012, as well as the TACs for transboundary Georges Bank (GB) stocks, and allocations of yellowtail flounder to the scallop fleet; (3) allocate zero trips to the CA II Yellowtail Flounder SAP; (4) limit the Eastern U.S./Canada Haddock SAP to

the use of Category A DAS for common pool vessels; (5) delay the opening of the Eastern U.S./Canada Management Area for trawl vessels; and (6) implement a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). These measures would affect regulated entities engaged in commercial fishing for groundfish and scallops. Sub-ACLs would also be set for the recreational catches of GOM cod and GOM haddock, and would affect regulated entities engaged in the party/charter industry.

Under the Small Business Act (SBA), any commercial fishing vessel that generates $4 million in sales, or any party/charter operation with $7 million in annual sales, is considered a small business. Although multiple vessels may be owned by a single owner, tracking of ownership is not readily available to reliably ascertain affiliated entities. Therefore, for purposes of analysis each permitted vessel is treated as a single small entity. During FY 2008 (the most recent complete FY), 2,732 vessels were issued a scallop and/or a NE multispecies permit. Of these vessels, 1,867 were issued only a NE multispecies permit, 500 were only issued a scallop permit, and 365 were issued both a scallop and a NE multispecies permit. The latter include vessels that have a limited access scallop and a limited access Category E (combination vessel) groundfish permit, as well as vessels that hold some combination of a party/charter permit and a limited access scallop permit or a general category permit. Among NE multispecies permit holders, 1,472 held limited access permits, and 760 held open access party/charter permits.

Based on FY 2008 activity, 1,267 of the 2,732 vessels with either a commercial scallop or NE multispecies permit participated in the scallop or NE multispecies fishery. Median gross sales for these vessels were $186 thousand, and no one entity had sales exceeding $4 million. Based on FY 2008 logbook data, 143 of the 760 permitted party/charter vessels participated in the GOM recreational groundfish fishery where either GOM haddock or GOM cod were retained. The total number of passengers carried by a single of these regulated party/charter operators did not exceed 11,000. At an average passenger fee of approximately $65 per passenger, none of the participating party/charter businesses would exceed $7 million in sales. Therefore, NMFS has determined that all 1,410 of the participating commercial and recreational for-hire vessels are considered small entities under the RFA.

Economic Impacts of the Proposed Action

A more detailed treatment of economic impacts may be found in Section 7.4 of the EA. As noted in Section 7.4, the economic impacts of the ACLs set for the commercial groundfish fishery are uncertain for any given vessel, because the economic impacts depend on whether the vessel owner chooses to enroll in a sector or remains in the common pool. Sectors offer relief from certain regulations while being limited to a quota on catch. Sectors provide opportunities to improve economic efficiency while placing a premium on managing available quota for multiple species to maximize the value of landings. Fishing in the context of a sector will likely require changes in fishing practices including where, when, and how fishing operations are conducted.

Groundfish revenues during both FY 2007 and 2008 were approximately $85 million. Given the proposed 2010 ACLs, at 2008 prices, the available potential revenue would be approximately $190 million, assuming the available ACL for all stocks can be harvested and no discarding occurs. Realizing revenues of this magnitude is unlikely because some level of discarding is likely, and available ACL for some species will constrain the ability to harvest the full ACL of others. If there are no changes in recent discarding rates or gear selectivity, groundfish revenues may be expected to decline to $63 million in FY 2010. However, improvements in selectivity, particularly while fishing for GB haddock, which comprises nearly half of the aggregate groundfish ACL, could lead to substantially higher revenues. If, for example, selectivity could be improved by 50 percent over FYF 2007–2008 averages, groundfish revenues would be an estimated $87 million in FY 2010.

Even if fishing revenues do not improve, vessel owners that enroll in sectors may still find themselves in a more favorable financial position because sectors offer the opportunity for pooling of quota across fishing platforms. For individuals that own multiple vessels, operating in a sector allows them to shed redundant capital, thereby reducing fixed costs. Operating costs may also be reduced because sectors participants are granted certain regulatory exemptions that decrease overall costs, and because fishing will likely be moved to an owner's most efficient vessel.

Economic impacts on vessels that do not enroll in a sector are also uncertain. The common pool measures (trip limits for GOM cod and pollock) were designed to ensure that the catch does not exceed the sub-ACL allocated to the common pool as a whole. The economic impact of these measures was estimated by applying the common pool measures adopted under Amendment 16, as modified by this proposed action, to FY 2007 activity. As of September 1, 2009, 723 permits had enrolled in a sector, and 757 had not. The latter figure includes a large number of vessels that have not been active in the groundfish fishery. In fact, only 279 of the common pool vessels had any Category A DAS that would enable them to participate in the groundfish fishery. Of these 279, only 113 were found to have actually participated in the groundfish fishery. These vessels had aggregate gross sales of $24.8 million (an average of $219,500 per vessel), of which nearly 30 percent was derived from sales on trips where groundfish were landed. The estimated combined effect of the Amendment 16/FW 44 measures on the common pool is to reduce total sales by $5.1 million, an average of $45,100 per vessel, or 20.1 percent. This represents a $3 million reduction in groundfish revenue from 2008 levels. These economic impacts represent an upper bound of the adverse impacts, because they do not reflect the ability of vessels to modify fishing behavior or to lease DAS to mitigate potential impacts. However, the ability to offset such impact by DAS leasing may be limited. Converting 2007 activity into 24-hr increments, as proposed in Amendment 16, the total DAS needed to fish at 2007 levels (3,769 DAS) exceeds that of the total DAS that will be allocated to the common pool (3,600) in FY 2010. Furthermore, the ability to find trading partners may also be limited by the restrictions on trading among vessels within specified baseline length and horsepower characteristics.

The allocation of yellowtail flounder to the scallop fishery in FY 2010 would have no economic impact on the scallop fishery, because the allocation would not constrain scallop catch. The economic impact of this action on the NE multispecies fishery in FY 2010 would be a reduction in multispecies revenue of between one and fifteen percent. The value of each metric ton of yellowtail flounder to the NE multispecies fishery ranges from a low of $3,296 to a high of $41,176, depending on whether the estimate includes only the value of yellowtail flounder, or also includes potential revenue losses from other groundfish stocks that may result from loss of access to a yellowtail stock area.

In contrast, as of 2011, it is anticipated that there will be short-term

AMs that will impact the scallop fishery if the sub-ACL is exceeded. The economic impact of the yellowtail flounder sub-ACL for the scallop fishery for FY 2011 is uncertain. This sub-ACL for the scallop fishery would have a potential impact on both groundfish and scallop vessels. However, as was the case for the setting of NE multispecies ACLs, the impact on any given vessel is indeterminate. The AM for the scallop fleet has yet to be determined, and setting an ACL may cause changes in fishing strategies to avoid forgone revenues that may be associated with exceeding the ACL. Assuming an inseason AM is selected, and there is no change in fishing patterns by either groundfish or scallop vessels, an upper-bound estimate is a total revenue loss of $35 million and $2.6 million for scallop and groundfish, respectively, during 2011, and losses of $36 million and $4 million during 2012. These values represent about 6 percent of the likely scallop ACLs that will be set for 2011 and 2012, and about 5 percent or less of groundfish revenue, depending on factors noted above affecting realized groundfish revenue.

Because the FW 44 yellowtail flounder allocation to the scallop fishery is based on the projected scallop harvest, a modification to FW 21 to the Atlantic Sea Scallop FMP could affect the proposed FW 44 allocation of yellowtail flounder to both the scallop and the NE multispecies fisheries. The outcome of the Council's January 2010, review of FW 21 was unknown at the time this document was drafted for publication. However, even if the yellowtail flounder allocations are not changed in FW 44, a modification of the scallop management program could change the impacts of the yellowtail flounder allocations, such that they are different than analyzed in the FW 44 EA. If necessary, the final FW 44 EA will be revised to analyze the impacts of the yellowtail flounder allocation, and the final rule will include a summary of the pertinent economic impacts.

For FY 2010, the estimated revenue loss for the groundfish fishery resulting from the combined impacts of the proposed common pool measures and ACL is between $3 million and $27 million (from the baseline FY 2008 revenue of $85 million), depending on the proportion of available fish that is caught. The larger revenue reductions would result from a continuation of recent TAC utilization and discard rates (which are only a small fraction of available haddock that are caught), whereas the lower revenue reduction estimate would require a 50-percent reduction in the amount of under-harvesting.

For FY 2011, the revenue loss resulting from the combined impacts of the common pool measures, ACL, and yellowtail flounder allocation to the scallop fishery is estimated at between $26.9 million and $53.8 million. The FY 2011 revenue loss for the scallop fleet is estimated at $35 million. The FY 2011 impact on groundfish revenue ranges from a loss of $15.8 million to a gain of $11.1 million. For FY 2012, the estimated revenue loss resulting from the combined impacts of the common pool measures, ACL, and yellowtail flounder allocation to the scallop fishery is between $27.6 million and $54.8 million. The FY 2012 loss to the scallop fleet is estimated at $36 million. The FY 2012 impact on groundfish revenue ranges from a loss of $14.8 million to a gain of $12.4 million.

The proposed action would not modify the recreational measures proposed in Amendment 16. Those measures would add 2 weeks to the GOM cod closed season and reduce the size limit on GOM haddock from 19 to 18 inches (47.5 to 45 cm). Thus, passenger demand may be expected to respond to these regulatory changes, and may not be expected to be affected by the setting of any particular recreational sub-ACL. However, because exceeding a recreational sub-ACL would trigger an AM, the economic impacts on recreational party/charter vessels would be associated with the likelihood that harvest levels would trigger an AM. According to GARM III estimates of landings, GOM cod harvest by all recreation modes ranged between 1,960 mt and 953 mt from FY 2004 to 2007. The GOM cod recreational sub-ACL would be 2,673 mt, 2,824 mt, and 2,826 mt during FY 2010, 2011, and 2012, respectively. Because harvest levels of GOM cod by the recreational sector, including party/charter operators, has been below the recreational sub-ACL for GOM cod, an AM would not be expected to be triggered by these limits. For this reason, the GOM cod sub-ACL would not be expected to have an adverse economic impact on party/charter vessels.

By contrast, during FY 2004–2007, the recreational harvest of GOM haddock ranged between 430 mt and 717 mt, and under this proposed rule the recreational sub-ACL for GOM haddock would decline from 324 mt in FY 2010, to 259 mt in 2012. This means that the recreational GOM haddock ACL will be about 57 percent of the FY 2004–2007 average harvest. In the absence of avoidance behavior by party/charter vessels, the GOM haddock sub-ACL may be expected to be exceeded, triggering an AM. The impact of triggering a GOM haddock AM on party/charter vessels is uncertain. Available data suggest substitutability between cod and haddock on party/charter trips, so if the GOM cod recreational sub-ACL is not constraining, some switching between haddock and cod on GOM party/charter trips may be anticipated. The economic impact on party/charter operators will depend on the selected AM and the relative strength of angler preference between cod and haddock. If the AM is a seasonal closure, then the economic impact would be a loss in trips that could be taken during the closure. These trips may not be recovered, given the seasonal nature of recreational passenger demand. If the GOM haddock AM is a change in the bag or size limit, and cod may easily be substituted for haddock, then passenger demand may be expected to be largely unchanged and the economic impact on party/charter vessels would likely be relatively low.

The economic impacts to the groundfish fishery of specification of the U.S./Canada TACs are difficult to predict due to the many factors that may affect the level of catch; however, it is likely that, due to the substantially reduced FY 2010 TACs for Eastern GB cod and GB yellowtail flounder (compared to FY 2009), the proposed action would result in reduced overall revenue from the U.S./Canada Management Area. The amount of fish landed and sold would not be equal to the sum of the TACs, but would be reduced as a result of discards (for the common pool), and may be further reduced by limitations on access to stocks that may result from the associated fishing rules. Reductions to the value of the fish may result from fishing derby behavior and potential impact on markets. The revenue from the sale of the three transboundary stocks may be up to 22 percent less than such revenue in FY 2008. It is possible that total revenue may be reduced by up to 30 percent from FY 2009 revenues. The amount of haddock that has been harvested from the U.S./Canada Management Area has been increasing, but it is unknown whether this trend will continue. The delayed opening of the Eastern U.S./Canada Area for trawl vessels would likely result in increased revenue from the Eastern U.S./Canada Area, because it is likely to prolong the time period during which the area is open and enable a higher overall catch of all species. Similarly, the specification of a trip limit for GB yellowtail flounder would prolong the opening of the Eastern U.S./Canada

Area and result in greater overall revenue.

The allocation of zero trips for the CA II Yellowtail Flounder SAP would preclude additional revenue from CA II, but would not represent a decrease in opportunity or revenue from recent years, because the SAP has not been opened since FY 2004 due to the status of the GB yellowtail flounder stock. The prohibition on the use of Category B DAS in the Eastern U.S./Canada Haddock SAP would result in only a slight decrease in revenue because participation in the SAP has been extremely low.

The proposed action would also provide the Regional Administrator authority to implement trip limits or differential DAS counting inseason in order to prevent ACLs from being exceeded, or to facilitate the harvesting of ACLs. Because it is unclear if this authority will result in decreased or increased fishing effort, the effect of this action may be short-term increases or decreases in revenue. The RA authority would contribute to long-term increases in revenue by optimizing catch levels to align with catch targets and facilitate stock rebuilding.

Economic Impact of Alternatives to the Proposed Action

Under the No Action Alternative, although ACLs would be specified, there would be no allocation made to the scallop fishery, and no U.S./Canada TACs would be specified. Under the No Action Alternative, the common pool management measures would be the same as those proposed by Amendment 16, and the Regional Administrator would not have additional authority to implement inseason trip limits or differential DAS requirements in order to prevent ACLs from being exceeded.

Because under the no action alternative the ACL is higher than that set by the proposed action, potential groundfish fishery revenues would be higher. As a result of not making a yellowtail flounder allocation to the scallop fishery, there would be no difference in scallop revenues in FY 2010 between the no action and the proposed action alternatives, because the scallop ACL sub-component would not constrain the scallop fishery in FY 2010. No allocation of yellowtail to the scallop fishery in FY 2010 would, however, result in additional revenue for the groundfish fishery (the revenue associated with 110 mt and 111 mt of GB and SNE/MA yellowtail flounder, respectively). Under the no action alternative, no specification of the U.S./Canada TACs would result in increased revenue from the U.S./Canada Management Area in the short-term, but would undermine rebuilding of GB cod and yellowtail flounder, and would likely result in long-term reductions in revenue.

Additionally, under the no action alternative, as a result of not making a yellowtail flounder allocation to scallop vessels in FY 2011 and 2012, scallop and groundfish fishing revenues would likely be higher than anticipated under the proposed action. If an allocation is not made, then the scallop catches would not be constrained by the level of incidental catch of yellowtail flounder in the fishery. In FY 2011 and 2012, the overall limit on yellowtail flounder catch may reduce scallop fishery revenues by $35 million and $36 million, respectively. With respect to groundfish revenue, the upper bounds for the difference between the no action alternative and the proposed action for FYs 2011 and 2012 are $2.6 million and $4 million, respectively. Not specifying the U.S./Canada TACs could result in increased revenues for groundfish fishermen; however, not specifying TACs is likely to increase the risk of overfishing the transboundary stocks, and of long-term declines in landings and revenues.

The no action alternative would neither implement more restrictive trip limits for GOM cod and pollock, nor provide the Regional Administrator the authority to implement inseason effort controls (trip limits or differential DAS counting). As such, the economic impacts of the no action alternative would not differ from those described in Amendment 16 analysis. There is the possibility that, under the no action alternative, there would be a lower likelihood of derby fisheries occurring, and that vessels owners would have an increased ability to plan their year than under the proposed alternative. These potential outcomes from the No Action Alternative might, therefore, lead to greater economic stability, because inseason changes to the regulations would not occur (except in the U.S./Canada Management Area).

The Council considered a third alternative for effort control measures. As stated in this rule, this alternative proposes to create a 2:1 differential DAS counting in the inshore GOM. Based on the September 1, 2009, sector roster composition for FY 2010, the 2:1 differential DAS counting alternative would impact very few common pool vessels because, for the most part, the common pool is comprised of vessels that primarily engage in fisheries other than groundfish. Of the vessels affected (approximately nine), the estimated reduction in total revenue ranges from 10 percent to 70 percent. This economic impact represents an upper bound of the adverse impacts, because it does not reflect the ability of vessels to modify fishing behavior or the potential to lease DAS to mitigate potential impacts.

Under the no action alternative, trawl vessels would be able to fish in the Eastern U.S./Canada Area (Eastern Area) as of May 1, 2010, and would not be delayed access until August 1, 2010. Further, the Regional Administrator would not implement a GB yellowtail flounder trip limit of 2,500 lb (1,125 kg). The result of this scenario would likely be a higher catch rate of both GB cod and GB yellowtail flounder early in the FY, but also accelerated catch of the TAC limits and early closure of the Eastern Area. In this event, the no action alternative would result in reduced revenue for groundfish vessels, because prolonged access to the Eastern U.S./Canada Area by vessels would result in greater harvest of other stocks in addition to cod and yellowtail flounder. Additionally, under the no action alternative, common pool vessels would be allowed to utilize Category B DAS in the Eastern U.S./Canada Area Haddock SAP. Although under the no action alternative the use of Category B DAS in this SAP would generate some revenue, the difference in revenue between the proposed action and the no action alternative would be minor because, under the no action alternative, the SAP would likely close after a very few trips due to the small incidental catch TACs.

This rule contains no proposed reporting or recordkeeping requirements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 27, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Further amend § 648.10, as proposed to be amended at 74 FR 69419, December 31, 2009 by revising paragraph (k)(3)(iv) to read as follows:

§ 648.10 NE multispecies broad stock areas.

(k) * * *

(3) * * *

(iv) *SNE/MA Stock Area 4.* The SNE/MA Stock Area 4 is the area bounded on the north and west by the coastline of the United States, bounded on the south by a line running from the east-facing coastline of North Carolina at 35° N. lat. until its intersection with the EEZ, and bounded on the east by straight lines connecting the following points in the order stated:

SNE/MA STOCK AREA 4

Point	N. Latitude	W. Longitude
G12	(1)	70°00′
IGB7	41°20′	70°00′
IGB6	41°20′	69°50′
IGB5	41°10′	69°50′
IGB4	41°10′	69°30′
IGB3	41°00′	69°30′
IGB2	41°00′	68°50′
SNE4	39°50′	68°50′
SNE3	39°50′	69°00′
SNE5	39°00′	69°00′
SNE6	39°00′	(2)

[1] South-facing shoreline of Cape Cod, MA.
[2] The U.S.-Canada maritime boundary as it intersects with the EEZ.

3. In § 648.14, add paragraph (i)(2)(iii)(D) and revise paragraphs (k)(13)(ii)(A) and (B) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(2) * * *

(iii) * * *

(D) Discard yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1) and (2).

* * * * *

(k) * * *

(13) * * *

(ii) * * *

(A) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a), (b), (c), (d), (e), (g), (h), (j), (k), (l), (n), (p), (r), and (s); or violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(B) Possess or land per trip more than the possession or landing limits specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (n), (p), (r), and (s), § 648.81(n), § 648.82(b)(5) and (6), § 648.85, or § 648.88 if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

4. In § 648.60, revise paragraph (a)(5)(ii) introductory text and paragraph (a)(5)(ii)(C) to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(5) * * *

(ii) *NE multispecies possession limits and yellowtail flounder TACs.* A limited access scallop vessel that is declared into a trip and fishing within the Sea Scallop Access Areas described in § 648.59(b) through (d), and issued a valid NE multispecies permit as specified in § 648.4(a)(1), may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, excluding yellowtail flounder, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(1) and (2), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section. Such vessel is subject to the seasonal restriction established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4).

* * * * *

(C) *Yellowtail flounder.* Such vessel must retain all yellowtail flounder that meet the minimum size restrictions specified under § 648.83(a)(1) and (2).

(*1*) *Scallop Access Area TAC Availability.* After declaring a trip into and fishing within the Closed Area I, Closed Area II, or Nantucket Lightship Scallop Access Areas described in § 648.59(b), (c), and (d), respectively a scallop vessel that has a valid NE multispecies permit as specified in § 648.4(a)(1) may possess and land yellowtail flounder, provided the Regional Administrator has not issued a notice that the scallop fishery portion of the TACs specified in § 648.85(c) for the respective Closed Area I, Closed Area II, or Nantucket Lightship Scallop Access Areas have been harvested. The Regional Administrator shall publish notification in the **Federal Register,** in accordance with the Administrative Procedure Act, to notify scallop vessel owners that the scallop fishery portion of the TAC for a yellowtail flounder stock has been or is projected to be harvested by scallop vessels in any Access Area. Upon notification in the **Federal Register** that a TAC has been or is projected to be harvested, scallop vessels are prohibited from fishing in, and declaring and initiating a trip to the Access Area(s), where the TAC applies, for the remainder of the fishing year, unless the yellowtail flounder TAC is increased, as specified in paragraph (a)(5)(ii)(C)(*3*) of this section.

(*2*) *U.S./Canada Area TAC availability.* After declaring a trip into and fishing in the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), a scallop vessel that has a valid NE multispecies permit, as specified in § 648.4(a)(1), may possess, and land yellowtail flounder, provided that the Regional Administrator has not issued a notice that the U.S./Canada yellowtail flounder TAC specified in § 648.85(a)(2) has been harvested. If the yellowtail flounder TAC established for the U.S./Canada Management Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(*3*), scallop vessels are prohibited from possessing or landing yellowtail flounder in or from the Closed Area I and Closed Area II Access Areas.

(*3*) *Modification to yellowtail flounder TACs.* The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

* * * * *

5. Further amend § 648.82, as proposed to be amended at 74 FR 69429, December 31, 2009 by revising the introductory text to paragraph (b)(6), revising paragraphs (e)(1)(i) and (n)(1)(ii), and adding paragraph (o) to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(b) * * *

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout as specified under § 648.86. The cod trip limit shall be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). For example, if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

* * * * *

(e) * * *

(1) * * *

(i) *Common pool vessels.* For a common pool vessel, Category A DAS shall accrue in 24-hr increments, unless otherwise required under paragraphs (n) or (o) of this section. For example, a vessel that fished from 6 a.m. to 10 p.m. would be charged 24 hr of Category A DAS, not 16 hr; a vessel that fished for

25 hr would be charged 48 hr of Category A instead of 25 hr.

* * * * *

(n) * * *

(1) * * *

(ii) *Differential DAS counting factor.* For determining the differential DAS counting AM specified in this paragraph (n)(1), or the inseason differential DAS counting adjustment specified in paragraph (o) of this section, the following differential DAS factor shall, except as provided in paragraph (n)(1)(iii) of this section, be applied to the DAS accrual rate specified in paragraph (e)(1) of this section, and implemented in a manner consistent with the Administrative Procedure Act.

Proportion of ACL caught	Differential DAS factor
0.5	0.5
0.6	0.6
0.7	0.7
0.8	0.8
0.9	No change
1.0	No change
1.1	1.1
1.2	1.2
1.3	1.3
1.4	1.4
1.5	1.5
1.6	1.6
1.7	1.7
1.8	1.8
1.9	1.9
2.0	2.0

* * * * *

(o) *Inseason adjustment to differential DAS counting for NE multispecies common pool vessels.* (1) In addition to the DAS accrual provisions specified in paragraphs (e) and (n) of this section, and other measures specified in this part, common pool vessels are subject to the following restrictions: The Regional Administrator shall project the catch of regulated species or ocean pout by common pool vessels and shall determine whether such catch will exceed any of the sub-ACLs specified for common pool vessels as described in § 648.90(a)(4). This projection shall include catch by common pool vessels, as well as available information, if available, regarding the catch of regulated species and ocean pout by vessels fishing for NE multispecies in state waters outside of the authority of the FMP, vessels fishing in exempted fisheries, and vessels fishing in the Atlantic sea scallop fishery. If it is projected that catch will exceed or under-harvest the common pool sub-ACL, the Regional Administrator may, at any time during the fishing year, implement a differential DAS counting factor to all Category A DAS used within the pertinent stock area(s), as specified in paragraph (n)(1)(i) of this section, in a manner consistent with the Administrative Procedure Act. Notwithstanding the fact that the differential DAS accountability measures described in paragraph (n)(1) of this section are intended to address potential over-harvests in fishing year 2010 and 2011, the scope of the Regional Administrator authority specified in this paragraph (o) is not limited to FY 2010 and 2011.

(2) The differential DAS counting factor shall be based on the projected proportion of the sub-ACL of each NE multispecies stock caught by common pool vessels, rounded to the nearest even tenth, as specified in paragraph (n)(1)(ii) of this section, unless otherwise specified in § 648.90(a)(5). For example, if the Regional Administrator projects that common pool vessels will catch 1.18 times the sub-ACL for GOM cod by the end of fishing year 2010, the Regional Administrator may implement a differential DAS counting factor of 1.2 to all Category A DAS used by common pool vessels within the Inshore GOM Differential DAS Area during fishing year 2010 (i.e., Category A DAS will be charged at a rate of 28.8 hr for every 24 hr fished—1.2 times 24-hr DAS counting). If it is projected that catch will simultaneously exceed or underharvest the sub-ACLs for several regulated species stocks within a particular stock area, the Regional Administrator may implement the most restrictive differential DAS counting factor derived from paragraph (n)(1)(ii) of this section for the sub-ACLs exceeded or underharvested to any Category A DAS used by common pool vessels within that particular stock area. For example, if it is projected that the common pool vessel catch will exceed the GOM cod sub-ACL by a factor of 1.2 and the CC/GOM yellowtail flounder sub-ACL by a factor of 1.1, the Regional Administrator may implement a differential DAS counting factor of 1.2 to any Category A DAS fished by common pool vessels within the Inshore GOM Differential DAS Area during the fishing year. For any inseason differential DAS counting factor implemented inseason, the differential DAS counting factor shall be applied against the DAS accrual provisions specified in paragraph (e)(1)(i) of this section for the time spent fishing in the applicable differential DAS counting area based upon the first VMS position into the applicable differential DAS counting area and the first VMS position outside of the applicable differential DAS counting area pursuant to § 648.10. For example, if a vessel fished 12 hr inside a differential DAS counting area where a differential DAS counting factor of 1.2 would be applied, and 12 hr outside of the differential DAS counting area, the vessel would be charged 48 hr of DAS use because DAS would be charged in 24-hr increments ((12 hr inside the area × 1.2 = 14.4 hr) + 12 hr outside the area, rounded to the next 24-hr increment to determine DAS charged).

(3) For any inseason differential DAS counting factor implemented in fishing year 2011, the inseason differential DAS counting factor shall be applied in accordance with the DAS accrual provisions specified in paragraph (e)(1)(i) of this section, and, if pursuant to paragraph (n)(1) of this section, in conjunction with a differential DAS counting factor also implemented for the same differential DAS area during fishing year 2011 as an AM. For example, if a differential DAS counting factor of 1.2 was applied to the Inshore GOM Differential DAS Area during fishing year 2011, as an AM due to a 20-percent overage of the GOM cod sub-ACL in fishing year 2010, and during fishing year 2011 the GOM cod sub-ACL was projected to be exceeded by 30 percent, an additional differential DAS factor of 1.3 would be applied to the DAS accrual rate as an inseason action during fishing year 2011. Under this example, the DAS accrual rate after both the AM and the inseason differential DAS rate is applied to FY 2011 in the Inshore GOM Differential DAS Counting Area would be 37.4 hr charged for every 24 hr fished—1.2 × 1.3 × 24-hr DAS charge.

6. In § 648.85, revise paragraphs (b)(6)(v)(B), (D), (F); and further amend § 648.85, as proposed to be amended at, 74 FR 69438, December 31, 2009 by revising paragraph (b)(6)(v)(H) and (I) to read as follows:

§ 648.85 Special management programs.

(b) * * *

(6) * * *

(v) * * *

(B) *GB cod stock area.* The GB cod stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

GB COD STOCK AREA

Point	N. latitude	W. longitude
GB1	(1)	70°00′

GB COD STOCK AREA—Continued

Point	N. latitude	W. longitude
GB2	42°20′	70°00′
GB3	42°20′	(2)
GB4	35°00′	(2)
GB5	35°00′	(3)

[1] Intersection of the north-facing coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] Intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

* * * * *

(D) *American plaice stock area.* The American plaice stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. latitude	W. longitude
AMP1	(1)	67°00′
AMP2	(2)	67°00′
AMP3	43°50′	(2)
AMP4	43°50′	67°40′
AMP5	(3)	67°40′
AMP6	(4)	67°40′
AMP7	42°30′	67°40′
AMP8	42°30′	(2)
AMP9	35°00′	(2)
AMP10	35°00′	(5)

[1] Intersection of south-facing ME coastline and 67°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] U.S./Canada maritime boundary (northern intersection with 67°40′ N. lat.).
[4] U.S./Canada maritime boundary (southern intersection with 67°40′ N. lat.)
[5] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

* * * * *

(F) *SNE/MA winter flounder stock area.* The SNE winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
SNEW1	(1)	70°00′
SNEW2	42°20′	70°00′
SNEW3	42°20′	68°50′
SNEW4	39°50′	68°50′
SNEW5	39°50′	71°40′
SNEW6	39°00′	71°40′
SNEW7	39°00′	(2)
SNEW8	35°00′	(2)

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA—Continued

Point	N. latitude	W. longitude
SNEW9	35°00′	(3)

[1] Intersection of the north-facing Coastline of Cape Cod, MA, and 70°00′ W. long.
[2] U.S./Canada maritime boundary.
[3] The intersection of the east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

* * * * *

(H) *GB yellowtail flounder stock area.* The GB yellowtail flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the east by the U.S./Canadian maritime boundary, and bound on the north, west, and south by straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
USCA16	42°20′	(1)
USCA1	42°20′	68°50′
USCA2	39°50′	68°50′
USCA17	39°50′	69°00′
USCA18	39°00′	69°00′
USCA5	39°00′	(1)

[1] U.S./Canada maritime boundary.

(I) *GB winter flounder stock area.* The GB winter flounder stock area, for the purposes of the Regular B DAS Program, identifying stock areas for trip limits specified in § 648.86, and determining areas applicable to Sector allocations of ACE pursuant to § 648.87(b), is the area bounded on the east by the U.S./Canadian maritime boundary and straight lines connecting the following points in the order stated:

Point	N. latitude	W. longitude
USCA16	42°20′	(1)
USCA1	42°20′	68°50′
USCA2	39°50′	68°50′
USCA17	39°50′	69°00′
USCA18	39°00′	69°00′
USCA5	39°00′	(1)

[1] U.S./Canada maritime boundary.

* * * * *

7. In § 648.86, revise paragraphs (a)(1) and (b)(1), and add paragraphs (r) and (s) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(1) *NE multispecies common pool vessels.* Haddock possession restrictions for such vessels may be implemented through Regional Administrator authority, as specified in paragraph (r) of this section.

* * * * *

(b) * * *

(1) *GOM cod landing limit.* Except as provided in paragraph (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS permit, including a vessel issued a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may land up to 800 lb (362.9 kg) of cod for each DAS, or part of a DAS, up to 4,000 lb (1,818.2 kg) per trip. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

* * * * *

(r) *Pollock.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, may not possess or land more than 1,000 lb (450 kg) of pollock for each DAS or part of a DAS fished, up to 10,000 lb (4,500 kg) per trip.

(s) *Regional Administrator authority to implement possession limits*—(1) *Possession restrictions to prevent exceeding common pool sub-ACLs.* If the Regional Administrator projects that the catch of any NE multispecies stock allocated to common pool vessels pursuant to § 648.90(a)(4) will exceed the pertinent sub-ACL, NMFS may implement or adjust, at any time prior to or during the fishing year, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to prevent exceeding the common pool sub-ACL in that fishing year.

(2) *Possession restrictions to facilitate harvest of sub-ACLs allocated to the common pool.* If the Regional Administrator projects that the sub-ACL of any stock allocated to the common pool pursuant to § 648.90(a)(4) will not be caught during the fishing year, the Regional Administrator may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per-DAS possession limit and/or a maximum trip limit in order to facilitate harvest and enable the total catch to approach, but not exceed, the pertinent sub-ACL allocated to the common pool for that fishing year.

8. Further amend § 648.87, as proposed to be amended at 74 FR 69450,

December 31, 2009 by revising paragraph (b)(1)(ii)(B) to read as follows:

§ 648.87 Sector allocation.

(b) * * *

(1) * * *

(ii) * * *

(B) *SNE/MA Yellowtail Flounder Stock Area.* The SNE/MA Yellowtail Flounder Stock Area, for the purposes of identifying stock areas for trip limits specified in § 648.86, and for determining areas applicable to Sector allocations of SNE/MA yellowtail flounder ACE pursuant to paragraph (b) of this section, is the area bounded by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. latitude	W. longitude
SNE1	35°00′	(1)
SNE2	35°00′	(2)
SNE3	39°00′	(2)
SNE4	39°00′	70°00′
SNE5	39°50′	70°00′
SNE7	39°50′	68°50′
SNE8	41°00′	68°50′
SNE9	41°00′	69°30′
SNE10	41°10′	69°30′
SNE11	41°10′	69°50′
SNE12	41°20′	69°50′
SNE13	41°20′	(3)

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA—Continued

Point	N. latitude	W. longitude
SNE14	(4)	70°00′
SNE15	(5)	70°00′

[1] Intersection of east-facing coastline of Outer Banks, NC, and 35°00′ N. lat.

[2] U.S./Canada maritime boundary.

[3] Intersection of east-facing coastline of Nantucket, MA, and 41°20′ N. lat.

[4] Intersection of north-facing coastline of Nantucket, MA, and 70°00′ W. long.

[5] Intersection of south-facing coastline of Cape Cod, MA, and 70°00′ W. long.

9. In § 648.88, revise paragraphs (a)(1) and (c) to read as follows:

§ 648.88 Multispecies open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 75 lb (33.8 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified in paragraph (a)(2) of this section. Should the GOM cod trip limit specified in § 648.86(b)(1) be adjusted in the future, the cod trip limit specified under this paragraph (a)(1) shall be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

* * * * *

(c) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas in § 648.59(b) through (d), which are subject to the possession limits in § 648.60(a)(5)(ii), a vessel that has been issued a valid NE multispecies possession limit permit is subject to the following possession restrictions:

(1) The vessel shall retain all yellowtail flounder that meet the minimum size restrictions in § 648.83(a)(1) and (2).

(2) The vessel may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies, excluding yellowtail flounder, when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified in paragraph (a)(2)(i) of this section, and provided that the amount of regulated NE multispecies onboard the vessel does not exceed any of the pertinent trip limits in § 648.86, except yellowtail flounder, and provided the vessel has at least one standard tote on board.

* * * * *

[FR Doc. 2010–2015 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 75, No. 20
Monday, February 1, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Departmental Management; Public meeting on BioPreferred℠ Complex Products and Assemblies Designation and Industry Training on Selling Biobased Products to the Federal Government

AGENCY: Departmental Management, Office of Procurement and Property Management, USDA.

ACTION: Notice of public meeting and industry training.

SUMMARY: The U.S. Department of Agriculture (USDA) will hold a public meeting on February 24, 2010, for interested stakeholders to discuss the issue of complex assembly products that contain biobased materials and components. Complex assembly products are made of distinct materials and components where some or all of the components contain biobased materials. One example of a complex assembly product is an office chair where the seat cushion, fabric, seat base and plastic molding are produced using biobased materials.

This issue pertains to (1) the designation USDA of biobased products for a Federal procurement preference, as mandated by the Food, Conservation, and Energy Act of 2008, and (2) the potential implications for complex assembly products under the pending "USDA Certified Biobased Product" labeling program. Given the growing importance of biobased products to consumers, industry, and government, there is a clear need to assess the viability of complex products, and to do so using an agreed-upon and credible process.

Prior to the public meeting, USDA will conduct training for biobased manufacturers on February 23, 2010 from 1 p.m. to 5 p.m. (PST) to provide useful information on selling biobased products to the Federal government. Topics will include:

1. Using BioPreferred tools to position your business to sell or increase sales to the Federal government;
2. The General Services Administration (GSA) Schedules/Programs (also referred to as the Multiple Award Schedules and Federal Supply Schedules) and GSA Advantage; and
3. Selling products via the Department of Defense's (DOD) EMALL to the Defense Logistics Agency (DLA), the Department of Defense's largest logistics combat support agency.

Speakers will include representatives from GSA, DLA, and a former government procurement official.

Dates

Industry training: February 23, 2010, 1 p.m. to 5 p.m. (PST)

Public meeting: February 24, 2010, 8:30 a.m. to 1 p.m. (PST)

Meeting Location

University of California Riverside—The Pentland Hills Bear Cave, One Pentland Way, Riverside, CA 92507. Both the industry training and the public meeting will be at this location.

Pre-registration for both the public meeting on February 24, 2010, and industry training on February 23, 2010, is not required but would be helpful, particularly if you wish to make a presentation. If you wish to register to attend the public meeting, please do so at this Web site: *http://www.cepd.iastate.edu/biopreferred-training* and state whether or not you wish to be recognized to make a formal presentation. If you wish to register to attend the industry training, please do so at the above Web site. Both meetings are free of charge.

Directions to the Pentland Hills facility may be found at *http://conferences.ucr.edu/Resources/Directions* and a map of the UCA Riverside campus is accessible at *http://campusmap.ucr.edu/campusMap.php.* The Pentland Hills Bear Cave facility is #365 (pent) on the Campus Map. Parking for the event will be in Lot 21 at Pentland Hills. The parking rate is $5.00 per day.

Those unable to attend the public meeting in person may listen to the meeting by calling 866–433–4616. The pass code is "635195." Participants using the audio bridge may submit questions or comments during the meeting to *USDABioInfo@iastate.edu* or through the webinar itself, the exact link of which will be sent to participants via email after registering. The industry training on the 23rd will be available only to those attending in person.

FOR FURTHER INFORMATION: Ron Buckhalt, BioPreferred Manager, U.S. Department of Agriculture, Office of Procurement and Property Management, 342 Reporters Building, 300 7th Street, SW., Washington, DC 20024, (202) 205–4008. *RonB.Buckhalt@DA.USDA.GOV.*

SUPPLEMENTARY INFORMATION: Section 9002 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) established a program for the procurement of USDA designated biobased products by Federal agencies and a voluntary program for the labeling of USDA certified biobased products. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) continued these programs and made certain changes to the Federal procurement preference program. USDA refers to the procurement preference program and the voluntary labeling program together as the BioPreferred℠ Program.

Due to the changes mandated by the 2008 Farm Bill, and the passage of five years since USDA first published the Guidelines for Designated Biobased Products for Federal Procurement (Guidelines) (7 CFR 2902), USDA intends to revise the Guidelines in 2010. USDA is holding three public meetings to gather input from interested stakeholders on what should be considered when revising the Guidelines. The first meeting, which occurred in January in Washington, DC, addressed evaluation of environmental impacts associated with the manufacture, use, and disposal of biobased products.

The purpose of the February 24th meeting, which is the second of the three meetings, is to stimulate discussion and gather input from stakeholders on how USDA can effectively implement the designation of complex assembly products for Federal preferred procurement status under the BioPreferred program as required by the 2008 Farm Bill. In addition, USDA is interested in obtaining comments on the potential impact of complex assembly designation on the pending "USDA Certified Biobased Product" labeling program.

Under the current Guidelines, USDA designates "finished" products by collecting information on available biobased products, manufacturers, and distributors to determine potential product categories, tests products for biobased content using ASTM International *Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis, D–6866.* USDA also currently evaluates environmental and human health benefits and lifecycle costs of categories using the Building for Environmental and Economic Sustainability (BEES) model developed by the National Institute of Standards and Technology.

To set the stage before opening the forum for public comment, USDA has invited to the public meeting speakers from USDA and the Environmental Protection Agency (EPA), as well as individuals from academia and industry who are well-versed in biobased materials, manufacturing and products. USDA is seeking answers to a series of questions about complex assembly products and their role in designating biobased products for Federal procurement.

These questions include:

- How should the designation of complex assemblies be organized?
- Are there definable categories with similar characteristics and common understanding?
- What entities are best positioned to help define the possible categories?
- Are there categories with greater potential to further the goals and intent of the BioPreferred program?
- What is the minimum allowable biobased content to be considered biobased?
- How should biobased content be calculated?
- What information should be provided to assist purchasers?
- What are the potential obstacles to purchasing designated complex assemblies?
- What differences should be included in the labeling program as opposed to the Federal procurement preference program?

Finally, USDA will hold a third public meeting at Iowa State University on April 1, 2010 to hear from interested stakeholders on how to designate intermediate ingredients and feedstocks that can be used to produce items subject to the Federal procurement preference program and how to automatically designate items composed of designated intermediate ingredients and feedstocks if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate). USDA will post a notice in the **Federal Register** when details are final regarding this Iowa public meeting, which will also have a training component.

Done in Washington, DC, this 20th day of January 2010.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2010–2039 Filed 1–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0082]

Determination of Pest-Free Areas in the Republic of Chile; Request for Comments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have received a request from the government of the Republic of Chile to recognize additional areas as pest-free areas for Mediterranean fruit fly (*Ceratitis capitata*) in the Republic of Chile. After reviewing the documentation submitted in support of this request, the Administrator of the Animal and Plant Health Inspection Service has determined that these areas meet the criteria in our regulations for recognition as pest-free areas. We are making that determination, as well as an evaluation document we have prepared in connection with this action, available for review and comment.

DATES: We will consider all comments we receive on or before April 2, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0082*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2009-0082, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2009-0082.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Mr. Phillip B. Grove, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734-6280.

SUPPLEMENTARY INFORMATION: Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56 through 319.56-49, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. One of the designated phytosanitary measures is that the fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin.

Under the regulations in § 319.56-5, APHIS requires that determinations of pest-free areas be made in accordance with the criteria for establishing freedom from pests found in International Standard for Phytosanitary Measures (ISPM) No. 4, "Requirements for the establishment of pest-free areas." The international standard was established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization and is incorporated by reference in our regulations in 7 CFR 300.5. In addition, APHIS must also approve the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be

performed upon detection of a pest. Pest-free areas are subject to audit by APHIS to verify their status.

APHIS has received a request from the government of the Republic of Chile to recognize an additional area of that country as being free of *Ceratitis capitata*, Mediterranean fruit fly (Medfly).[1] Specifically, the government of the Republic of Chile asked that we recognize the Arica Province as an area that is free of Medfly. Currently, APHIS recognizes the Republic of Chile, except for the Arica Province, as free of Medfly. Furthermore, Medfly host articles (fruits and vegetables) from the Republic of Chile may be imported into the United States without treatment for Medfly from areas in the Republic of Chile that are free of Medfly. Recognizing the Arica Province as free of Medfly would result in the entire Republic of Chile as being recognized as free of that pest.

In accordance with our regulations and the criteria set out in ISPM No. 4, we have reviewed and approved the survey protocols and other information provided by the Republic of Chile relative to its system to establish freedom, phytosanitary measures to maintain freedom, and system for the verification of the maintenance of freedom. Because this action concerns the expansion of a currently recognized pest-free area in the Republic of Chile from which fruits and vegetables are authorized for importation into the United States, our review of the information presented by the Republic of Chile in support of its request is examined in a commodity import evaluation document (CIED) titled "Recognition of an Additional Region as Medfly Pest-Free Area (PFA) for the Republic of Chile."

The CIED may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the CIED by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

Therefore, in accordance with § 319.56-5(c), we are announcing the Administrator's determination that the Republic of Chile (including the Arica Province) meets the criteria of § 319.56-5(a) and (b) with respect to freedom from Medfly. After reviewing the comments we receive on this notice, we will announce our decision regarding the status of this area with respect to their freedom from Medfly. If the Administrator's determination remains unchanged, we will amend the list of pest-free areas to list the Republic of Chile as free of Medfly.

Done in Washington, DC, this 26th day of January 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–2009 Filed 1–29–10: 8:45 am]

BILLING CODE 3410–34–S

[1]A list of pest-free-areas currently recognized by APHIS can be found at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/DesignatedPestFreeAreas.pdf*).

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to California Seed & Plant Lab, Inc. of Elverta, California, an exclusive license to U.S. Patent No. 6,410,223, "Direct Polymerase Chain Reaction Assay, or Bio-PCR", issued on June 25, 2002.

DATES: Comments must be received on or before March 3, 2010.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; *telephone:* 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as California Seed & Plant Lab Inc. of Elverta, California has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2010–1945 Filed 1–29–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to 141 Repellent, Inc. of Reston, Virginia, an exclusive license to U.S. Patent No. 7,378,557, "Methods for Preparing Isolongifolenone and Its Use in Repelling Arthropods", issued on May 27, 2008, and U.S. Patent No. 7,579,016, "Methods for Repelling Arthropods Using Isolongifolenone Analogs," issued on August 25, 2009.

DATES: Comments must be received on or before March 3, 2010.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; *telephone:* 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as 141 Repellent, Inc. of Reston, Virginia, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2010–1946 Filed 1–29–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Central Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343), the Salmon-Challis National Forest's Central Idaho Resource Advisory Committee will conduct a business meeting which is open to the public.

DATES: Tuesday, February 23, 2010, beginning at 5 p.m.

ADDRESSES: Public Lands Center, 1206 South Challis Street, Salmon, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review of RAC 2010 projects, possible approval of RAC project proposals, and other RAC business. The meeting is an open public forum. Some RAC members may attend the meeting by conference call or electronically.

FOR FURTHER INFORMATION CONTACT: Lyle E. Powers, Acting Forest Supervisor and Designated Federal Officer, at 208–756–5557.

Dated: January 22, 2010.

Lyle E. Powers,

Acting Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. 2010–1817 Filed 1–29–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting, Posting and Deposting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice; clarifying text.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a document in the **Federal Register** on July 6, 2004, concerning the proposed posting, posting and deposting of stockyards. The document shows the facility number for Shamrock Livestock Commission, Shamrock, Texas is the same as the facility number assigned to Texas Cattle Exchange, Inc., Eastland, Texas (TX–346).

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363 or e-mail: *s.brett.offutt@usda.gov.*

Clarification

In the **Federal Register** of July 6, 2004, in FR Doc. 04–15215, on page 40598, a chart shows the facility number, stockyard name and location, and date of posting of 11 stockyards. To clarify, the facility number for Shamrock Livestock Commission, Shamrock, Texas as follows:

Facility number	Stockyard name and location	Date of posting
TX–355 ...	Shamrock Livestock Commission, Shamrock, Texas.	November 3, 2003

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–2020 Filed 1–29–10; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Customer Input—Patent and Trademark Customer Surveys.

Form Number(s): None.

Agency Approval Number: 0651–0038.

Type of Request: Extension of a currently approved collection.

Burden: 220 hours.

Number of Respondents: 1,900 responses.

Avg. Hours per Response: The USPTO estimates that it takes the public approximately 15 minutes (0.25 hours) to complete a telephone survey and 5 minutes (0.08 hours) to complete both the paper and electronic submissions of the questionnaires and customer surveys. This includes the time to gather the necessary information, respond to the survey, and submit it to the USPTO.

Needs and Uses: The public uses the telephone and customer surveys and the questionnaires to provide their opinions, suggestions, and comments about the USPTO's services, products, and customer service. Depending on the type of survey, the public can provide their comments on the spot to the interviewer, or complete the survey at their own pace and either mail their responses to the USPTO or submit their responses electronically via a web-based survey. The USPTO uses the data collected from these surveys for strategic planning, allocation of resources, the establishment of performance goals, and the verification and establishment of service standards. The USPTO also uses this data to assess customer satisfaction with USPTO products and services, to assess customer priorities in service characteristics, and to identify areas where service levels differ from customer expectations.

Affected Public: Individuals or households; business or other for profit; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publically available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

* *E-mail: Susan.Fawcett@uspto.gov.* Include "0651–0038 Customer Input—Patent and Trademark Customer Surveys copy request" in the subject line of the message.

* *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.

* *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before March 3, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: January 25, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–2048 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for March 2010

The following Sunset Reviews are scheduled for initiation in March 2010 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping duty proceedings	Department contact
Magnesium Metal from the People's Republic of China (A–570–896).	Jennifer Moats; (202) 482–5047.
Magnesium Metal from Russia (A–821–819).	Dana Mermelstein; (202) 482–1391.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders are scheduled for initiation in March 2010.

Suspended Investigations

No Sunset Review of suspended investigations are scheduled for initiation in March 2010.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 22, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–2060 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the **Federal Register** initiation notice.

Opportunity To Request A Review: Not later than the last day of February 2010,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
Antidumping Duty Proceedings	
Brazil:	
Stainless Steel Bar A–351–825	2/1/09–1/31/10
Frozen Warmwater Shrimp A–351–838	2/1/09–1/31/10
France: Uranium A–427–818	2/1/09–1/31/10
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate A–533–817	2/1/09–1/31/10
Forged Stainless Steel Flanges A–533–809	2/1/09–1/31/10
Frozen Warmwater Shrimp A–533–840	2/1/09–1/31/10
Stainless Steel Bar A–533–810	2/1/09–1/31/10
Certain Preserved Mushrooms A–533–813	2/1/09–1/31/10
Indonesia:	
Certain Cut-to-Length Carbon-Quality Steel Plate A–560–805	2/1/09–1/31/10
Certain Preserved Mushrooms A–560–802	2/1/09–1/31/10
Italy:	
Certain Cut-to-Length Carbon-Quality Steel Plate A–475–826	2/1/09–1/31/10
Stainless Steel Butt-Weld Pipe Fittings A–475–828	2/1/09–1/31/10
Japan:	
Carbon Steel Butt-Weld Pipe Fittings A–588–602	2/1/09–1/31/10
Certain Cut-to-Length Carbon-Quality Steel Plate A–588–847	2/1/09–1/31/10
Stainless Steel Bar A–588–833	2/1/09–1/31/10
Malaysia: Stainless Steel Butt-Weld Pipe Fittings A–557–809	2/1/09–1/31/10
Philippines: Stainless Steel Butt-Weld Pipe Fittings A–565–801	2/1/09–1/31/10
Republic of Korea:	
Certain Cut-to-Length Carbon-Quality Steel Plate A–580–836	2/1/09–1/31/10
Stainless Steel Butt-Weld Pipe Fittings A–580–813	2/1/09–1/31/10
Taiwan: Forged Stainless Steel Flanges A–583–821	2/1/09–1/31/10
Thailand: Frozen Warmwater Shrimp A–549–822	2/1/09–1/31/10
The People's Republic of China:	
Axes/adzes A–570–803	2/1/09–1/31/10
Bars/wedges A–570–803	2/1/09–1/31/10
Certain Preserved Mushrooms A–570–851	2/1/09–1/31/10
Frozen Warmwater Shrimp A–570–893	2/1/09–1/31/10
Hammers/sledges A–570–803	2/1/09–1/31/10
Natural Bristle Paint Brushes and Brush Heads A–570–501	2/1/09–1/31/10
Picks/mattocks A–570–803	2/1/09–1/31/10
Small Diameter Graphite Electrodes A–570–929	8/21/08–1/31/10
Uncovered Innerspring Units A–570–928	2/2/09–1/31/10
Socialist Republic of Vietnam: Frozen Warmwater Shrimp A–552–802	2/1/09–1/31/10
Countervailing Duty Proceedings	
France: Uranium C–427–819	1/1/09–12/31/09
India:	
Certain Cut-to-Length Carbon-Quality Steel Plate C–533–818	1/1/09–12/31/09
Prestressed Concrete Steel Wire Strand C–533–829	1/1/09–12/31/09
Indonesia: Certain Cut-to-Length Carbon-Quality Steel Plate C–560–806	1/1/09–12/31/09
Italy: Certain Cut-to-Length Carbon-Quality Steel Plate C–475–827	1/1/09–12/31/09
Republic of Korea: Certain Cut-to-Length Carbon-Quality Steel Plate C–580–837	1/1/09–12/31/09
The People's Republic of China: Circular Welded Carbon Quality Steel Line Pipe [2] C–570–936	7/10/08–12/31/09

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were

[2] This case was inadvertently omitted from the opportunity notice that published on January 11, 2010 (75 FR 1333).

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of February 2010. If the Department does not receive, by the last day of February 2010, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from use, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 26, 2010.

John M. Andersen

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–2061 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT38

Notice of Intent to Prepare a Programmatic Environmental Impact Statement and Conduct Restoration Planning to Compensate for Injuries to Natural Resources in Portland Harbor, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a programmatic environmental impact statement and restoration plan; request for comments; notice of public scoping meeting.

SUMMARY: NOAA, the Department of the Interior (U.S. Fish and Wildlife Service), the Oregon Department of Fish and Wildlife, the Nez Perce Tribe, the Confederated Tribes of the Warm Springs Indian Reservation of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Siletz Indians, and the Confederated Tribes of the Grand Ronde Community of Oregon are collectively referred to as the "Trustees" for this case. The Confederated Tribes and Bands of the Yakima Nation, although a Trustee for Portland Harbor, has withdrawn from the Trustee Council and is no longer participating in the restoration planning efforts of the group of Trustees identified here. The Trustees for this case are providing notice of their efforts to plan restoration projects to compensate for injuries to natural resources in Portland Harbor in the Lower Willamette River. The Trustees seek damages from potentially responsible parties (PRPs) to restore, rehabilitate, replace or acquire the equivalent of natural resources and services injured by the release of hazardous substances. The Trustees will prepare a programmatic environmental impact statement (PEIS) to identify and address the environmental impacts of the proposed restoration, and they seek public involvement in development of a Draft Restoration Plan (RP). This notice explains the scoping process the Trustees will use to gather input from the public. Comments on what the Trustees should consider in the PEIS and RP may be submitted in written form or verbally at a public scoping meeting.

DATES: A preliminary public scoping meeting date and time is scheduled as follows:

Wednesday, March 3, 2010, 6–8 p.m., City of Portland's Water Pollution Control Laboratory, 6543 N. Burlington Avenue, Portland, OR 97203

Written comments must be received by March 15, 2010.

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to Megan Callahan Grant, NOAA Restoration Center, 1201 NE Lloyd Blvd. ı1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Megan Callahan Grant at (503) 231–2213 or e-mail at *megan.callahan-grant@noaa.gov*.

SUPPLEMENTARY INFORMATION: Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, parties responsible for releasing hazardous substances into the environment are liable both for the costs of responding to the release (by cleaning up, containing or otherwise remediating the release) and for damages arising from injuries to publicly owned or managed natural resources resulting from the release. Natural resource damage assessment (NRDA) is the process of assessing the nature and extent of the resulting injury, destruction or loss of natural resources and the services they provide. NRDA also includes the process of determining the compensation required to make the public whole for such injuries, destruction or loss. CERCLA authorizes certain Federal and state agencies and Indian tribes to be designated as Trustees for affected natural resources. Under CERCLA and implementing regulations, these agencies and tribes are authorized to assess natural resource injuries and to seek compensation from responsible parties, including the costs of performing the damage assessment. The Trustees are required to use recovered damages only to restore, replace or acquire the equivalent of the injured or lost resources and services.

In January of 2007, the Portland Harbor Trustee Council released a Pre-Assessment Screen (PAS) for the Portland Harbor Superfund site. The purpose of the PAS was to provide the foundation for determining the need to conduct a formal natural resource

damage assessment as authorized by CERCLA. The PAS concluded that natural resources in the area have been affected or potentially affected from releases or discharges of contaminants. Exposed living natural resources include, but are not limited to: (1) aquatic-dependent mammals such as mink and river otter, and species they depend on as prey items; (2) migratory birds, including osprey, bald eagle, mergansers and other waterfowl, great blue heron, spotted sandpiper and other shorebirds, cliff swallow, belted kingfisher, and other species; (3) threatened and endangered species; (4) anadromous and resident fish, including salmon and steelhead; (5) reptiles and amphibians; (6) aquatic invertebrates; (7) wapato and other aquatic plants. Exposed habitat types and water natural resources include wetland and upland habitats, groundwater, and surface water. The services that are provided by these potentially affected natural resources include, but are not limited to: (1) habitat for trust resources, including food, shelter, breeding, foraging, and rearing areas, and other factors essential for survival; (2) consumptive commercial resource use such as commercial fishing; (3) consumptive recreational resource use such as hunting and fishing; (4) non-consumptive uses such as wildlife viewing, photography, and other outdoor recreation activities; (5) primary and secondary contact activities such as swimming and boating; (6) cultural, spiritual, and religious use; (7) option and existence values; (7) traditional foods. Based on the conclusions of the PAS, the Portland Harbor Trustee Council has determined that proceeding past the preassessment phase to a full natural resource damage assessment is warranted.

Scientific literature and studies being conducted by the Trustees seek to document injuries from hazardous substances found in Portland Harbor. The objective of these studies is to demonstrate (1) how the contamination has harmed the organisms that inhabit the riverine sediments, (2) how the contamination has harmed and the fish and wildlife that come into contact with the contaminated sediments or that eat contaminated prey items, and (3) how the harm to the natural resources has impacted the people that use these resources. Concurrent with the damage assessment, the Trustees plan to carry out restoration planning, seeking comments from the public on how best to make the public whole for injuries documented through the damage assessment.

As restoration planning proceeds, the Trustees will take advantage of opportunities to settle natural resource damage claims with willing parties. By identifying criteria and guidance to be used in selecting feasible restoration projects, the plan will provide a framework to maximize the benefits of specific restoration projects to the affected resources and services in the defined areas of the Lower Willamette River. The Trustees plan to consider alternatives that may include: (1) integrated habitat restoration actions that will benefit multiple species and services (those species listed above as potentially affected by releases of hazardous substances, such as salmon and resident fish, mammals such as mink and river otter, and aquatic-dependent birds such as osprey and bald eagle); (2) species-specific restoration actions (for example, augmenting a species population through artificial production); and (3) a no-action alternative (no action takes place and the public is not compensated). Additional alternatives identified through the public involvement process may also be considered, to the extent that they demonstrate a nexus to natural resources injured by the release of hazardous substances.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the Council on Environmental Quality regulations implementing NEPA under 40 CFR Chapter V, apply to restoration actions by Federal trustees. These authorities prescribe a scoping process the purpose of which is to identify the concerns of the affected public and Federal agencies, states, and Indian tribes, involve the public early in the decision making process, facilitate an efficient PEIS preparation process, define the issues and alternatives that will be examined in detail, and save time by ensuring that draft documents adequately address relevant issues. The scoping process reduces paperwork and delay by ensuring that important issues are addressed early.

The Trustees will prepare an Administrative Record (Record). The Record will include documents that the Trustees relied upon during the development of the RP and PEIS. After preparation, the Record will be on file at the NOAA Restoration Center's offices in Portland, OR. Additional documents and information will be available at the following websites: *http://www.darp.noaa.gov/* and *http://www.fws.gov/oregonfwo/contaminants/PortlandHarbor/default.asp*

Release of a draft PEIS for public comment is planned for late 2011. Specific dates and times for future events will be publicized when scheduled.

Dated: January 26, 2010.

Patricia A. Montanio,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2010–2019 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2010–0004]

Extension of Period for Comments on Enhancement in the Quality of Patents

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments.

SUMMARY: The United States Patent and Trademark Office (USPTO) published a notice in the **Federal Register** seeking public comment directed to this focus with respect to methods that may be employed by applicants and the USPTO to enhance the quality of issued patents, to identify appropriate indicia of quality, and to establish metrics for the measurement of the indicia. The USPTO is extending the period for public comment until March 8, 2010.

Comment Deadline Date: March 8, 2010. No public hearing will be held.

ADDRESSES: Written comments should be sent by electronic mail message over the Internet addressed to *patent_quality_comments@uspto.gov*. Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, marked to the attention of Kenneth M. Schor and Pinchus M. Laufer. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The written comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: By telephone: Pinchus M. Laufer, Legal Advisor, at (571) 272–7726, or Kenneth M. Schor, Senior Legal Advisor, at (571) 272–7710; by mail addressed to U.S.

Patent and Trademark Office, Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Pinchus M. Laufer and Kenneth M. Schor; or by electronic mail (e-mail) message over the Internet addressed to *pinchus.laufer@uspto.gov* or *kenneth.schor@uspto.gov*.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office (USPTO) published a notice in the **Federal Register** seeking public comment directed to this focus with respect to methods that may be employed by applicants and the USPTO to enhance the quality of issued patents, to identify appropriate indicia of quality, and to establish metrics for the measurement of the indicia. *See Request for Comments on Enhancement in the Quality of Patents,* 74 FR 65093 (Dec. 9, 2009), 1350 *Off. Gaz. Pat. Office* 46 (Jan. 5, 2010). The USPTO indicated that to be ensured of consideration, written comments must be received on or before February 8, 2010. *See Request for Comments on Enhancement in the Quality of Patents,* 74 FR at 65094, 1350 *Off. Gaz. Pat. Office* at 46. The USPTO is extending the period for submission of public comments until March 8, 2010.

Dated: January 26, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–2036 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2010–0003]

Extension of the Patent Application Backlog Reduction Stimulus Plan

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) published a notice in the **Federal Register** providing an additional temporary basis (the Patent Application Backlog Reduction Stimulus Plan) under which a small entity applicant may have an application accorded special status for examination if the applicant expressly abandons another copending unexamined application. The Patent Application Backlog Reduction Stimulus Plan allows small entity applicants having multiple applications currently pending before the USPTO to have greater control over the priority with which their applications are examined while also stimulating a reduction of the backlog of unexamined patent applications pending before the USPTO. The USPTO is extending Patent Application Backlog Reduction Stimulus Plan until June 30, 2010.

DATES: *Effective Date:* February 1, 2010. The Patent Application Backlog Reduction Stimulus Plan became effective on November 27, 2009.

FOR FURTHER INFORMATION CONTACT: Pinchus M. Laufer, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at 571–272–7726; or via e-mail addressed to *Pinchus.Laufer@uspto.gov;* or by mail addressed to: Box Comments Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: The USPTO published a notice in the **Federal Register** providing an additional temporary basis (the Patent Application Backlog Reduction Stimulus Plan) under which a small entity applicant may have an application accorded special status for examination if the applicant expressly abandons another copending unexamined application. *See Patent Application Backlog Reduction Stimulus Program,* 74 FR 62285 (Nov. 27, 2009), 1349 *Off. Gaz. Pat. Off.* 304 (Dec. 22, 2009) (notice). The Patent Application Backlog Reduction Stimulus Plan allows small entity applicants having multiple applications currently pending before the USPTO to have greater control over the priority with which their applications are examined while also stimulating a reduction of the backlog of unexamined patent applications pending before the USPTO. The USPTO indicated that the program would last for a period ending on February 28, 2010, but may be extended for an additional time period thereafter. *See Patent Application Backlog Reduction Stimulus Program,* 74 FR at 62287, 1349 *Off. Gaz. Pat. Off.* at 306.

The USPTO is extending Patent Application Backlog Reduction Stimulus Plan until June 30, 2010. The USPTO may further extend the procedures under Patent Application Backlog Reduction Stimulus Plan to all applicants (on either a temporary or permanent basis), or may also discontinue the procedures after June 30, 2010, depending upon the results of the Patent Application Backlog Reduction Stimulus Plan. For a petition under 37 CFR 1.102 to be granted under the Patent Application Backlog Reduction Stimulus Plan (unless the Patent Application Backlog Reduction Stimulus Plan is extended by a subsequent notice), the petition under 37 CFR 1.102 and the letter of express abandonment and its accompanying statement must be filed on or before June 30, 2010.

Dated: January 26, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–2033 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1658]

Grant of Authority for Subzone Status, Excalibar Minerals LLC (Barite Milling), New Iberia, Louisiana

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for "...the establishment... of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port of South Louisiana, grantee of Foreign–Trade Zone 124, has made application to the Board for authority to establish a special–purpose subzone at the barite manufacturing and distribution facility of Excalibar Minerals LLC, located in New Iberia, Louisiana, (FTZ Docket 21–2009, filed 5/6/09);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 23394, 5/19/09) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and

Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of ground barite at the facility of Excalibar Minerals LLC, located in New Iberia, Louisiana (Subzone 124N), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 15th day of January 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–2062 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping duty order listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-year Review* which covers the same order.

EFFECTIVE DATE: February 1, 2010.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 - *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty order:

DOC Case No.	ITC Case No.	Country	Product	Department Contact
A–570–894	731–TA–1070B	China	Tissue Paper Products	Brandon Farlander (202) 482–0182

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "http://ia.ita.doc.gov/sunset/." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103 (c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order–specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order–specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: January 22, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–2063 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2010–0006]

Interim Procedure for Patentees To Request a Recalculation of the Patent Term Adjustment To Comply With the Federal Circuit Decision in Wyeth v. Kappos Regarding the Overlapping Delay Provision of 35 U.S.C. 154(b)(2)(A)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is modifying the computer program it uses to calculate patent term adjustments in light of *Wyeth* v. *Kappos,* No. 2009–1120 (Fed. Cir., Jan. 7, 2010). The USPTO expects to complete this software modification by March 2, 2010. In the meantime, the USPTO is providing patentees with the ability to request a recalculation of their patent term adjustment without a fee as an alternative to the petition and fee required by 37 CFR 1.705(d). In order to qualify, a form requesting a recalculation of the patent term adjustment must be submitted no later than 180 days after the patent has issued and the patent must be issued prior to March 2, 2010. In addition, this procedure is only available for alleged errors that are specifically identified in *Wyeth.* The USPTO is deciding pending petitions under 37 CFR 1.705 in accordance with the *Wyeth* decision. This notice also provides information concerning the Patent Application Information Retrieval (PAIR) screen that displays the patent term adjustment calculation.

DATES: *Effective Date:* The procedure set forth in this notice is effective on February 1, 2010.

Applicability Date: The procedure set forth in this notice is applicable only to patents issued prior to March 2, 2010, in which a request for recalculation of patent term adjustment in view of *Wyeth* is filed within 180 days of the day the patent was granted.

FOR FURTHER INFORMATION CONTACT: The Office of Patent Legal Administration by telephone at (571) 272–7702, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450.

SUPPLEMENTARY INFORMATION: Under 35 U.S.C. 154(b)(1), an applicant is entitled (subject to certain conditions and limitations) to patent term adjustment for the following reason: (1) If the USPTO fails to take certain actions during the examination and issue process within specified time frames (35 U.S.C. 154(b)(1)(A)), which are known as the "A" delays; (2) if the USPTO fails to issue a patent within three years of the actual filing date of the application (35 U.S.C. 154(b)(1)(B)), which are known as the "B" delays; and (3) for delays due to interference, secrecy order, or successful appellate review (35 U.S.C. 154(b)(1)(C)), which are known as the "C" delays. 35 U.S.C. 154(b)(2)(A) provides that "[t]o the extent that periods of delay attributable to grounds specified in [35 U.S.C. 154(b)(1)] overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed." The USPTO interpreted this provision as covering situations in which a delay by the USPTO contributes to multiple bases for adjustment (the "pre-*Wyeth*" interpretation of 35 U.S.C. 154(b)(2)(A)). *See Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A),* 69 FR 34283 (June 21, 2004). The United States Court of Appeals for the Federal Circuit, however, recently held in *Wyeth* that the USPTO's interpretation of 35 U.S.C. 154(b)(2)(A) was too strict, and that periods of delay overlap under 35 U.S.C. 154(b)(2)(A) only if the periods which measure the amount of adjustment under 35 U.S.C. 154(b)(1) occur on the same calendar day.

The USPTO makes patent term adjustment determinations by a computer program that uses the information recorded in the USPTO's Patent Application Locating and Monitoring (PALM) system, except when an applicant requests reconsideration pursuant to 37 CFR 1.705. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term,* 65 FR 56365, 56370, 56380–81 (Sept. 18, 2000) (final rule). The USPTO is in the process of revising the computer program it uses to calculate patent term adjustment to calculate overlapping delays consistent with the Federal Circuit's interpretation of 35 U.S.C. 154(b)(2)(A) in *Wyeth.* The USPTO expects the revisions to the patent term adjustment computer program to be in place for use on the patents issuing on March 2, 2010.

Patentees should note that the patent term adjustment provisions of 35 U.S.C. 154(b) are complex, there are numerous types of communications that are exchanged between applicants and the USPTO during the patent application process, the PALM system was not originally designed for the purpose of calculating patent term adjustment as provided in 35 U.S.C. 154(b), and one or more of the time frames specified in of 35 U.S.C. 154(b)(1)(A) and (B) are not met presently in a high percentage of the patents. In addition, revisions to the patent term adjustment computer program necessary to calculate overlapping delays consistent with the Federal Circuit's interpretation of 35 U.S.C. 154(b)(2)(A) in *Wyeth* significantly increases the complexity of the patent term adjustment computer program. Thus, for patents issuing on or after March 2, 2010, a patentee who believes that the patent term adjustment calculation for his or her patent is not correct must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the date the patent issued. The USPTO is modifying and will continue to modify the patent term adjustment computer program as it becomes aware of situations in the patent term adjustment computer program where it is not correctly calculating the applicable patent term adjustment.

Requests for Reconsideration of the Patent Term Adjustment indicated in the Patent: 37 CFR 1.705(d) provides, in part, that any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and must comply with the requirements of 37 CFR 1.705(b)(1) and (b)(2). 35 U.S.C. 154(b)(4) provides that an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) shall have remedy by a civil action against the Director filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The USPTO is providing an optional procedure under which patentees seeking a revised patent term adjustment in a patent issued prior to March 2, 2010, may request that the

USPTO recalculate the patent term adjustment without a request for reconsideration under 37 CFR 1.705(d) (or fee), provided that the patentee's sole basis for requesting reconsideration of the patent term adjustment in the patent is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A) and such a request is filed within 180 days of the day the patent was granted. The USPTO is providing a Request for Recalculation of Patent Term Adjustment in View of *Wyeth* form (PTO/SB/131) for use in making such a request. The Request for Recalculation of Patent Term Adjustment in View of *Wyeth* form (PTO/SB/131) is available on the USPTO Web site at *http://www.uspto.gov/forms/index.jsp.* This procedure and Request for Recalculation of Patent Term Adjustment in View of *Wyeth* form (PTO/SB/131) are applicable only for patents that issue prior to March 2, 2010. The USPTO will deny as untimely any request for recalculation of patent term adjustment indicated on a patent that is not filed within 180 days of the day the patent was granted. Patentees are reminded that this is an optional procedure, and that any patentee who wishes to preserve his or her right to review in the United States District Court for the District of Columbia of the USPTO's patent term adjustment determination must ensure that he or she also takes the steps required under 35 U.S.C. 154(b)(3) and (b)(4) and 37 CFR 1.705 in a timely manner.

The fee specified in 37 CFR 1.18(e) is required for a request for reconsideration under 37 CFR 1.705 (37 CFR 1.705(b)(1)), and the USPTO may only refund fees paid by mistake or in excess of that required (35 U.S.C. 42(d)). Therefore, the procedure set forth in this notice is not a basis for requesting a refund of the fee specified in 37 CFR 1.18(e) for any request for reconsideration under 37 CFR 1.705, including any previously filed request that was solely based on the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A).

The procedure set forth in this notice and the Request for Recalculation of Patent Term Adjustment in View of *Wyeth* form (PTO/SB/131) may not be used to request a reconsideration of the patent term adjustment indicated in the notice of allowance in an application that has not yet issued as a patent. If the application issues as a patent prior to March 2, 2010, the optional procedure set forth in this notice and the Request for Recalculation of Patent Term Adjustment in View of *Wyeth* form (PTO/SB/131) may be used to request recalculation of the patent term adjustment provided on the patent. It is expected that for applications issuing as patents on or after March 2, 2010, the patent term adjustment calculation will be consistent with the Federal Circuit's interpretation of 35 U.S.C. 154(b)(2)(A) in *Wyeth.*

The USPTO is deciding any currently pending request for reconsideration of the patent term adjustment indicated in the patent under 37 CFR 1.705(d) that was filed within two months of the date the patent issued consistent with the Federal Circuit's interpretation of 35 U.S.C. 154(b)(2)(A) in *Wyeth.* Patentees who received a decision on a request for reconsideration of the patent term adjustment indicated in the patent under 37 CFR 1.705(d) under the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A) may file a request for reconsideration of that decision if such a request for reconsideration is filed within two months of the date of the decision on a request for reconsideration (37 CFR 1.181(f)). If the patentee's sole basis for requesting reconsideration of the decision is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A), the request for reconsideration need only state that reconsideration is being requested in view of the Federal Circuit's decision in *Wyeth* (the Request for Recalculation of Patent Term Adjustment in View of *Wyeth* form (PTO/SB/131) may also be used for this purpose).

Patentees seeking a revised patent term adjustment in a patent issued on or after March 2, 2010, must file a request for reconsideration under 37 CFR 1.705(d) that complies with the requirements of 37 CFR 1.705(b)(1) and (b)(2) within two months of the date the patent issued.

To the extent that the procedures adopted under the authority of 35 U.S.C. 2(b)(2) and 154(b)(3) require that any request for reconsideration of the patent term adjustment indicated in the patent must be filed within two months of the date the patent issued and include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), these requirements are hereby *sua sponte* waived for patents that meet all of the following criteria: (1) The patent must be issued prior to March 2, 2010; (2) the patentee's sole basis for requesting reconsideration of the patent term adjustment in the patent is the USPTO's pre-*Wyeth* interpretation of 35 U.S.C. 154(b)(2)(A); and (3) the Request for Recalculation of the Patent Term Adjustment in View of *Wyeth* form (PTO/SB/131) is filed within 180 days of the day the patent was granted. *See* 37 CFR 1.183. This waiver does not apply to patents issued on or after March 2, 2010, to requests that the USPTO recalculate the patent term adjustment for alleged errors other than that identified in *Wyeth,* or to any request for reconsideration of the patent term adjustment indicated in the patent filed later than 180 days after the patent was granted.

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice is covered by OMB control number 0651–0020.

Patent Term Adjustment Information Displayed in PAIR: The USPTO provides a patent term adjustment calculation screen that is viewable through PAIR. The patent term adjustment screen has been displaying the following information at the right hand column: (1) USPTO delay days (the number of days of "A" and "C" delay); (2) Three Year Delay days (the number of days of "B" delay); (3) Applicant Delay days (the number of days by which the USPTO delay days will be reduced); and (4) the Total Patent Term Adjustment. Patentees who use the PAIR patent term adjustment calculation screen should note that it does not display the periods of delay which overlap and thus is not adequate for calculating the patent term under the Federal Circuit's interpretation of 35 U.S.C. 154(b)(2)(A) in *Wyeth.* The USPTO plans to revise this screen to show: (1) the number of days of "A" delay; (2) the number of days of "B" delay; (3) the number of days of "C" delay; (4) the number of days of "A" delay that overlap with a day of "B" delay plus the number of days of "A" delay that overlap with a day of "C" delay (the provisions of 35 U.S.C. 154(b)(1)(B)(ii) prevent a "B" delay period and "C" delay period from overlapping); (5) the number of days of non-overlapping USPTO delay; (6) the number of days of applicant delay; and (7) the total patent term adjustment. The revised PAIR patent term adjustment screen, however, will not be ready by March 2, 2010. The USPTO expects the revised PAIR patent term adjustment screen to be ready by July of 2010.

Nothing in this notice shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Dated: January 26, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–2041 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS20

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Conducting Air-to-Surface Gunnery Missions in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the U.S. Air Force (USAF), Eglin Air Force Base (Eglin AFB), to take marine mammals, by harassment, incidental to conducting air-to-surface (A-S) gunnery missions in the Gulf of Mexico (GOM). The USAF's activities are considered military readiness activities.

DATES: Effective January 27, 2010, through January 26, 2011.

ADDRESSES: A copy of the authorization, the application containing a list of the references used in this document, and NMFS' 2008 Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289, ext 156.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

The National Defense Authorization Act (NDAA) (Public Law 108–136) removed the "small numbers" and "specified geographical region" provisions and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

NMFS originally received an application on February 13, 2003, from Eglin AFB for the taking, by harassment, of marine mammals incidental to programmatic mission activities within the Eglin Gulf Test and Training Range (EGTTR). The EGTTR is described as the airspace over the GOM that is controlled by Eglin AFB. A notice of receipt of Eglin AFB's application and Notice of Proposed IHA and request for 30–day public comment published on January 23, 2006 (71 FR 3474). A 1–year IHA was subsequently issued to Eglin AFB for this activity on May 3, 2006 (71 FR 27695, May 12, 2006).

On January 29, 2007, NMFS received a request from Eglin AFB for a renewal of its IHA, which expired on May 2, 2007. This application addendum requested revisions to three components of the IHA requirements: protected species surveys; ramp-up procedures; and sea state restrictions. A Notice of Proposed IHA and request for 30–day public comment published on May 30, 2007 (72 FR 29974). A 1–year IHA was subsequently issued to Eglin AFB for this activity on December 11, 2008 (73 FR 78318, December 22, 2008).

On February 17, 2009, NMFS received a request from Eglin AFB for a renewal of its IHA, which expired on December 10, 2009. No modifications to the activity location, the mission activities, or the mitigation and monitoring measures required under the 2008–2009 IHA were requested by Eglin AFB. Therefore, these activities are identical to what has been described previously (73 FR 78318, December 22, 2008). A-S gunnery operations may potentially impact marine mammals at or near the water surface. Marine mammals could potentially be harassed, injured, or killed by exploding and non-exploding projectiles, and falling debris (USAF, 2002). However, based on analyses provided in the USAF's 2002 Final Programmatic EA (PEA), Eglin's Supplemental Information Request (2003), and NMFS' 2008 EA, as well as for reasons discussed in the Notice of Proposed IHA (74 FR 53474, October 19, 2009) and later in this document, NMFS concurs with Eglin AFB that gunnery exercises are not likely to result in any injury or mortality to marine mammals. Potential impacts resulting from A-S test operations include direct physical impacts (DPI) resulting from ordnance. Sixteen marine mammal species or stocks are authorized for taking by Level B harassment incidental to Eglin AFB's A-S activities and include: Bryde's whale (*Balaenoptera brydei*); sperm whale (*Physeter macrocephalus*); dwarf

sperm whale (*Kogia simus*); pygmy sperm whale (*K. breviceps*); Atlantic bottlenose dolphin (*Tursiops truncatus*); Atlantic spotted dolphin (*Stenella frontalis*); pantropical spotted dolphin (*S. attenuata*); Cuvier's beaked whale (*Ziphius cavirostris*); Clymene dolphin (*S. clymene*); spinner dolphin (*S. longirostris*); striped dolphin (*S. coeruleoalba*); false killer whale (*Pseudorca crassidens*); pygmy killer whale (*Feresa attenuata*); Risso's dolphin (*Grampus griseus*); rough-toothed dolphin (*Steno bredanensis*); and short-finned pilot whale (*Globicephala macrorhynchus*).

Description of the Specified Activity

A-S gunnery missions, a "military readiness activity" as defined under 16 U.S.C. 703 note, involve surface impacts of projectiles and small underwater detonations with the potential to affect cetaceans that may occur within the EGTTR. These missions typically involve the use of 25–mm (0.98–in), 40–mm (1.57–in), and 105–mm (4.13–in) gunnery rounds containing, 0.0662 lb (30 g), 0.865 lb (392 g), and 4.7 lbs (2.1 kg) of explosive, respectively. Live rounds must be used to produce a visible surface splash that must be used to "score" the round (the impact of inert rounds on the sea surface would not be detected). The USAF has developed a 105–mm training round (TR) that contains less than 10 percent of the amount of explosive material (0.35 lb; 0.16 kg) as compared to the "Full-Up" (FU) 105–mm (4.13 in) round. The TR was developed as one method to mitigate effects on marine life during nighttime A-S gunnery exercises when visibility at the water surface is poor. However, the TR cannot be used in the daytime since the amount of explosive material is insufficient to be detected from the aircraft.

Water ranges within the EGTTR that are typically used for the gunnery operations are located in the GOM offshore from the Florida Panhandle (areas W–151A, W–151B, W–151C, and W–151D as shown in Figure 1–2 in Eglin's 2003 application). Data indicate that W–151A (Figure 1–3 in Eglin's application) is the most frequently used water range due to its proximity to Hurlburt Field, but activities may occur anywhere within the EGTTR.

Eglin AFB proposes to conduct these mission activities year round during both daytime and nighttime hours. Therefore, NMFS has made the IHA effective for an entire year from January 27, 2010, through January 26, 2011. However, it should be noted that the level of activity has been far lower over the past few years than that predicted to be conducted by the USAF and by NMFS in this document for two reasons. First, many of the training crew members have been engaged in other activities in other parts of the world recently. Second, land ranges are the preferred method of live-fire training. In the last year, the USAF crews have not used the water ranges due to the excellent availability of land ranges. However, at some point in the future, land ranges may become more difficult to acquire, so water ranges are needed to ensure that aircrews can be fully trained. A detailed overview of the activity was provided in the Notice of Proposed IHA (74 FR 53474, October 19, 2009). No changes have been made to the proposed activities.

Comments and Responses

A notice of receipt of Eglin AFB's application and NMFS' proposal to issue an IHA to the USAF, Eglin AFB, published in the **Federal Register** on October 19, 2009 (74 FR 53474). During the 30–day public comment period, NMFS received comments from the Marine Mammal Commission (MMC) and a member of the public. The comment from the private citizen opposed the issuance of an authorization without any specific substantiation for why such an authorization should not be issued. For the reasons set forth in this document, NMFS has determined that issuance of the authorization is appropriate. Following are the comments from the MMC and NMFS' responses.

Comment 1: The MMC continues to question NMFS' conviction that temporary threshold shift (TTS), in all instances, constitutes no more than Level B harassment. The MMC recommends that NMFS revise its interpretation of TTS to indicate that it constitutes a temporary loss of function with consequences that may vary widely from negligible to biologically significant (e.g., compromised ability to forage, respond to reproductive cues, detect predators) depending on a variety of circumstances at the time the loss occurs, including the nature of the structural and functional hearing loss, the animals' behavioral response to the stimulus, its history, and environmental conditions; as such, and under certain circumstances, TTS may constitute Level A harassment.

Response: NMFS agrees with the MMC that additional information regarding the range of effects from TTS should be added to the analysis of potential effects from the A-S gunnery mission exercises. That information has been added to the "Potential Effects of the Specified Activity on Marine Mammals" section found later in this document.

Regarding the MMC's assertion that under certain circumstances TTS may constitute Level A harassment, this issue has been addressed several times by NMFS in the past (see for example 70 FR 48675, August 19, 2005; and 66 FR 22450, May 4, 2001). As stated in those documents, the best scientific information available concludes that TTS is not an auditory injury, but is a temporary physiological reaction on the part of mammals to avoid an injury. The MMC, however, argues for considering TTS as both Level A harassment and Level B harassment based on conjecture on what might occur if a marine mammal with compromised hearing was at a disadvantage for survival. As noted previously, it is likely that marine mammals evolved certain behavioral responses to address natural loud noises in the environment (for example, billions of lightning strikes per year on the ocean at about 260 dB peak) by changes in conspecific spatial separation. For a more detailed analysis of why TTS is not considered Level A harassment, please refer to the **Federal Register** citations provided here, as well as Southall *et al.* (2007) for information on this subject.

Comment 2: The MMC recommends that NMFS conduct a thorough review of the considerable information available on behavioral responses of marine mammals to sound before it moves forward with proposed regulations tied to the narrow findings of Schlundt *et al.* (2000) as the basis for estimating the number of animals likely to exhibit behavioral responses.

Response: NMFS used the findings in Schlundt *et al.* (2000), as it was the best available science when developing the pressure criterion and estimating the level of take. However, NMFS will review any additional literature suggested by the MMC during the development of proposed regulations.

Comment 3: The MMC reiterates its concern over the conclusion that no animals could be killed over the course of a year of such exercises. The MMC recommends that NMFS require performance testing of mitigation measures to assess their actual effectiveness at detecting marine mammals. The Navy is being asked to conduct similar evaluation programs, and doing so seems essential if our collective approach to such matters is to be considered science-based.

Response: Since the MMC did not make any specific recommendations regarding the performance testing of mitigation measures to assess their actual effectiveness at detecting marine

mammals, NMFS is uncertain as to what exactly it is the MMC is recommending be done in this instance. Regarding the evaluation programs being conducted by the Navy, NMFS assumes that the MMC is referring to the effectiveness of visual observations by vessel-based marine mammal observers based on years of experience. The Navy's evaluation monitoring is in no way comparable to the activities being conducted here by Eglin AFB.

The application addendum submitted by Eglin AFB in January 2007 explained in detail the advantages and improved effectiveness of using the Infrared Detection Sets (IDS) system over typical night-vision devices and other visual observation systems. The IDS system is capable of detecting differences in temperature from thermal energy (heat) radiated from living bodies or from reflected and scattered thermal energy. Visible light is not necessary for object detection. This system is equally effective during day or night use. For a full explanation on the IDS system and its effectiveness, please refer to the 2008 IHA Notice of Issuance (73 FR 78318, December 22, 2008), Eglin AFB's 2007 application addendum, or NMFS' 2008 EA (see ADDRESSES). These documents also describe the effectiveness of this system at 6,000 ft (1,829 m) altitude, which was a requested change by the USAF due to safety concerns for personnel if protected species surveys were flown at lower altitudes.

Aircraft crew members are required to scan the testing area prior to the commencement of all A-S gunnery mission activities, for which optical and electronic sensors are required to be employed for target detection. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the mission will be immediately halted and relocated as necessary or suspended until the marine mammal has left the area. If relocated to another target area, the clearance procedures must be repeated. Based on the analysis of effectiveness of the observation systems, NMFS has determined that flying the pre-mission surveys at an altitude of 6,000 ft (1,829 m) is a sufficient altitude to detect the presence of marine mammals. Since activities will not have occurred prior to these surveys, any sighted marine mammals will be assumed to either be alive or dead from a cause other than Eglin AFB's A-S activities.

Regarding the effectiveness of differentiating between a live and a dead marine mammal during post-mission protected species surveys, unless there is significant physical damage, the operators/systems are not capable of determining between a non-moving live animal and a dead animal with no apparent physical damage. Typically, marine mammals do not exhibit the same levels of energy/heat transfer back into the environment that is associated with land animals due to their insulating fat layers. However, the USAF has stated that they would be able to see a wounded or recently killed marine mammal on or near the surface that is bleeding externally or with significant open wounds, as this would provide a heat signature that can be detected quite well by the IDS system.

Additionally, the size of the wound, time elapsed since the injury was incurred, and orientation of the animal/wound are all factors determining whether or not one could see the gunnery-type wounds (such as bullet holes or fragmentation wounds). However, the weapons used during A-S exercises detonate on or very near the surface. According to the USAF, even if the weapon failed to detonate, gun-type projectiles lose lethal velocity within a few feet of the surface. Lastly, if a marine mammal enters the exercise area during a live-fire event, exercises would cease immediately, and the activity would either remain suspended until the area was determined to be clear of marine mammals or moved to a new area, where pre-mission surveys would be conducted be recommencing live-fire events.

Comment 4: The MMC states that until data are available that demonstrate the effectiveness of electronic detection techniques in higher sea states, authorizing incidental taking during operations conducted in such conditions is premature. Therefore, the MMC recommends that NMFS work with the USAF to design and conduct the necessary performance verification testing for electronic detection devices under the pertinent sea state conditions.

Response: For the 2008 IHA, NMFS increased the sea state restriction from 3 to 4. The reasoning for increasing the sea state limitation was fully explained in the 2008 IHA Notice of Issuance (73 FR 78318, December 22, 2008) and NMFS' 2008 EA. Readers should refer to those documents for the explanation.

USAF subject matter experts have determined based on in-the-field experience, the airborne systems adequately function in a sea state of 4. Research conducted by Baldacci *et al.* (2005) indicated a sea state of 2 or 3 was pushing their system capabilities. However, Baldacci *et al.* (2005) were looking horizontally along the surface of the water, whereas the USAF is looking nearly straight down, thus improving system capabilities in higher sea states. Specific system capabilities/limitations are classified and cannot be publicly provided.

Sensor Operators are continuously scanning the area for traffic, boats, marine mammals, etc. when transiting to and from the water exercise ranges. The USAF will instruct the Sensor Operators to begin gathering additional data, such as sea state and level of difficulty in detecting objects at the different sea states, during those transits for comparison purposes, as long as doing so does not interfere with mission training activities. Beyond this new data collection effort, NMFS is uncertain what the MMC intended, as they did not provide any specific details on the types of data that should be collected or collection methods.

Comment 5: The MMC recommends that NMFS review its overall strategy for managing risks associated with such testing and training activities and consider how its existing strategy might be modified to be both more precautionary but also more likely to lead to scientific advancement in this field of research.

Response: Pursuant to section 101(a)(5)(D) of the MMPA, NMFS may issue an IHA if it finds that the activity will have a negligible impact on the affected species or stock and that such taking will not have an unmitigable adverse impact on the affected species or stock for subsistence uses (where relevant). Additionally, NMFS must prescribe means of effecting the least practicable impact on the affected species or stocks and their habitats. In this case, NMFS reviewed and analyzed the activity and the mitigation measures proposed by USAF to determine whether there would be a negligible impact on the affected species and stocks and whether they constitute the means of effecting the least practicable impact. NMFS has made both these determinations.

The USAF is currently using the results of a recent habitat/species abundance survey in order to limit exercises in areas during times of year when high marine species abundance is anticipated. In 2007, Dr. Lance Garrison, NMFS Southeast Fisheries Science Center, conducted a marine species habitat modeling survey in the EGTTR as part of the Department of Defense Legacy Resource Management Program. In this project, the researchers developed habitat models using new aerial survey line transect data collected during the winter and summer of 2007. In combination with remotely sensed habitat parameters (i.e., sea surface temperature and chlorophyll), these

data were used to develop spatial density models for bottlenose dolphins and several sea turtle species within continental shelf and coastal waters of the eastern GOM. The "species-environment" relationship describes the environmental preferences and tolerances of the target species. This relationship is then projected spatially to provide a finer-scale prediction of areas within a region where animal density is expected to be highest. Similarly, the relationship can be used to predict the density of animals outside of the time period or area when survey data are collected. Although there are some limitations to the results of Dr. Garrison's study, the data are used by training crews at Eglin AFB to help determine the best locations for training missions in the EGTTR so that areas with high abundances of marine mammals and sea turtles can be avoided. Such scientific studies are being used to reduce impacts to marine mammals (and other protected species) in the EGTTR.

Description of Marine Mammals in the Area of the Specified Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. Of these 29 species of marine mammals, approximately 21 may be found within the proposed action area, the EGTTR. These species are the Bryde's whale, sperm whale, dwarf sperm whale, pygmy sperm whale, Atlantic bottlenose dolphin, Atlantic spotted dolphin, pantropical spotted dolphin, Blainville's beaked whale (*Mesoplodon densirostris*), Cuvier's beaked whale, Gervais' beaked whale (*M. europaeus*), Clymene dolphin, spinner dolphin, striped dolphin, killer whale (*Orcinus orca*), false killer whale, pygmy killer whale, Risso's dolphin, Fraser's dolphin (*Lagenodelphis hosei*), melon-headed whale (*Peponocephala electra*), rough-toothed dolphin, and short-finned pilot whale. Of these species, only the sperm whale is listed as endangered under the Endangered Species Act (ESA) and as depleted throughout its range under the MMPA. While some of the other species listed here have depleted status under the MMPA, none of the GOM stocks of those species are considered depleted. More detailed information on these species can be found in Wursig *et al.* (2000), NMFS' 2008 EA (see **ADDRESSES**), and in the NMFS U.S. Atlantic and GOM Stock Assessment Reports (Waring *et al.*, 2009). This latter document is available at: *http://www.nefsc.noaa.gov/publications/tm/tm210/*. The West Indian manatee (*Trichechus manatus*) is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

The species most likely to occur in the area of Eglin AFB's proposed activities include: Atlantic bottlenose dolphin; Atlantic spotted dolphin; pantropical spotted dolphin; spinner dolphin; striped dolphin; Risso's dolphin; Clymene dolphin; and dwarf and pygmy sperm whales. Blainville's beaked whale, Gervais' beaked whale, killer whale, Fraser's dolphin, and melon-headed whales are rare in the project area and are not anticipated to be impacted by the A-S gunnery mission activities. Therefore, these five species are not considered further.

Cetacean abundance estimates for the study area are derived from GulfCet II (Davis *et al.*, 2000) aerial surveys of the continental shelf within the Minerals Management Service's Eastern Planning Area, an area of 70,470 km^2. Texas A&M University and NMFS conducted the surveys from 1996 to 1998. A complete discussion on the abundance and density data can be found in the Notice of Proposed IHA (74 FR 53474, October 19, 2009) and Eglin AFB's 2003 application.

Potential Effects of the Specified Activity on Marine Mammals

A-S gunnery operations may potentially impact marine mammals at or near the water surface. Marine mammals could potentially be harassed, injured or killed by exploding and non-exploding projectiles, and falling debris (USAF, 2002). However, based on analyses provided in the USAF's Final PEA, Eglin's Supplemental Information Request (2003), and NMFS' 2008 EA, NMFS concurs with Eglin AFB that A-S gunnery exercises are not likely to result in any injury or mortality to marine mammals.

Explosive criteria and thresholds for assessing impacts of explosions on marine mammals were discussed by NMFS in detail in its issuance of an IHA for Eglin's Precision Strike Weapon testing activity (70 FR 48675, August 19, 2005) and are not repeated here. Please refer to that document for this background information. However, one part of the analysis has changed since that time. That information was provided in the Notice of Proposed IHA (74 FR 53474, October 19, 2009) and is not repeated here. Table 1 in this document outlines the acoustic criteria used by NMFS when addressing noise impacts from explosives. These criteria remain consistent with criteria established for other activities in the EGTTR and other acoustic activities authorized under sections 101(a)(5)(A) and (D) of the MMPA.

TABLE 1. CURRENT NMFS ACOUSTIC CRITERIA WHEN ADDRESSING HARASSMENT FROM EXPLOSIVES

Level B Behavior	177 dB re 1 μPa^2–sec 1/3 Octave SEL (sound energy level)
Level B TTS Dual Criterion	182 dB re 1 μPa^2–sec 1/3 Octave SEL
Level B TTS Dual Criterion	23 psi
Level A PTS (permanent threshold shift)	205 dB re 1 μPa^2–sec SEL
Level A Injury (non-hearing related)	13 psi-msec
Mortality	30.5 psi-msec

TTS can disrupt behavioral patterns by inhibiting an animal's ability to communicate with conspecifics and interpret other environmental cues important for predator avoidance and prey capture. However, depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and

longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication.

The following physiological mechanisms are thought to play a role in inducing auditory fatigue: effects to sensory hair cells in the inner ear that reduce their sensitivity; modification of the chemical environment within the sensory cells; residual muscular activity in the middle ear; displacement of certain inner ear membranes; increased blood flow; and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than permanent threshold shift (PTS), they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not, because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to underwater detonations) as Level B Harassment, not Level A Harassment (injury).

Direct Physical Impacts (DPI)

Potential impacts resulting from A-S test operations include DPI resulting from ordnance. DPI could result from inert bombs, gunnery ammunition, and shrapnel from live missiles falling into the water. However, the possibility of DPI to marine mammals is considered highly unlikely. Therefore, the risk of injury or mortality is low. The Notice of Proposed IHA (74 FR 53474, October 19, 2009) contained a complete discussion of possible impacts from DPI on marine mammals. Impacts to marine mammals from Eglin AFB's activities are anticipated to be limited to Level B harassment in the form of temporary changes in behavior or temporary changes in hearing thresholds (i.e., TTS).

Anticipated Effects on Habitat

The primary source of marine mammal habitat impact is noise resulting from gunnery missions. However, the noise does not constitute a long-term physical alteration of the water column or bottom topography, as the occurrences are of limited duration and are intermittent in time. Other sources that may affect marine mammal habitat were considered and potentially include the introduction of fuel, chaff, debris, ordnance, and chemical residues into the water column. A full description of anticipated effects on habitat was provided in the Notice of Proposed IHA (74 FR 53474, October 19, 2009). Based on that information, NMFS has determined that the A-S gunnery mission activities will not have any impact on the food or feeding success of marine mammals in the northern GOM. Additionally, no loss or modification of the habitat used by cetaceans in the GOM is expected. The activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the ITA process such that "least practicable impact" shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the "military readiness activity". The training activities described in Eglin AFB's application are considered military readiness activities.

The mitigation measures included in this IHA are the same as those required in the 2008–2009 IHA (73 FR 78318, December 22, 2008), which are also virtually identical to the mitigation measures that were required in the 2006 IHA (71 FR 27695, May 12, 2006). There were only three differences in the mitigation and monitoring measures between the 2006 and 2008 IHAs. Eglin AFB's 2007 application addendum requested revisions to three components of the IHA requirements: protected species surveys, ramp-up procedures, and sea state restrictions. A discussion of the differences in the requirements can be found in the 2008 IHA Notice of Issuance (73 FR 78318, December 22, 2008) and NMFS' 2008 EA (see **ADDRESSES**). The revisions to those three requirements are also included in this IHA. However, the explanations as to why Eglin AFB requested the changes and NMFS' determinations specific to those three requirements are not repeated in this document. Readers should refer to either the 2008 IHA Notice of Issuance (73 FR 78318, December 22, 2008) or NMFS' 2008 EA (see **ADDRESSES**) for the full explanation.

Development of the Training Round (TR)

The largest type of ammunition used during typical gunnery missions is the 105–mm (4.13–in) round containing 4.7 lbs (2.1 kg) of high explosive (HE). This is several times more HE than that found in the next largest round (40 mm/1.57 in). As a mitigation technique, the USAF developed a 105–mm TR that contains only 0.35 lb (0.16 kg) of HE. The TR was developed to dramatically reduce the risk of harassment at night and Eglin AFB anticipates a 96 percent reduction in impact by using the 105–mm TR.

Visual Mitigation

Areas to be used in gunnery missions are visually monitored for marine mammal presence from the AC–130 aircraft prior to commencement of the mission. If the presence of one or more marine mammals is detected, the target area will be avoided. In addition, monitoring will continue during the mission. If marine mammals are detected at any time, the mission will halt immediately and relocate as necessary or be suspended until the marine mammal has left the area. Daytime and nighttime visual monitoring will be supplemented with infrared (IR) and low-light television (TV) monitoring. As nighttime visual monitoring is generally considered to be ineffective at any height, the EGTTR missions will incorporate the TR.

Ramp-up Procedures

The rationale for requiring ramp-up procedures is that this process may allow animals to perceive steadily increasing noise levels and to react, if necessary, before the noise reaches a threshold of significance. The AC–130 gunship's weapons are used in two activity phases. First, the guns are checked for functionality and calibrated. This step requires an abbreviated period of live fire. After the guns are determined to be ready for use, the mission proceeds under various test and training scenarios. This second phase involves a more extended period of live fire and can incorporate use of one or any combination of the munitions available (25-, 40-, and 105–mm rounds). The ramp-up procedure is required for the initial gun calibration, and, after this phase, the guns may be

fired in any order. Eglin and NMFS believe this process will allow marine species the opportunity to respond to increasing noise levels. If an animal leaves the area during ramp-up, it is unlikely to return while the live-fire mission is proceeding. This protocol allows a more realistic training experience. In combat situations, gunship crews would not likely fire the complete ammunition load of a given caliber gun before proceeding to another gun. Rather, a combination of guns would likely be used as required by an evolving situation. An additional benefit of this protocol is that mechanical or ammunition problems on an individual gun can be resolved while live fire continues with functioning weapons. This also diminishes the possibility of a lengthy pause in live fire, which, if greater than 10 min, would necessitate Eglin's re-initiation of protected species surveys.

Other Mitigation

In addition to the development of the TR, the visual mitigation, and the ramp-up procedures already described in this document, additional mitigation measures to protect marine life were included in the 2006 and 2008 IHAs and are also required in the 2010 IHA. These requirements are:

(1) If daytime weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals and other marine life, A-S gunnery exercises must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Daytime test firing will be conducted only when sea surface conditions are sea state 4 or less on the Beaufort scale.

(2) Prior to each firing event, the aircraft crew will conduct a visual survey of the 5–nm (9.3–km) wide prospective target area to attempt to sight any marine mammals that may be present (the crew will do the same for sea turtles and Sargassum rafts). The AC–130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 6,000 ft (1,829 m). Provided marine mammals (and other protected species) are not detected, the AC–130 can then continue orbiting the selected target point as it climbs to the mission testing altitude. During the low altitude orbits and the climb to testing altitude, the aircraft crew will visually scan the sea surface within the aircraft's orbit circle for the presence of marine mammals. Primary emphasis for the surface scan will be upon the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC–130's optical and electronic sensors will also be employed for target clearance. If any marine mammals are detected within the AC–130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target and repeat the clearance procedures. If multiple firing events occur within the same flight, these clearance procedures will precede each event.

(3) The aircrews of the A-S gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (less than or equal to 12 nm (22 km)). This would potentially restrict most gunnery activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (e.g., endangered sperm whales) typically reside.

(4) Observations will be accomplished using all-light TV, IR sensors, and visual means for at least 60 min prior to each exercise.

(5) Aircrews will utilize visual, night vision goggles, and other onboard sensors to search for marine mammals while performing area clearance procedures during nighttime pre-mission activities.

(6) If any marine mammals are sighted during pre-mission surveys or during the mission, activities will be immediately halted until the area is clear of all marine mammals for 60 min or the mission location relocated and resurveyed.

(7) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with NMFS and appropriate changes must be made, prior to conducting the next A-S gunnery exercise.

NMFS carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicability of implementation, and impact on the effectiveness of the military-readiness activity.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicability of implementation, and impact on the effectiveness of the military-readiness activity.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

The Incidental Take Statement in NMFS' Biological Opinion on this action required certain monitoring measures to protect marine life. NMFS also imposed these same requirements, as well as additional ones, under Eglin AFB's 2006 and 2008 IHAs as they related to marine mammals. NMFS has included these same measures in the 2010 IHA. They are:

(1) The A-S gunnery mission aircrews will participate in the marine mammal species observation training. Designated crew members will be selected to receive training as protected species observers. Observers will receive training in protected species survey and identification techniques.

(2) Aircrews will initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4,572 to 6,096 m) elevation, and then initiate a spiraling descent down to an observation altitude of approximately 6,000 ft (1,829 m) elevation. Rates of descent will occur over a 3 to 5 min time frame.

(3) Eglin will track their use of the EGTTR for test firing missions and

protected species observations, through the use of mission reporting forms.

(4) A-S gunnery missions will coordinate with next-day flight activities to provide supplemental post-mission observations for marine mammals in the operations area of the previous day.

(5) A summary annual report of marine mammal observations and A-S activities will be submitted to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources either at the time of a request for renewal of an IHA or 90 days after expiration of the current IHA if a new IHA is not requested. This annual report must include the following information: (i) Date and time of each A-S gunnery exercise; (ii) a complete description of the pre-exercise and post-exercise activities related to mitigating and monitoring the effects of A-S gunnery exercises on marine mammal populations; (iii) results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the gunnery exercises and number of marine mammals (by species if possible) that may have been harassed due to presence within the 5–nm activity zone; and (iv) a detailed assessment of the effectiveness of sensor-based monitoring in detecting marine mammals in the area of A-S gunnery operations.

(6) If any dead or injured marine mammals are observed or detected prior to testing, or injured or killed during live fire, a report must be made to NMFS by the following business day.

(7) Any unauthorized takes of marine mammals (i.e., injury or mortality) must be immediately reported to NMFS and to the respective stranding network representative.

Estimated Take by Incidental Harassment

As it applies to a "military readiness activity", the definition of harassment is (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Only take by Level B harassment is anticipated as a result of and authorized for the A-S gunnery mission activities. The exercises are expected to only affect animals at or very near the surface of the water. Cetaceans in the vicinity of the exercises may incur temporary changes in behavior and/or temporary changes in their hearing thresholds. Based on the mitigation and monitoring measures required to be implemented (described earlier in this document), no injury or mortality of marine mammals is anticipated as a result of or authorized for the A-S gunnery mission activities.

The Notice of Proposed IHA (74 FR 53474, October 19, 2009) included an in-depth discussion of the methodology used by Eglin AFB and NMFS to estimate take by harassment incidental to the A-S gunnery exercises and the numbers of cetaceans that might be affected by the exercises. A summary is provided here.

DPI are only anticipated to affect marine species at or very near the ocean surface. As a result, in order to calculate impacts, Eglin used corrected species densities (see Table 4–23 in the USAF's Final PEA) to reflect the surface interval population, which is approximately 10 percent of densities calculated for distribution in the total water column. The impacts to marine mammals swimming at the surface that could potentially be injured or killed by projectiles and falling debris was determined to be an average of 0.2059 marine mammals per year. However, NMFS believes that the required mitigation measures would significantly reduce even these low levels.

In addition to small arms, Eglin calculated the potential for other non-explosive items (bombs, missiles, and drones) to impact marine mammals. As shown in the 2002 Final PEA and the Notice of Proposed IHA (74 FR 53474, October 19, 2009), the potential for any non-small arms/non-gunnery DPI to marine mammals is extremely remote and can, therefore, be discounted.

Similar to non-small arms/non-gunnery DPI, DPI from gunnery activities may also affect marine mammals in the surface zone. Again, DPI are anticipated to affect only marine mammals at or near the ocean surface. Accordingly, the density estimates have been adjusted to indicate surface animals only being potentially affected. DPI from gunnery activities are extremely remote and can be discounted. Using the largest round (105 mm), it would take approximately 120 yr to impact a marine mammal from daytime gunnery activities and approximately 27 yr to impact a marine mammal from nighttime gunnery activities.

Estimating the impacts to marine mammals from underwater detonations is difficult due to complexities of the physics of explosive sound under water and the limited understanding with respect to hearing in marine mammals. Detailed assessments were made in the notice for the 2006 and 2008 IHAs on this action (71 FR 27695, May 12, 2006; 73 FR 78318, December 22, 2008), as well as the Notice of Proposed IHA (74 FR 53474, October 19, 2009) and are summarized in this document. These assessments used, and improved upon, the criteria and thresholds for marine mammal impacts that were developed for the shock trials of the *USS SEAWOLF* and the *USS Winston S. Churchill* (DDG–81) (Navy, 1998; 2001). The criteria and thresholds used in those actions were adopted by NMFS for use in calculating incidental takes from explosives. Criteria for assessing impacts from Eglin AFB's A-S gunnery exercises include: (1) mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing-related and non-hearing related; and (3) harassment, as determined by a temporary loss of some hearing ability and behavioral reactions.

Permanent hearing loss is considered an injury and is termed PTS. NMFS, therefore, categorizes PTS as Level A harassment. Temporary loss of hearing ability is termed TTS, meaning a temporary reduction of hearing sensitivity which abates following noise exposure. TTS is considered non-injurious and is categorized as Level B harassment. NMFS recognizes dual criteria for TTS, as well as for Level A harassment, one based on peak pressure and one based on the greatest 1/3 octave sound exposure level (SEL) or energy flux density level (EFDL), with the more conservative (i.e., larger) of the two criteria being selected for impacts analysis (note: SEL and EFDL are used interchangeably, but with increasing scientific preference for SEL). The peak pressure metric used in previous shock trials to represent TTS was 12 pounds per square inch (psi) which, for the net explosive weight used, resulted in a zone of possible Level B harassment approximately equal to that obtained by using a 182 decibel (dB) re 1 microPa2–s, total EFDL/SEL metric. The 12–psi metric is largely based on anatomical studies and extrapolations from terrestrial mammal data (see Ketten, 1995; Navy, 1999 (Appendix E, Churchill FEIS; and 70 FR 48675 (August 19, 2005)) for background information). However, the results of a more recent investigation involving marine mammals suggest that, for small charges, the 12–psi metric is not an adequate predictor of the onset of TTS

but that one should use 23 psi. This explanation was provided in the Notice of Proposed IHA (74 FR 53474, October 19, 2009).

Table 1 (earlier in this document) summarizes the relevant thresholds for levels of noise that may result in Level A harassment (injury) or Level B harassment via TTS or behavioral disturbance to marine mammals. Mortality and injury thresholds are designed to be conservative by considering the impacts that would occur to the most sensitive life stage (e.g., a dolphin calf). Table 2 provides the estimated ZOI radii for the EGTTR ordnance.

TABLE 2. ESTIMATED RANGE FOR A ZONE OF IMPACT (ZOI) DISTANCE FOR THE EGTTR ORDNANCE.

Expendable	Level A Harassment-Injurious(205 dB) EFD (m)	Level B Harassment Non-Injurious (182 dB) EFD For TTS (m)	Level B Harassment Non-injurious (23 psi) For TTS (m)	Level B Harassment-Non-injurious (177 dB) EFD For Behavior (m)
105 mm FU	0.79	11.1	216	22.1
105–mm TR	0.22	3.0	90	6.0
40–mm HE	0.33	4.7	122	9.4
25–mm HE	0.11	1.3	49	2.6

FU=Full-up; TR=Training Round; HE=High Explosive

Based on the detailed discussion contained in the Notice of Proposed IHA (74 FR 53474, October 19, 2009), Table 3 in this **Federal Register** document provides Eglin AFB's estimates of the annual number of marine mammals, by species, potentially taken by Level B harassment, by the gunnery mission noise. It should be noted that these estimates are derived without consideration of the effectiveness of the required mitigation measures (except use of the TR), which are discussed earlier in this document. As indicated in Table 3, Eglin AFB and NMFS estimate that up to 271 marine mammals may incur Level B (TTS) harassment annually. Because these gunnery exercises result in multiple detonations, they have the potential to also result in a temporary modification in behavior by marine mammals at levels below TTS. Based on NMFS' estimates, up to 25 marine mammals may experience a behavioral response to these exercises during the time frame of an IHA (see Table 3). Finally, while one would generally expect the threshold for behavioral modification to be lower than that causing TTS, due to a lack of empirical information and data, a dual criteria for Level B behavioral harassment cannot be developed. However, to ensure that takings are covered by this IHA, NMFS estimates that approximately 1,000 marine mammals of 16 stocks may incur Level B (harassment) takes during the 1–year period of an IHA. NMFS has determined that this number will be significantly lower due the to the expected effectiveness of the mitigation measures required in the IHA. Additionally, mortality resulting from either DPI or the resulting sounds generated into the water column from detonations was determined to be highly unlikely.

TABLE 3. YEARLY ESTIMATED NUMBER OF MARINE MAMMALS AFFECTED BY THE GUNNERY MISSION NOISE

Species	Adjusted Density (#/km^2)	Level A Harassment Injurious 205 dB* EFD For Ear Rupture	Level B Harassment Non-Injurious 182 dB* EFD For TTS	Level B Harassment Non-Injurious 23 psi For TTS	Level B Harassment Non-Injurious 177 dB* EFD For Behavior
Bryde's whale	0.007	<0.001	0.010	0.4	0.041
Sperm whale	0.011	<0.001	0.016	0.0	0.064
Dwarf/pygmy sperm whale	0.024	<0.001	0.035	1.5	0.139
Cuvier's beaked whale	0.10	<0.001	0.015	0.6	0.058
Mesoplodon spp.	0.019	<0.001	0.028	1.2	0.110
Pygmy killer whale	0.030	<0.001	0.044	1.9	0.174
False killer whale	0.026	<0.001	0.038	1.6	0.151
Short-finned pilot whale	0.027	<0.001	0.039	1.7	0.157
Rough-toothed dolphin	0.028	<0.001	0.041	1.7	0.163
Bottlenose dolphin	0.810	0.006	1.177	50.1	4.706
Risso's dolphin	0.113	0.001	0.164	7.0	0.657
Atlantic spotted dolphin	0.677	0.005	0.984	41.9	3.934
Pantropical spotted dolphin	1.077	0.008	1.565	66.7	6.258
Striped dolphin	0.237	0.002	0.344	14.7	1.377
Spinner dolphin	0.915	0.007	1.330	56.6	5.316
Clymene dolphin	0.253	0.002	0.368	15.7	1.470
Unidentified dolphin**	0.053	<0.001	0.077	3.3	0.308
Unidentified whale	0.008	<0.001	0.012	0.5	0.046
All marine mammals	4.325	0.032	6.29	271.1	25.13

km^2 = square kilometers; NA = not applicable
*dB= dB re 1 Pa^2–s
**Bottlenose dolphin/Atlantic spotted dolphin

Negligible Impact Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers: (1) the number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, and intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of Eglin AFB's A-S gunnery mission activities, and none are authorized. Takes will be limited to Level B harassment in the form of behavioral disturbance and TTS. Although activities would be permitted to occur year-round and can last for approximately 5 to 6 hours at a time, the actual live-fire portion of the exercise usually only lasts for 90 to 120 min. Additionally, it should also be noted that anticipated the level of activity has been far lower over the past few years than that predicted and estimated in this document. Those reasons were discussed earlier in this document. It is possible that some individuals may be taken more than once if those individuals are located in the exercise area on two different days when exercises are occurring. However, multiple exposures are not anticipated to have effects beyond Level B harassment.

Of the 16 marine mammal species or stocks that may be impacted by Eglin AFB's A-S gunnery mission activities, only the sperm whale is listed as endangered under the ESA and as depleted under the MMPA. No mortality or injury is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

Additionally, the mitigation and monitoring measures required to be implemented (described earlier in this document) are expected to minimize even further the potential for injury or mortality. The protected species surveys require Eglin AFB to search the area for marine mammals, and if any are found in the live fire area, then the exercise must be suspended until the animal(s) has left the area or the activity relocated. Moreover, the aircrews of the A-S gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (less than or equal to 12 nm (22 km)). This would potentially restrict most gunnery activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (e.g., endangered sperm whales) typically reside.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Eglin AFB's A-S gunnery mission exercises will result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the A-S gunnery mission exercises will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

A Biological Opinion issued by NMFS on October 20, 2004, concluded that the A-S gunnery exercises in the EGTTR are unlikely to jeopardize the continued existence of species listed under the ESA that are within the jurisdiction of NMFS or destroy or adversely modify critical habitat. NMFS has determined that this action, including the modifications to the mitigation and monitoring measures in the 2008 IHA and included in the 2010 IHA, does not have effects beyond that which was analyzed in that previous consultation, it is within the scope of that action, and reinitiation of consultation is not necessary. A new Incidental Take Statement has been issued for this action.

National Environmental Policy Act (NEPA)

The USAF prepared a Final PEA in November 2002 for the EGTTR activity. NMFS made the USAF's 2002 Final PEA available upon request on January 23, 2006 (71 FR 3474). In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in the USAF's 2002 Final PEA, and, on May 1, 2006, determined that the document accurately and completely described the proposed action, the alternatives to the proposed action, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted the USAF's 2002 Final PEA under 40 CFR 1506.3 and made its own FONSI on May 16, 2006. The NMFS FONSI also took into consideration updated data and information contained in NMFS' **Federal Register** document noting issuance of an IHA to Eglin AFB for this activity (71 FR 27695, May 12, 2006), and previous notices (71 FR 3474 (January 23, 2006); 70 FR 48675 (August 19, 2005)).

As the issuance of the 2008 IHA to Eglin AFB amended three of the mitigation measures for reasons of practicality and safety, NMFS reviewed the USAF's 2002 Final PEA and determined that a new EA was warranted to address: (1) the proposed modifications to the mitigation and monitoring measures; (2) the use of 23 psi as a change in the criterion for estimating potential impacts on marine mammals from explosives; and (3) a cumulative effects analysis of potential environmental impacts from all GOM activities (including Eglin mission activities), which was not addressed in the USAF's 2002 Final PEA. Therefore, NMFS prepared a new EA in December 2008 and issued a FONSI for its action on December 9, 2008. Based on those findings, NMFS determined that it was not necessary to complete an environmental impact statement for the issuance of an IHA to Eglin AFB for this activity. NMFS has determined that this activity is within the scope of NMFS' 2008 EA and FONSI.

Authorization

As a result of these determinations, NMFS has issued an IHA to the USAF, Eglin AFB, for the take of several species of marine mammals incidental to the A-S gunnery mission activities in the GOM provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: January 25, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–2017 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AW90

Taking and Importing Marine Mammals; U.S. Navy's Atlantic Fleet Active Sonar Training (AFAST)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Atlantic Fleet Active Sonar Training (AFAST) Study Area, which extends east from the Atlantic Coast of the U.S. to 45° W. long. and south from the Atlantic and Gulf of Mexico Coasts to approximately 23° N. lat., but not encompassing the Bahamas (see Figure 1–1 in the Navy's Application), from January 22, 2010 through January 21, 2011.

DATES: This Authorization is effective from January 22, 2010, through January 21, 2011.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301)713–2289, ext. 166.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to AFAST training, maintenance, and RDT&E became effective on January 22, 2009 (74 FR 4843, January 27, 2009), and remain in effect through January 21, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

Summary of Request

On November 2 2009, NMFS received a request from the Navy for a renewal of an LOA issued on January 22, 2009, for the taking of marine mammals incidental to training and research activities conducted within the AFAST Study Area under regulations issued on January 22, 2009 (74 FR 4843, January 27, 2009). The Navy has complied with the measures required in 50 CFR 216.244 & 216.245, as well as the associated 2009 LOA, and submitted the reports and other documentation required in the final rule and the 2009 LOA.

Summary of Activity under the 2009 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2009, the training activities conducted by the Navy were within the scope and amounts contemplated by the final rule and authorized by the 2009 LOA. In fact, the number of some exercises were below the Navy's proposed 2009 operations (e.g., the Navy conducted only four of the seven major anti-submarine warfare strike group training exercises proposed for 2009 (4 of 5 COMPTUEX and 0 of 2 JTFEX).

Planned Activities for 2010

In 2010, the Navy expects to conduct the same type and amount of training identified in the final rule and 2009 LOA, with a few modifications, all of which are of little to no consequence to marine mammals (in fact, the annual take estimates are fewer in 2010 than 2009 as a result of these changes). Following are the modifications:

- The Navy anticipates an increase in the use of Extended Echo Ranging (EER)/Improved Extended Echo Ranging (IEER) SSQ–110A sonobuoys. Use will likely increase from 872 to 1725 sonobuoys annually.
- The Navy anticipates an increase in the use of Advanced Echo Ranging (AEER) SSQ–125 sonobuoys. Use will likely increase from 872 to 1550 sonobuoys annually.
- The Navy anticipates an increase in the use of the AN/SLQ–25 NIXIE towed countermeasure. Use will likely increase from 332 to 2500 hours annually.
- The Navy plans to cease the use of SQQ–32 side mine hunting sonar in the AFAST Study area, which reduces use from 4474 hours annually to 0.

The modifications to Navy training and research activities proposed in 2010, will not effect marine mammals in a manner not previously considered or analyzed in NMFS' final rule and other associated documents.

Estimated Take for 2010

The Navy recalculated the estimated number of marine mammal takes (see page 14 in the Navy's 2010 LOA renewal application) and the result was an increase of between 1 and 236 takes annually for 13 species, and a reduction of between 1 and 5416 takes for 8 species. These changes are very small when compared to the total number of takes authorized annually, and NMFS does not anticipate a change in the nature of the anticipated impacts due to the training modifications. The rule contemplated a 10% buffer to allow for training shifts and NMFS is authorizing the same amount of take in 2010 as was authorized in 2009.

Summary of Monitoring, Reporting, and Other Requirements Under the 2009 LOA

Annual Exercise Reports

The Navy submitted their classified and unclassified 2009 exercise reports within the required timeframes and the unclassified report is posted on NMFS website: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. NMFS has reviewed both reports and they contain the information required by the 2009 LOA. The reports indicate the amounts of different types of training that occurred from January 8, 2009, through August 1, 2009, and estimate the amounts of training occurring from August 2, 2009, through January 7, 2010. As mentioned above, the Navy only conducted 4 of the 7 major anti-submarine warfare strike group training exercises addressed in the rule.

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 89 marine mammal sightings totaling 444 animals.

Monitoring and Annual Monitoring Reports

The Navy conducted the monitoring required by the 2009 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and exercises, as well as passive acoustic monitoring utilizing high frequency acoustic recording packages (HARPs) and pop-up buoys. The Navy submitted their 2009 Monitoring Report, which is posted on NMFS' website (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. The Navy included a summary of their 2009 monitoring effort and results (beginning on page 8 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Because data is gathered through August 1 and the report is due in October, some of the data analysis will occur in the subsequent year's report.

Integrated Comprehensive Management Program (ICMP) Plan

The ICMP will be used both as: (1) a planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (e.g., R&D), and other appropriate newly published information. The Navy finalized a 2009 ICMP Plan outlining the program on December 22, 2009, as required by the 2009 LOA. The ICMP may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

The ICMP is a program that will be in place for years and NMFS and Navy anticipate the ICMP may need to be updated yearly in order to keep pace with new advances in science and technology and the collection of new data.. In the 2009 ICMP Plan, the Navy outlines three areas of targeted development for 2010, including:

- Identifying more specific monitoring sub-goals under the major goals that have been identified
- Characterizing Navy Range Complexes and Study Areas within the context of the prioritization guidelines described here
- Continuing to Develop Data Management, Organization and Access Procedures

Stranding Response Plan

NMFS and the Navy developed a Stranding Response Plan for AFAST and certain components of the Plan were included as mitigation measures in the 2009 LOA. The Navy was required to work with NMFS to develop a communication plan to facilitate response and information exchange in the event of a marine mammal stranding event. The communication plan was completed and disseminated to the necessary NMFS and Navy staff, although it is not available to the public because it contains personal information.

The Navy was also required to work with NMFS to develop a Memorandum of Agreement (MOA), or other mechanism consistent with federal fiscal law requirements to establish a framework whereby the Navy can assist NMFS with stranding investigations in certain circumstances. NMFS and the Navy have developed a draft Memorandum of Understanding (MOU) that is currently under review at both agencies. The MOU includes agreement between the NMFS and the Navy to further develop regional stranding investigation assistance plans to identify regional assets, equipment, locations, or services that Navy may be able to provide and the process by which this will operate within a given geographic area.

Adaptive Management and 2010 Monitoring Plan

NMFS and the Navy conducted an adaptive management meeting in October, 2009 wherein we reviewed the Navy monitoring results through August 1, 2009, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Because this is the first year of the regulation's period of effectiveness, the review only covered about 7 months of monitoring, which limited NMFS and the Navy's ability to undertake a robust review of the Navy's exercises and their effects on marine mammals. Based on the implementation of the 2009 monitoring, the Navy proposed some minor modifications to their monitoring plan for 2010, which NMFS agreed were appropriate. Beyond those changes, none of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 13 of the Navy's 2010 LOA Application, which may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. As additional data is obtained in subsequent years, NMFS and Navy will be better positioned to conduct more extensive reviews and modify existing mitigation and monitoring measures, if appropriate.

Authorization

The Navy complied with the requirements of the 2009 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2009 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized, and was likely lower given the fact that Navy conducted fewer operations in 2009 than originally planned. Further, the level of taking authorized in 2010 for the Navy's AFAST activities is consistent with our previous findings made for the total taking allowed under the AFAST regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2010 AFAST activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the AFAST Study Area from January 22, 2010, through January 21, 2011.

Dated: January 21, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–2021 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT66

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities from Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a letter of authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force (USAF), to take four species of seals and

sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California, a military readiness activity.

DATES: Effective February 7, 2010, through February 6, 2011.

ADDRESSES: The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephoning one of the contacts listed below (FOR FURTHER INFORMATION CONTACT). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713–2289 ext. 156, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. The National Defense Authorization Act (Public Law 108–136) removed the "small numbers" and "specified geographical region" limitations for a "military readiness activity." Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of Pacific harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and northern fur seals (*Callorhinus ursinus*), by harassment, incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB, were issued on February 6, 2009 (74 FR 6236), and remain in effect until February 6, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile and rocket launches at VAFB.

This LOA is effective from February 7, 2010, through February 6, 2011, and authorizes the incidental take, by Level B harassment only, of the four marine mammal species listed above that may result from the launching of up to 30 space and missile vehicles and up to 20 rockets annually from VAFB, as well as from aircraft and helicopter operations. Harbor seals haul-out on several sites on VAFB, and harbor seals, California sea lions, elephant seals, and northern fur seals are found on various haul-out sites and rookeries on San Miguel Island (SMI). Currently, six space launch vehicle programs use VAFB to launch satellites into polar orbit: Delta II, Taurus, Atlas V, Delta IV, Falcon, and Minotaur. Also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts are launched from VAFB.

The activities under these regulations create two types of noise: continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. The noise generated by VAFB activities will result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space launch vehicle and missile launches and aircraft and helicopter operations may cause the animals to move towards or enter the water. Take of pinnipeds will be minimized through implementation of the following mitigation measures: (1) all aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries; (2) missile and rocket launches must, whenever possible, not be conducted during the harbor seal pupping season of March through June; (3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during the primary pinniped pupping seasons of March through June; and (4) monitoring methods will be reviewed by NMFS if post-launch surveys determine that an injurious or lethal take of a marine mammal occurred. VAFB will also use monitoring surveys, audio-recording equipment, and time-lapse video to monitor the animals before, during, and after rocket launches, and to measure sound levels generated by the launches. Reports will be submitted to NMFS after each LOA expires, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires.

Summary of Request

On December 18, 2009, NMFS received a request for a LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by harassment, incidental to space vehicle and test flight activities at VAFB.

Summary of Activity and Monitoring Under the 2009 LOA

In compliance with the 2009 LOA, VAFB submitted an annual report on the activities at VAFB, covering the period of February 7 through November 30, 2009. The report also contained information on a February 6, 2009, launch that was covered under the 2008 LOA, as it was not described in any previous reports. A summary of that report (ManTech SRS Technologies, 2009) follows.

During the reporting period covered by the 2009 LOA, there were a total of six launches from VAFB: two missile launches and four space vehicle launches. The dates, locations, and monitoring required for the launches are summarized in Tables 1 and 2 below.

TABLE 1. SUMMARY OF SPACE VEHICLE LAUNCHES FROM VAFB AND MONITORING CONDUCTED IN 2009.

Vehicle	Date (2009)	Time	Launch Site	Monitoring Conducted
Delta II NOAA-N Prime	6–Feb	0222 PST	SLC–2W	SMI
Taurus OCO	24–Feb	0155 PST	576E	No
Delta II STSS ATRR	5–May	1324 PDT	SLC–2W	VAFB/SMI
Delta II Worldview-II	8–Oct	1151 PDT	SLC–2W	SMI
Atlas V DMSP–18	18–Oct	0912 PDT	SLC–3E	VAFB (Acoustics)

TABLE 2. SUMMARY OF ALL OTHER LAUNCHES FROM VAFB AND MONITORING CONDUCTED IN 2009.

Launch Vehicle	Date (2009)	Time	Launch Site	Monitored
Minuteman III GT–195 GM	29–Jun	0301 PDT	LF–04	Yes
Minuteman III GT–195 GM–2	23–Aug	0901 PDT	LF–09	No

The Taurus OCO launch occurred outside of the VAFB harbor seal pupping season, and a sonic boom of greater than 1 lb/ft^2 (psf) was not predicted to occur at SMI as a result of the launch; therefore, no biological or acoustical monitoring was required or conducted. Similarly, the Minuteman III GT–195 GM–2 launch occurred outside of the VAFB harbor seal pupping season; therefore, no biological or acoustical monitoring was required or performed on VAFB.

In 2009, there were 5,934 tower operations and 651 range operations from the VAFB Airfield. Tower operations include all arrivals and departures from the airfield, while range operations include activities such as overflights, flight tests, etc. Helicopter and fixed-wing operations occurred on both north and south VAFB. There were no observed impacts to pinnipeds from these activities.

Delta II NOAA-N Prime

Since this launch occurred outside of the harbor seal pupping season, no monitoring was required on VAFB. However, the modeling program, PCBoom3, predicted that a sonic boom greater than 1 psf could impact SMI, so biological and acoustical monitoring were required at SMI. Counts of northern elephant seals done between February 1 and 7, 2009 at East Adams Cove on the west side of SMI recorded from 225 to 249 seals. Post-launch counts fell within the pre-launch range. The number of elephant seal pups in the focal group over the course of the monitoring period ranged from 185 to 218 pups. Post-launch counts of pups exceeded pre-launch counts. No elephant seals exhibited a change in behavior or moved toward or into the water; no vigilant or alert behaviors were observed. The four pups observed to be suckling prior to the launch remained suckling throughout the observation period (0200 to 0246 PST). Post-launch analysis of the digital audio tape (DAT) recording showed that no sonic boom had been recorded.

Between 18 and 22 dead pups were seen each day during the launch monitoring period, both before and after the launch occurred. On February 7, 2009, the second day after the launch, two of the dead pups were noted to be "freshly dead." These two fresh dead pups were thought to have been a result of high swell that was present on the monitored beach. High swells and tides are one of the major causes of mortality in dependent elephant seal pups (Le Boeuf and Laws, 1994).

A dead adult female elephant seal, with puncture marks in her back, was observed near the tide line on 6 February in the morning following the launch. Photographs revealed bite marks on the dead seal just below the neck, indicating that the female was likely killed by an aggressive male attempting to mate with her (Le Boeuf and Mesnick, 1990). In summary, based on post-launch analysis, there was no evidence of injury, mortality, or abnormal behavior in any of the monitored elephant seals on SMI as a result of this launch.

Delta II STSS ATRR

Since this launch occurred during the harbor seal pupping season and a sonic boom greater than 1 psf was predicted to occur at SMI, monitoring was required on both VAFB and SMI. Diurnal observations of harbor seals at the Spur Road haul-out on north VAFB were conducted from May 2–4 and 6–7, 2009. Between zero and 27 adult and juvenile seals and between zero and one harbor seal pup were observed during the monitoring period. A time-lapse video recorder revealed that no seals were hauled out at the site during the launch due to the presence of a coyote that caused all the seals to flush into the water prior to the launch.

On SMI, observations of California sea lions and northern elephant seals were conducted from May 2–7, 2009 at West Judith Cove on the west side of SMI. There were between 262 and 684 sea lions observed each day. Only two pups were observed being whelped during the monitoring period, and both died soon after birth and prior to the launch. The number of elephant seals observed over the course of the monitoring period ranged from 97 to 339 seals. A sonic boom was heard. Monitors reported that the boom did not cause the sea lions, elephant seals, or gulls in the area to alert, and no animals raised their heads in response to the sound. In summary, there was no evidence of injury, mortality, or abnormal behavior in any of the monitored harbor seals at VAFB or the monitored sea lions or elephant seals on SMI as a result of the Delta II STSS ATRR launch.

Delta II Worldview-II

Since this launch occurred outside of the harbor seal pupping season, no monitoring was required on VAFB. However, the modeling program, PCBoom3, predicted that a sonic boom greater than 1 psf could impact SMI, so biological and acoustical monitoring were required at SMI. Immediately prior to the launch, monitors were able to view 938 adult and pup California sea lions, 282 adult and pup northern fur seals, and 48 subadult and female northern elephant seals. The launch

vehicle was not seen or heard during the launch window, and no sonic boom was heard or recorded. None of the monitored animals made any visible movements outside of normal behavior during or after the launch, and animals continued to haul out at the site and persist in high numbers immediately after the launch. In summary, there was no evidence of injury, mortality, or abnormal behavior of the monitored pinnipeds on SMI as a result of this launch.

Atlas V DMSP–18

This launch occurred outside of the harbor seal pupping season, and no sonic boom greater than 1 psf was predicted to impact SMI. Therefore, no biological or acoustical monitoring was required at VAFB or SMI. However, due to an equipment malfunction during the acoustic recording of the initial Atlas V launch in March 2008, only an incomplete acoustic profile was obtained. Therefore, acoustic monitoring of this second Atlas V launch was performed. The results are contained in the 2009 annual LOA report (ManTech SRS Technologies, 2009).

Minuteman III GT–199 GM

Due to the Minuteman's westward launch trajectory, no sonic boom modeling or launch monitoring was required on SMI for this launch. Additionally, no acoustic recordings were required as noise from the Minuteman launch vehicle has been well quantified by measurements performed for previous Minuteman launches. However, since this launch occurred during the harbor seal pupping season on VAFB, biological monitoring was required at VAFB. Diurnal observations of harbor seals were conducted at the Lion's Head haul-out site from June 26 through July 1, 2009. The number of harbor seals observed during the monitoring period ranged from three to 11 seals. Post-launch counts exceeded pre-launch counts. No pups were seen during the launch monitoring period. Additionally, no seals were present within the video recorder frame at the time of the launch. In summary, there was no evidence of injury, mortality, or abnormal behavior in any monitored harbor seals on VAFB resulting from this launch.

Authorization

The USAF complied with the requirements of the 2009 LOA, and NMFS has determined that the marine mammal take resulting from the 2009 launches is within that analyzed in and anticipated by the associated regulations. Accordingly, NMFS has issued a LOA to the 30th Space Wing, USAF authorizing the take by harassment of marine mammals incidental to space vehicle and test flight activities at VAFB. Issuance of this LOA is based on findings described in the preamble to the final rule (74 FR 6236, February 6, 2009) and supported by information contained in VAFB's 2009 annual report that the activities described under this LOA will have a negligible impact on marine mammal stocks. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: January 25, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–2022 Filed 1–29–10; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Monday February 8, 2010.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review Meeting.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–2189 Filed 1–28–10; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB)

AGENCY: Office of the Secretary of Defense Reserve Forces Policy Board, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Reserve Forces Policy Board (RFPB) will meet on March 30 and 31, 2010. Subject to the availability of space, this meeting is open to the public.

DATES: The meeting will be held on March 30 (from 8:30 a.m. to 4 p.m.) and on March 31 (from 8:30 a.m. to 2:30 p.m.), 2010.

ADDRESSES: The March 30 meeting will be held at the Fort Myer Officer's Club, Arlington, VA 22211. The March 31 meeting will be held at the Pentagon, Conference Room 3E863, Arlington, VA.

Written statements should be sent to: Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

FOR FURTHER INFORMATION CONTACT: Col. Marjorie Davis, Designated Federal Officer, (703) 697–4486 (Voice), (703) 614–0504 (Facsimile), *marjorie.davis@osd.mil* or *RFPB@osd.mil.*

SUPPLEMENTARY INFORMATION:

Agenda

Consider health care for our reserve forces and the long range implications of a generation of young veterans.

Meeting Accessibility

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. To request a seat, contact the Designated Federal Officer not later than February 26, 2010, at 703–697–4486, or by e-mail, *RFPB@osd.mil.*

Written Statements

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the RFPB at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Board's Designated Federal Officer (see **ADDRESSES**). The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the RFPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: January 27, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–1960 Filed 1–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Revised Notice of Intent To Prepare an Environmental Impact Statement for Beddown of Training F–35A Aircraft

AGENCY: Air Education and Training and Air National Guard, United States Air Force.

ACTION: Notice of Intent.

SUMMARY: The United States Air Force published a Notice of Intent to prepare an EIS in the **Federal Register** (Vol 74, Bi, 249, page 69080) on Dec 28, 2009. The phone number that was listed for the point of contact was entered incorrectly. This revised Notice of Intent has been prepared to notify the public of the correct phone number to be used for gaining further information.

FOR FURTHER INFORMATION CONTACT: Mr. David Martin, HQ ACC/A7PP, 266 F Street West, Randolph AFB, TX 78150–4319, telephone 210–652–1961.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–2057 Filed 1–29–10; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 3, 2010.

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 send e-mail to *oira_submission@omb.eop.gov.*

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. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 27, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Application for Grants under Disability and Rehabilitation Research.

Frequency: Review and Monitoring.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 655.

Burden Hours: 131,000.

Abstract: This application package invites grants for research and related activities in Rehabilitation of Individuals with disabilities. This is in response to Public Law 93–112, Secs. 14(a) and 762, Rehabilitation Act of 1973, as amended. This grant application package contains program profiles, standard forms, program regulations, **Federal Register** information, FAQs, and transmitting instructions. Applications are primarily institutions of higher education, but may also include States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations and hospitals; and Indian tribes and tribal organizations. NIDRR's Research Fellowship is for qualified individuals only.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4206. 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 when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* 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. 2010–2051 Filed 1–29–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice of dates of submission of State revenue and expenditure reports for fiscal year (FY) 2009 and of revisions to those reports.

SUMMARY: The Secretary announces dates for the submission by State educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey (NPEFS)) for FY 2009. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census (Bureau of the Census) is the data collection agent for the National

Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2011 appropriated funds.

DATES: The date on which submissions will first be accepted is March 15, 2010. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 7, 2010.

ADDRESSES AND SUBMISSION INFORMATION: SEAs may mail ED Form 2447 to: Bureau of the Census, *Attention:* Governments Division, Washington, DC 20233–6800.

SEAs may submit data via the World Wide Web using the interactive survey form at *surveys.nces.ed.gov/ccdnpefs.* If the Web form is used, it includes a digital confirmation page where a pin number may be entered. A successful entry of the pin number serves as a signature by the authorizing official. A certification form also may be printed from the Web site, and signed by the authorizing official and mailed to the Governments Division of the Bureau of the Census, at the address listed in the previous paragraph. This signed form must be mailed within five business days of Web form data submission.

Alternatively, SEAs may hand deliver submissions by 4:00 p.m. (Eastern Time) to: Governments Division, Bureau of the Census, 4600 Silver Hill Road, Suitland, MD, 20746.

If an SEA's submission is received by the Bureau of the Census after September 7, 2010, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.
2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Kennerly, Chief, Bureau of the Census, *Attention:* Governments Division, Washington, DC 20233–6800. *Telephone:* (301) 763–1559. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education, Washington, DC 20208–5651. *Telephone:* (202) 502–7362.

SUPPLEMENTARY INFORMATION: Under the authority of section 153(a)(1)(I) of the Education Sciences Reform Act of 2002, 20 U.S.C. 9543, which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average State per-pupil expenditure (SPPE) for elementary and secondary education, as defined in section 9101(2) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7801(2)).

In addition to utilizing the SPPE data as general information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including, but not limited to, Title I, Part A of the ESEA, Impact Aid, and Indian Education programs. Other programs, such as the Educational Technology State Grants program (Title II, Part D of the ESEA), the Education for Homeless Children and Youth Program under Title VII of the McKinney-Vento Homeless Assistance Act, the Teacher Quality State Grants program (Title II, Part A of the ESEA), and the Safe and Drug-Free Schools and Communities program (Title IV, Part A of the ESEA), make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I, Part A allocations.

In February 2010, the Bureau of the Census, acting as the data collection agent for NCES, will e-mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 15, 2010, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 15, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 7, 2010.

Having accurate and consistent information on time is critical to an efficient and fair allocation process and to the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 7, 2010, as the final date by which the NPEFS Web form or ED Form 2447 must be submitted. If an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 7, 2010, the data also may be too late to be included in the final NCES published dataset.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Authority: 20 U.S.C. 9543.

Dated: January 27, 2010.

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2010–2026 Filed 1–29–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC10–6–000 and IC10–6Q–000]

Commission Information Collection Activities (FERC Form Nos. 6 and 6–Q); Comment Request; Extensions

January 25, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collections and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c) (2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collections described below.

DATES: Comments in consideration of the collections of information are due April 5, 2010.

ADDRESSES: Comments may be filed either electronically or in paper format, and should refer to Docket Nos. IC10–6–000 and IC10–6Q–000. For comments that only pertain to one of the collections, specify the appropriate collection and related docket number. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.*

Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* First time users will have to establish a user name and password (*http://www.ferc.gov/docs-filing/eregistration.asp*) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling. Commenters filing electronically should not make a paper filing.

Commenters that are not able to file electronically must send their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in Docket Number IC10–6 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* However, due to a system issue, Docket Number IC10–6Q is not available at this time for eSubscription. In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the "eLibrary" link and searching on Docket Numbers IC10–6 and IC10–6Q. For user assistance, contact FERC Online Support at: *ferconlinesupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, or by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: For the purpose of publishing this notice and seeking public comment, FERC requests comments on the following information collections:

- FERC Form 6 ("FERC–6"), "Annual Report of Oil Pipeline Companies," implemented in 18 CFR Sections 357.1, 357.2, and 385.2011; OMB Control No. 1902–0022 and
- FERC Form 6–Q ("FERC–6Q" or "FERC–6–Q"), "Quarterly Financial Report of Oil Pipeline Companies," implemented in 18 CFR Section 357.4; OMB Control No. 1902–0206.

The associated regulations, information collections, burdens, and OMB clearance numbers will continue to remain separate and distinct.

Under the Interstate Commerce Act (ICA), (49 U.S.C. 1, 20, 54 Stat. 916), the Commission is authorized and empowered to make investigations and to collect and record data to the extent FERC may consider to be necessary or useful for the purpose of carrying out the provisions of the ICA. FERC must ensure just and reasonable rates for transportation of crude oil and petroleum products by pipelines in interstate commerce.

The information collected by FERC Form Nos. 6 and 6–Q are used by the Commission to carry out its responsibilities in implementing the statutory provisions of the ICA, including the authority to prescribe rules and regulations concerning accounts, records and memoranda, as necessary or appropriate. Financial accounting and reporting provides needed information concerning a company's past performance and its future prospects. Without reliable financial statements prepared in accordance with the Commission's Uniform System of Accounts and related regulations, the Commission would be unable to accurately determine the costs that relate to a particular time period, service or line of business.

FERC uses data from the FERC Form Nos. 6 and 6–Q to assist in: (1) Implementation of its financial audits and programs, (2) continuous review of the financial condition of regulated companies, (3) assessment of energy markets, (4) rate proceedings and economic analyses, and (5) research for use in litigation.

Financial information reported on the annual FERC Form 6 and quarterly FERC Form 6–Q provides FERC, as well as customers, investors and others, an important tool to help identify emerging trends and issues affecting jurisdictional entities within the energy industry. It also provides timely disclosures of the impacts that new accounting standards, or changes in existing standards, have on jurisdictional entities, as well as the economic effects of significant transactions, events, and circumstances. The reporting of this information by jurisdictional entities assists the Commission in its analysis of profitability, efficiency, risk and in its overall monitoring.

Action: The Commission is requesting three-year extensions of the current expiration dates for the FERC–6 and FERC–6Q, with no change to the reporting requirements.

Burden Statement: The estimated annual public reporting burdens and the associated public costs follow.[1 2]

FERC Data Collection	Projected number of respondents (1)	Number of annual responses per respondent (2)	Projected average burden hours per response (3)	Total annual burden hours [1] (1) × (2) × (3)
FERC–6 (Complete form) [2]	142	1	186	26,412
FERC–6 (Pages 1, 301, and 700 only) [2]	1	1	15	15
FERC–6 (Pages 1 and 700 only) [2]	23	1	10	230
FERC–6Q	142	3	150	63,900

The total annual cost to respondents [1] [2] [3] is estimated as follows.

FERC Data Collection	Total annual burden hours (1)	Estimated hourly cost [3] ($) (2)	Estimated total annual cost to respondents ($) [1] (2) × (1)
FERC–6 (Complete form) [2]	26,412	$66.29	$1,750,851
FERC–6 (Pages 1, 301, and 700 only) [2]	15	66.29	994
FERC–6 (Pages 1 and 700 only) [2]	230	66.29	15,247
FERC–6Q	63,900	66.29	4,235,931

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 collections of information are 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 collections 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1977 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

[1] These figures may not be exact, due to rounding and/or truncating.

[2] Order 620 in Docket No. RM99–10 (issued 12/13/2000, available at *http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=8370177*) established filing thresholds. The filing thresholds for filing all or part of the FERC–6 are based on the filer's annual jurisdictional operating revenues, for each of the three previous calendar years:

- File complete Form 6: Revenues $500,000 or more.
- File only Pages 1, 301, and 700: Revenues more than $350,000 but less than $500,000.
- File only Pages 1 and 700: Revenues of $350,000 or less.

See the instructions at *http://www.ferc.gov/docs-filing/forms/form-6/form-6.pdf* for more information.

The estimated annual totals for all filers completing all or part of the FERC–6 are: 166 filers and 26,657 hours, for a cost of $1,767,092.

[3] Using 2,080 hours/year, the estimated cost for 1 full-time employee is $137,874/year. The estimated hourly cost is $66.29 (or $137,874/2,080).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–729–001]

Commission Information Collection Activities (FERC–729); Comment Request; Submitted for OMB Review

January 22, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 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 received twenty comments in response to the **Federal Register** notice (74 FR 52796, 10/14/2009). FERC has summarized and addressed the commenters' suggestions below and in its submission to OMB.

DATES: Comments on the collection of information are due by March 3, 2010.

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 1902–0238 as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638. A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC10–729–001. 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 (including the required number of copies and acceptable filing formats) are available at *http://www.ferc.gov/help/submission-guide/electronic-media.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.

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 telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov*.

SUPPLEMENTARY INFORMATION: FERC–729 ("Electric Transmission Facilities," OMB Control No. 1902–0238) covers the reporting requirements [1] of 18 CFR part 50, and, as relates to transmission facilities, 18 CFR 380.3(c)(3), 380.5(b)(14), 380.6(a)(5), 380.15(d), and 380.16.

The purpose of these regulations is to implement the Commission's mandates under Energy Policy Act of 2005 (EPAct 2005) section 1221 which authorizes the Commission to issue permits under Federal Power Act (FPA) section 216(b) for electric transmission facilities and the Commission's delegated responsibility to coordinate all other federal authorizations under FPA section 216(h). The related FERC regulations seek to develop a timely review process for siting of proposed electric transmission facilities. The regulations provide for, among other things, an extensive pre-application process that will facilitate maximum participation from all interested entities and individuals to provide them with a reasonable opportunity to present their views and recommendations, with respect to the need for and impact of the facilities, early in the planning stages of the proposed facilities as required under FPA section 216(d).

Additionally, under FPA section 216(b)(1)(C), FERC has the authority to issue a permit to construct electric transmission facilities if a state has withheld approval for more than a year or has conditioned its approval in such a manner that it will not significantly reduce transmission congestion or is not economically feasible. FERC envisions that, under certain circumstances, the Commission's review of the proposed facilities may take place after one year of the state's review. Accordingly, under section 50.6(e)(3) the Commission will not accept applications until one year after the state's review and then from applicants who can demonstrate that a state may withhold or condition approval of proposed facilities to such an extent that the facilities will not be constructed.[2] In cases where FERC's jurisdiction rests on FPA section 216(b)(1)(C),[3] the pre-filing process should not commence until one year after the relevant State applications have been filed. This will give the States one full year to process an application without any intervening Federal proceedings, including both the pre-filing and application processes. Once that year is complete, an applicant may seek to commence FERC's pre-filing process. Thereafter, once the pre-filing process is complete, the applicant may submit its application for a construction permit.

The environmental report includes information on areas such as: aquatic life, wildlife, and vegetation and the expected impacts on them; cultural resources; socioeconomics; geological resources; soils, land use, recreation, and aesthetics; alternatives; buildings; and reliability and safety.

Public Comments and FERC Responses. A summary of the public comments filed on the FERC–729 reporting requirements, FERC's response, and proposed changes to the requirements follow.

a. *Comment:* We received several public comments on the Commission's transmission siting policy and process, including FERC's jurisdiction, stakeholder participation, environmental impacts, health and safety issues, and alternatives. We also received comments in regard to the Potomac-Appalachian Transmission Highline (PATH) Project, transmission planning, cost allocation, cyber security, physical and national security, and public access to documents.

FERC Response: The purpose of Docket No. IC10–729 is to seek comment on the generic information collection requirements imposed on applicants for Electric Transmission Facilities. (The request for comments is described more fully in the last paragraph in both the 60-day Notice (at *http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12167427*) and this Notice.) Docket No. IC10–729 does not address case-specific transmission applications; rather it addresses the information requirements the agency imposes on applicants in general. FERC's transmission siting process is detailed in Parts 50 and 380 of the Commission's regulations, and further information is on our Web site at *http://www.ferc.gov/for-citizens/citizen-guides/electric/guide-transmission.pdf.* In addition, currently, there are no requests for the Commission to site transmission facilities in Maryland or in any other state, including the PATH Project. (Specific PATH Project information, including the status of applications in Maryland, Virginia, and West Virginia, can be found on the Project's Internet Web site at *http://www.pathtransmission.com*.)

Docket No. IC10–729 is not an appropriate venue to address those comments, but the appropriate FERC offices have been made aware of those comments.

b. *Comment:* Applicants should detail efforts undertaken to contact public and private organizations that actively engage in the protection of historic, cultural, natural, and scenic resources. Responses to these contacts should be included in the pre-filing process.

FERC response: Section 50.5(c)(3)–(5) of the Commission's regulations requires the applicant to provide a list of the permitting entities responsible for conducting separate federal permitting and environmental reviews and authorizations, including how the applicant intends to account for each of the relevant entity's permitting and environmental review schedules and when the applicant proposes to file with these entities. The applicant must also provide a list of all other stakeholders that have been contacted, or have contacted the applicant, about the project and a description of what other work has already been completed, including contacting stakeholders and agency and Indian tribe consultations. FERC also requires communication between applicants and stakeholders to be documented throughout the pre-filing process. Section 50.5(e)(8) requires the applicant to file monthly status reports during the pre-filing process detailing project activities, including stakeholder communications.

c. *Comment:* Applicants should include an explanation of which mitigation measure was chosen and why others were rejected.

FERC response: FERC staff reviews the applicant's proposed mitigation

[1] These requirements were promulgated by Order 689, issued November 16, 2006, in Docket No. RM06–12, in accordance with section 1221 of the Energy Policy Act of 2005: (a) to establish filing requirements and procedures for entities seeking to construct or to modify electric transmission facilities, and (b) to coordinate the processing of Federal authorizations and the environmental review of electric transmission facilities in designated national interest electric transmission corridors. (Order 689 is available in FERC's eLibrary at *http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=4455911*.)

[2] However, the Commission will not issue a permit authorizing construction of the proposed facilities until, among other things, it finds that the state has, in fact, withheld approval for more than a year or had so conditioned its approval.

[3] In all other instances (*i.e.,* where the state does not have jurisdiction to act or otherwise to consider interstate benefits, or the applicant does not qualify to apply for a permit with the State because it does not serve end use customers in the State), the pre-filing process may be commenced at any time.

measures to ensure that they are appropriate and adequate for the corresponding environmental impact. The applicant is required to develop and propose mitigation measures in the resource reports tailored to a specific environmental impact. To the extent that FERC staff determines that a rejected mitigation measure warrants further evaluation, the applicant may be required to provide additional information to support its decision. If necessary, FERC staff can also require additional mitigation to address an impact. The applicant must follow all staff-recommended mitigation measures, included as specific conditions in the Commission's authorization.

d. *Comment:* Commenters suggest that the applicant should address the range of potential environmental impacts (*e.g.,* air pollution) associated with changes in electric generation levels and sources.

FERC response: Section 380.16(b) of the Commission's regulations requires each of the applicant's resource reports to address conditions or resources that are likely to be directly or indirectly affected by the project, and identify cumulative effects resulting from existing or reasonably foreseeable projects. This would include environmental impacts associated with changes in electric generation levels and sources.

e. *Comment:* More information is needed from electric utilities. Information collected during meetings with utilities should be shared with public stakeholders. Without full disclosure to the public, the permit process is not effective, efficient, or timely.

FERC response: As indicated in the Commission's Notice, applicants are required to provide information on certain resource areas (including aquatic life; wildlife; vegetation; cultural resources, socioeconomics, geological resources, soils; land use; recreation; aesthetics; alternatives; buildings; and reliability and safety). This information is posted on FERC's eLibrary system (at *http://www.ferc.gov*) and is available for public review. FERC staff conducts reviews of an applicant's submission to determine compliance with the Commission's regulations. If the information is deemed deficient, Commission staff can seek additional information from an applicant. All information requests, subsequent responses, as well as discussions with the applicant, Federal, State, and local agencies and Indian tribes on matters related to the merits of an application are documented and placed on FERC's eLibrary for public access and review.

f. *Comment:* What is FERC's estimate for the average cost and time required for FERC staff and expert consultants to evaluate the information collected for a single utility application? What is FERC's estimate for the average cost and time for a public stakeholder using industry experts to evaluate the information in a utility's application?

FERC response: The Commission's estimates for the burden and cost imposed on industry address the annual averages for all of the applications FERC expects to receive. The figures are estimated annual averages for industry and include the cost and burden for staff and expert consultants, as well as other needed resources (such as information technology; administrative, legal, and management resources). The estimated average annual industry burden appears below, in the section titled "Burden Statement." Additional details on the industry burden and cost are included in the supporting statement, that FERC is submitting to OMB, in Questions 12 and 13. After publication of this Notice in the **Federal Register,** the supporting statement will be submitted to OMB.[4] FERC's estimates for the government's average annual cost for FERC–729 include the staff and other resources (such as consultants, administrative, legal, management, and information technology resources) for the review and processing of the filings, and the OMB clearance for the filing requirements. Additional details on the government cost are included in the supporting statement that FERC is submitting to OMB in Question 14.[4]

Under the Paperwork Reduction Act (PRA) and the related guidance from the Office of Management and Budget (OMB), " 'burden' means time, effort, or financial resources expended by persons to generate, maintain, or provide information to or for a Federal agency" [44 U.S.C. 3502(2)]. The burden and cost estimates include the time and effort required to plan, develop, prepare, and fulfill an information collection, and to respond to the agency's requirement. The PRA does not require burden estimates for the cost and time for a public stakeholder to evaluate a particular utility's application to the agency.

g. *Comment:* FERC must require utilities to provide reasonable alternatives instead of allowing utilities to submit a single monolithic proposal.

FERC response: FERC requires utilities to provide and analyze reasonable alternatives at multiple points in the pre-filing process. Section 50.5(e)(5) of the Commission's regulations requires the applicant to file a summary of the project alternatives considered or under consideration within 30 days of initiating the pre-filing process. Section 380.16(k) requires the applicant to submit an entire resource report dedicated to alternatives and the associated environmental impacts. This resource report would describe a variety of alternatives, including, where appropriate, alternatives other than new transmission lines.

h. *Comment:* Utilities currently lack commitment to work with public stakeholders, do not maintain open communication with public stakeholders or respond to public stakeholder questions, do not plan for public stakeholder input, do not adequately explain mitigation, benefits, and alternatives. The proper preparation and stakeholder involvement in the pre-filing process can make the entire process easier, quicker, and ultimately less expensive.

FERC response: The Commission's regulations require an applicant to develop and implement a Project Participation Plan to ensure stakeholders have access to accurate and timely information on the proposed project and to provide a forum for resolving issues. This plan identifies specific tools and actions to facilitate stakeholder communications, including a single point of contact within the company and a description and schedule explaining how the applicant intends to respond to requests for information from the public as well as federal, state, and tribal permitting agencies. Public stakeholders also have the opportunity to interact directly with an applicant at open houses.

Action: The Commission is requesting a three-year extension of the current expiration date for the FERC–729, with no changes.

Burden Statement: Public reporting burden for this collection is estimated as follows.

[4] The supporting statement will then be available at *http://www.reginfo.gov/public/do/PRAMain* by selecting "Federal Energy Regulatory Commission" from the drop-down picklist under "Currently under Review." Then go to the entry for FERC–729 (OMB Control No. 1902–0238) and click on the link to the "ICR Reference Number". Then click on the link labeled "View Supporting Statement and Other Documents," and the link under "Supporting Statement A".

FERC data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–729	10	1	9,600	96,000

Note: These figures may not be exact, due to rounding.

The total estimated annual cost burden [5] to respondents is $7,680,000 (96,000 hours × $80 per hour [5]).

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 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, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1979 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

[5] Based on the Bureau of Labor Statistics "Occupational Outlook Handbook (OOH), 2008–09 Edition," Occupational Employment Statistics (Occupational Employment and Wages, for May 2008, for Lawyers (23–1011), posted at *http://www.bls.gov/oes/current/oes231011.htm*), FERC is using $80 per hour. Other professions (such as engineers and administrators) are involved in preparing the filing. We are using $80 per hour as a high-end figure to include all of the professions involved with preparation of the filing.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC10–60–001, IC10–61–001, and IC10–555A–001]

Commission Information Collection Activities (FERC Form 60,[1] FERC–61, and FERC–555A); Comment Request; Submitted for OMB Review

January 25, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collections 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** (74 FR 53225, 10/16/2009) requesting public comments. FERC received no comments and has made this notation in its submission to OMB.

[1] The rulemaking in Docket No. RM09–21–000 ("Revised Filing Requirements for Centralized Service Companies under the Public Utility Holding Company Act of 2005, the Federal Power Act, and the Natural Gas Act") addresses clarifications to the FERC Form 60. The Final Rule (Order 731, issued 12/17/2009; 74 FR 68526, 12/28/2009) was submitted to OMB on 12/28/2009. The rulemaking in Docket No. RM09–21 is not a subject of this Notice in Docket No. IC10–60 *et al.*

DATES: Comments on the collections of information are due by March 3, 2010.

ADDRESSES: Address comments on the collections 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 1902–0215 (for FERC Form 60, FERC–61, and FERC–555A) as a point of reference. For comments that pertain to only one or two of the collections, specify the appropriate collection. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket Nos. IC10–60–001, IC10–61–001, and IC10–555A–001. (If comments apply to only one or two of the collections, indicate the corresponding dockets and collection numbers.) 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/electronic-media.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 Nos. IC10–60–001, IC10–61–001, and IC10–555A–001 (or the appropriate docket numbers, if the comments pertain only to one or two of the collections).

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 telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov*.

SUPPLEMENTARY INFORMATION: OMB Control Number 1902–0215 currently includes three information collections:

- FERC Form 60, "Annual Report of Centralized Service Companies", pursuant to 18 CFR 369.1 and 366.23, with details at *http://www.ferc.gov/docs-filing/forms.asp#60,*
- FERC–61, "Narrative Description Of Service Company Functions", pursuant to 18 CFR 366.23, and
- FERC–555A, "Preservation of Records of Holding Companies and Service Companies Subject to PUHCA" [Public Utility Holding Company Act of 2005], record retention requirements, pursuant to 18 CFR 366.22, and parts 367 and 368.

On August 8, 2005, the Energy Policy Act of 2005, was signed in to law, repealing the Public Utility Holding Company Act of 1935 (PUHCA 1935) and enacting the Public Utility Holding Company Act of 2005 (PUHCA 2005). Section 1264 (Federal books and records access provision) and Section 1275 (non-power goods and services provision) of PUHCA 2005 supplemented FERC's existing ratemaking authority under the Federal Power Act (FPA) to protect customers against improper cross-subsidization or encumbrances of public utility assets, and similarly, FERC's ratemaking authority under the Natural Gas Act (NGA). These provisions of PUHCA 2005 supplemented the FERC's broad authority under FPA Section 301 and NGA section 8 to obtain the books and records of regulated companies and any person that controls or is controlled by such companies if relevant to jurisdictional activities.

FERC Form 60. Form No. 60 is an annual reporting requirement under 18 CFR 366.23 for centralized service companies. The report is designed to collect financial information (including balance sheet, assets, liabilities, billing and charges for associated and non-associated companies) from centralized service companies subject to the jurisdiction of the FERC. Unless the holding company system is exempted or granted a waiver by Commission rule or order pursuant to 18 CFR 366.3 and 366.4, every centralized service company in a holding company system must prepare and file electronically with the FERC the Form No. 60, pursuant to the General Instructions in the form.

FERC–61. FERC–61 is a filing requirement for service companies in holding company systems (including special purpose companies) that are currently exempt or granted a waiver of FERC's regulations and would not have to file FERC Form 60. Instead, those service companies are required to file, on an annual basis, a narrative description of the service company's functions during the prior calendar year (FERC–61). In complying, a holding company may make a single filing on behalf of all of its service company subsidiaries.

FERC–555A. FERC prescribed preservation of records requirements for holding companies and service companies (unless otherwise exempted by FERC). This requires them to maintain and make available to FERC, their books and records. The preservation of records requirement provides for uniform records retention by holding companies and centralized service companies subject to PUHCA 2005.

Data from the FERC Form 60, FERC–61, and FERC–555A provide a level of transparency that: (1) Helps protect ratepayers from pass-through of improper service company costs, (2) enables FERC to review and determine cost allocations (among holding company members) for certain non-power goods and services, (3) aids FERC in meeting its oversight and market monitoring obligations, and (4) benefits the public, both as ratepayers and investors. In addition, the records are used by the FERC's audit staff during compliance reviews and special analyses.

If data from the FERC Form 60, FERC–61, and FERC–555A were not available, FERC would not be able to meet its statutory responsibilities, under EPAct 1992, EPAct of 2005, and PUHCA 2005, and FERC would not have all of the regulatory mechanisms necessary to ensure customer protection.

Action: The Commission is requesting a three-year extension of the current FERC Form 60, FERC–61, and FERC–555A requirements, with no changes.

Burden Statement: The estimated, average annual public reporting burden [2] [3] follows.

FERC information collection	Annual no. of respondents	Average no. of reponses per respondent	Average burden hours per response	Total annual burden hours
	(1)	(2)	(3)	(1) × (2) × (3)
FERC Form 60 [3]	38	1	75.0	2,850
FERC–61	22	1	.5	11
FERC–555A	100	1	1,080.0	108,000
Total				110,861

Note: The figures may not be exact, due to rounding.

The total estimated annual cost burdens to respondents follow.

[2] Employees work an average of 2,080 hours per year and cost an estimated $128,297 per year. The average hourly cost is $61.68125/hour [($128,297/year)/(2,080 hours/year)].

[3] The burden figures provided here for the FERC Form 60 are updated (from those in the 60-day Notice in Docket No. IC10–60) to reflect the more recent estimates provided in Docket No. RM09–21 and the associated supporting statement submitted to OMB. There were no comments on the burden associated with reporting requirements in Docket No. RM09–21 or Docket No. IC10–60.

FERC information collection	Annual burden (hrs.)	Average cost ($) per hour	Total annual cost ($)
	(1)	(2)	(1) × (2)
FERC Form 60 [3]	2,850	$120.00/hour	$342,000.00
FERC–61 [2]	11	61.68125/hour	678.49
FERC–555A [4]	108,000	([4])	[4] 1,912,341.25
Totals			2,255,019.74

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 collections of information are 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 collections 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1978 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

[4] Based on an estimated 120 cubic feet of paper records per respondent, the total estimated annual cost to all respondents is $1,912,341.25 [$1,836,000 (for staffing), plus $76,341.25 (for storage)]. However, the storage of paper (and related record retention and access) is more expensive than electronic storage, so savings are accomplished when documents are stored electronically (*e.g.,* by using on-line electronic storage or removable storage media like CD–ROM or thumb drives). It would appear that these records are likely stored electronically, so the estimated cost ($1,912,341.25) of storage for paper only is the worst case estimate.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13651–000]

Lock + ™ Hydro Friends Fund XXXIII, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 22, 2010.

On January 8, 2010, Lock + ™ Hydro Friends Fund XXXIII, LLC (Lock + Hydro) filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Green Lantern Project No. 13651, to be located on the Mississippi River, in Pike County, Illinois, and Ralls County, Missouri. The project would to be located at the existing Mississippi River Lock and Dam No. 22 owned and operated by the U.S. Corps of Engineers that includes a reservoir, a lock and dam equipped with roller and tainter gates, and an earth dike.

The proposed project would consist of: (1) Two new underwater frame modules located adjacent to the earth dike each containing nine turbine generating units with a total capacity of about 9.45 megawatts; (2) a new 220-foot, 450-foot-long intake conduit; (3) a new 220-foot-wide, 50-foot-long tailrace; and (4) a new 5-mile-long, 69 kilovolt transmission line. The project would produce an estimated average annual generation of about 62,130 megawatts-hours.

Lock + Hydro Contact: Wayne F. Krouse, Chairman and CEO, Hydro Green Energy, LLC., 5090 Richmond Avenue, Suite 290, Houston, TX 77056, (877) 556–6566.

FERC Contact: Tom Dean, (202) 502–6041.

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. 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 under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project 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–13651) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1984 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2157–190]

Public Utility District No. 1 of Snohomish County, WA; City of Everett, WA; Notice of Application To Amend Recreation Plan and Soliciting Comments, Motions To Intervene, and Protests

January 22, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 2157–190.

c. *Date Filed:* December 7, 2009.

d. *Applicant:* Public Utility District No. 1 of Snohomish County, Washington and City of Everett, Washington.

e. *Name of Project:* Henry M. Jackson Hydroelectric Project.

f. *Location:* The project is located on Sulton River, in Snohomish County, Washington. This project occupies approximately 1,939 acres of Federal lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Anne Spangler, Public Utility District No. 1 of Snohomish County, Washington, 2320 California Street, P.O. Box 1107, Everett, WA 98206, (425) 783–1000.

i. *FERC Contact:* Any questions on this notice should be addressed to Jade Alvey at (202) 502–6864, or by e-mail: *jade.alvey@ferc.gov.*

j. *Deadline for filing comments and/or motions:* February 22, 2010.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2157–190) on any comments or motions filed.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Proposal:* Public Utility District No. 1 of Snohomish County, Washington (PUD), with the support from the City of Everett, Washington, filed an application to amend the recreation plan (plan) for the Henry M. Jackson Hydroelectric Project. The amendment request pertains to changes and improvements to the Nighthawk and Bear Creek recreation sites at the project, currently being contemplated as part of the relicensing process. Due to the scheduled 2011 closure of 3.1 miles of South Shore Road by the Washington Department of Natural Resources, PUD is requesting an amendment to the plan in order to complete construction work at these sites prior to the closure.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov;* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1986 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–40–000]

BCR Holdings, Inc.; Notice of Application

January 25, 2010.

Take notice that on January 8, 2010, BCR Holdings, Inc (BCR), 820 Gessner, Suite 1680, Houston, TX 77024, filed with the Commission an application, pursuant to section 7(c) of the Natural Gas Act, and Subpart F of Part 157, and Subpart G of Part 284 of the Commission's Regulations for: (1) A certificate of public convenience and necessity in Docket No. CP10–40–000 authorizing BCR to construct and operate a natural gas storage facility and pipeline facilities connecting with Texas Eastern Transmission Corporation (TETCO), Gulf South Pipeline Co. LP (Gulf South), Discovery Gas Transmission LLC (Discovery), and Bridgeline Holdings, LP (Bridgeline) in Lafourche Parish, Louisiana; (2) a blanket certificate in authorizing BCR to construct, acquire, operate and abandon facilities; and (3) a blanket certificate in authorizing BCR to provide open-access firm and interruptible interstate natural gas storage and storage related services and the associated pre-granted abandonment authorization, as more fully set forth in the application which is open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding

the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

BCR proposes to construct, own, operate, and maintain a natural gas storage facility on and near the Bully Camp salt dome in Lafourche Parish, Louisiana. BCR states that it would construct and operate approximately 4.7 miles of 20-inch diameter pipeline connecting with TETCO, approximately 0.4 mile of 10-inch diameter pipeline connecting with Gulf South, approximately 0.3 mile of 20-inch diameter pipe connecting to Discovery and approximately 0.7 mile of 16-inch diameter pipe connecting to Bridgeline. BCR also states that it would construct and operate a compressor station with a total of 18,940 HP. BCR further states that the underground salt cavern storage facility would consist of two caverns with a total working gas capacity of 15 Billion cubic feet (Bcf) and total cushion gas capacity of 8.6 Bcf. The maximum daily injection and withdrawal capabilities would be approximately 830 MMcf and approximately 1,200 MMcf respectively. BCR seeks authorization to charge market-based rates for its proposed services.

Copies of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Thomas W. Cook, 805 East Union Street, Broken Arrow, OK 74011, via telephone at (918) 449–0333, or e-mail *twcook@cox.net*; or to John R. Staffier, Stuntz, Davis & Staffier, P.C., 555 Twelfth Street, NW., Suite 630, Washington, DC 20004, or via telephone at (202) 638–6588, or e-mail *jstaffier@sdsatty.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents Docket No. CP09–439–000 filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: 5 p.m. Eastern Time on February 15, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1972 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13656–000]

TideWorks, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

January 22, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–13656–000.

c. *Date Filed:* January 15, 2010.

d. *Applicant:* TideWorks, LLC.

e. *Name of Project:* TideWorks Project.

f. *Location:* On the Sasanoa River adjacent to Bareneck Island, in Sagadahoc County, Maine. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Shana Lewis, 730 N. Yellowstone Street, Livingston, MT 59047, (406) 224–2908.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian Tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* March 16, 2010.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at (*http://www.ferc.gov*) under the "eFiling" link.

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The TideWorks Project would consist of: (1) A new 10-foot-wide, 20-foot-long steel pontoon float suspending into the river; (2) a new submerged 5 kilowatt single vertical shaft turbine generating unit with four 4-inch-wide, 5-foot-long blades; (3) a new 3.5-foot-wide, 40-foot-long walkway ramp connecting the pontoon float to Bareneck Island; (4) a new 100-foot-long, 220-volt transmission line; and (5) appurtenant facilities. The project would have an average annual generation of about 22,000 kilowatt-hours. The project would operate in a run-of-river mode using the river current flood and ebb tidal flows to rotate the hydrokinetic turbine generating unit.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the 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. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Maine State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1985 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13649–000]

Lock + ™ Hydro Friends Fund XXXI, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 22, 2010.

On January 8, 2010, Lock + ™ Hydro Friends Fund XXXI, LLC (Lock + Hydro) filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Kermit Project No. 13649, to be located on the Mississippi River, in Adams County, Illinois, and Lewis County, Missouri. The project would be located at the existing Mississippi River Lock and Dam No. 20 owned and operated by the U.S. Corps of Engineers that includes a reservoir and a lock and dam equipped with roller and tainter gates.

The proposed project would consist of: (1) Two new underwater frame modules located adjacent to the dam each containing nine turbine generating units with a total capacity of about 9.45 megawatts; (2) a new 220-foot, 450-foot-long intake conduit; (3) a new 220-foot-wide, 50-foot-long tailrace; and (4) a new 9-mile-long, 69 kilovolt transmission line. The project would produce an estimated average annual generation of about 62,130 megawatts-hours.

Lock + Hydro Contact: Wayne F. Krouse, Chairman and CEO, Hydro Green Energy, LLC., 5090 Richmond Avenue, Suite 290, Houston, TX 77056, (877) 556–6566.

FERC Contact: Tom Dean, (202) 502–6041.

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. 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 under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project 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–13649) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1983 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13636–000, Project No. 13637–000, Project No. 13650–000]

Mississippi L&D 21, LLC, Mississippi River No. 21 Hydropower Company Lock + ™ Hydro Friends Fund XXXII, LLC; Notice of Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 22, 2010.

On December 1, 2009, Mississippi L&D 21, LLC (Mississippi LLC) filed an application for a preliminary permit for the proposed Mississippi River Lock and Dam No. 21 Hydroelectric Project No. 13636. On December 2, 2009, Mississippi River No. 21 Hydropower Company (Hydropower Company) filed an application for a preliminary permit for the proposed Mississippi River No. 21 Hydropower Project No. 13637. On January 8, 2010, Lock + ™ Hydro Friends Fund XXXII, LLC (Lock + Hydro) filed an application for a preliminary permit for the proposed Hulk Project No. 13650. The permit applications were filed pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the projects, to be located on the Mississippi River, in Adams County, Illinois, and Marion County, Missouri. The projects would be located at the existing Mississippi River Lock and Dam No. 21 owned and operated by the U.S. Corps of Engineers that includes a reservoir, a lock and dam equipped with

roller and tainter gates, and an earth dike.

Mississippi LLC's proposed project would consist of: (1) A new 75-foot-wide by 150-foot-long powerhouse located adjacent to the earth dike containing four 13-megawatt (MW) turbine generating units with a total capacity of 52 MW; (2) a new 6.8-mile-long, 136-kilovolt (kV) transmission line; and (3) appurtenant facilities. The project would produce an estimated average annual generation of 199,600 megawatt-hours.

Mississippi LLC Contact: Mr. Brent Smith, CCO, Symbiotics, LLC, P.O. Box 535, Rigby, Idaho 83442, (208) 745–0834.

Hydropower Company's proposed project would consist of: (1) A new 66-foot-wide by 800-foot-long powerhouse located adjacent to the earth dike containing thirty 500-kilowatt turbine generating units with a total capacity of 15 MW; (2) either a new 1.57-mile-long, 69-kV transmission line located in Missouri, a new 0.5-mile-long, 34.5-kV transmission line, or a new 1.5-mile-long, 34.5-kV transmission line located in Illinois; and (3) appurtenant facilities. The project would produce an estimated average annual generation of 71,400 megawatt-hours.

Hydropower Company Contact: Mr. John Spring, President, Mississippi River No. 21 Hydropower Company, 730 Maine Street, Quincy, Illinois 62301, (217) 228–4515.

Lock + Hydro's proposed project would consist of: (1) Two new underwater frame modules located adjacent to the earth dike each containing nine turbine generating units with a total capacity of about 9.45 megawatts; (2) a new 220-foot, 450-foot-long intake conduit; (3) a new 220-foot-wide, 50-foot-long tailrace; and (4) a new 3-mile-long, 69 kilovolt transmission line. The project would produce an estimated average annual generation of about 61,129 megawatt-hours.

Lock + Hydro Contact: Wayne F. Krouse, Chairman and CEO, Hydro Green Energy, LLC, 5090 Richmond Avenue, Suite 290, Houston, TX 77056, (877) 556–6566.

FERC Contact: Tom Dean, (202) 502–6041.

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. 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 under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13636, 13637, or 13650) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1982 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–41–000]

Paiute Pipeline Company; Notice of Application

January 22, 2010.

Take notice that on January 12, 2010, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP10–41–000 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for authorization to construct and operate certain facilities to enhance the capacity of the South Tahoe lateral in Douglas and Washoe Counties, Nevada, as more fully set forth in the application which is open to the public for inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Paiute proposes to (1) construct and operate approximately 0.9 miles of 12-inch diameter pipeline looping on its South Tahoe lateral in Douglas County; (2) modify two delivery points on the South Tahoe lateral in Douglas County so as to increase the delivery capacity at both points; and (3) modify its Wadsworth Pressure Limiting Station in Washoe County. Paiute states that the proposed new facilities would allow Paiute to provide approximately 2,265 Dekatherm equivalent of natural gas per day in new firm transportation capacity in Nevada. Paiute also states that the proposed facilities would cost approximately $2,387,000 to construct. Paiute further states that it proposes to charge the two new shippers, Southwest Gas Corporation-Northern California and Southwest Gas Corporation-Northern Nevada, an incremental transportation rate for firm transportation service, as stated in Paiute's FERC Gas Tariff, Rate Schedule FT–1.

Any questions regarding this application should be directed to Edward C. McMurtrie, Vice President/General Manager, Paiute Pipeline Company, P.O. Box 94197, Las Vegas, Nevada 89193–4197, or by telephone at (702) 876–7109, facsimile at (702) 873–3820 or via e-mail: *edward.mcmurtrie@swgas.com.*

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing

comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(www.ferc.gov)* under the "e-Filing" link.

Comment Date: February 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1973 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–165]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 22, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 349–165.

c. *Date Filed:* June 30, 2009, and supplemented on November 13, 2009.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* The proposed facilities would be located on Lake Martin, along Pike Creek in portions of Sections 17 and 18, Township 21 North, Range 21 East, in Tallapoosa County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Keith Bryant, Senior Engineer, APC Hydro Services, 600 18th Street North, Birmingham, AL 35203; (205) 257–1403.

i. *FERC Contact:* Any questions regarding this notice should be directed to Isis Johnson, Telephone (202) 502–6346, and e-mail: *isis.johnson@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* February 22, 2010.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov.filing-comments.asp.*

Please include the project number (P–349–165) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee requests Commission authorization to permit Russell Lands, Inc. to construct various non-project facilities associated with the Willow Glynn at Willow Point residential subdivision. These facilities include 2 floating docks, with 16 double-slips each, a wooden pedestrian bridge, a wooden boardwalk along 1,378 feet of shoreline, a 6-slip canoe pier, and a 120-foot-long concrete seawall.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also 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. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1971 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–449–000]

Wyoming Interstate Company, Ltd.; Notice of Availability of the Environmental Assessment for the Proposed Diamond Mountain Compressor Station Project

January 25, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Diamond Mountain Compressor Station Project proposed by Wyoming Interstate Company, Ltd. (WIC) in the above referenced docket. WIC requests authorization to construct, operate, and maintain the Diamond Mountain Compressor Station in Uintah County, Utah.

The EA assesses the potential environmental effects of the construction and operation of the Diamond Mountain Compressor Station Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The proposed Diamond Mountain Compressor Station Project includes the following facilities:

- Two 10,310-horsepower Solar Taurus 70 turbines and auxiliary facilities;
- A separate communications site; and
- A non-jurisdictional power line.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local agencies; elected officials; interested groups and individuals; newspapers and libraries in the project area; Native American Tribes; environmental groups; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before February 24, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP09–449–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on "Sign up" or "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Web site *(http://www.ferc.gov)* using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP09–449). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1987 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–3240–016; ER01–1633–013]

Oleander Power Project, LP; Southern Company-Florida LLC; Notice of Filing

January 22, 2010.

Take notice that on January 14, 2010, Oleander Power Project, LP and Southern Company-Florida LLC submitted a compliance filing to incorporate market-base rate tariff restrictions, pursuant to the Commission's December 15, 2009 Order, *Southern Company Services, Inc., et al.,* 129 FERC ¶ 61, 222 (2009).

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1974 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1682–005]

New York Independent System Operator, Inc.; Notice of Filings

January 22, 2010.

Take notice that on January 20, 2010, Generation Owners, Attachment E Supplier, and the New York Independent System Operator, Inc. (NYISO), filed in compliance with the Commission's January 15, 2010 Order in this proceeding,[1] revised, redacted public versions of their original filings and pleadings in this proceeding and additional information directed by the Commission.[2]

Any person desiring to intervene or to protest these filings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 29, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1975 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *New York Independent System Operator, Inc.,* 130 FERC ¶ 61,029 (2010).

[2] Foley & Lardner LLP, accession number 20100120–5120; New York ISO, accession numbers 20100120–5119; Steptoe & Johnson LLP accession number 20100120–5114.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Dockets Nos. ER10–607–000; ER10–608–000; ER10–610–000; ER10–609–000; ER10–612–000; ER10–611–000]

Coalinga Cogeneration Company, Kern River Cogeneration Company, Mid-Set Cogeneration Company, Salinas River Cogeneration Company, Sargent Canyon Cogeneration Company, Sycamore Cogeneration Company; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 25, 2010.

This is a supplemental notice in the above-referenced proceeding of Coalinga Cogeneration Company, Kern River Cogeneration Company, Mid-Set Cogeneration Company, Salinas River Cogeneration Company, Sargent Canyon Cogeneration Company, and Sycamore Cogeneration Company'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 February 16, 2010.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1976 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13629–000]

Fred Coleman; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 22, 2010.

On November 13, 2009, Fred Coleman filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Coleman Ranch Hydroelectric Project, which would be located on the Bird irrigation canal, a tributary of Little Timber Creek in Lemhi County, Idaho. 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: (1) A new 30-foot by 30-foot impoundment with a storage capacity of 0.1 acre-foot, located within or adjacent to the existing Bird irrigation canal; (2) a new intake structure with a fish screen; (3) one of three options for water conveyance: (a) Option 1, a new buried 24-inch to 30-inch diameter, 23,000-foot-long plastic or steel pipeline; (b) Option 2, a new buried 24-inch to 30-inch diameter, 25,300-foot-long plastic or steel pipeline; or (c) Option 3, a new 12,500-foot-long canal with a 3-foot-wide bottom and a new buried 24-inch to 30-inch diameter, 18,800-foot-long plastic or steel pipeline; (4) a new 20-foot by 20-foot powerhouse containing one generating unit with an installed capacity of 800 kilowatts, discharging into a new non-project concrete splitter box and thence into irrigation canals; and (5) a new 12.5-kilovolt, 4-mile-long transmission line connecting the project to an existing Idaho Power Company substation. The proposed project would have an average annual generation of 3.325 gigawatt-hours.

Applicant Contact: Nicholas E. Josten, 2742 Saint Charles Avenue, Idaho Falls, Idaho 83404; phone: (208) 528–6152.

FERC Contact: Dianne Rodman, (202) 502–6077.

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/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight 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–13629) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1981 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13587–000]

American Hydro Power, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

January 22, 2010.

On November 20, 2009, American Hydro Power, Inc. filed an application, pursuant to Section 4(f) of the Federal Power Act, proposing to study the feasibility of the Diamond Mills Dam Hydroelectric Project No. 13587, to be located on Esopus Creek, in Ulster County, New York.

The proposed project would consist of: (1) The existing 32-foot-high, 346-foot-long Diamond Mills Dam; (2) an existing 140-acre impoundment with a normal water surface elevation of 57 feet mean sea level; (3) two new turbines and generators with a total capacity of 423 kilowatts; (4) an existing 17.5-foot-wide, 50-foot-long concrete sluiceway; (5) an existing trash rack and sluice gate; (6) a refurbished 6-foot-diameter, 40-foot-long penstock connected to two new 3-foot-diameter, 5-foot-long penstock sections; (7) two new 3-foot-diameter, 15-foot-long pipes connected to the existing tailrace; (8) a new 18-foot-wide, 52-foot-long masonry powerhouse; (9) a new approximately 80-foot-long, 4,160-volt transmission line from the powerhouse to a transformer station, and a new approximately 50-foot-long, 480-volt transmission line and 200-foot-long, 13.2-kilovolt transmission line from the transformer station; (10) and appurtenant facilities. The project would have an estimated annual generation of 2,113 megawatt-hours.

Applicant Contact: Thomas Struzzieri, 319 Main Street, Saugerties, NY 12477, (845) 246–8833.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 60 days from the issuance of this notice. 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 under the "eFiling" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D.

Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*.

More information about this project 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–13587) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1980 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0020; FRL–8808–3]

Pesticide Product; Registration Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application to register a pesticide product containing an active ingredient not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on this application.

DATES: Comments must be received on or before March 3, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0020, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0020. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-9525; e-mail address: *benmhend.driss@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

i. Identify the document by docket ID number and other identifying

information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received an application as follows to register a pesticide product containing an active ingredient not included in any previously registered products. Pursuant to the provision of section 3(c)(4) of FIFRA, EPA is hereby providing notice of receipt of the application and opportunity to comment.

File Symbol: 53575-GA. *Applicant*: Pacific Biocontrol Corporation, 575 Viewridge Dr., Angwin, CA 94508. *Product name*: Isomate-EGVM mating disruptor pheromone *(E,Z)-7,9-Dodecadien-1-yl acetate at 75.68%*. *Proposed classification/Use*: None.

III. Background Information

The European Grape Vine moth (EGVM), *Lobesia botrana*, is a Lepidopteran pest that poses a risk of serious harm to vineyards. The EGVM is established in many parts of the world, but, has not previously been observed in the United States. Recently, the EGVM has been observed in the Napa Valley of northern California. The EGVM can feed on both the flower and the fruit of the grapevine. If the moth attacks mature grape clusters, the berries can become further damaged through infection by the fungus botrytis – a condition known as bunch rot. In 2009, Napa Valley winegrape growers suffered serious crop loss and damage from EGVM. Approximately 30 properties have been officially identified as having the pest present, and it is believed that the pest will be found on many more properties once delimitation trapping is conducted this spring. As a sustainable agriculture community, registration of a pheromone-based product is of importance to the Napa Valley winegrape growers and other affected communities in order to provide effective, sustainable, and low risk alternatives to traditional pesticides.

The subject active ingredient is a synthetic biochemical that is structurally similar to and mimics the naturally occurring pheromone produced by the female EGVM to attract males for mating. This pheromone is one of a group of straight-chain lepidopteran pheromones (SCLPs) for which EPA has previously conducted an aggregate risk assessments. The active ingredient will mitigate the effects of the EGVM by disrupting the normal mating cycle of the EGVM. The pheromone will be contained in a twist-tie dispenser that consists of a polyethylene plastic tube parallel to an associated aluminum wire within the field. It will be applied by hand directly on the plant or trellis wires. Each twist-tie dispenser slowly releases infinitesimal amounts of pheromone into the atmosphere. The pheromone slowly diffuses from the inside of the tube to the surface where it volatilizes in microgram amounts. This formulation is not randomly distributed by a mechanical device, nor is it sprayed into the air.

A. What are pheromones?

Pheromones are natural chemicals emitted by insects that mediate communications between individuals of the same species. Pheromones serve a number of functions including identifying the location of food sources, alarming other individuals about potential dangers, and locating potential mates. Pheromones are ubiquitous in the environment, and are not considered to be air pollutants.

EPA has registered many products containing SCLPs. The Agency has compiled a substantial database on SCLPs and has assessed the risks of this class of compounds to human health and the environment. SCLPs exhibit negligible toxicity in animal testing; have no effects on non-target species; and are used at extremely low rates (application rates of SCLPs do not exceed 150 grams active ingredient/acre/year). Because the effects of SCLPs are highly species specific, and given their low application rates, risks to human health are negligible. In addition, EPA concludes that there is no likelihood of adverse effects to non-target organisms. SCLPs are exempt from the requirement of a tolerance in or on all raw agricultural commodities when applied to growing crops at a rate not to exceed 150 grams of active ingredient/acre (40 CFR 180.1153). EPA has determined that there is a certainty of no harm from consumption of food containing residues of SCLPs.

B. What is Isomate-EGVM?

The application before the Agency is for "Isomate-EGVM," an end-use product (EP) containing 94% of active ingredient, which is the SCLP that is chemically similar to the pheromone produced naturally by the European Grapevine Moth – and which has a similar physiologic effect. In general, pheromones are easily broken down by UV light and oxidation, and do not remain long in the environment. But, to be effective, the Isomate-EGVM must last long enough to effectively act on the target pest's population within the orchards where they are used. Inert ingredients are therefore added as stabilizers to protect the longevity of the pheromone. Isomate-EGVM contains two inert ingredients, BHT and bumetrizole. BHT is an antioxidant and bumetrizole functions as a UV stabilizer. BHT is approved by the FDA as a food additive permitted for direct addition to food for human consumption, and is present in a wide array of food items. Bumetrizole is also approved by the FDA as a stabilizer in polymers used in producing, manufacturing, packaging, processing, and transporting food. In addition, the NOP (National Organic Program) has approved both of these ingredients for organic uses involving twist-tie dispensers.

C. EPA's Proposed Action

Pursuant to FIFRA Section 3(c)(4), EPA is providing notice of, and the opportunity to comment on, the receipt of an application for registration for the pesticide product Isomate-EGVM. In addition, EPA is providing advanced notice of OPP's preliminary risk assessment on Isomate-EGVM. EPA has been informed by USDA's Animal Plant Health Inspection Service (APHIS) that vineyards located in Sonoma and Napa counties in California have become infested with EGVM. The moth is currently in diapause. APHIS is concerned that an active and severe infestation may begin when the moths begins to emerge from diapause in late February. APHIS has requested expedited consideration of the Isomate-EGVM registration application so that growers will be able to immediately begin to use this product for mating disruption efforts when the insects emerge. Based upon EPA's risk assessment for SCLPs, including the EGVM pheromone, EPA believes that registration of Isomate-EGVM will not cause harm to humans and will not

cause unreasonable adverse effects on the environment particularly given the fact that the product, when applied, volatizes when released.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: January 21, 2010.

Keith Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–2146 Filed 1–29–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on revisions to an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). On November 24, 2009 (74 FR 61351), the FDIC solicited public comment for a 60-day period on revision of its "Forms Related to Processing Deposit Insurance Claims" information (OMB No. 3064–0143). No comments were received. Therefore, the FDIC hereby gives notice of its submission of the information collection to OMB for review.

DATES: Comments must be submitted on or before March 3, 2010.

ADDRESSES: Interested parties are invited to submit written comments. All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.*
- *Mail:* Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, PA1730–3000, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the FDIC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact Leneta G. Gregorie, by telephone at (202) 898–3719 or by mail at the address identified above. In addition, copies of the proposed revised Forms 7200/05 and 7200/09, and proposed new Form 7200/18 can be obtained at the FDIC's Web site *(http://www.fdic.gov/regulations/laws/federal/).*

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval to make minor revisions to simplify and clarify three of the forms, and eliminate one of the forms, used in support of deposit insurance activities related to failed banks.

Title: Forms Related to Processing of Deposit Insurance Claims.

Forms Currently in Use

Declaration for Testamentary Deposit (Single Grantor), Form 7200/03
Declaration for Public Unit Deposit, Form 7200/04
Declaration for Trust, Form 7200/05
Declaration of Independent Activity, Form 7200/06
Declaration of Independent Activity for Unincorporated Association, Form 7200/07
Declaration for Joint Ownership Deposit, Form 7200/08
Declaration for Testamentary Deposit (Multiple Grantors), Form 7200/09
Declaration for Defined Contribution Plan, Form 7200/10
Declaration for IRA/KEOGH Deposit, Form 7200/11
Declaration for Defined Benefit Plan, Form 7200/12
Declaration of Custodian Deposit, Form 7200/13
Declaration for Health and Welfare Plan, Form 7200/14
Declaration for Plan and Trust, Form 7200/15.

Estimated Number of Respondents and Burden Hours for Forms in Use After Revision of Collection

FDIC document	Hours per response	Number of respondents	Burden hours
Declaration for Public Unit Deposit, Form 7200/04	0.50	500	250
Declaration for Trust, Form 7200/05	0.50	900	450
Declaration of Independent Activity, Form 7200/06	0.50	25	12.5
Declaration of Independent Activity for Unincorporated Association, Form 7200/07	0.50	25	12.5
Declaration for Joint Ownership Deposit, Form 7200/08	0.50	25	12.5
Declaration for Testamentary Deposit, Form 7200/09	0.50	1,500	750
Declaration for Defined Contribution Plan, Form 7200/10	1.0	50	50
Declaration for IRA/KEOGH Deposit, Form 7200/11	0.50	50	25
Declaration for Defined Benefit Plan, Form 7200/12	1.0	200	200
Declaration of Custodian Deposit, Form 7200/13	0.50	50	25
Declaration for Health and Welfare Plan, Form 7200/14	1.0	200	200
Declaration for Plan and Trust, Form 7200/15	0.50	1,300	650
Sub-total		4,825	2,638
Additional Burden for Deposit Brokers Only		70	137
New Form To Be Added:			
Declaration for Irrevocable Trust, Form 7200/18	0.50	200	100
Total		5,095	2,875

General Description of Collection: The collection involves forms used by the FDIC to obtain information from individual depositors and deposit brokers necessary to supplement the records of failed depository institutions

to make determinations regarding deposit insurance coverage for depositors of failed institutions. The information provided allows the FDIC to identify the actual owners of an account and each owner's interest in the account.

Current Action: The FDIC is requesting OMB approval to make modifications, which may be considered substantive and material, to the following forms: Declaration for Trust, Form 7200/05, and Declaration for Testamentary Deposit (Multiple Grantors), Form 7200/09. In addition, the FDIC proposes to eliminate its Declaration for Testamentary Deposit (Single Grantors), Form 7200/03, combining it with the newly modified Form 7200/09, Declaration for Testamentary Deposit; and add to the collection a new form, Declaration for Irrevocable Trust, Form 7200/18. Specifically, with respect to Form 7200/05, the FDIC is changing the title of the form to "Declaration for Revocable Trust," thereby eliminating use of the form for irrevocable trusts; deleting the request for information on ownership interest (by percentage or dollar amount); adding a request for information on beneficiary type (*i.e.,* individual, charity, or non-profit) and adding, for charitable or non-profit organizations, a request that the respondent indicate whether the charity or non-profit is recognized by the IRS. The FDIC believes that the changes to Form 7200/05 do not render it any more or less burdensome than the existing form; therefore, the estimated time to complete the form is unchanged. There is, however, an estimated decrease (of 200) in the number of respondents because the form will no longer be used to collect information for irrevocable trusts. With respect to Form 7200/09, the FDIC is proposing to combine it with Form 7200/03, making it applicable to both single and multiple grantor testamentary deposits; eliminate the request for information regarding the relationship of each beneficiary to the grantors; eliminate the requirement to provide a date of death for any named beneficiaries who are deceased; add a request for information on beneficiary type (*i.e.,* individual, charity, or non-profit) and add, for charitable or non-profit organization beneficiaries, a request that the respondent indicate whether the charity or non-profit is recognized by the IRS. The FDIC believes that changes to Form 7200/09 do not render it any more or less burdensome than the existing form. Although the number of respondents has increased to reflect inclusion of respondents to discontinued Form 7200/03, the impact on overall burden for the collection is neutral. With respect to new Form 7200/18, it will collect information regarding irrevocable trusts that previously was collected on Form 7200/05. However, unlike old Form 7200/05, new Form 7200/18 does not request information on the ownership interest (percentage or dollar amount) of beneficiaries, or the date of death or any deceased beneficiaries, but does collect information on the beneficiary type (*i.e.,* individual, charity or non-profit) and, for charitable or non-profit organizations, on whether the entity is recognized by the IRS. The estimated response time for new Form 7200/18 is 30 minutes and the estimated number of respondents is 200. Therefore, the impact of all of the changes on overall burden estimates for the collection is neutral.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 26th day of January 2010.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2010–1998 Filed 1–29–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 16, 2010.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Viradesh Kumar Nanda and Sameer Kumar Nanda; to acquire additional shares of Hometown Community Bancshares, Inc., and its subsidiary, Hometown Community Bank, both of Braselton, Georgia. Total pro forma ownership will equal 17.51 percent.

2. Brian Clayton McRae, of Shreveport, Louisiana; to retain shares of Vernon Bancshares, and its subsidiary bank, Vernon Bank, both of Leesville, Louisiana.

Board of Governors of the Federal Reserve System, January 27, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–1964 Filed 1–29–10; 8:45 am]

BILLING CODE 6210–01–S

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 applications 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. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

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 February 25, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Sandhills Financial Services, LLC, Fremont, Nebraska; to become a bank holding company through the acquisition of 100 percent of the voting shares of Bassett Investment Company, and thereby acquire Commercial Bank, both in Bassett, Nebraska.

Board of Governors of the Federal Reserve System, January 27, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–1965 Filed 1–29–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Studying the Implementation of a Chronic Care Toolkit and Practice Coaching In Practices Serving Vulnerable Populations." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by April 2, 2010.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Studying the Implementation of a Chronic Care Toolkit and Practice Coaching In Practices Serving Vulnerable Populations

An important part of AHRQ's mission is to disseminate information and tools that can support improvement in quality and safety in the U.S. health care community. This proposed information collection supports that part of AHRQ's mission by further refining the practice coaching delivered in conjunction with a previously developed toolkit, Implementing Integrating Chronic Care and Business Strategies in the Safety Net: A Toolkit for Primary Care Practices and Clinics. AHRQ requests that the Office of Management and Budget approve, under the Paperwork Reduction Act of 1995, AHRQ's intention to collect information needed to determine whether practice coaching is effective in facilitating adoption of the Chronic Care Model (CCM) for improving treatment and management of chronic medical conditions by primary care physicians, especially those who care for underserved populations. This project is being conducted pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to quality measurement and improvement and with respect to clinical practice, including primary care and practice-oriented research. 42 U.S.C. 299a(a)(2) and (4). This project will be conducted by AHRQ through a contract with the University of Minnesota.

Although 1500 physician practices in the U.S. and internationally have been involved in CCM quality improvement efforts, most patients still do not receive their chronic care in accordance with CCM. One factor affecting CCM implementation has been that having teams attend collaborative meetings (three two-day meetings over a nine-month period) is burdensome, especially for under-resourced providers. An attempt to use the Internet as a virtual collaborative met with disappointing results. Another barrier to adoption of the CCM in settings that serve vulnerable populations is the scarcity of resources to implement and sustain the CCM. In 2006 AHRQ contracted with the RAND Corporation, Group Health's MacColl Institute, and the California Health Care Safety Net Institute (SNI) to develop a toolkit that informs safety net providers on how to redesign their systems of care along the lines of the Chronic Care Model while attending to their financial realities. The result was Implementing Integrating Chronic Care and Business Strategies in the Safety Net. A Toolkit for Primary Care Practices and Clinics. The Toolkit was piloted in two California safety net clinics. Recognizing that merely distributing the Toolkit was unlikely to foster adoption of CCM, the intervention included six months of practice coaching delivered by the MacColl Institute. Practice Coaches (PC) are health care or related professionals who help primary care practices in a variety of quality improvement and research activities. PCs made two site visits to each site and participated in weekly team meetings by phone. They also interacted with the sites through e-mail and phone contact.

The lack of documentation available on coaching led to the development of a practice coaching manual, which was funded by AHRQ through a contract with the RAND Corporation. Development of the Coaching Manual entailed conducting a literature review, interviewing practice coaching experts, and incorporating evaluation results from the coaching provided in conjunction with the Toolkit. The Coaching Manual was published in the winter of 2009. The literature review and interviews revealed that there are a number of different models of practice coaching. However, knowledge is scant about how practice coaching is best performed, under what conditions practice coaching is most successful, and the costs of coaching and being coached. Pilot testing the Toolkit with a low-intensity practice coaching strategy proved insufficient to encourage practices to use the Toolkit independently. The Toolkit was subsequently streamlined based on pilot sites' reports that the initial Toolkit was not easy to use. This project will explore the implementation of the revised Toolkit along with a more intensive practice coaching strategy, providing lessons on methods to improve chronic care in clinical practices that serve vulnerable populations.

Method of Collection

This project will include the following data collections:

(1) *Key Informant Interviews* with providers, staff and practice coaches

from 20 safety net practices that participate in the practice coaching intervention. These will be used to describe the process and content of practice coaching, perceived changes from the coaching intervention at the practice, provider and patient levels, factors that impeded or facilitated the coaching intervention and implementation of practice changes through the coaching process, overall satisfaction with practice coaching, and recommendations for improvement.

(2) *Primary Care Practice Profile (PCPP*). This questionnaire will be completed by a single individual at each site, either the medical director or chief administrator, and will provide an overview of each replication site that will help place intervention activities and outcomes in context for each site. It covers demographics of patients served, patient flow, disease health outcomes, most frequent diagnoses, most frequent referrals, number of staff by discipline, staff and patient satisfaction, processes of care, and organizational processes.

(3) *Physician Practice Connections-Readiness Survey (PPC–RS)*—This questionnaire asks about the presence of 53 practice systems in 5 of the 6 domains of the Chronic Care Model: Clinical information systems (information systems, presence of registry or organized database, and systematic monitoring of patient population); decision support (clinician reminders and alerts for lab tests, and visits or guidelines related to individual patient care), delivery system redesign (services for managing patients with chronic illness involving multiple clinicians and care between visits), health care organization (performance tracking and feedback, process of using clinical information systems to aggregate and report on key indicators, and use of data for benchmarking performance and informing QI activities), and clinical quality improvement (presence of formal processes to assess care, develop interventions, and use data to monitor the effects).

(4) *Assessment of Chronic Illness Care (ACIC)*—The ACIC is contained in the Toolkit and yields subscale scores and a total score. Subscale scores reflect CCM components and include: Community linkages, self-management support, decision support, delivery system design, information systems, and organization of care.

(5) *Change Process Capability Questionnaire (CPCQ)*—The CPCQ assesses 30 factors and strategies that experienced quality improvement leaders ranked as most important for successful implementation. A recent validation study found good predictive validity. Items correlating with the PPC–RS were eliminated after the initial validation study so there is little to no overlap across the two measures. In addition to changes in the content of care (CCM components), these also include organizational will for change (Priority) and capacity and skill in the conduct of the actual change processes and strategies.

(6) *Patient Assessment of Chronic Illness Care (PACIC)*—The 20-item PACIC consists of five sub scales which assess components of the CCM: Patient activation, delivery system design/decision support, goal setting, problem-solving/contextual counseling, and followup and coordination.

(7) *Consumer Assessment of Healthcare Providers and Systems*—Primary Care Adult—This questionnaire assesses patient experiences in three areas: Getting appointments and healthcare when needed; how well doctors communicate, and courteous and helpful office staff.

(8) *Primary Care Staff Satisfaction Survey*—This questionnaire assesses staff satisfaction with their work environment. It consists of 8 4-point likert scale items and 2 open-ended questions, and was developed by the Institute for Healthcare Improvement.

(9) *Chart Audits*—Chart audits will be conducted at baseline, the end of the 10 month coaching intervention, and at 3-month follow-up to assess changes in patient care quality over the course of the intervention. A chart abstraction form will be developed to collect these data. This data collection will be performed by the project staff and will not impose a burden on the participating sites. Therefore, OMB clearance is not required for this data collection.

Clinic staff will be provided with a paper version of the surveys as well as the option to the complete the surveys on line using a secure on-line survey program. With the exception of the staff surveys, no special information technology will be used to collect information, since many of the data collection forms are standardized instruments available in hard-copy form, and special permission from the developers would be required to create electronic versions of these forms. The information collection is a one-time only project; thus, there would be little benefit in reduced burden from automated information collection tools for the other instruments.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this two year study. Key informant interviews will be conducted with practice coaches at midpoint in the intervention and again at the end of the intervention. Key informant interviews will also be conducted with up to 3 primary care providers and 2 other staff members from each of the 20 practices (10 per year) prior to start of the intervention, and again at 3-month follow-up after the intervention is completed. Each interview takes about 1 hour.

The Primary Care Practice Profile will be administered once and will be completed by one staff person from each practice and takes 30 minutes to complete. The Physician Practice Connections-Readiness Survey (PPC–RS) will be completed pre, post and at 3-month follow-up by three individuals from each of the 20 practices (individuals with the appropriate knowledge to complete the survey will be identified by the medical director of each site). It takes 90 minutes to complete. The Assessment of Chronic Illness Care (ACIC) will be completed by 4 staff and 4 primary care providers per practice at pre, post and 3-month follow-up and takes 30 minutes to complete. The Change Process Capability Questionnaire (CPCQ) will be completed by 4 staff and 4 primary care providers per practice at pre, post and 3-month follow-up and takes 15 minutes to complete. The Primary Care Staff Satisfaction Survey (PCSSS) will be completed by 4 staff and 4 primary care providers per practice at pre, post and 3-month follow-up and takes 15 minutes to complete. The Patient Assessment of Chronic Illness Care (PACIC) will be completed by 3,000 adult patients (1,500 annually) with chronic illness and requires 15 minutes to complete. The Consumer Assessment of Healthcare Providers and Systems-Primary Care Adult (CAHPS) will be completed by 3,000 adult patients (1,500 annually) with chronic illness and requires 45 minutes to complete. Both patient surveys will be administered to adult patients with a chronic disease who receive care at the practices during a 2-day data collection period immediately before, immediately after, and at 3-month follow-up. The surveys will be administered during the post visit period in the wait room, by a bi-lingual Spanish-English research assistant. The total annualized burden hours are estimated to be 1,984 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondent's time to participate in this study. The total annualized cost burden is estimated to be $60,714.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Key informant interviews with practice coaches	2	2	1	4
Key informant interviews with providers (3 per practice interviewed twice)	10	6	1	60
Key informant interviews with staff (2 per practice interviewed twice)	10	4	1	40
Primary Care Practice Profile (PCPP)	10	1	30/60	5
Physician Practice Connections—Readiness Survey (PPC–RS) (3 per practice × 3 times)	10	9	1.5	135
Assessment of Chronic Illness Care (ACIC) (8 per practice × 3 times)	10	24	30/60	120
Change Process Capability Questionnaire (CPCQ) (8 per practice × 3 times)	10	24	15/60	60
Primary Care Staff Satisfaction Survey (PCSSS) (8 per practice × 3 times)	10	24	15/60	60
Patient Assessment of Chronic Illness Care (PACIC)	1,500	1	15/60	375
Consumer Assessment of Healthcare Providers and Systems–Primary Care Adult (CAHPS)	1,500	1	15/60	1,125
Total	3,072			1,984

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Key informant interviews with practice coaches	2	4	$42.00	$168
Key informant interviews with providers	10	60	77.64	4,658
Key informant interviews with staff	10	40	32.64	1,306
Primary Care Practice Profile (PCPP)	10	5	77.64	388
Physician Practice Connections—Readiness Survey (PPC–RS)	10	135	77.64	10,481
Assessment of Chronic Illness Care (ACIC)	10	120	** 55.14	6,617
Change Process Capability Questionnaire (CPCQ)	10	60	** 55.14	3,308
Primary Care Staff Satisfaction Survey	10	60	** 55.14	3,308
Patient Assessment of Chronic Illness Care (PACIC)	1,500	375	20.32	7,620
Consumer Assessment of Healthcare Providers and Systems—Primary Care Adult (CAHPS)	1,500	1,125	20.32	22,860
Total	3,072	1,984		60,714

* Based upon the mean of the average wages, May 2008 National Occupational and Wage Estimates accessed on December 14, 2009 at: *http://www.bls.gov/oes/currentloesnat.htm#b290000National* Compensation Survey:
** Average for 4 staff ($32.64/br) and 4 physician clinicians. ($77.64/br).

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to conduct this research. The total cost over two years is estimated to be $600,000.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$162,744	$81,372
Data Collection Activities	92,994	46,497
Data Processing and Analysis (20%)	92,994	46,497
Publication of Results	23,248	11,624
Project Management	92,994	46,497
Overhead	135,026	67,513
Total	600,000	300,000

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQs information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 15, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–1953 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Evaluation of the GuideLines Into Decision Support (GLIDES)." In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on November 27th, 2009 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by March 3, 2010.

ADDRESSES: Written comments should be submitted to: AHRQs OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of the GuideLines Into Decision Support (GLIDES)

With this project AHRQ proposes to evaluate how the translation of clinical knowledge into clinical decision support can be routinized in practice and taken to scale in ways that improve the quality of healthcare delivery for children in the U.S. Previously in the GLIDES project, AHRQ designed and implemented decision support tools based on guidelines for the prevention of pediatric overweight and obesity and the management of chronic asthma in the pediatric population (publication forthcoming). In this phase of the project, conducted for AHRQ through a contract with Yale University and Nemours, physicians will be surveyed about their experiences with the decision support tools developed in the previous phase. The participating study institutions (Yale University and Nemours) are geographically and organizationally diverse, and include a wide range of patients from a variety of social, economic and ethnic backgrounds. This project directly addresses AHRQ's mission of improving health systems practices, in particular for priority populations, including low-income groups, minority groups, women, children, and individuals with chronic diseases. See 42 USC 299(c)(1)(B).

The evaluation plan includes a physician survey component and an extraction of electronic medical record data. Participating physicians will be surveyed about their experiences with the decision support tools developed for this project. This will allow AHRQ to evaluate the fulfillment of knowledge transformation goals and the effectiveness of the decision support tools in improving the quality of health care at the chosen sites. Without such an evaluation, it would be difficult to determine whether this project has met AHRQ's goals of enhancing the "quality, appropriateness and effectiveness of health services." See 42 USC 299(b); 42 USC 299a(a)(1). Consequently, it is necessary to collect this information to fulfill AHRQ's mission.

Method of Collection

Self-administered questionnaires will be used to elicit physicians' general opinions of guideline-based care and clinical decision support tools on a five point Likert-type scale. Results from low-utilizing physicians will be compared to high-utilizing physicians to determine whether general opinions of guidelines and technology correlate with actual practice. Results will also be analyzed by demographic characteristics included in the survey questionnaire to determine whether opinions vary by age, degree of computer experience and skill, level of training and professional degree. These analyses will be important to future studies and decision support designers because they will help us understand whether interventions need to be targeted differently to different audiences. For example, senior level specialists may have less desire or need for clinical decision support tools than novice generalists have. In-person qualitative interviews lasting approximately 30 minutes will be conducted with key personnel at each site (including physicians, nurse practitioners, and respiratory therapists). Participants will remain anonymous in the transcribed interviews. The interviews will be analyzed using standard qualitative techniques to explore barriers and facilitators to using the clinical decision support tool. The Human Investigation Committee (HIC) at Yale University has reviewed this protocol. The HIC found the survey study to be exempt from review under 45 CFR 46.101(b)(2). The HIC approved the interview study and required signed informed consent from participants.

Electronic medical record data will be extracted into an electronic spreadsheet for analysis. This extraction will occur at regular intervals to ensure continued maintenance and uptake of the tool. Utilization of the decision support tools at the provider and site level will be assessed based on the rate of electronic chart documentation. This is important to determine the rate of uptake of the intervention, as well as to determine whether there are any flaws in the design of the tool. Congruence of actual

practice with guideline recommendations will be assessed based on automatically generated disagreement flags in the electronic medical record as well as by manual chart review. This data collection, including the manual chart review, will be performed by project staff and will not impose a burden on the participating sites. In addition, project staff will directly observe a random sampling of clinicians using the tool in clinical settings to determine how the tool affects workflow. These observations will not require any effort, time or action on the part of the clinicians themselves and will not impose a burden on the participating sites.

Signed informed consent will be obtained prior to any observations. The Human Investigation Committee at Yale University has reviewed this protocol. It approved the medical record review, approved direct observation of clinicians and interviews of clinicians, required signed informed consent from clinicians, granted a waiver of informed consent from patients per 45 CFR 46.116(d), and granted a waiver of HIPAA authorization.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. The Asthma Management and Clinical Decision Support System Usability and User Satisfaction Survey (asthma questionnaire) will be completed by 172 health care professionals across 3 sites and is expected to require about 6 minutes to complete. The Obesity Prevention and Clinical Decision Support System Usability and User Satisfaction Survey (obesity questionnaire) will be completed by 82 health care professionals across 2 sites and is expected to require about 6 minutes to complete. The in-person interviews will be conducted with a total of 50 clinicians at 3 sites and are expected to last 30 minutes each. The total burden is estimated to be 51 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be $2,781.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of sites	Number of responses per site	Hours per response	Total burden hours
Asthma questionnaire—Yale	2	31	6/60	6
Asthma questionnaire—Nemours	1	110	6/60	11
Obesity questionnaire—Yale	1	57	6/60	6
Obesity questionnaire—Nemours	1	25	6/60	3
In-person interviews—Yale	2	15	30/60	15
In-person interviews—Nemours	1	20	30/60	10
Total	8			51

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of sites	Total burden hours	Average hourly wage rate*	Total cost burden
Asthma questionnaire—Yale	2	6	$59.83	$359
Asthma questionnaire—Nemours	1	11	59.83	658
Obesity questionnaire—Yale	1	6	47.25	284
Obesity questionnaire—Nemours	1	3	47.25	142
In-person Interviews—Yale	2	15	53.54	803
In-person Interviews—Nemours	1	10	53.54	535
Total	8	51		2,781

*Based upon the mean of the average wages for other physicians and surgeons, general pediatricians, and pediatric trainees (asthma questionnaire), and general pediatricians and pediatric trainees (obesity questionnaire), National Compensation Survey: Occupational wages in the United States 2008, "U.S. Department of Labor, Bureau of Labor Statistics," and Yale Pediatric Residency Program, 2008.

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost for this research. Since this project will not exceed one year the total and annualized costs are identical. The total cost is estimated to be $5,703.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$1,406	$1,406
Data Collection Activities	416	416
Data Processing and Analysis	780	780
Publication of Results	1,601	1,601
Project Management	200	200
Overhead	1,299	1,299

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost	Annualized cost
Total	5,703	5,703

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ' s estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: January 25, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–1894 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0745]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Colorectal Cancer Screening Program (OMB Number 0920–0745, exp. 7/31/2010)—Revision—Division of Cancer Prevention and Control (DCPC), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Colorectal Cancer (CRC) is the second leading cause of cancer-related deaths in the United States, following lung cancer. Based on scientific evidence which indicates that regular screening is effective in reducing CRC incidence and mortality, regular CRC screening is now recommended for average-risk persons. Screening tests that are recommended by the United States Preventive Services Task Force, and that may be used alone or in combination, include fecal occult blood testing (FOBT), fecal immunochemical testing (FIT), flexible sigmoidoscopy, colonoscopy, and/or double-contrast barium enema (DCBE).

In 2005, CDC established a three-year demonstration program, subsequently extended to four years, to screen low-income individuals 50 years of age and older who have no health insurance or inadequate health insurance for CRC. The five demonstration sites report information to CDC including de-identified, patient-level demographic, screening, diagnostic, treatment, outcome and cost reimbursement data (OMB No. 0920–0745, exp. 7/31/2010). The information is being used to assess the feasibility and cost effectiveness of a publicly funded screening program and describe key outcomes, and has been critical in guiding the expansion of the program.

CDC will request OMB approval to continue the information collection for three years, with changes. First, the number of funded sites will increase from 5 to 26, and the term "Demonstration" will be deleted from the title of the program. Second, there will be a reduction in the burden per respondent associated with the collection of clinical information. Reporting forms for medical complications and medically ineligible clients will be discontinued, and reporting forms for colorectal cancer clinical data elements (CCDE) will be streamlined. Data elements that were underused in analysis of the demonstration program data, or difficult to standardize across programs, will be removed, and the level of detail collected from endoscopy and pathology reports will be reduced. As a result, the reporting burden per CCDE form will be similar regardless of primary test provided. Third, the collection of patient-level reimbursement cost data will be discontinued and will be replaced by the collection of program-level activity-based cost data. The revised information collection will utilize a Cost Assessment Tool (CAT) currently in use by another CDC-funded cancer program (OMB No. 0920–0812, exp. 6/30/2012). The information to be collected through the CAT will allow CDC to compare activity-based costs across multiple sites and programs, and will provide a more effective means of monitoring and improving the performance and cost-effectiveness of the CRC screening program.

The goals of the expanded CRC screening program are to increase population-based screening and to reduce health disparities in CRC screening, incidence and mortality. The program will continue to provide services to low-income individuals age 50 and older with inadequate or no health insurance. Each site will screen an estimated 375 patients per year (186 semiannually). The increase in the number of funded sites and the proposed changes will result in an

overall increase in burden to respondents.

CCDE information will be transmitted to CDC electronically twice per year. Information collected through the Cost Assessment Tool will be transmitted electronically to CDC once per year. Participation is required for all sites funded through the CRC screening program. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form type	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Colorectal Cancer Screening Programs.	Clinical Data Elements	26	375	15/60	2,438
	Cost Assessment Tool	26	1	22	572
Total					3,010

Dated: January 26, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–2059 Filed 1–29–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10BG]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Voluntary Environmental Assessment Information System (NVEAIS)—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC is requesting OMB approval for a National Voluntary Environmental Assessment Information System to collect data from food- and waterborne illness outbreak environmental assessments routinely conducted by local, State, territorial, or tribal food and water safety programs during outbreak investigations. Environmental assessment data are not currently collected at the national level. The data reported through this information system will provide timely data on the causes of outbreaks, including environmental factors associated with outbreaks, and are essential to environmental public health regulators' efforts to respond more effectively to outbreaks and prevent future, similar outbreaks. This information system is specifically designed to link to CDC's existing disease outbreak surveillance system (National Outbreak Reporting System).

The information system was developed by the Environmental Health Specialists Network (EHS–Net), a collaborative project of CDC, the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and nine states (California, Connecticut, Georgia, Iowa, New York, Minnesota, Oregon, Rhode Island, and Tennessee). The network consists of environmental health specialists (EHSs), epidemiologists, and laboratorians. The EHS–Net has developed a standardized protocol for identifying, reporting, and analyzing data relevant to food- and waterborne illness outbreak environmental assessments.

The information to be reported to NVEAIS will be obtained from environmental assessments routinely conducted by state, local, tribal and territorial food and water safety program officials in response to food- and waterborne illness outbreaks. While conducting environmental assessments during outbreak investigations is routine for food and water safety program officials, reporting information from the environmental assessments to CDC is not. Thus, state, local, tribal, and territorial food and water safety program officials are the respondents for this data collection. However, participation in the system is voluntary.

There are approximately 3,000 public health departments (where food and water safety programs are typically located) in the United States. Many of these departments have separate food and water safety programs. If a public health department chooses to participate in NVEAIS, there will likely be two respondents from that department—one person responsible for reporting foodborne outbreak environmental assessment data to NVEAIS and one person responsible for reporting waterborne outbreak environmental assessment data to NVEAIS. Thus, although it is not possible to determine how many departments will choose to participate, as NVEAIS is voluntary, the maximum potential number of respondents is approximately 6,000 (one for each food safety program and one for each water safety program in each public health department).

It is not possible to determine exactly how many outbreaks will occur in the future, nor where they will occur. However, we can estimate, based on existing data, that a maximum of 1,600 illness outbreaks (1,100 foodborne and 500 waterborne) will occur annually.

Only respondents in the jurisdictions in which these outbreaks occurred would report to NVEAIS. Thus, not every respondent will respond every year. Thus, we have based our respondent burden estimate on the number of outbreaks likely to occur each year, rather than the number of potential respondents. Assuming each outbreak occurs in a different jurisdiction, there will be one respondent per outbreak. Each respondent will respond only once per outbreak investigated and the average burden per response will be approximately 120 minutes. Thus, the estimated total annual burden to report is 3,200 hours.

There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Food safety program officials	1,100	1	2	2,200
Water safety program officials	500	1	2	1,000
Total				3,200

Dated: January 26, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–2058 Filed 1–29–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx *, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876, (Formerly: Dynacare Kasper Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly:

Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,).

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521, (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register,** July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. 2010–2042 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control/Initial Review Group, (NCIPC/IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Time and Date

12:30 p.m.–4 p.m., February 16, 2010. (Closed.)

Place: Teleconference.

Status: The meetings will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct research on unintentional childhood injury.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications intended to encourage exploratory/developmental research in unintentional childhood injury. Requests for Applications are related to the following individual research announcement: CE10–001, Preventing Unintentional Childhood Injuries (R21).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: J Felix Rogers, PhD, M.P.H., Telephone (770) 488–4334, NCIPC/ERPO, CDC, 4770 Buford Highway, NE., M/S F63, Atlanta, Georgia 30341–3724.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: January 22, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–2002 Filed 1–29–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Science Moving Towards Research Translation and Therapy (SMARTT)—Non-Biologics and Small Molecules Production Facility.

Date: February 23, 2010.

Time: 8:30 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William J Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924. 301–435–0725. *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Science Moving Towards Research Translation and Therapy (SMARTT)—Biologics Production Facility.

Date: February 23, 2010.

Time: 11:30 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William J Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924. 301–435–0725. *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Science Moving Towards Research Translation and Therapy (SMARTT)—Pharmacology/Toxicology Center.

Date: February 23, 2010.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William J Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924. 301–435–0725. *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Science Moving Towards Research Translation and Therapy (SMARTT) Coordinating Center.

Date: February 24, 2010.

Time: 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William J Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924. 301–435–0725. *johnsonwj@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Pathway to Independence Award (K99's).

Date: February 25–26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mandarin Oriental, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: Holly K Krull, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892–7924. 301–435–0280. *krullh@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–2035 Filed 1–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as-needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10 (d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the ARRA: Limited Competition "AHRQ Institutional Training Grants for CE" (K12) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: ARRA: Limited Competition "AHRQ Institutional Training Grants for CE" (K12).

Date: March 3, 2010 (Open on March 3 from 8:00 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Hilton Rockville Executive Meeting Center, 1750 Rockville Pike, Madison Conference Room, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room

2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 25, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–1901 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: March 18, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: The theme of the meeting will be "HIV/AIDS and Aging." The meeting will address issues related to: increased rates of new infections among older adults; impact of long-term use of antiretroviral therapies in HIV-infected individuals; and premature aging in HIV-infected individuals. An update also will be provided on the OARAC Working Groups for HIV Treatment and Prevention Guidelines.

Place: National Institutes of Health, 5635 Fishers Lane, Rockville, MD 20852.

Contact Person: Christina Brackna, Coordinator, Program Planning and Analysis, Office of Aids Research, Office of the Director, NIH, 5635 Fishers Lane MSC 9310, Suite 4000, Rockville, MD 20852, (301) 402–8655, *cm53v@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Centers home page: *http://www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1897 Filed 1–29–10; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10 (d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the ARRA: Limited Competition "NRSA CE Development Award" (T32) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: ARRA: Limited Competition "NRSA CE Development Award" (T32)

Date: March 3, 2010 (Open on March 3 from 1 p.m. to 1:15 p.m. and closed for the remainder of the meeting).

Place: Hilton Rockville Executive Meeting Center, 1750 Rockville Pike, Madison Conference Room, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 25, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–1896 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: February 23–25, 2010 (Open from 8 a.m. to 8:15 a.m. on February 23 and closed for remainder of the meeting).

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Forest Glen Conference Room, Bethesda, MD 20852.

2. Name of Subcommittee: Health Systems Research.

Date: February 24–25, 2010 (Open from 8 a.m. to 8:15 a.m. on February 24 and closed for remainder of the meeting).

Place: Marriott Bethesda North & Conference Center, 5701 Marinelli Road, Linden Oak Conference Room, Bethesda, MD 20852.

3. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: March 3–4, 2010 (Open from 8:30 a.m. to 8:45 a.m. on March 3 and closed for remainder of the meeting).

Place: Hilton Rockville Executive Meeting Center, 1750 Rockville Pike, Plaza 3 Conference Room, Rockville, Maryland 20850.

4. *Name of Subcommittee:* Health Care Research Training.

Date: March 4–5, 2010 (Open from 8 a.m. to 8:15 a.m. on March 4 and closed for remainder of the meeting).

Place: Hilton Rockville Executive Meeting Center, 1750 Rockville Pike, Madison Conference Room, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: January 21, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–1880 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–90–M

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, SRO Conflict SEP: Vector Biology.

Date: February 11, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Stroke, Traumatic Brain Injury, and Neurovascular Pathologies.

Date: February 25, 2010.

Time: 1 p.m. to 4 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: Kevin Walton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kevin.walton@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: January 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–2032 Filed 1–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. Application of Emerging Technologies and Biospecimen Sciences.

Date: February 24–25, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel. R13 Conference Grants Review,

Date: February 25, 2010.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 8041, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Bratin K. Saha, PhD, Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8041, Bethesda, MD 20892, 301–402–0371. *sahab@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Quantitative Cell-Based Imaging for Clinical Diagnosis and Treatment.

Date: February 25, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 706, Rockville, MD 20852 (Teleconference Meeting).

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Officer, Special Review Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892–8329, 301–496–7576, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Facilitating the Transfer of Statistical Methodology into Practice.

Date: March 3, 2010.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 707, Rockville, MD 20852 (Telephone Conference Meeting).

Contact Person: Marvin L Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329 301–496–0694, *msalin@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Development of Cancer Proteomics Reagents,

Date: March 9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852,

Contact Person: Zhiqiang Zou, M.D., PhD, Scientific Review Officer, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8050A, Bethesda, MD 20852, 301–402–9415, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies Development.
Date: March 10–11, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, EDRN Biomarker Development Labs (U01).
Date: March 10–11, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Sherwood Githens, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. Room 8146, Bethesda, MD 20892, 301–435–1822, *githenss@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Anticancer Agents.
Date: March 24–26, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Joyce C. Pegues, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Nanotechnology Platform Partnerships.
Date: March 31–April 1, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Savvas C Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm 8053, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology.
Date: April 15–16, 2010.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Joyce C. Pegues, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–2030 Filed 1–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.
Date: February 25–26, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: US Grant Hotel, 326 Broadway, San Diego, CA 92101.
Contact Person: Ernest W Lyons, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review, Group Neurological Sciences and Disorders A.
Date: March 3, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Argonaut Hotel, 495 Jefferson Street, San Francisco, CA 94109.
Contact Person: Richard D. Crosland, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1932 Filed 1–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as-needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b (c)(6). Grant applications for the ARRA: Limited Competition "Electronic Data Methods" (U13) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory

disclosure under the above-cited statutes.

SEP Meeting on: ARRA: Limited Competition "Electronic Data Methods" (U13).

Date: February 26, 2010 (Open on February 26 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, Forest Glen Conference Room, Bethesda, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 21, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–1902 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Transforming Primary Care (Ri 8) applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Transforming Primary Care (Ri 8).

Date: March 9–10, 2010 (Open on March 9 from 8:30 a.m. to 8:45 a.m. and closed for the remainder of the meeting).

Place: Doubletree Hotel & Executive Meeting Center, 8120 Wisconsin Avenue, Conference Room TBD, Bethesda, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: January 25, 2010.

Carol M. Clancy,

Director.

[FR Doc. 2010–1900 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices (ACIP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Times and Dates

8 a.m.–6 p.m., February 24, 2010.
8 a.m.–3 p.m., February 25, 2010.

Place: CDC, Tom Harkin Global Communications Center, 1600 Clifton Road, NE., Building 19, Kent "Oz" Nelson Auditorium, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. 1396s, the committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters To Be Discussed: The agenda will include discussions on; Human Papillomavirus (HPV) Vaccines; 13–Valent Pneumococcal Conjugate Vaccine; Influenza Vaccines; Rotavirus Vaccines; Vaccine Supply Update; Meningococcal Vaccines; Evidence Based Recommendations; Hepatitis B vaccination for diabetics.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Antonette Hill, Immunization Services Division, National Center for Immunization and Respiratory Diseases, CDC, 1600 Clifton Road, NE., Mailstop E–05, Atlanta, Georgia 30333, telephone (404)639–8836, fax (404)639–8905.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: January 22, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–2043 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; Report of an Altered System of Records

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of an Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Health Resources and Services Administration (HRSA) is publishing notice of a proposal to alter the system of records for the Health Education Assistance On-Line Processing System (HOPS), 09–15–0044.

The purposes of these alterations are to update the location of this system and the system manager, to modify routine use number 6, correct typographical errors, and to add routine use number 17 related to notification of breaches in security or confidentiality of records maintained in the system. In addition, the section for Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System was updated. The "Authority for Maintenance of System" provision has been modified to reference Section 702 of the Public Health Service Act [42 U.S.C. Section 292a], as amended, and to add the Debt Collection Improvement Act (31 U.S.C. Sections 3701 and 3711–3720E). Lastly, the "Disclosure to Consumer Reporting Agencies" provision was modified to reference the definition of a "consumer reporting

agency" as stated in the Fair Credit Reporting Act (15 U.S.C.1681a(f)) and the Debt Collection Improvement Act (31 U.S.C. 3701(a)(3)).

DATES: HRSA filed an altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on 01/15/2010. To ensure all parties have adequate time in which to comment, the altered systems, including the routine uses, will become effective 30 days from the publication of the notice or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless HRSA receives comments that require alterations to this notice.

ADDRESSES: The public should address comments to the Health Resources and Services Administration, 5600 Fishers Lane, Room 9–105, Rockville, Maryland 20857; telephone (301) 443–1173. This is not a toll-free number. Comments received will be available for review and inspection, by appointment, at this same address from 9 a.m. to 3 p.m. eastern time zone, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judy Rodgers, Chief, Health Education Assistance Loan Program, Division of Student Loans and Scholarships, 5600 Fishers Lane, Room 9–105, Rockville, Maryland 20857; telephone (301) 443–1173. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HRSA maintains system of records 09–15–0044, "Health Education Assistance On-Line Processing System (HOPS)" to: (1) Identify students participating in the HEAL Program; (2) monitor the loan status of HEAL recipients, which includes the collection of overdue debts owed under the HEAL Program; and (3) compile and generate managerial and statistical reports.

HRSA is proposing a change to the name and room number of the HRSA division responsible for the operation of the HEAL Program from the Division of Health Careers Diversity and Development in room 8–37 to the Division of Student Loans and Scholarships in room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. HRSA is correcting typographical errors in the system of records as well. HRSA is also modifying routine use number 6 to remove a reference to the Government Accountability Office, which is redundant with a permitted disclosure found in the Privacy Act at 5 U.S.C. 552a(b)(10). Furthermore, HRSA is adding a new routine use (number 17) to permit disclosures to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance. This routine use is compatible with the purpose for which the records were collected. In addition, the "Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System" provision was updated to reflect enhanced data storage, to allow external users read-only access only. HRSA is upgrading the System Manager to Chief, Health Education Assistance Loan Program.

Section "Authority for Maintenance of System" is being updated.

Dated: November 17, 2009.

Mary K. Wakefield,

Administrator.

System Number 09–15–0044

SYSTEM NAME:

Health Education Assistance On-Line Processing System (HOPS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

- Division of Student Loans and Scholarships, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.
- Records are also located at contractor sites. A list of contractor sites where individually identifiable data are currently located is available upon request to the System Manager.
- Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of Health Education Assistance Loans.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, social security number or other identifying number, birth date, demographic background, educational status, loan location and status, and financial information about the individual for whom the record is maintained. Contains lender and school identification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 701 and 702 of the Public Health Service Act, as amended (42 U.S.C. 292 and 292a), which authorize the establishment of a Federal program of student loan insurance; Section 715 of the Public Health Service Act, as amended (42 U.S.C. 292n), which directs the Secretary to require institutions to provide information for each student who has a loan; Section 709 of the Public Health Service Act, as amended (42 U.S.C. 292h), which authorizes disclosure and publication of HEAL defaulters; and the Debt Collection Improvement Act (31 U.S.C. 3701 and 3711–3720E).

PURPOSE(S) FOR RECORDS IN THIS SYSTEM:

The purpose of this system is:

1. To identify borrowers participating in the HEAL Program;
2. To monitor the loan status of HEAL recipients, which includes the collection of overdue debts owed under the HEAL Program; and
3. To compile and generate managerial and statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to Federal, State, or local agencies, to private parties such as relatives, present and former employers, business and personal associates, educational and financial institutions, and collection agencies. The purpose of such disclosures is to verify the identity of the loan applicant, to determine program eligibility and benefits, to enforce the conditions or terms of the loan, to counsel the borrower in repayment efforts, to investigate possible fraud and abuse, to verify compliance with program regulations, and to locate delinquent borrowers through pre-claims assistance. Information may be disclosed to educational or financial institutions to assist them in loan management.

2. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

3. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when: (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the

United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether Federal, State or local, charged with enforcing or implementing the statute or any rule, regulation or order issued pursuant thereto.

5. HRSA will disclose from this system of records a delinquent debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose, as follows: (a) To another Federal agency so that agency can effect a salary offset for debts owed by Federal employees; if the claim arose under the Social Security Act, the employee must have agreed in writing to the salary offset. (b) To another Federal agency so that agency can affect an authorized administrative offset; *i.e.,* withhold money payable to, or held on behalf of, debtors other than Federal employees. (c) To the Treasury Department, Internal Revenue Service (IRS), to request a debtor's current mailing address to locate him/her for purposes of either collecting or compromising a debt or to have a commercial credit report prepared.

6. Records may be disclosed to the Office of Management and Budget for auditing financial obligations to determine compliance with programmatic, statutory, and regulatory provisions.

7. HRSA may disclose information from this system of records to a consumer reporting agency (credit bureau) to obtain a commercial credit report for the following purposes: (a) To establish creditworthiness of a loan applicant; and (b) to assess and verify the ability of a debtor to repay debts owed to the Federal Government. Disclosures are limited to the individual's name, address, Social Security number and other information necessary to identify him/her; the funding being sought or amount and status of the debt; and the program under which the application or claim is being processed.

8. HRSA may disclose to the Internal Revenue Service (IRS), U.S. Department of the Treasury (Treasury Department), information about an individual applying for a loan under any loan program authorized by the Public Health Service Act to find out whether the loan applicant has a delinquent tax account. This disclosure is for the sole purpose of determining the applicant's creditworthiness and is limited to the individual's name, address, Social Security number, other information necessary to identify him/her, and the program for which the information is being obtained.

9. HRSA will report to the IRS, Treasury Department, as taxable income, the written-off amount of a debt owed by an individual to the Federal Government when a debt becomes partly or wholly uncollectible—either because the time period for collection under the statute of limitations has expired, or because the Government agrees with the individual to forgive or compromise the debt.

10. HRSA will disclose to debt collection agents, other Federal agencies, and other third parties who are authorized to collect a Federal debt, information necessary to identify a delinquent debtor. Disclosure will be limited to the debtor's name, address, Social Security number, and other information necessary to identify him/her; the amount, status, and history of the claim, and the agency or program under which the claim arose.

11. HRSA will disclose information from this system of records to any third party that may have information about a delinquent debtor's current address, such as the U.S. Postal Service, a consumer reporting agency (credit bureau), a State motor vehicle administration, a professional organization, an alumni association, etc., for the purpose of obtaining the debtor's current address. This disclosure will be limited to information necessary to identify the individual (defaulter's name, latest known City and State of residence, total amount of the HEAL debt).

12. Records may be disclosed to Department contractors and subcontractors for the purpose of assisting HEAL program managers in collating, compiling, aggregating, or analyzing records used in administering the HEAL program. Contractors maintain, and are also required to ensure that subcontractors maintain, Privacy Act safeguards with respect to the records.

13. HRSA may disclose from this system of records to the IRS, Treasury Department: (a) A delinquent debtor's name, address, Social Security number, and other necessary information to identify the debtor; (b) the amount of the debt; and (c) the program under which the debt arose, so that the IRS can offset against the debt any income tax refunds which may be due to the debtor.

14. HRSA may disclose the complete loan file of defaulted HEAL recipients to potential purchasers of HEAL loans to enable them to value and price the loans, and to actual purchasers to enable them to collect the defaulted loans. The purpose of this disclosure will be to facilitate the sale and collection of defaulted HEAL loans. Potential purchasers are required to maintain Privacy Act safeguards with respect to the records.

15. In accordance with the directive in 42 U.S.C. 292h(c)(1), the names of HEAL borrowers who are in default will be published in the Defaulted Borrowers Web site, *http://www.defaulteddocs.dhhs.gov,* by city and State along with the amounts of their HEAL debts. The individual's address also may be published if the address is a matter of public record as a result of legal proceedings having been filed concerning the individual's HEAL debt.

16. In accordance with the directive in 42 U.S.C. 292h(c)(2), disclosure may be made to relevant Federal agencies, schools, school associations, professional and specialty associations, State licensing boards, hospitals with which a HEAL defaulter may be associated, and other similar organizations.

17. To appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12), (as set forth in 31 U.S.C. Section 3711(e)): Disclosures may be made from this system to "consumer reporting agencies" as defined in the

Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Improvement Act (31 U.S.C. 3701(a)(3)). The purposes of these disclosures are:

1. To provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records; and

2. To enable HRSA to improve the quality of loan and scholarship decisions by taking into account the financial reliability of applicants. Disclosure of records will be limited to the individual's name, Social Security number (SSN), and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

• *Storage:* Records are maintained in database servers, file folders, cd's, dvd's and magnetic tapes.

• *Retrievability:* Social Security Number or other identifying number.

• *Safeguards:*

1. *Authorized users:* Access is limited to authorized HEAL personnel and contractors responsible for administering the HEAL program. Authorized personnel include HEAL employees and officials, financial and fiscal management personnel, computer personnel and program managers who have responsibility for implementing the HEAL program. Read-Only users: Read-only access is given to Servicers, Holders and financial/fiscal management personnel.

2. *Physical safeguards:* Magnetic tapes, disc packs, computer equipment and other forms of personal data are stored in areas where fire and life safety codes are strictly enforced. All documents are protected during lunch hours and non-working hours in locked file cabinets or locked storage areas. Twenty-four hour, seven-day security guards perform random checks on the physical security of the records storage areas.

3. *Procedural safeguards:* A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. In addition, all sensitive data is encrypted using Oracle Transparent Data Encryption functionality. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act and ADP security procedures. Contractors are required to maintain, and are also required to ensure that subcontractors maintain, confidentiality safeguards with respect to these records. Contractors and subcontractors are instructed to make no further disclosure of the records except as authorized by the System Manager and permitted by the Privacy Act. All individuals who have access to these records receive the appropriate ADP security clearances. HEAL personnel make site visits to ADP facilities for the purpose of ensuring that ADP security procedures continue to be met. Privacy Act and ADP system security requirements are specifically included in contracts. The HRSA project directors, project officers, and the System Manager oversee compliance with these requirements.

4. *Implementing guidelines:* The safeguards described above were established in accordance with DHHS Chapter 45–13 and supplementary Chapter PHS.hf: 45–13 of the General Administration Manual; and the *http://www.hhs.gov/ocio/policy#Security* Web site.

RETENTION AND DISPOSAL:

HRSA is working with the Records Officer and NARA to obtain the appropriate retention value.

SYSTEM MANAGER(S) AND ADDRESS:

• Chief, Health Education Assistance Loan Program, Division of Student Loans and Scholarships, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

To find out if the system contains records about you contact the System Manager.

REQUESTS IN PERSON:

A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the record and that provided by the individual requesting access to the record. No verification of identity shall be required where the record is one which is required to be disclosed under the Freedom of Information Act.

REQUESTS BY MAIL:

Written requests for information and/or access to records received by mail must contain information providing the identity of the writer and a reasonable description of the record desired. Written requests must contain the name and address of the requester, his/her date of birth and at least one piece of information which is also contained in the subject record, and his/her signature for comparison purposes.

REQUESTS BY TELEPHONE:

Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also provide a reasonable description of the record being sought. Requesters may also request an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager, provide a reasonable description of the record, specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individual loan recipients, HEAL schools, lenders, and holders of HEAL loans and their agents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–1970 Filed 1–29–10; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–646, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day Notice of Information Collection Under Review: Form G–646, Sworn Statement of Refugee Applying for Admission to the United States; OMB Control No. 1615–0097.

The Department of Homeland Security, U.S. Citizenship and

Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 10, 2009, at 74 FR 58037, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0097 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Sworn Statement of Refugee Applying for Admission to the United States.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–646. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The data collected by Form G–646 is used by USCIS to determine eligibility for the admission of the applicants to the United states as refugees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 24,975 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: January 26, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–1947 Filed 1–29–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–565, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Form N–565, Application for Replacement Naturalization/Citizenship Document; OMB Control No. 1615–0091.

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The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 10, 2010, at 74 FR 58037, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0091 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–565; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form N–565 is used to apply for a replacement of a Declaration of Intention, Certificate of Citizenship or Replacement Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 22,567 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,671 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: January 26, 2010.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–1962 Filed 1–29–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Visa Waiver Program Carrier Agreement (Form I–775)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-day notice and request for comments; Revision of an existing information collection: 1651–0110.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Visa Waiver Program Carrier Agreement (Form I–775). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 60281) on November 20, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before March 3, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Visa Waiver Program Carrier Agreement.

OMB Number: 1651–0110.

Form Number: I–775.

Abstract: Form I–775 is the form used by carriers to request acceptance by CBP into the Visa Waiver Program (VWP) and whereby the carriers agree to the terms of the VWP as delineated in Section 217(e) of the INA. Once participation is granted, the Form I–775 serves to hold the carriers liable for transportation costs and to ensure the completion of required forms. CBP is proposing to adjust the burden hours for this collection of information as a result of decreasing the estimated response time from 2 hours to 30 minutes. CBP is also proposing to add new provisions to this Agreement including: Carriers must not transport to the United States any alien traveling under the Visa Waiver Program without authorization via the Electronic System for Travel Authorization; Carriers applying to become signatory to a visa waiver contract with CBP must have paid all their User Fee obligations and any previous penalties under the INA, U.S. Customs or Agriculture laws; and Carriers applying to become signatory to the VWP with CBP must post a bond sufficient to cover the total penalty amounts for violations that were imposed against the carrier during the previous fiscal year.

Current Actions: This submission is being made to extend the expiration date with a revision to the burden hours.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 400.

Estimated Time per Respondent: 30 minutes.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: January 27, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–2037 Filed 1–29–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–648, Revision of an Existing Information Collection Request; Comment Request

ACTION: 60-day notice of information collection under review: Form N–648, Medical Certification for Disability Exceptions. OMB Control No. 1615–0060.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 2, 2010.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please make sure to add the OMB Control Number 1615–0060 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Medical Certification for Disability Exceptions.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–648. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses Form N–648 issued by the medical professional to substantiate a claim for an exception to the requirements of section 312(a) of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: January 27, 2010.

Stephen Tarragon

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services.

[FR Doc. 2010–2040 Filed 1–29–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: NAFTA Regulations and Certificate of Origin

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Revision of an existing collection of information: 1651–0098.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before April 2, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1651–0098.

Form Number: CBP Forms 434, 446, and 447.

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada and to facilitate conditions of fair competition within the free trade area. CBP uses these forms to verify eligibility for preferential tariff treatment under NAFTA. CBP is adding the Form 447, North American Free Trade Agreement Motor Vehicle Averaging Election, to this collection of information. The CBP Form 447 is used to gather the information required by 19 CFR part 181, Section 11 (2), Information Required When Producer Chooses to Average for Motor Vehicles. The Form 447 shall be completed for each category set out in the Regulation that is chosen by the producer of a motor vehicle referred to in 19 CFR part 181, Section 13 (Special Regional Value Content Requirements) in filing an election pursuant to subsection 13 (4).

Current Actions: This submission is being made to revise the burden hours as a result of adding Form 447.

Type of Review: Revision.

Affected Public: Businesses.

Form 434, NAFTA Certificate of Origin

Estimated Number of Respondents: 40,000.

Estimated Number of Responses per Respondent: 3.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 30,000.

Form 446, NAFTA Questionnaire

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 300.

Form 447, NAFTA Motor Vehicle Averaging Election

Estimated Number of Respondents: 11.

Estimated Number of Responses per Respondent: 1.28.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 14.

Dated: January 27, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–2038 Filed 1–29–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–590, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Form I–590, Registratiod for Classification as Refugee; OMB Control No. 1615–0068.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** onOctober 16, 2009, at 74 FR 53285, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and OMB USCIS Desk Officer via facsimile at 202–395–5806 or via *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0068 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–590. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form I–590 provides a uniform method for applicants to apply for refugee status and contains the information needed for USCIS to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: January 26, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–1948 Filed 1–29–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2010–N010; 60120–1113–0000–D2]

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

DATES: Written comments on this request for a permit must be received by March 3, 2010.

ADDRESSES: Submit written data or comments to the Assistant Regional Director—Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal indentifying 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.

Document Availability

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail (see **ADDRESSES**) or by telephone at 303–236–4256. All comments we receive from individuals become part of the official public record.

Applications

The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Alex Buerkle, University of Wyoming, Laramie, Wyoming, TE–207945. The applicant requests a renewed permit to take *Penstemon penlandii* (Penland beardtongue) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Mark Czaplewski, Central Platte Natural Resources District, Grand Island, Nebraska, TE–100193. The applicant requests a renewed permit to take interior least tern *(Sterna antillarum athalassos)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: William Wyatt Hoback, University of Nebraska at Kearney, Kearney, Nebraska, TE–045150. The applicant requests a renewed permit to take American burying beetle *(Nicrophorus americanus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: James R. Peterson, Kansas Department of Transportation, Topeka, Kansas, TE–046929. The applicant requests a renewed permit to take American burying beetle *(Nicrophorus americanus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Craig Paukert, Kansas State University, Manhattan, Kansas, TE–136943. The applicant requests a renewed permit to take Topeka shiner *(Notropis topeka)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Dave Dean, POWER Engineers, Inc., Hailey, Idaho, TE–237960. The applicant requests a permit to take American burying beetle *(Nicrophorus americanus)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Andrew Burgess, South Dakota Game, Fish, and Parks, Pierre, South Dakota, TE00670A. The applicant requests a permit to take Topeka shiner *(Notropis topeka)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: January 21, 2010.

Hugh Morrison,

Acting Regional Director, Denver, Colorado.

[FR Doc. 2010–2055 Filed 1–29–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2009–N262; 81640–1265–0000–S3]

Farallon National Wildlife Refuge, San Francisco County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the Farallon National Wildlife Refuge (Refuge). In the CCP, we describe how we will manage the Refuge for the next 15 years.

DATES: The CCP and FONSI are available now. The FONSI was signed on September 24, 2009. Implementation of the CCP may begin immediately.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI/EA by any of the following methods. You may request a hard copy or CD–ROM.

Agency Web Site: Download a copy of the document(s) at *http://www.fws.gov/cno/refuges/farallon/.*

E-mail: sfbaynwrc@fws.gov.

Mail: U.S. Fish and Wildlife Service, San Francisco Bay NWRC, Attn: Winnie Chan, 9500 Thornton Avenue, Newark, CA 94560.

In-Person Viewing or Pickup: Call 510–792–0222 to make an appointment during regular business hours at San Francisco Bay National Wildlife Refuge Complex, 1 Marshlands Road, Fremont, CA 94536.

Local Library: The final document is also available at the San Francisco Public Library, 100 Larkin Street, San Francisco, CA 94102, during regular library hours.

FOR FURTHER INFORMATION CONTACT: Winnie Chan, Refuge Planner, (510) 792–0222; *sfbaynwrc@fws.gov.*

SUPPLEMENTARY INFORMATION: With this notice, we finalize the CCP process for Farallon NWR. We announce our decision and the availability of the FONSI for the final CCP for Farallon in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the EA that accompanied the draft CCP.

The Refuge is located off the coast of San Francisco and is within San Francisco County. The 211-acre Refuge consists of four island groupings that were first designated as a Refuge in 1909, "as a preserve and breeding ground for native birds" (Executive Order 1043, Feb. 27, 1909). The Refuge supports the largest seabird breeding colony in the contiguous United States and provides wintering and nesting habitat for migratory seabirds and pinnipeds. In 1974, Congress enacted Public Law 93–550, which designated all the islands except for Southeast Island as the Farallon Wilderness, totaling 141 acres.

We made the Draft CCP and Environmental Assessment (Draft CCP/EA) available for a 112-day public review and comment period, which we announced via several methods, including press releases, updates to constituents, and a **Federal Register** notice (73 FR 78386, December 22, 2008). The Draft CCP/EA identified and evaluated four alternatives for managing the Refuge for the next 15 years. Alternative A was the no-action alternative, which described current Refuge management activities. Alternative B placed greater emphasis on wildlife monitoring and research, habitat restoration, eradication of nonnative species, and off-refuge outreach and education. Alternative C, which was identified as the preferred

alternative, explored on-refuge visitor services opportunities. Alternative D reduced the human activities on the Refuge, including management actions to reduce wildlife disturbance.

We received more than 60 comment letters on the Draft CCP/EA during the review period. Many comment letters expressed concerns about allowing public access on the Refuge. In response to these comments, we decided to select Alternative B as the new preferred alternative. We incorporated comments we received into the CCP when possible, and we responded to the comments in an appendix to the CCP. In the FONSI, we selected Alternative B for implementation and made it the basis for the CCP. The FONSI documents our decision and is based on the information and analysis contained in the EA.

Alternative B represents the most environmentally preferred alternative because it would expand resource management needs and off-refuge public opportunities. Habitat restoration and removal of non-native species would be conducted. Visitor opportunities and environmental education would focus on off-refuge activities through improved coordination and use of new technology.

The selected alternative best meets the Refuges' purposes, vision and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management. Based on the associated environmental assessment, this alternative is not expected to result in significant environmental impacts and therefore does not require an environmental impact statement.

Dated: January 4, 2010.

Ren Lohoefener,

Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2010–2052 Filed 1–29–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1883, M.L. Eaton collected 27 cultural items "from Indian graves in Michigan". The cultural items were accessioned into the museum in 1894. The 27 unassociated funerary objects are 6 copper loop/ball earrings (identified as A04767; catalog number 101–22–03–94); 1 group of blue/green glass beads (A04768; 101–22–03–94); 1 copper alloy bead together with organic material (A14993; 101–22–03–94); 1 group of shell beads (A14994; 101–22–03–94); 1 individual glass bead (A14995; 101–22–03–94); 1 copper alloy brooch (A14998; 101–22–03–94); 10 whitish-colored bead fragments (A15418; 101–22–03–94); 1 group of copper alloy wire/cone earring fragments (A15419; 101–22–03–94); 1 copper alloy pendant (A15420; 101–22–03–94); 1 group of copper alloy fragments together with organic material (A15420; 101–22–03–94); 1 piece of lead wire (A15421; 101–22–03–65); 1 copper alloy brooch sewn onto a piece of cloth (A18208; 101–22–03–94); and 1 piece of leather or bark (A18209; 101–22–03–94).

Based on this historical information, the museum has determined that these objects "taken from Indian graves in Michigan" are, more likely than not, Native American funerary objects. The museum is unable to determine whether or not these objects are associated with human remains, as there are no human remains from these burials in the museum collection. Therefore, the museum considers them to be unassociated funerary objects. Finally, the museum has concluded that it is unable to determine by a reasonable belief that the unassociated funerary objects are culturally affiliated with any present-day Indian tribe. Nevertheless, the museum has determined that, more likely than not, the funerary objects were removed from the aboriginal lands of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan.

Officials of the University of Nebraska State Museum, University of Nebraska-Lincoln have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 27 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the University of Nebraska State Museum, University of Nebraska-Lincoln also have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot be reasonably traced between the unassociated funerary objects and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In February 2009, the University of Nebraska State Museum requested that the Review Committee recommend disposition of "culturally unidentifiable" unassociated funerary objects to the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan, because the funerary objects were found within their aboriginal territory. The Review Committee considered the proposal at its May 23 - 24, 2009 meeting, and recommended disposition of the unassociated funerary objects to the above-listed Indian tribes.

A September 16, 2009, letter from the Designated Federal Officer, writing on behalf of the Secretary of the Interior, transmitted the recommendation for the museum to effect disposition of the funerary objects to the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan, to

the extent allowed by Federal, state, or local law, and contingent on the publication of a Notice of Intent to Repatriate in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Priscilla C. Grew, NAGPRA Coordinator, University of Nebraska State Museum, 307 Morrill Hall, Lincoln, NE 68588–0338, telephone (402) 472–3779, before March 3, 2010. Disposition of the unassociated funerary objects to the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan may proceed after that date if no additional claimants come forward.

The University of Nebraska State Museum, University of Nebraska-Lincoln is responsible for notifying the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan that this notice has been published.

Dated: December 16, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–2018 Filed 1–29–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Madison County Historical Society, Edwardsville, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Madison County Historical Society, Edwardsville, IL. The human remains were removed from the Little Bighorn Battlefield, Bighorn County, MT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Madison County Historical Society professional staff in consultation with representatives of the staff of the Little Bighorn Battlefield National Monument. In addition, the Madison County Historical Society sent a letter with information on the human remains to the Arapahoe Tribe of the Wind River Reservation, Wyoming; Crow Tribe of Montana; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. The Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana responded that they are not culturally affiliated with the human remains described in this notice.

At an unknown date, human remains representing a minimum of one individual were probably removed from Little Bighorn Battlefield, near present-day Crow Agency, Big Horn County, MT. No known individual was identified. No associated funerary objects are present.

In 1929, the Madison County Historical Society purchased the John R. Sutter Collection and an inventory of that collection was conducted at that time. In 1938, the Works Progress Administration (WPA) conducted a comprehensive inventory of all of the museum's holdings. In 1995, the museum did a NAGPRA inventory. In November 2008, the museum staff reviewed the original NAGPRA inventory and other available records. They determined that during the NAGPRA inventory, a scalp had been incorrectly attributed to a 1988 donation. Upon comparison to the 1938 WPA inventory records, the museum reasonably believes this scalp was purchased as part of the John R. Sutter Collection in 1929. The Madison County Historical Society has no information on how John Sutter originally acquired the human remains.

The 1929 Sutter Purchase Inventory lists the human remains as "Part of an Indian scalp." Next to the entry is a note that reads "Custer Massacre." Based on this information, the officials of the Madison County Historical Society reasonably believe the human remains are Native American and were removed from the Little Bighorn Battlefield at an unknown date, but possibly in 1876.

Five tribes were at the site of the Battle of Little Big Horn - the Sioux, Cheyenne, Arapaho, Crow, and Arikara. Descendants of these tribes are members of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Crow Tribe of Montana; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. Since the officials of the Madison County Historical Society cannot determine the specific tribe to which the Native American human remains are culturally affiliated, the museum believes that a possible cultural affiliation could exist for any of the five aforementioned tribes. However, during consultation, the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana responded that no scalps were taken from the Cheyenne in the battle, and consequently there is no cultural affiliation to the Cheyenne. Therefore, absent other information, the museum officials have narrowed the possible affiliation to the Arapahoe Tribe of the Wind River Reservation, Wyoming; Crow Tribe of Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and/or Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Officials of the Madison County Historical Society have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Madison County Historical Society also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Arapahoe Tribe of the Wind River Reservation, Wyoming; Crow Tribe of Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and/or Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Suzanne Dietrich, Director, or the president, Madison County Historical Society, 715 North Main St., Edwardsville, IL 62025, telephone (618) 656–7562, before March

3, 2010. Repatriation of the human remains to the Arapahoe Tribe of the Wind River Reservation, Wyoming; Crow Tribe of Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and/or Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed after that date if no additional claimants come forward.

The Madison County Historical Society is responsible for notifying the Arapahoe Tribe of the Wind River Reservation, Wyoming; Crow Tribe of Montana; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: December 22, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–2027 Filed 1–29–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Western Michigan University, Anthropology Department, Kalamazoo, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of the inventory of human remains and associated funerary objects in the possession of Western Michigan University, Anthropology Department, Kalamazoo, MI. The human remains and associated funerary objects were removed from Mackinac County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Western Michigan University professional staff in consultation with representatives of the Little Traverse Bay Bands of Odawa Indians, Michigan, and the Sault Ste. Marie Tribe of Chippewa Indians of Michigan.

In 1972, human remains representing a minimum of two individuals were removed from the Beyer Site, Mackinac County, MI, as part of the St. Ignace archeological survey under the direction of Dr. James Fitting. The burial was encountered in a single excavation unit and found to be partially disturbed, most likely from agricultural plowing evident across the site area. The burial collection was transferred to Western Michigan University for curation and further analysis. Dr. Robert Sundick, a physical anthropologist in the Anthropology Department at Western Michigan University, studied the human remains. The three associated funerary objects are a small amount of unidentified animal bone, a lot of wood charcoal, and one piece of chipped stone debitage.

The human remains were determined to be of Native American ancestry based on skeletal and dental morphology. The determination of a date from around 1650 C.E was based on stratigraphy, ceramic association, and associated trade goods, in particular local and foreign material gunflints. French missionary and military accounts make it clear that Odawa and Ojibway peoples inhabited both shores of the Straits of Mackinac as early as 1650; their oral histories indicate that they occupied this area for generations before the French arrived. In 1671, the Jesuits established a mission at St. Ignace and noted that many Odawa people lived there. During the time that the Beyer Site was occupied, circa 1650 C.E., the Odawa and Ojibway were the major tribes living in the St. Ignace area, in addition to some Huron groups. In 1649, Huron/Wyandotte refugees fled Iroquois attacks in Ontario and some ultimately settled on the north side of the Straits at present-day St. Ignace. Although the tribal affiliation of the human remains found at St. Ignace is not scientifically certain, the remains are likely culturally affiliated with the Odawa, as they were the tribe most commonly reported in the area during the period in question. Cultural affiliation between the Beyer Site human remains and the Little Traverse Bay Bands of Odawa Indians, Michigan, is based on their historic continuity of occupation in the St. Ignace area. Although the Beyer Site material may relate to the Ojibway or Huron refugees, the NAGPRA coordinator of the Sault Ste. Marie Tribe of Chippewa Indians of Michigan (modern descendants of the Ojibway) has sent Western Michigan University letters of support for the repatriation of the human remains removed from the Beyer Site to the Little Traverse Bay Bands of Odawa Indians, Michigan. Consequently, the preponderance of archeological, historic, and consultation evidence connects the Beyer Site to the Odawa Indians.

Officials of Western Michigan University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of Western Michigan University also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Western Michigan University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Little Traverse Bay Bands of Odawa Indians, Michigan.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387–2753, before March 3, 2010. Repatriation of the human remains and associated funerary objects to the Little Traverse Bay Bands of Odawa Indians, Michigan may proceed after that date if no additional claimants come forward.

Western Michigan University is responsible for notifying the Little Traverse Bay Bands of Odawa Indians, Michigan, and Ste. Marie Tribe of Chippewa Indians of Michigan that this notice has been published.

Dated: January 5, 2010

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–2008 Filed 1–29–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains and associated funerary objects were removed from Lopez Island, San Juan County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Burke Museum professional staff in consultation with representatives of the Lummi Tribe of the Lummi Reservation, Washington; Samish Indian Tribe, Washington; and Swinomish Indians of the Swinomish Reservation, Washington.

In 1968, human remains representing a minimum of 25 individuals were removed from Watmough Bay (45–SJ–280), in the southern part of Lopez Island, San Juan County, WA, by a University of Washington Field School led by David Munsell. The collection was transferred from the University of Washington Anthropology Department to the Burke Museum in the 1970s. The collection was formally accessioned by the museum in 1996 (Accn. #1996–121). No known individuals were identified. The 74 associated funerary objects are 2 stone flakes; 5 unmodified stones; 1 bone bipoint; 1 bone tool; 1 bone tube; 5 charcoal samples; 1 core; 1 dog cranium; 1 hammerstone; 2 harpoon points; 5 modified bones; 2 mudstone concretions (one unmodified and one modified); 4 net weights; 1 point; 1 sediment sample (in three bags); 1 modified shell; 2 unmodified shells; 1 lot unmodified dentalium shells; 2 lots of bone and shell; 6 lots of non-human bone; 1 lot non-human bone, stone, and shell; 1 lot plant material mixed with human bone; 1 lot stone; and 26 level bags containing stone, charcoal, shell, mammal, fish, and bird bones.

The Watmough Bay archeological site is a shell midden site containing cultural objects consistent with prehistoric Native American technologies. Radiocarbon dates (2-sigma calibrated) for this site indicate discontinuous dates of 1060 to 2785 years ago, and with one later date of 285 to 50 years ago. The majority of dates for the site fall in the range of 1250 to 1650 years ago. Burial context in a shell midden in non-articulated burials is consistent with prehistoric Coast Salish burial practices, and indicates that the human remains described above are Native American.

In 1944, human remains representing a minimum of one individual were removed from Lopez Island, San Juan County, WA, by Mr. and Mrs. Ira Wood. In 1944, the human remains were donated to the Burke Museum by Joy Kirkpatrick (Burke Accn. #3349). No known individual was identified. No associated funerary objects are present.

In 1968, human remains representing a minimum of one individual were removed from Mud Bay, Lopez Island, San Juan County, WA. The human remains were removed by a University of Washington field party led by David Munsell. The collection was transferred from the University of Washington Anthropology Department to the Burke Museum in the 1970s, and was formerly accessioned in 1996 (Burke Accn. #1996–121). In 1998, the human remains were found in level bags at the museum. No known individual was identified. No associated funerary objects are present.

In 1968, human remains representing a minimum of one individual were removed from Mackaye Harbor, Lopez Island, San Juan County, WA. The human remains were removed by a University of Washington field party led by David Munsell. The collection was transferred from the University of Washington Anthropology Department to the Burke Museum in the 1970s, and was formerly accessioned in 1996 (Burke Accn. #1996–121). In 2000, the human remains were found in level bags at the museum. No known individual was identified. The one associated funerary object is one bag of mammal and fish bones.

In 1945, human remains representing a minimum of one individual were removed from the Richardson site (45–SJ–185), Lopez Island, San Juan County, WA. The human remains were excavated by Mr. Carroll Burroughs, and transferred to the Burke Museum in 1951 (Burke Accn. #3649). In 2000, the human remains were found in the collection. No known individual was identified. The five associated funerary objects are four mammal bones and one projectile point.

Historical documentation indicates that the southern Lopez Island area is part of the Samish aboriginal territory [Suttles (1951 and 1990), Smith (1941), Roberts (1975), and Tremaine (1975)]. The Treaty of Point Elliot in 1855 stated that the Samish were to be relocated to the Lummi Reservation. After the Treaty of Point Elliot in 1855, many Samish individuals relocated to either the Lummi Reservation or the Swinomish Reservation (Ruby and Brown 1986:179). Many Samish, however, chose to remain in their old village sites. In 1996, the Samish Indian Tribe was re-recognized by the Federal government.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least 29 individuals of Native American ancestry. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 80 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Lummi Tribe of the Lummi Reservation, Washington; Samish Indian Tribe, Washington; and Swinomish Indians of the Swinomish Reservation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195, telephone (206) 685–9364, before March 3, 2010. Repatriation of the human remains and associated funerary objects to the Lummi Tribe of the Lummi Reservation Washington; Samish Indian Tribe, Washington; and Swinomish Indians of the Swinomish Reservation, Washington may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Lummi Tribe of the Lummi Reservation, Washington; Samish Indian Tribe, Washington; and Swinomish Indians of the Swinomish Reservation, Washington that this notice has been published.

Dated: December 23, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–2025 Filed 1–29–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and Arizona State Museum, University of Arizona, Tucson, AZ; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, and in the physical custody of the Arizona State Museum, University of Arizona, Tucson, AZ. The human remains and associated funerary objects were removed from sites within the boundaries of the Gila Bend Indian Reservation, San Xavier Indian Reservation, and Tohono O'odham Indian Reservation in Maricopa, Pima, and Pinal Counties, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals from 155 to 158, and the number of associated funerary objects from 1,545 to 1,596, which were from four collections that were published in a Notice of Inventory Completion in the **Federal Register** (73 FR 12215- 12219, March 6, 2008).

In the **Federal Register**, paragraph number 4, page 12215, is corrected by substituting the following paragraph:

In 1964, human remains representing a minimum of 15 individuals were removed from the Fortified Hill Site (AZ T:13:8[ASM]), Maricopa County, AZ, during legally authorized excavations conducted by the University of Arizona and Arizona State Museum under the direction of William Wasley. The human remains were accessioned into the collections of the Arizona State Museum in 1964. No known individuals were identified. The 784 associated funerary objects are 5 animal bone awls, 20 animal bone ornaments, 2 basketry fragments, 516 beads, 3 bone fragments, 78 lots of botanical material, 12 ceramic bowls, 10 ceramic jars, 1 ceramic scoop, 15 ceramic sherds, 8 ceramic vessels, 3 crystals, 1 mineral object, 2 pendants, 63 projectile points, 1 piece of unidentified raw material, 3 shell bracelets, 8 shell bracelet fragments, 20 shell fragments, 7 shell needle fragments, 1 shell pendant, 4 lots of textile fragments, and 1 wood artifact.

In the **Federal Register**, paragraph number 9, page 12216, is corrected by substituting the following paragraph:

At an unknown date, human remains representing a minimum of one individual were removed by an unknown person from an unknown location, AZ AA:1:-- vicinity, near Chuichui and the northern border of the Tohono O'odham Indian Reservation, Pinal County, AZ, during construction of a fence. The human remains were donated to the Arizona State Museum in January 1954. No known individual was identified. The two associated funerary objects are a ceramic jar in which the cremated human remains had been placed and a ceramic bowl which had been placed over the jar.

In the **Federal Register**, the first full paragraph on page 12217 is corrected by substituting the following paragraph:

In 1973, human remains representing a minimum of three individuals were removed from site AZ AA:5:30(ASM) in Pinal County, AZ, during archeological investigations carried out by the Arizona State Museum under the direction of Mark Raab under contract to the National Park Service. The human remains were accessioned into the collections of the Arizona State Museum in 1973. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register**, paragraph number 18, page 12217, is corrected by substituting the following paragraph:

From 1930 to 1932, human remains representing a minimum of 25 individuals were removed from Martinez Hill Ruin AZ BB:13:3(ASM) on the San Xavier Indian Reservation, Pima County, AZ, during legally authorized excavations conducted by the University of Arizona under the direction of Byron Cummings. The human remains were accessioned into the collections of the Arizona State Museum at an unknown date prior to 1953. No known individuals were identified. The 52 associated funerary objects are 1 awl, 17 beads, 14 ceramic jars, 3 ceramic pitchers, 7 geode fragments, 1 lot of hematite, 1 projectile point, 7 scrapers, and 1 shell necklace.

In the **Federal Register**, paragraph number 14, page 12218, is corrected by substituting the following paragraph:

Officials of the Bureau of Indian Affairs and Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 158 individuals of Native American ancestry. Officials of the Bureau of Indian Affairs and Arizona State Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 1,596 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bureau of Indian Affairs and Arizona State Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626- 2950, before March 3, 2010. Repatriation of the human remains and associated funerary objects to the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: December 22, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–2031 Filed 1–29–10; 8:45 am]

BILLING CODE 4313–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Wyoming, Anthropology Department, Human Remains Repository, Laramie, WY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the University of Wyoming, Anthropology Department, Human Remains Repository, Laramie, WY. The human remains and associated funerary objects were removed from the area of The Dalles in Oregon.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Wyoming, Anthropology Department, Human Remains Repository professional staff in consultation with representatives of the Confederated Tribes of the Warm Springs Reservation of Oregon, and in conjunction with the Confederated Tribes of the Umatilla Indian Reservation, Oregon, and Confederated Tribes and Bands of the Yakama Nation, Washington.

In the 1930s, human remains representing a minimum of 18 individuals were removed from near The Dalles in Oregon, by two private citizens of the area after the burial locations had been disturbed by earth moving activities associated with highway construction. No known individuals have been identified. The 22 associated funerary objects are 1 lot of brass, iron wire and nail fragments; 2 rolled copper/brass tinklers or tube beads; 1 lot of small fragments of window glass; 1 shell bead; 1 bird bone whistle; 3 fragments of worked animal bone; 5 small pieces of wood; 5 pieces of unmodified animal bone; 1 lot of small fragments of lead sheeting; 1 distal phalanx of a large bird (probably an eagle); and 1 lot of small glass trade beads in a variety of colors.

Verdigris staining on some of the human remains indicates contact with copper or brass. Some of the funerary objects are from the historic era and suggest a burial in the mid to late–1800s. It is not known if all the objects described above are associated funerary objects or were inadvertently incorporated into the collection during storage. However, the University of Wyoming, Anthropology Department, Human Remains Repository are treating all objects that were found stored with the Native American human remains as associated funerary objects.

The University of Wyoming, Anthropology Department, Human Remains Repository determined that the human remains are Native American based on the presence of platymeric femoral morphology, toothwear patterns, the presence of shovel shaped incisors, interorbital observations and cranial deformation patterns, as well as the statements regarding recovery context made by one of the original collectors. Tribal evidence presented for cultural affiliation is based on review of records afforded to the tribes, historic documented locations of tribal groups and oral histories of their occupation of the general area, and review of the information from the Human Remains Repository. Based on this information, the cultural affiliation is to the Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Confederated Tribes and Bands of the Yakama Nation, Washington.

Officials of the University of Wyoming, Anthropology Department, Human Remains Repository have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 18 individuals of Native American ancestry. Officials also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 22 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of a death rite or ceremony. Lastly, officials of the University of Wyoming, Anthropology Department, Human Remains Repository have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Confederated Tribes and Bands of the Yakama Nation, Washington.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Rick L. Weathermon, NAGPRA Contact at the University of Wyoming, Department 3431, Anthropology, 1000 E. University Ave., Laramie, WY 82071, telephone (307) 766–5136, before March 3, 2010. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Confederated Tribes and Bands of the Yakama Nation, Washington may proceed after that date if no additional claimants come forward.

The University of Wyoming, Anthropology Department, Human Remains Repository is responsible for notifying the Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Confederated Tribes and Bands of the Yakama Nation, Washington that this notice has been published.

Dated: December 16, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–2023 Filed 1–29–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE. The human remains were removed from Midland County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25

U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by University of Nebraska State Museum, University of Nebraska-Lincoln professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan.

In 1883, human remains representing a minimum of two individuals were removed from an unidentified site in the City of Midland, in Midland County, MI, by M.L Eaton. The human remains have been under the control of the museum since 1894 (Accn. #20MD0/Catalog #1.01; Accn. #20MDD0/Catalog #1.02). No known individuals were identified. No associated funerary objects are present.

Museum catalog records state that the individuals were found in an "Indian grave." Based on this information and an analysis of the human remains by a forensic anthropologist employed by the museum, the museum has concluded that, more likely than not, the two individuals are Native American. Based on green copper stains on the mental eminence of one individual (Catalog #1.02), the museum has dated these remains to the historic period.

The museum has concluded that it is unable to determine by a reasonable belief that the human remains are culturally affiliated with any present-day Indian tribe. Nevertheless, the museum has determined that, more likely than not, the human remains were removed from the aboriginal lands of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan.

Officials of the University of Nebraska State Museum, University of Nebraska-Lincoln, have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the University of Nebraska State Museum, University of Nebraska-Lincoln have also determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In February 2009, the University of Nebraska State Museum requested that the Review Committee recommend disposition of the two culturally unidentifiable human remains to the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan, because the human remains were found within their aboriginal territory. The Review Committee considered the proposal at its May 23 - 24, 2009 meeting, and recommended disposition of the human remains to the above-listed Indian tribes.

A September 16, 2009, letter from the Designated Federal Officer, writing on behalf of the Secretary of the Interior, transmitted the authorization for the museum to effect disposition of the physical remains of the culturally unidentifiable individuals to the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan, contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Priscilla C. Grew, NAGPRA Coordinator, University of Nebraska State Museum, 307 Morrill Hall, Lincoln, NE 68588–0338, telephone (402) 472–3779, before March 3, 2010. Disposition of the human remains to the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan may proceed after that date if no additional claimants come forward.

The University of Nebraska State Museum, University of Nebraska-Lincoln is responsible for notifying the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and Saginaw Chippewa Indian Tribe of Michigan that this notice has been published.

Dated: December 16, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–2016 Filed 1–29–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Colorado Historical Society, Denver, CO; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Colorado Historical Society, Denver, CO. The human remains and associated funerary objects were removed from known and unknown locations in Colorado, Arizona, New Mexico, and Utah.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The

National Park Service is not responsible for the determinations in this notice.

This notice corrects the number of associated funerary objects from 345 to 451, and the minimum number of individuals from 361 to 373, in a Notice of Inventory Completion published in the **Federal Register** (69 FR 68162–68169, November 23, 2004).

In the **Federal Register** of November 23, 2004, at page 68163, paragraph number 2 is corrected by the addition of one associated funerary object, and by substituting the following paragraph:

Prior to 1890, human remains representing a minimum of two individuals were removed by Richard Wetherill, Al Wetherill, and Charlie Mason from unidentified sites in the Mesa Verde area, Montezuma County, CO. The human remains (O.701.1, O.2249.1) were initially sold to Charles McLoyd, who sold the collection to the Colorado Historical Society in 1890. No known individuals were identified. One associated funerary object, O.247.1, a black-on-white ceramic plate, is present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Mesa Verde area dates from approximately 1000 B.C. to A.D. 1300.

In the **Federal Register** of November 23, 2004, at page 68163, paragraph number 6 is corrected by deleting one individual and two associated funerary objects, and by substituting the following paragraph:

Prior to 1892, human remains representing a minimum of 21 individuals were removed by either Arthur Wilmarth or Al and Richard Wetherill from the Mesa Verde area in Montezuma County, CO. The human remains (O.680.1, O.683.1, O.690.1, O.713.1, O.715.1, O.721.1, O.722.1, O.1731.1, O.1733.2, O.1734.1, O.1735.1, O.1736.1, O.1741.1, O.735.1, O.673.1, O.674.1, O.676.1, O.2252.1, O.2267.1, O.6017.1, UHR.171) were accessioned by the Colorado Historical Society in 1892. The 10 associated funerary objects (O.432.1, O.285.1, O.1733.3, O.1733.1, O.1729.1, O.1736.1.b, O.188.2, O.1741.1.b, O.7405.45, O.935.1) are a black-on-white ceramic mug, two black-on-white ceramic bowls, a black-on-white ceramic pitcher, a cotton shirt, a buckskin shirt, a feather blanket, and three single sandals. The original provenience within the Mesa Verde region from which these human remains were removed is unknown. Arthur Wilmarth, Al and Richard Wetherill and D.W. Ayers excavated numerous sites in the Mesa Verde area (including Tower House, Balcony House, Cliff Palace, Mug House, Mummy House, Step House, and Spruce Tree House) at different times. Items recovered from earlier excavations led by the Wetherills were sold to Charles McLoyd, who sold the collection to the Colorado Historical Society in 1890. Later excavations led by Arthur Wilmarth were funded by the Colorado State Legislature and items from the excavations were displayed at the Columbian Exposition at the Chicago World's Fair in 1893. These items were transferred to the Colorado Historical Society later the same year. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of the Mesa Verde area generally dates from approximately 1000 B.C. to A.D. 1300.

In the **Federal Register** of November 23, 2004, at page 68164, paragraph number 2 is corrected by deleting one associated funerary ojbect, and by substituting the following paragraph:

Prior to 1893, human remains representing a minimum of four individuals were removed by either Arthur Wilmarth or Al and Richard Wetherill from Mummy House (5MV524), Montezuma County, CO. It is likely that these individuals were removed during excavations funded by the Colorado State Legislature and led by Wilmarth, along with the Wetherill brothers and D.W. Ayers, to develop an exhibit for the Columbian Exposition at the Chicago World's Fair in 1893, and the individuals were transferred to the Colorado Historical Society that same year (O.714.1, O.1732.1, O.1737.1 [1–2]). The five associated funerary objects (O.4903.1.a-e) are a feather blanket, cotton cloth, a piece of cotton twine, a hide, and one wooden object. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan occupation of the Mesa Verde area generally dates from approximately 1000 B.C. to A.D. 1300.

In the **Federal Register** of November 23, 2004, at page 68164, paragraph number 3 is corrected by adding two individuals, and by substituting the following paragraph:

In the early 1900s, human remains representing a minimum of three individuals were removed by the family of Mrs. Margery Stanley from an unknown location in Arizona. The human remains (OAHP Case Number 211) were transferred by the Denver Office of the Medical Examiner to the Colorado Office of Archaeology and Historic Preservation (OAHP, part of the Colorado Historical Society) in 2003. No known individual was identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan sites in the southwestern United States generally date between approximately 1000 B.C. and A.D. 1300.

In the **Federal Register** of November 23, 2004, at page 68164, paragraph number 8 is corrected by deleting one individual, and by substituting the following paragraph:

In 1928 and 1929, human remains representing a minimum of four individuals were removed by Paul Martin from Little Dog Ruin (site 5MT13403), Montezuma County, CO. The human remains (O.2233.1, O.2234.1, O.2235.1, O.2236.1) were accessioned by the Colorado Historical Society in 1929. No known individual was identified. The three associated funerary objects (O.2159.1, O.2233.B, O.2233.C) are a black-on-white bowl, a basket fragment, and a pine needle brush. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of Little Dog Ruin dates to the Pueblo III period, from approximately A.D. 1140 to 1300.

In the **Federal Register** of November 23, 2004, at page 68165, paragraph number 3 is corrected by deleting one associated funerary object, and by substituting the following paragraph:

Prior to 1930, human remains representing a minimum of three individuals were removed by Jean A. Jeancon and Frank H.H. Roberts from unidentified sites on Stollsteimer Mesa, Archuleta County, CO. The human remains (O.2240.1, O.2241.1, O.2242.1) were accessioned by the Colorado Historical Society in 1930. No known individuals were identified. No associated funerary objects are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Ancient Puebloan occupation of Stollsteimer Mesa generally dates from approximately 1000 B.C. to A.D. 1300.

In the **Federal Register** of November 23, 2004, at page 68165, paragraph number 5 is corrected by deleting one individual and adding one associated funerary object, and by substituting the following paragraph:

In 1935, human remains representing a minimum of six individuals were removed by Harold Westesen from an unknown location on Dove Creek, Dolores County, CO. Mr. Westesen donated the human remains (O.7359.1,

O.7360.1.A, O.7360.2, O.7360.3, O.7360.4.A, O.7360.4.B) to the Montrose Chamber of Commerce, who transferred them to the Colorado Historical Society in 1956. No known individuals were identified. The two associated funerary objects (O.7359.18 & 19), a black-on-white ceramic sherd and a red-on-brown ceramic sherd are present. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan occupation of the Dove Creek area generally dates from approximately 1000 B.C. to A.D. 1300.

In the **Federal Register** of November 23, 2004, at page 68165, paragraph number 7 is corrected by deleting one individual, and by substituting the following paragraph:

Prior to 1944, human remains representing a minimum of 133 individuals were removed by avocational collector James Mellinger from unspecified sites in Colorado, New Mexico, Arizona, or Utah. Mr. Mellinger donated the human remains to the Colorado Historical Society between 1944 and 1951 (CHS accession numbers 78.98.1, 3–10, 13–17, 19, 21–22, 24–35, 38–39, 42–45, 48–51, 53–70, 72–80, 82–96, 98–100; 78.99.2–21, 23–49; JS.2; O.1728.1). No known individuals were identified. The one associated funerary object (O.1728.3) is a woven mat. Mr. Mellinger is known to have collected primarily in the Four Corners region of the southwestern United States. The morphology of the human remains is consistent with physical features common to Ancient Puebloan populations. The cultural item associated with the burials is diagnostic of Ancient Puebloan technological traditions. Ancient Puebloan occupation of the southwestern United States generally dates from approximately 1000 B.C. to A.D. 1300.

In the **Federal Register** of November 23, 2004, at page 68167, paragraph number 5 is corrected by changing the excavator and one site number, and the addition of three associated funerary objects and 15 individuals, by substituting the following paragraph:

In 1993, human remains representing a minimum of 21 individuals were removed by SWCA Environmental Consultants from sites 5MT9168, 5MT9343, 5MT11861, and 5MT7522, Montezuma County, CO. Originally, six individuals (OAHP Case Number 88) were transferred to the Colorado Office of Archaeology and Historic Preservation (OAHP, part of the Colorado Historical Society) in 1993 by James Hummert. The removal was done pursuant to a state permit. No known individuals were identified. No associated funerary objects were present. In 2007, human remains representing 15 additional individuals (OAHP Case Number 237) were transferred by SWCA Environmental Consultants from site 5MT7522. They had been excavated in 1993, but had been overlooked until 2007. No known individuals were identified. Three associated funerary objects were identified and transferred. The three associated funerary objects are two groundstone artifacts and one lot of ceramic sherds making up a Mancos black-on-white bowl. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of site 5MT7522 dates from the Basketmaker III to the Pueblo II period, from approximately A.D. 450 to A.D. 1050.

In the **Federal Register** of November 23, 2004, at page 68167, paragraph number 9 is corrected by deleting two individuals and adding 100 sherds to the number of associated funerary objects, by substituting the following paragraph:

In 1995, human remains representing a minimum of one individual were removed by Fort Lewis College from site 5LP117, La Plata County, CO. The human remains (OAHP Case Number 112) were transferred to the Colorado Office of Archaeology and Historic Preservation (OAHP, part of the Colorado Historical Society) in 1995. The removal was done pursuant to a state permit. No known individual was identified. The 116 associated funerary objects are one lot (115) of ceramic sherds (grayware, black-on-white ware, Fugitive Redware black-on-white and Fugitive Redware) and one tubular bone bead. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of site 5LP117 dates to the Basketmaker II /III, from approximately 1000 B.C. to A.D. 750.

In the **Federal Register** of November 23, 2004, at page 68168, paragraph number 5 is corrected by adding one individual and one lot of ceramic sherds, by substituting the following paragraph:

In 1998, human remains representing a minimum of four individuals were removed by La Plata Archaeological Consultants from site 5LP425, La Plata County, CO. The human remains (OAHP Case Number 139) were transferred to the Colorado Office of Archaeology and Historic Preservation (OAHP, part of the Colorado Historical Society) in 1999. The removal was done pursuant to a state permit. No known individual was identified. Associated funerary objects consist of one lot (190) of ceramic sherds (grayware and whiteware). Cranial morphology is consistent with physical features common to Ancient Puebloan populations. The cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of site 5LP425 dates from approximately 1000 B.C. to A.D. 750.

In the **Federal Register** of November 23, 2004, at page 68168, paragraph number 10 is corrected by deleting one individual and adding two objects, by substituting the following paragraph:

In 1998 and 1999, human remains representing a minimum of four individuals were removed by Complete Archaeological Services from Stix and Leaves Pueblo (site 5MT11555), Montezuma County, CO. The human remains (OAHP Case Number 161) were transferred to the Colorado Office of Archaeology and Historic Preservation (OAHP, part of the Colorado Historical Society) in 2002. Excavations at Stix and Leaves Pueblo were conducted pursuant to a state permit. At the time of removal, site 5MT11555 was located on private land. No known individuals were identified. Associated funerary objects consist of two perforated dog canines, possibly earrings. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of Stix and Leaves Pueblo dates to the Pueblo I-II periods, from approximately A.D. 750 to 1300.

In the **Federal Register** of November 23, 2004, at page 68168, paragraph number 11 is corrected by changing the years of excavation and the name of the site, and deletes two individuals and two associated funerary objects, by substituting the following paragraph:

Between 1998 and 2002, human remains representing a minimum of 26 individuals were removed by staff from Fort Lewis College from the Darkmold Site (5LP4991), La Plata County, CO. Excavations at the Darkmold Site were conducted pursuant to a state permit. At the time of removal, site 5LP4991 was located on private land. The human remains and associated funerary objects (OAHP Case Number 156) were transferred to the Colorado Office of Archaeology and Historic Preservation (OAHP, part of the Colorado Historical Society) between 1999 and 2004. No

known individuals were identified. The 111 associated funerary objects are 84 Olivella beads, 5 Haliotis pendants, 1 chlorite schist pipe, 1 chlorite schist pendant, 2 bone beads, 3 bone awls, 1 biface, 1 bone tool, 1 utilized flake, 2 lithic cores, 1 lithic tool, 2 manos, 1 lithic chopper, 1 shell, 4 shell beads, and 1 projectile point. Cranial morphology is consistent with physical features of Ancient Puebloan populations. Cultural items associated with the burials are diagnostic of Ancient Puebloan technological traditions. Occupation of the Darkmold Site dates to the Basketmaker II period, from 1000 B.C. to A.D. 500.

In the **Federal Register** of November 23, 2004, at page 68169, paragraph number 2 is corrected by adding one individual and one associated funerary object, by substituting the following paragraph:

In 2000, human remains representing a minimum of two individuals were removed by staff from Fort Lewis College from site 5LP5980, La Plata County, CO. The human remains (OAHP Case Number 183) were transferred to the Colorado Office of Archaeology and Historic Preservation (OAHP, part of the Colorado Historical Society) in 2002. Excavations at site 5LP5980 were conducted pursuant to a state permit. At the time of removal, site 5LP5980 was located on private land. No known individual was identified. The four associated funerary objects consist of three small gray ceramic pots and one deer scapula hoe. Cranial morphology is consistent with physical features common to Ancient Puebloan populations. Occupation of site 5LP5980 dates to the Basketmaker II/III period, from approximately 1500 B.C. to A.D. 750.

In the **Federal Register** of November 23, 2004, at page 68169, paragraph number 3 is corrected by adding two individuals and three associated funerary objects, by substituting the following paragraph:

In 2003, human remains representing a minimum of three individuals were removed by Charles Wheeler from site 5LP7347 on the grounds of Fort Lewis College, La Plata County, CO. The human remains (OAHP Case Number 208) were transferred to the Colorado Office of Archaeology and Historic Preservation (OAHP, part of the Colorado Historical Society) in 2003. No known individual was identified. Three associated funerary objects consist of one metate, one metate fragment and one piece of fire-cracked rock. Occupation of 5LP7347 dates to the Basketmaker II/III period, from approximately 1500 B.C. to A.D.750.

Finally, in the **Federal Register** of November 23, 2004, at page 68169, paragraph 8 is corrected by substituting the following paragraph:

Determinations. Under 25 U.S.C. 3003, museum officials have determined that the human remains represent the physical remains of 373 individuals of Native American ancestry. Museum officials determined that the 451 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Museum officials determined that the human remains and associated funerary objects are culturally affiliated with the Indian tribes listed in Summary.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Sheila Goff, NAGPRA Liaison, Colorado Historical Society, 1300 Broadway, Denver, CO 80203, telephone number (303) 866–4531, before March 3, 2010. Repatriation of the human remains and the associated funerary objects to the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The Colorado Historical Society is responsible for notifying the Apache Tribe of Oklahoma; Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, Arizona; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Jicarilla Apache Nation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico; Paiute Indian Tribe of Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tonto Apache Tribe of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: November 25, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–2014 Filed 1–29–10; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000.L10200000.XZ0000]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, March 25 and 26, 2010, in Napa County, California. On March 25, the RAC convenes at 10 a.m. at the Calpine Geothermal Visitor Center, 15550 Central Park Rd., Middletown, for a field tour of public lands managed by the BLM Ukiah Field Office. On March 26, the meeting begins

at 8 a.m. in the Conference Room of the Inn at Southbridge, 1020 Main St., St. Helena. Time for public comment has been reserved for 11 a.m.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 221–1743; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting agenda topics include discussion of BLM image and identity issues, a status report on public land equestrian projects in the Northwest California region, a status report on land use planning, information on activities at the Weaverville Community Forest, a status report on the North Coast Geotourism MapGuide project, access to South Cow Mountain and projects being undertaken as part of the American Reinvestment and Recovery Act. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: January 22, 2010.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2010–2003 Filed 1–29–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Service Concession Contracts; Implementation of Alternative Valuation for Leasehold Surrender Interest in the Signal Mountain Lodge and Leeks Marina Proposed Concession Contract, Grand Teton National Park

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS) is proposing, subject to consideration of public comments, to utilize an alternative formula for the valuation of leasehold surrender interest under its proposed concession contract GRTE003–11 for operation of the Signal Mountain Lodge and Leeks Marina at Grand Teton National Park ("new contract").

DATES: Public comments will be accepted on or before March 3, 2010.

ADDRESSES: Send comments to Ms. Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005 or via e-mail at *jo_pendry@nps.gov* or via fax at 202/371–2090.

FOR FURTHER INFORMATION CONTACT: Jo Pendry, Chief Commercial Services Program, 202–513–7156.

SUPPLEMENTARY INFORMATION: The standard formula for leasehold surrender interest ("LSI") value for applicable improvements provided by a concessioner under a National Park Service concession contract as defined in 36 CFR part 51 ("standard formula") is as follows:

(1) The initial construction cost of the related capital improvement,

(2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;

(3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold sulTender interest concession contract, or, if applicable, the date on which a concessioner ceases to utilize a related capital improvement (*e.g.,* where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

However, Section 405(a)(4) of Public Law 105–391 authorizes the inclusion of alternative LSI value formulas in concession contracts (such as the new contract) estimated to have an LSI value in excess of $10 million. One acceptable alternative methodology identified in Public Law 105 391 calls for the depreciation of LSI value on the basis of Internal Revenue Code requirements as they existed in 1998.

However, NPS is proposing an alternative LSI formula that avoids Internal Revenue Code complexities in LSI valuation. The proposed alternative formula has two components: One for initial LSI value (as of the commencement of the contract) and a second for new LSI value, *e.g.,* that credited during the term of the contract, as described below:

(1) Initial LSI Value. The reduction of the initial LSI value under the new contract on a monthly straight-line depreciation basis, applying a 40-year recovery period regardless of asset class. There is no adjustment of the initial LSI value as a result of the installation (including replacement) of fixtures in the related capital improvements during the term of the proposed contract; and

(2) New LSI Value. The reduction of the leasehold surrender interest value in any new structures or major rehabilitations constructed during the term of the new contract to be based on straight-line depreciation and also apply a 40-year recovery period (on a monthly basis) with no asset class distinctions. The construction cost of new capital improvements will include the costs of installed fixtures. Any installation (or replacement) of fixtures after the initial construction would not alter the established LSI value in the improvements.

In summary, the proposed alternative formula: (1) Depreciates all asset classes composing LSI value over a 40-year recovery period; and (2) Eliminates adjustments of the initial LSI value as a result of the installation (or replacement) of fixtures during the contract term.

The NPS has determined, subject to consideration of public comment and after scrutiny of the financial and other circumstances involved in the proposed contract, that utilization of the proposed alternative formula, as compared to the Standard Formula set forth above, is necessary in order to: (1) Provide a fair return to the Government from the revenues of the proposed contract; and (2) Further competition for the proposed contract by providing a reasonable opportunity for the concessioner to make a profit under the new contract.

The NPS has also taken into consideration the fact that the proposed alternative formula provides a recovery period (40 years) for LSI improvements, which exceeds that which would have been provided by the Internal Revenue Code in 1998. This is because the recovery period of the proposed alternative formula would apply to all LSI improvements, regardless of their Internal Revenue Code asset class and applicable recovery period.

We consider that adoption of the proposed alternative formula will not impact the projected rate of return of the new concessioner under the terms of the new contract (as opposed to inclusion of the standard formula). This is because, in developing the minimum franchise fee to be included in the new contract,

we will assess the projected revenues and expense of the business activities we will authorize and estimate a fair return to the new concessioner taking into account applicable industry norms. As part of this assessment, we will calculate the cost to the new concessioner of acquiring the existing LSI (and any required new LSI improvements). The minimum franchise fee, accordingly, will reflect the financial consequences of the proposed alternative formula such that the estimated reasonable opportunity for profit to the new concessioner would be projected to be the same whether the new contract included the standard formula or the proposed alternative formula. The proposed alternative formula will not lower the projected returns to the new concessioner but will reduce the speculative nature of LSI value under the standard formula.

Please note that, in the interest of time, the NPS may issue a prospectus for the new contract in the near future that incorporates the proposed alternative formula. If consideration of public comments in response to this notice causes us to alter the proposed alternative formula, we will amend the prospectus accordingly before the deadline for submission of proposals.

Before including your address, phone number, e-mail address, or other 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.

Daniel N. Wenk,

Deputy Director, Operations.

[FR Doc. 2010–1864 Filed 1–29–10; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2009–N222; 80230–1265–0000–S3]

Desert National Wildlife Refuge Complex, Clark, Lincoln, and Nye Counties, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the record of decision (ROD) for the final Comprehensive Conservation Plan/Environmental Impact Statement (CCP/EIS) for the Desert National Wildlife Refuge (NWR) Complex. We completed a thorough analysis of the environmental, social, and economic considerations and presented it in our final CCP/EIS, which we released to the public on August 19, 2009. The ROD documents our decision to adopt and implement the final CCP/EIS Alternative C, for Ash Meadows, Desert, and Moapa Valley NWRs and Alternative D for Pahranagat NWR.

DATES: The Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service, signed the ROD on September 24, 2009.

ADDRESSES: You may view or obtain copies of the ROD and Final CCP/EIS by any of the following methods:

Agency Web site: Download a copy of the documents at *http://www.fws.gov/desertcomplex/ccp.htm.*

Electronic mail: fw8plancomments@fws.gov. Include "Desert NWRC ROD" in the subject line of the message.

Mail: Mark Pelz, Chief, Refuge Conservation Planning, Pacific Southwest Region, U.S. Fish and Wildlife Service, 2800 Cottage Way, W–1832, Sacramento, CA 95825–1846.

In person viewing or pickup: Copies of the ROD may be viewed at the Desert National Wildlife Refuge Complex, 4701 North Torrey Pines, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Cynthia Martinez, Refuge Complex Manager, U.S. Fish and Wildlife Service, 4701 North Torrey Pines, Las Vegas, NV 89130, phone (702) 515–5450 or Mark Pelz, Chief, Refuge Planning, 2800 Cottage Way, W–1832, Sacramento, CA, 95825; (916) 414–6504 (phone); mark_pelz@fws.gov (e-mail).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for the Desert NWR Complex (Ash Meadows, Desert, Moapa Valley and Pahranagat NWRs). The CCP will guide us in managing and administering the four wildlife refuges for the next 15 years. We started this process in a **Federal Register** notice (67 FR 54229, August 21, 2002). We released the draft CCP/EIS to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (73 FR 39979) on July 11, 2008. The public review period lasted 60 days. We announced the availability of the final CCP/EIS in the **Federal Register** (74 FR 41928) on August 19, 2009.

Ash Meadows NWR was established in 1984 under the authority of the Endangered Species Act of 1973, as amended. It comprises 23,000 acres of spring-fed wetlands, mesquite bosques, and desert uplands that provide habitat for at least 24 plants and animal species found nowhere else in the world. The Wildlife Refuge is located 90 miles northwest of Las Vegas and 30 miles west of Pahrump.

Desert NWR was originally established in 1936 by Executive Order No. 7373 and subsequently modified by Public Land Order 4079, for the protection, enhancement and maintenance of wildlife resources including bighorn sheep. Located just north of Las Vegas, Nevada, the 1.6 million acre Wildlife Refuge is the largest in the lower 48 States.

The Moapa Valley NWR was established in 1979 under the authority of the Endangered Species Act of 1973, as amended, to secure habitat for the endangered Moapa dace. The Wildlife Refuge is located on 116 acres in northeastern Clark County. Due to its small size, fragile habitats, on-going habitat restoration work, and unsafe structures, the Wildlife Refuge is currently closed to the general public.

The Pahranagat NWR was established in 1963, under the authority of the Migratory Bird Conservation Act, as amended, to protect habitat for migrating birds in the Pahranagat Valley. The 5,382 acre Wildlife Refuge consists of marshes, meadows, lakes, and upland desert habitat. It provides nesting, resting, and feeding areas for waterfowl, shorebirds, wading birds, and song birds including the endangered southwestern willow flycatcher.

In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces the availability of the ROD for the final CCP/EIS for the Desert NWR Complex. We completed a thorough analysis of the environmental, social, and economic considerations in the final CCP/EIS. The ROD documents our selection of Alternative C, for Ash Meadows, Desert, and Moapa Valley NWRs and Alternative D for Pahranagat NWR.

Background

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year

plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

CCP Alternatives and Selected Alternative

Both our draft and final CCP/EIS identified several major issues. To address those issues, we developed and evaluated three alternatives for managing Ash Meadows and Moapa Valley NWRs and four alternatives for managing Desert and Pahranagat NWRs. These alternatives are outlined in the final CCP/EIS Summary document available at *http://www.fws.gov/desertcomplex/ccp.htm.*

Our decision is to adopt Alternative C for Ash Meadows, Desert, and Moapa Valley NWRs and Alternative D for Pahranagat NWR, as described in the ROD. The ROD details the basis of our decision, which we made after considering the following: the impacts identified in Chapter 4 of the draft and final CCP/EIS; the results of public and other agency comments; how well the alternative addresses the relevant issues, concerns, and opportunities identified during the planning process; and other relevant factors, including fulfilling the purposes for which the wildlife refuges were established, contributing to the mission and goals of the NWRS, and statutory and regulatory guidance. We have determined that Alternative C for Ash Meadows, Desert, and Moapa Valley NWRs and Alternative D for Pahranagat NWR include the suite of activities that best achieve the stated purpose and need for action and the goals for each wildlife refuge presented in the final CCP/EIS Chapter 1. These alternatives were selected for implementation because they provide the greatest number of opportunities for the wildlife refuges to make a significant contribution to the conservation of fish, wildlife, and habitat needs in the region, balanced with opportunities for high-quality wildlife-dependant recreation.

Dated: January 26, 2010.

Ren Lohofener,

Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2010–2046 Filed 1–29–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Temporary Concession Contract for Lake Mead National Recreation Area, AZ/NV

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intention to award temporary concession contract for Lake Mead National Recreation Area.

SUMMARY: Pursuant to 36 CFR 51.24, public notice is hereby given that the National Park Service intends to award a temporary concession contract for the conduct of certain visitor services within Lake Mead National Recreation Area, Arizona and Nevada for a term not to exceed 3 years. The visitor services include marina and boat rentals, overnight accommodations, food and beverage, retail, fuel, and short term trailer villages. This action is necessary to avoid interruption of visitor services.

DATES: The term of the temporary concession contract will commence (if awarded) no earlier than February 1, 2010.

SUPPLEMENTARY INFORMATION: The temporary concession contract is intended to be awarded to Forever Resorts, a qualified person (as defined in 36 CFR 51.3). The existing concessioner, Seven Resorts, Inc., has informed the National Park Service (NPS) that it will be concluding its operations at Echo Bay under CC–LAME010–71 within Lake Mead National Recreation Area effective January 31, 2010.

The National Park Service has determined that a temporary concession contract is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services.

This action is issued pursuant to 36 CFR 51.24(a). This is not a request for proposals.

January 5, 2010.

Jonathan B. Jarvis,

Director, National Park Service.

[FR Doc. 2010–1861 Filed 1–29–10; 8:45 am]

BILLING CODE 4312–53–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070B (Review)]

Tissue Paper From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on certain tissue paper products from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on certain tissue paper products from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is March 3, 2010. Comments on the adequacy of responses may be filed with the Commission by April 16, 2010. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* February 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–210, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On March 30, 2005, the Department of Commerce issued an antidumping duty order on imports of certain tissue paper products from China (70 FR 16223). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission defined the *Domestic Like Product* as all tissue paper, co-extensive with Commerce's scope. Certain Commissioners defined the *Domestic Like Product* differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all domestic producers (whether integrated or converters) of tissue paper. Certain Commissioners defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is March 30, 2005.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the *United* States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 3, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is April 16, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse

inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in square meters and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in square meters and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in square meters and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different

national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: January 26, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–1836 Filed 1–29–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 1210–5]

Possible Modifications to the International Harmonized System Nomenclature

AGENCY: United States International Trade Commission.

ACTION: Request for proposals to amend the international Harmonized System.

SUMMARY: The Commission is requesting proposals from interested persons and agencies to amend the international Harmonized Commodity Description and Coding System (Harmonized System) in connection with the Fifth Review Cycle of the World Customs Organization (WCO), with a view to keeping the Harmonized System current with changes in technology and trade patterns. The proposals will be reviewed by the Commission, U.S. Customs and Border Protection, and the U.S. Department of Commerce (Bureau of the Census) for potential submission by the U.S. Government to the WCO in Brussels, Belgium.

DATES: November 1, 2010: Deadline for submissions.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this collection of proposals may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: David Beck, Director, Office of Tariff Affairs and Trade Agreements (202–205–2603, fax 202–205–2616, *david.beck@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Affairs (202–205–1819, *margaret.olaughlin@usitc.gov*). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet Web site *(http://www.usitc.gov).* Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3010) designates the Commission, the U.S. Department of the Treasury, and the U.S. Department of Commerce, subject to the policy direction of the Office of U.S. Trade Representative, as the principal agencies responsible for formulating U.S. Government positions on technical and procedural issues and in representing the U.S. Government in activities of the World Customs Organization (WCO) relating to the International Convention on the Harmonized Commodity Description and Coding System, informally known as the Harmonized System (HS). The U.S. Trade Representative subsequently designated the Commission to lead the U.S. delegation to the HS Review Sub-Committee (RSC), which is responsible for considering amendments to the HS in order to keep the HS current with changes in technology and patterns of international trade (see 53 FR 45646, Nov. 10, 1988).

Through this notice the Commission is seeking proposals to amend the HS in connection with the Fifth Review Cycle of the HS Review Sub-Committee of the WCO. Proposals received will be made a part of the Commission's record keeping system and available for public inspection (with the exception of any confidential business information) through the Commission's record files and through the Commission's electronic docket (EDIS). The Commission has designated this notice as number five in the series and is in the process of adding available notices and submissions from the four prior instances in which it requested such proposals under section 1210 of the 1988 Act.

By way of further background, shortly after implementation of the international Harmonized System (HS) in 1988, the WCO's HS Review Sub-Committee (RSC) began a series of systematic reviews of the HS. Four such reviews have been completed, resulting in WCO Recommendations that countries using the HS update their national tariffs to reflect international amendments. The Fifth Review Cycle has begun, with a view to examining proposals to amend the HS, for inclusion in a WCO Recommendation to be issued in June 2014 and targeted implementation of amendments on January 1, 2017.

The HS was established by an international convention, which, *inter alia,* provides that the HS should be kept up to date in light of changes in technology and patterns of international trade. The HS Nomenclature, which is maintained by the WCO, provides a uniform structural basis for the customs tariffs and statistical nomenclatures of all major trading countries of the world, including the United States.

An up-to-date copy of the Harmonized Tariff Schedule of the United States (HTS), which incorporates the international HS in its overall structure, can be found on the Commission's Web site *(http://www.usitc.gov/tata/hts/bychapter/index.htm).* Hard copies and electronic copies on CD can be found at many of the 1,400 Federal Depository Libraries located throughout the United States and its territories; further information about these locations can be found at *http://www.gpoaccess.gov/fdlp.html* or by contacting GPO Access at the Government Printing Office, 866–512–1800.

The international HS comprises the broadest levels of categories in the HTS, that is, the General Rules for the Interpretation of the Nomenclature, Section and Chapter titles, Section and Chapter legal notes, and heading and subheading texts to the 6-digit level of detail. Additional U.S. Notes, further subdivisions (8-digit subheadings and 10-digit statistical annotations) and statistical notes, as well as the entirety of chapters 98 and 99 and several appendixes, are national legal and statistical detail added for the administration of the U.S. tariff and statistical programs and are not part of the international HS review process that is the subject of this notice.

Request for Proposals: The Commission is seeking proposals for specific modifications to the international Harmonized System (including the rules of interpretation, section and chapter notes, and the texts of 4-digit headings and 6-digit subheadings) that will further the goals set out by the HS Convention. No proposals for changes to U.S. national-level provisions (including Additional U.S. Notes, 8-digit subheadings, 10-digit statistical annotations, and rates of duty) will be considered by the Commission as part of this review. Interested parties, associations, and government agencies should submit specific language for proposed amendments to the HS, together with appropriate descriptive comments and, to the extent available, relevant trade data.

As part of this review, the Commission particularly invites proposals concerning the following matters:

- The deletion of HS headings or subheadings with low trade volume,
- The separate identification of new products important in international trade, and/or
- The simplification of the HS, *e.g.,* by the elimination of classification provisions that are difficult to administer.

As indicated above, no proposals for changes to national-level provisions (including Additional U.S. Notes, U.S. 8-digit subheadings, statistical annotations, and rates of duty) will be considered by the Commission as part of this review. The changes in the international HS that will result from this Fifth Review Cycle of the WCO are not intended to affect tariff rates.

Proposals received will be considered by the interagency U.S. delegation to the WCO's HS Review Sub-Committee. Should the WCO later make recommendations as part the Fifth Review Cycle, the Commission will undertake a review and make recommendations to the President in accordance with section 1205 of the 1988 Act. The Commission will publish a notice and seek the views of interested parties in connection with any such review.

This notice does not solicit proposals for changes to the HS Explanatory Notes, which are maintained by the WCO. However, requests for changes to the Explanatory Notes (not arising from proposed legal amendments to the HS) may be sent by a WCO member administration directly to the WCO's Harmonized System Committee (the parent committee to the RSC) at any time; government and private sector parties interested in such action should contact the Commission (see contacts above) or the following contacts at U.S. Customs and Border Protection: Myles B. Harmon, Director, Commercial & Trade Facilitation Division, 202–325–0060, or Gail Hamill, Chief, Tariff Classification & Marking Branch, 202–325–0010.

Written Submissions: Interested persons and agencies are invited to submit written proposals, which should be addressed to the Secretary and received no later than November 1, 2010. Submissions should be marked with a reference to "Docket No. 1210–5". All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf).* Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. Confidential business information received in the proposals may be made available to Customs and Census during the examination of these proposals. The Commission will not otherwise publish or release any confidential business information received, nor release it to other government agencies or other persons.

By order of the Commission.

Issued: January 26, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–1913 Filed 1–29–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0007]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Release and Receipt of Imported Firearms, Ammunition and Implements of War.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 228, page 62597–62598, on November 30, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Release and Receipt of Imported Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6A (5330.3C). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, Not-for-profit institutions. *Abstract:* The data provided by this information collection request is used by ATF to determine if articles imported meet the statutory and regulatory criteria for importation and if the articles shown on the permit application have been actually imported.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 20,000 respondents, who will complete the form within approximately 24 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 8,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–1869 Filed 1–29–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0087]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: eForm 6 access request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 228, page 62597 on November 30, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 3, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:
—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* eForm 6 Access Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5013.3. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* none. *Abstract:* Respondents must complete the eForm 6 Access Request form in order to receive a user ID and password to obtain access to ATF's eForm 6 System. The information is used by the Government to verify the identity of the end users prior to issuing passwords.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 500 respondents, who will complete the form within approximately 18 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 150 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–1868 Filed 1–29–10; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States, et al. v. Stericycle, Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed

Final Judgment and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States, et al.* v. *Stericycle, Inc., et al.,* Civil Action No. 1:09–cv–02268. On November 30, 2009, the United States and the States of Missouri and Nebraska filed a Complaint alleging that the proposed acquisition by Stericycle, Inc. of MedServe, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Stericycle to divest all MedServe assets used in the provision of infectious waste collection and treatment services for Large Quantity Generator ("LQG") customers in the states of Kansas, Missouri, Nebraska, and Oklahoma. These assets include an autoclave in Newton, Kansas; transfer stations in Kansas City, Kansas; Oklahoma City, Oklahoma; Omaha, Nebraska; and Booneville, Missouri; LQG customer contracts associated with these facilities; and certain tangible and intangible assets. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of a copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

J. Robert Kramer II,

Director of Operations and Civil Enforcement.

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 8700, Washington, DC 20530; STATE OF MISSOURI, Office of the Attorney General, P.O. Box 899, Jefferson City, Missouri 65102; and STATE OF NEBRASKA, Office of the Attorney General, 2115 State Capitol Building, Lincoln, Nebraska 68509–8920, *Plaintiffs,* v. STERICYCLE, INC., 28161 North Keith Drive, Lake Forest, Illinois 60045; ATMW ACQUISITION CORP., 28161 North Keith Drive, Lake Forest, Illinois 60045; MEDSERVE, INC., 6575 West Loop South, Suite 145, Bellaire, Texas, 77401; and AVISTA CAPITAL PARTNERS, L.P., 6575 West Loop South, Suite 145, Bellaire, Texas 77401, *Defendants.*	CASE NO.: 1:09–cv–02268; JUDGE: John D. Bates; DECK TYPE: Antitrust; DATE STAMP: November 30, 2009.

Complaint

Plaintiff, the United States of America ("United States"), acting under the direction of the Attorney General of the United States, and plaintiffs, the State of Missouri and the State of Nebraska, acting under the direction of their respective Attorneys General, bring this civil antitrust action against defendants, Stericycle, Inc. and ATMW Acquisition Corp. and MedServe, Inc. and Avista Capital Partners, L.P. to enjoin Stericycle's proposed acquisition of MedServe and to obtain other equitable relief. Plaintiffs complain and allege as follows:

I. Nature of the Action

1. Pursuant to an agreement and plan of merger dated May 9, 2009, Stericycle intends to acquire all of the voting shares of MedServe in a transaction valued at $185 million. Defendants Stericycle and MedServe currently compete in the provision of infectious waste collection and treatment services for large quantity generator ("LQG") customers. The resulting combination would create a monopoly in the provision of infectious waste collection and treatment services for LQG customers in the states of Missouri, Nebraska, Oklahoma, and Kansas.

2. The United States, the State of Missouri, and the State of Nebraska bring this action to prevent the proposed acquisition because it would substantially lessen competition in the provision of infectious waste collection and treatment services for LQG customers in the states of Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Jurisdiction and Venue

3. The United States brings this action under Section 15 of the Clayton Act, as amended, 15 U.S.C. 4 and 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The State of Missouri and the State of Nebraska bring this action under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The State of Missouri and the State of Nebraska, by and through their respective Attorneys General, or other authorized officials, bring this action in their sovereign capacities and as *parens patriae* on behalf of the citizens, general welfare, and economy of each of their states.

4. Defendants collect and treat infectious waste generated by LQG customers in the flow of interstate commerce. Defendants' activities in collecting and treating infectious waste substantially affect interstate commerce. The Court has jurisdiction over this action and over the parties pursuant to 15 U.S.C. 22, and 28 U.S.C. 1331 and 1337.

5. Defendants transact business, and have consented to venue and personal jurisdiction, in the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(c).

III. The Defendants

6. Defendant Stericycle, Inc. is a Delaware corporation with its principal place of business in Lake Forest, Illinois. Stericycle, a multi-national company, is the largest provider of infectious waste collection and treatment services in the United States, with operations in nearly all of the contiguous 48 states, including 46 treatment facilities and 80 transfer and collection sites. In 2008, Stericycle reported total worldwide sales of approximately $1.1 billion, of which approximately 78 percent were generated in the United States. ATMW Acquisition Corp. is a corporation formed by Stericycle to facilitate its acquisition of MedServe. Stericycle and ATMW hereinafter are collectively referred to as Stericycle.

7. Defendant MedServe is a Delaware corporation with its principal place of business in Bellaire, Texas. MedServe is the second-largest provider of infectious waste collection and treatment services in the United States, with operations in

25 states that include eight treatment facilities and 18 transfer and collection sites. In 2008, MedServe had total revenues of about $35.6 million. Avista Capital Partners, L.P. is an entity formed by MedServe to facilitate the acquisition of MedServe by Stericycle. MedServe and Avista hereinafter are collectively referred to as MedServe.

IV. Trade and Commerce

A. The Relevant Service Market

8. Regulated medical waste is waste generated in the diagnosis, treatment, or immunization of human beings or animals. There are generally three types of regulated medical waste: (1) Infectious waste; (2) pathological waste; and (3) trace chemotherapy waste. Infectious waste is waste that has come into contact with bodily fluids and "sharps" waste, such as syringes and scalpels. Pathological waste is anatomical parts, and trace chemotherapy waste is small amounts of chemical compounds used to treat cancer patients and the equipment used to administer the compounds. Infectious waste comprises approximately 90 percent of the regulated medical waste generated in the United States.

9. State and Federal governments heavily regulate the collection and treatment of regulated medical waste. They prescribe how each type of regulated medical waste must be stored, collected, and treated. Providers of infectious waste collection and treatment services are required to be licensed by various state and Federal regulatory agencies before they can offer such services.

10. Regulated medical waste must be stored separately from other types of waste, and each type of regulated medical waste must be stored separately from the other types in specially marked and sealed containers. Collection and transport of regulated medical waste to treatment facilities must be performed by state-approved companies.

11. State-approved treatment facilities must be used to render regulated medical waste non-infectious. Failure to use state-approved treatment facilities subjects both the generator of the infectious waste and the infectious waste collection and treatment service provider to criminal prosecution, fines, damage actions, and potentially high clean-up costs.

12. Autoclaves are the most prevalent treatment technology for infectious waste. An autoclave uses steam sterilization combined with pressure to render infectious waste non-infectious. Because autoclaving is a reliable and long-proven technology, it has become the preferred choice for treating infectious waste.

13. The infectious waste collection and treatment services industry categorizes customers according to the amount of infectious waste they generate. LQG customers typically are hospitals, large laboratories, and other large medical facilities that generate large amounts of infectious waste. LQG customers often need collection to occur on a daily basis, or at least several times a week, and must receive continuous supplies of containers with sizeable storage capacity from their service providers.

14. LQG customers require their service providers to perform both infectious waste collection and treatment. They also require their providers to meet strict standards to ensure they have sufficient technical capability, knowledge, and financial resources. For example, an LQG customer typically requires an infectious waste collection and treatment service provider to have: (a) An adequate infrastructure to serve the customer's needs, including trucks, storage containers, transfer stations, electronic equipment capable of monitoring and tracking each type of waste, and personnel with a variety of expertise to support the infrastructure; (b) an established reputation for providing reliable and timely collection and treatment for LQG customers; (c) its own infectious waste treatment facility to minimize the number of companies that handle the waste, thereby reducing the possibility that the waste is mishandled; and (d) substantial liability insurance that meets all Federal and state regulatory requirements governing infectious waste.

15. Collection and treatment providers bid for each LQG customer's business separately, and an infectious waste collection and treatment service provider can identify the specific competitive conditions that apply to each LQG customer, including which potential competitors can serve that LQG customer. Infectious waste collection and treatment service providers for LQG customers can and do price discriminate based on an LQG customer's requirements and the number of other competitors available to provide such services.

16. A small but significant increase in the price of infectious waste collection and treatment services for LQG customers would not cause LQG customers to move sufficient volumes of infectious waste to another type of collection and treatment service so as to make such a price increase unprofitable.

17. Accordingly, the provision of infectious waste collection and treatment services for LQG customers is a line of commerce and a relevant price discrimination service market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

18. The geographic market for the provision of infectious waste collection and treatment services for LQG customers is largely defined by transportation costs. Infectious waste collection and treatment companies rely on trucks to transport waste from customer sites to their treatment facilities. Transfer stations enable service providers to transfer their waste into tractor-trailers and more cost-effectively to transport their waste to treatment facilities. Typically, the greater the distance between an LQG customer's operations and the service provider's treatment or transfer facility, the less price competitive the provider is.

19. For LQG customers served by MedServe in Kansas, Missouri, Nebraska, and Oklahoma, the only competitive alternative is Stericycle. In these states, no other infectious waste collection and treatment service provider has a facility located within approximately 300 miles of Stericycle's or MedServe's facilities.

20. In the states of Kansas, Missouri, Nebraska, and Oklahoma, LQG customers would not switch to a more distant infectious waste collection and treatment service provider in sufficient numbers so as to make a small but significant increase in price unprofitable.

21. Accordingly, the states of Kansas, Missouri, Nebraska, and Oklahoma are a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Anticompetitive Effects of the Acquisition

22. In the states of Kansas, Missouri, Nebraska, and Oklahoma, the market for the provision of infectious waste collection and treatment services for LQG customers is highly concentrated. Following the acquisition, Stericycle would become the monopoly provider of infectious waste collection and treatment services for LQG customers in these states.

23. Vigorous price competition between Stericycle and MedServe in the provision of infectious waste collection and treatment services has benefited LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. Stericycle and MedServe are each other's only rivals, directly competing on price and quality

of service in the provision of infectious waste collection and treatment services for LQG customers.

24. Therefore, the proposed acquisition will eliminate the competition between Stericycle and MedServe; reduce the number of providers of infectious waste collection and treatment services for LQG customers from two to one; and enable Stericycle to establish a monopoly in the provision of such services, leading to higher prices and lower quality of service for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act.

D. Entry Into Collection and Treatment of Infectious Waste Generated by LQG Customers

25. Successful entry into the provision of collection and treatment services for infectious waste for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would be difficult, time-consuming, and costly. A prospective provider of infectious waste collection and treatment services for LQG customers faces substantial financial and permitting requirements to build a facility and the infrastructure needed to serve LQG customers. It also must have an established reputation for handling the large amounts of infectious waste produced by LQG customers.

26. A provider of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma must establish a treatment facility that contains a treatment technology, such as an autoclave, with sufficient capacity for treating large volumes of infectious waste. In addition to the capital costs of the treatment unit, local zoning and state permits are required.

27. A provider of infectious waste collection and treatment services for LQG customers also must have an infrastructure of trucks, transfer stations, and electronic equipment capable of collecting, transporting, treating and disposing, and monitoring and tracking the infectious waste.

28. A provider of infectious waste collection and treatment services for LQG customers must develop a reputation and record of reliably collecting and treating large volumes of infectious waste in compliance with state and Federal regulations.

29. A provider of infectious waste collection and treatment services for LQG customers must have the financial capability to indemnify LQG customers for any environmental fines or accidents resulting from the collection, transportation, and treatment of the infectious waste.

30. Obtaining the necessary permits and building an autoclave facility, establishing the infrastructure to serve LQG customers, and developing a reputation and record of service and compliance would require in excess of two years.

31. Entry into the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would not be timely, likely, or sufficient to counter anticompetitive price increases or diminished quality of service that Stericycle could impose after the proposed acquisition.

V. Violation Alleged

32. The United States incorporates the allegations of paragraphs 1 through 31 above.

33. Stericycle's proposed acquisition of all of MedServe's voting securities and infectious waste collection and treatment assets in the states of Kansas, Missouri, Nebraska, and Oklahoma will substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

34. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. Actual and potential competition between Stericycle and MedServe in the provision of infectious waste collection and treatment services for LQG customers in the states of Kansas, Missouri, Nebraska, and Oklahoma will be eliminated;

b. Competition generally in the provision of infectious waste collection and treatment services for LQG customers in the states of Kansas, Missouri, Nebraska, and Oklahoma will be substantially lessened; and

c. Prices for infectious waste collection and treatment services for LQG customers in the states of Kansas, Missouri, Nebraska, and Oklahoma will likely increase, and service likely will be reduced.

VI. Requested Relief

35. Plaintiffs request:

a. That Stericycle's proposed acquisition of MedServe be adjudged and decreed to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. That defendants and all persons acting on their behalf be permanently enjoined and restrained from consummating the proposed acquisition of MedServe by Stericycle, or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to merge the voting securities or assets of the defendants;

c. That plaintiffs receive such other and further relief as the case requires and the Court deems just and proper; and

d. That plaintiffs recover the costs of this action.

Dated: November 30, 2009.

Respectfully submitted,

For Plaintiff United States of America.

/s/ _____

Christine A. Varney,

Assistant Attorney General, D.C. Bar # 435204.

/s/ _____

Maribeth Petrizzi,

Chief, Litigation II Section.

/s/ _____

Molly S. Boast,

Deputy Assistant Attorney General.

/s/ _____

Dorothy B. Fountain,

Assistant Chief, Litigation II Section, D.C. Bar # 439469.

/s/ _____

J. Robert Kramer II,

Director of Operations.

/s/ _____

Frederick H. Parmenter
Stephen A. Harris
Carolyn Davis
Leslie D. Peritz
Jay D. Owen,

Attorneys. U.S. Department of Justice, Antitrust Division, Litigation II Section, Suite 8700, 450 Fifth Street, NW., Washington, DC 20530. Tel: (202) 307–0924, Fax: (202) 307–6583, E-mail: Frederick.Parmenter@usdoj.gov.

For Plaintiff State of Missouri.

Chris Koster,

Attorney General.

By:

/s/ _____

Anne E. Schneider,

Assistant Attorney General, State of Missouri, P.O. Box 899, Jefferson City, MO 65102, Tel: (573) 751–8455, Fax: (573) 751–2041, E-mail: Anne.Schneider@ago.mo.gov.

For Plaintiff State of Nebraska.

Jon Bruning,

Attorney General.

By:

/s/ _____

Leslie C. Levy,

Assistant Attorney General, 2115 State Capitol Building, Lincoln, NE 68509–8920, Tel.: (402) 471–2811, Fax: (402) 471–4725, E-mail: Leslie.Levy@nebraska.gov.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF MISSOURI, and STATE OF NEBRASKA, *Plaintiffs*, v. STERICYCLE, INC., ATMW ACQUISITION CORP., MEDSERVE, INC., and AVISTA CAPITAL PARTNERS, L.P., *Defendants*.	CASE NO.: 1:09-cv-02268, JUDGE: John D. Bates, DECK TYPE: Antitrust, DATE STAMP: November 30, 2009.

Proposed Final Judgement

Whereas, plaintiffs, the United States of America, the State of Missouri, and the State of Nebraska, filed their Complaint on November 30, 2009; plaintiffs and defendants, Stericycle, Inc. and ATMW Acquisition Corp., and MedServe, Inc. and Avista Capital Partners, L.P., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of law or fact;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Divestiture Assets to assure that competition is not substantially lessened;

And Whereas, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to the United States that the divestitures required below can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby *Ordered, Adjudged,* and *Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to which defendants shall divest the Divestiture Assets.

B. "Stericycle" means defendant Stericycle, Inc., a Delaware corporation with its principal place of business in Lake Forest, Illinois, and ATMW Acquisition Corp. (a corporation formed to facilitate the acquisition), and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

C. "MedServe" means defendant MedServe, Inc., a Delaware corporation with its principal place of business in Bellaire, Texas, and Avista Capital Partners, L.P. formed to facilitate the acquisition, and their successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and all of their directors, officers, managers, agents, and employees.

D. "Infectious Waste" means regulated medical waste that is generated in the diagnosis, treatment, or immunization of human beings or animals and that has come into contact with bodily fluids, and "sharps" waste, such as syringes and scalpels.

E. "Treatment" means the sterilization of infectious waste at a state-approved treatment facility, including the use of transfer stations to facilitate the shipment of infectious waste to other treatment sites.

F. "Large Quantity Generator Customer" or "LQG Customer" means any customer that spends $1000 or more per month on infectious waste collection and treatment services.

G. "Divestiture Assets" means:

1. The following facilities:

a. MedServe's Newton, Kansas autoclave facility, located at 1021 South Spencer Avenue, Newton, Kansas 67114;

b. MedServe's Kansas City, Kansas transfer station, located at 200 Funston Road, Suite B, Kansas City, Kansas 66115;

c. MedServe's Oklahoma City, Oklahoma transfer station, located at 8800 SW 8th Street, Oklahoma City, Oklahoma 73128;

d. MedServe's Omaha, Nebraska transfer station, located at 13824–C Plaza, Omaha, Nebraska 68144; and

e. MedServe's Booneville, Missouri transfer station, located at 680 Al Bersted Drive, Booneville, Missouri 65233;

2. All tangible assets at the MedServe facilities listed in Paragraph II(G)(1), including all research and development activities, equipment, and fixed assets, real property (leased or owned), equipment, personal property, inventory (containers), office furniture, materials, supplies, on- or off-site warehouses or storage facilities; all licenses, permits, and authorizations issued by any governmental organization relating to the facilities; all lists of MedServe LQG customers; all MedServe LQG customer contracts, accounts, and credit records; all other records; and all trucks and other vehicles assigned to the facilities as of May 9, 2009; and

3. All intangible assets associated with the MedServe facilities listed in Paragraph II(G)(1), including, but not limited to, all contractual rights, patents, licenses and sublicenses, intellectual property, technical information, computer software (including waste monitoring software and management information systems) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information provided to employees, customers, suppliers, agents or licensees.

III. Applicability

A. This Final Judgment applies to Stericycle and MedServe, as defined above, and all other persons in active concert or participation with either of them, who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is

later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with the State of Missouri and the State of Nebraska. The United States, in its sole discretion, after consultation with the State of Missouri and the State of Nebraska, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the operation and management of the Divestiture Assets to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer to employ or contract with any defendant employee whose primary responsibility is the operation or management of the Divestiture Assets.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of the Divestiture Assets, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

H. Unless the United States, after consultation with the State of Missouri and the State of Nebraska, otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall be made to a single Acquirer and shall include all the Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the State of Missouri and the State of Nebraska, that the divestitures will achieve the purposes of this Final Judgment and that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business providing infectious waste collection and treatment services for LQG customers located in Kansas, Missouri, Nebraska, and Oklahoma. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

1. Shall be made to the Acquirer that, in the United States's sole judgment, after consultation with the State of Missouri and the State of Nebraska, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of providing infectious waste collection and treatment services for LQG customers; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the State of Missouri and the State of Nebraska, that none of the terms of any agreement between the Acquirer and defendants gives defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the sale of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestitures to an Acquirer acceptable to the United States, after consultation with the State of Missouri and the State of Nebraska, at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V, Paragraph D, of this Final Judgment, the trustee may hire at the defendants' cost and expense any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestitures.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential

research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

F. After its appointment, the trustee shall file monthly reports with the United States, the State of Missouri, the State of Nebraska, and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States, the State of Missouri, and the State of Nebraska of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestitures and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt of such notice by the United States, the State of Missouri, and the State of Nebraska, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestitures, the proposed Acquirer and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If the United States, after consultation with the State of Missouri and the State of Nebraska, provides written notice that it does not object, the divestitures may be consummated, subject only to defendants' limited right to object to the sale under paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Notice of Future Acquisitions

A. Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), Stericycle, without providing advance notification to the United States, the State of Missouri, and the State of Nebraska, shall not directly or indirectly acquire, any (1) interest in any business located in Kansas, Missouri, Nebraska, and Oklahoma that is engaged in the collection and treatment of infectious waste; (2) other than in the ordinary course of business, assets located in Kansas, Missouri, Nebraska, and Oklahoma that are used in the collection and treatment of infectious waste; or (3) capital stock or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the collection and treatment of infectious waste in Kansas, Missouri, Nebraska, or Oklahoma, where that person's annual revenues in these states from the collection and treatment of infectious waste were in excess of $500,000.

B. Such notification shall be provided to the United States, the State of Missouri, and the State of Nebraska in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about the collection and treatment of infectious waste. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the United States make a written request for additional information, Stericycle shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

IX. Hold Separate

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no

action that would jeopardize the divestitures ordered by this Court.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestitures have been completed under Section IV or V, defendants shall deliver to the United States, the State of Missouri, and the State of Nebraska an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States, after consultation with the State of Missouri and the State of Nebraska, to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section IX of this Final Judgment. Defendants shall deliver to the United States, the State of Missouri, and the State of Nebraska, an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division ("DOJ"), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

During the term of this Final Judgment, defendants may not reacquire any part of the Divestiture Assets, nor may any defendant participate in any other transaction that would result in a combination, merger, or other joining together of any part of the Divestiture Assets with assets of the divesting company.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, STATE OF MISSOURI, and STATE OF NEBRASKA, *Plaintiffs,* v. STERICYCLE, INC., ATMW ACQUISITION CORP., MEDSERVE, INC., and AVISTA CAPITAL PARTNERS L.P., *Defendants.*	CASE NO.: 1:09-cv-02268, JUDGE: Hon. John D. Bates, DECK TYPE: Antitrust, DATE STAMP.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Stericycle, Inc., through ATMW Acquisition Corp., and defendant MedServe, Inc., through Avista Capital Partners, L.P., entered into a stock purchase agreement dated May 9, 2009, pursuant to which Stericycle would acquire all of the voting shares of MedServe, valued at $185 million. The United States, and the State of Missouri and the State of Nebraska ("States"), filed a civil antitrust Complaint on November 30, 2009, seeking to enjoin the proposed acquisition. The Complaint alleged that the likely effect of the acquisition would be to substantially lessen competition in the provision of infectious waste collection and treatment services for large quantity generator ("LQG") customers in the states of Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in higher prices and reduced service for these customers of infectious waste collection and treatment services.

With the filing of the Complaint in this case, the United States and the States also filed a Hold Separate Stipulation and Order and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, explained more fully below, Stericycle and MedServe are required within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable business, all of the MedServe infectious waste collection and treatment assets in Kansas, Missouri, Nebraska, and Oklahoma. Under the terms of the Hold Separate Stipulation and Order, Stericycle and MedServe are required to take certain steps to ensure that the assets to be divested will be preserved and held separate from their other assets and businesses.

The United States, the States, and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Stericycle is a Delaware corporation with its principal place of business in Lake Forest, Illinois. Stericycle, a multinational company, is the largest provider of infectious waste collection and treatment services in the United States, with operations in nearly all of the contiguous 48 states, including 46 treatment facilities and 80 transfer and collection sites. In 2008, Stericycle reported total worldwide sales of approximately $1.1 billion, of which approximately 78 percent were generated in the United States. ATMW Acquisition Corp. is a corporation formed by Stericycle to facilitate its acquisition of MedServe.

MedServe is a Delaware corporation with its principal place of business in Bellaire, Texas. MedServe is the second-largest provider of infectious waste collection and treatment services in the United States, with operations in 25 states that include eight treatment facilities and 18 transfer and collection sites. In 2008, MedServe had total revenues of about $35 million. Avista Capital Partners, L.P. is an entity formed by MedServe to facilitate the acquisition of MedServe by Stericycle.

The proposed transaction, as agreed to by defendants on May 9, 2009, would substantially lessen competition in the provision of infectious waste collection and treatment services for LQG customers in the states of Missouri, Nebraska, Oklahoma, and Kansas. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States and the States on November 30, 2009.

B. The Competitive Effects of the Transaction

1. Relevant Service Market: Infectious Waste Collection and Treatment Services for LQG Customers

Regulated medical waste is waste generated in the diagnosis, treatment, or immunization of human beings or animals. There are three types of regulated medical waste: (1) Infectious waste; (2) pathological waste; and (3) trace chemotherapy waste. Infectious waste is waste that comes into contact with bodily fluids and "sharps" waste, such as syringes and scalpels. Pathological waste is anatomical parts, and trace chemotherapy waste is small amounts of chemical compounds used to treat cancer patients and the equipment used to administer the compounds. Infectious waste comprises approximately 90 percent of all regulated medical waste generated in the United States.

State and Federal governments heavily regulate the collection and treatment of regulated medical waste. They prescribe how each type of regulated medical waste must be stored, collected, and treated. Providers of infectious waste collection and treatment services are required to be licensed by the various state and Federal regulatory agencies before they can offer such services. Regulated medical waste must be stored separately from other types of waste, and each type of regulated medical waste must be stored separately from the other types in specially marked and sealed containers. Collection and transport to treatment facilities must be performed by a state-approved company.

State-approved treatment facilities must be used to render regulated medical waste non-infectious. Failure to use state-approved treatment facilities subjects both the generator of the infectious waste and the infectious waste collection and treatment service provider to criminal prosecution, fines, damage actions, and potentially high clean-up costs.

Autoclaves are the most prevalent treatment technology for infectious waste. An autoclave uses steam sterilization combined with pressure to render infectious waste non-infectious. Because autoclaving is a reliable and long-proven technology for treating infectious waste, it has become the

preferred choice for treating infectious waste.

The infectious waste collection and treatment services industry categorizes customers according to the amount of infectious waste that they generate. LQG customers typically are hospitals, large laboratories, and other large medical facilities that generate large amounts of infectious waste. LQG customers often need collection to occur on a daily basis, or at least several times a week, and must receive continuous supplies of containers with sizeable storage capacity from their service providers.

LQG customers require that their service providers perform both infectious waste collection and treatment. They also require their providers to meet strict standards to ensure they have sufficient technical capability, knowledge, and financial resources. For example, LQG customers typically require an infectious waste collection and treatment service provider to have: (a) An adequate infrastructure to serve the customer's needs, including trucks, storage containers, transfer stations, electronic equipment capable of monitoring and tracking each type of waste, and personnel with a variety of expertise to support the infrastructure; (b) an established reputation for providing reliable and timely collection and treatment for LQG customers; (c) its own infectious waste treatment facility to minimize the number of companies that handle the waste, thereby reducing the possibility that the waste is mishandled; and (d) substantial liability insurance that meets all Federal and State regulatory requirements governing infectious waste.

Collection and treatment service providers bid for each LQG customer's business separately, and an infectious waste collection and treatment service provider can identify the specific competitive conditions that apply to each LQG customer, including which potential competitors can serve that LQG customer. Infectious waste collection and treatment service providers for LQG customers can and do price discriminate based on an LQG customer's requirements and the number of competitors available to provide such services.

A small but significant increase in the price of infectious waste collection and treatment services for LQG customers would not cause LQG customers to move sufficient volumes of infectious waste to another type of collection and treatment service so as to make such a price increase unprofitable. Accordingly, the provision of infectious waste collection and treatment services for LQG customers is a line of commerce and a relevant price discrimination service market within the meaning of Section 7 of the Clayton Act.

2. Relevant Geographic Market

The geographic market for the provision of infectious waste collection and treatment services for LQG customers is largely defined by transportation costs. Infectious waste collection and treatment service companies rely on trucks to transport waste from customer sites to their treatment facilities. Transfer stations enable service providers to transfer their waste into tractor-trailers and more cost-effectively transport their waste to treatment facilities. Typically, the greater the distance between an LQG customer's operations and the service provider's treatment or transfer facility, the less price competitive the provider is.

For LQG customers served by MedServe in Kansas, Missouri, Nebraska, and Oklahoma, the only competitive alternative is Stericycle. In these states, no other infectious waste collection and treatment service provider has a facility located within approximately 300 miles of Stericycle's or MedServe's facilities.

In the states of Kansas, Missouri, Nebraska, and Oklahoma, LQG customers would not switch to a more distant infectious waste collection and treatment service provider in sufficient numbers so as to make a small but significant increase in price unprofitable. Accordingly, the states of Kansas, Missouri, Nebraska, and Oklahoma are a relevant geographic market within the meaning of Section 7 of the Clayton Act.

3. Anticompetitive Effects of the Acquisition

In the states of Kansas, Missouri, Nebraska, and Oklahoma, the market for the provision of infectious waste collection and treatment services for LQG customers is highly concentrated. Following the acquisition, Stericycle would become the monopoly provider of infectious waste collection and treatment services for LQG customers in these states.

Vigorous price competition between Stericycle and MedServe in the provision of infectious waste collection and treatment services has benefited LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. Stericycle and MedServe are each other's only rival, directly competing on price and quality of service in the provision of infectious waste collection and treatment services for LQG customers.

Therefore, the proposed acquisition will eliminate the competition between Stericycle and MedServe; reduce the number of providers of infectious waste collection and treatment services for LQG customers from two to one; and enable Stericycle to establish a monopoly in the provision of such services, leading to higher prices and lower quality of service for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma, in violation of Section 7 of the Clayton Act.

Successful entry into the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would be difficult, time-consuming, and costly. A prospective provider of infectious waste collection and treatment services for LQG customers faces substantial financial and permitting requirements to build a facility and the infrastructure needed to serve LQG customers. It also must have an established reputation for handling large amounts of infectious waste produced by LQG customers. A provider of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma must establish a treatment facility that contains a treatment technology, such as an autoclave, with sufficient capacity for treating large volumes of infectious waste. In addition to the capital costs of the treatment unit, local zoning and state permits are required.

A provider of infectious waste collection and treatment services for LQG customers also must have an infrastructure of trucks, transfer stations, and electronic equipment capable of collecting, transporting, treating and disposing, and monitoring and tracking the infectious waste. A provider of infectious waste collection and treatment services for LQG customers also must develop a reputation and record of reliably collecting and treating large volumes of infectious waste in compliance with state and Federal regulations. In addition, a provider of infectious waste collection and treatment services for LQG customers must have the financial capability to indemnify LQG customers for any environmental fines or accidents resulting from the collection, transportation, and treatment of the infectious waste.

Obtaining the necessary permits and building an autoclave facility, establishing the infrastructure to serve LQG customers, and developing a reputation and record of service and compliance would require in excess of two years. Entry into the provision of

infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma would not be timely, likely, or sufficient to counter anticompetitive price increases or diminished quality of service that Stericycle could impose after the proposed acquisition.

III. Explanation of the Proposed Final Judgment

The terms of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition alleged in the Complaint. Section IV of the proposed Final Judgment requires defendants, within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the assets currently used by MedServe in the provision of infectious waste collection and treatment services to LQG customers in Kansas, Missouri, Nebraska, and Oklahoma to an acquirer acceptable to the United States, in its sole discretion. The assets to be divested, along with associated tangible and intangible assets, are MedServe's Newton, Kansas autoclave facility and MedServe's transfer stations in Kansas City, Kansas; Oklahoma City, Oklahoma; Omaha, Nebraska; and Booneville, Missouri. These assets comprise all of the assets used by MedServe in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. The divestiture of these assets according to the terms of the proposed Final Judgment will establish a new, independent, and economically viable competitor, thereby preserving competition in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma.

In the event that defendants do not accomplish the divestiture within the time prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court, United States, and the States as appropriate, setting forth his or her efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the trustee, the United States, and the States, will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

Section VII of the proposed Final Judgment requires that defendants provide advance notification of certain future proposed acquisitions not otherwise subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a. That provision requires 30 days' advance written notice to the United States and the States before defendants acquire, directly or indirectly, (1) any interest in any business located in Kansas, Missouri, Nebraska, and Oklahoma that is engaged in the collection and treatment of infectious waste; (2) other than in the ordinary course of business, any assets located in Kansas, Missouri, Nebraska, and Oklahoma that are used in the collection and treatment of infectious waste; or (3) capital stock or voting securities of any person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in the collection and treatment of infectious waste in Kansas, Missouri, Nebraska, and Oklahoma, where that person's annual revenues in these states from the collection and treatment of infectious waste were in excess of $500,000. With this provision, the United States and the States will have knowledge in advance of acquisitions that may impact competition in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, the States, and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest. The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have commenced litigation and sought a judicial order enjoining the acquisition of MedServe by Stericycle. The United States is satisfied that the divestiture and other relief described in the proposed Final Judgment will preserve competition in the provision of infectious waste collection and treatment services for LQG customers in Kansas, Missouri, Nebraska, and Oklahoma. The relief contained in the

proposed Final Judgment would achieve all or substantially all of the relief that the United States would have obtained through litigation, while avoiding the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, in accordance with the statute, the court is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.* 2009–2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").

As the United States Court of Appeals for the District of Columbia has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [T]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a proposed settlement is in the public interest, the court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its

[1] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

[2] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1)(2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review.).

intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16 (e)(2). The language wrote into the statute is what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January __, 2010.

Respectfully submitted,

Frederick H. Parmenter,

U.S. Department of Justice, Antitrust Division, Lit II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, 202–307–0620.

Certificate of Service

I, Frederick H. Parmenter, hereby certify that on January __, 2010, caused a copy of the foregoing *Competitive Impact Statement* to be served upon defendants Stericycle, Inc., ATMW Acquisition Corp., MedServe, Inc., and Avista Capital Partners, L.P., and plaintiffs the State of Missouri and State of Nebraska by mailing the document electronically to the duly authorized legal representatives as follows:

Counsel for Defendants Stericycle, Inc., and ATMW Acquisition Corp.

David A. Clanton, D.C. Bar # 376880, Baker & McKenzie LLP, 815 Connecticut Avenue, NW., Washington, DC 20006–4078, Tel: (202) 452–7014, Fax: (202) 416–6929, E-mail: *david.a.clanton@bakernet.com.*

Counsel for Defendants MedServe, Inc. and Avista Capital Partners, L.P.

Sean F.X. Boland, D.C. Bar # 249318, Howrey LLP, 1299 Pennsylvania Avenue, NW., Washington, DC 20004–2402, Tel: (202) 383–7122, Fax: (202) 318–8649, E-mail: *BolandS@howrey.com.*

Counsel for Plaintiff State of Missouri

Anne E. Schneider, Assistant Attorney General, State of Missouri, P.O. Box 899, Jefferson City, MO 65102, Tel: (573) 751–8455, Fax: (573) 751–2041, E-mail: *Anne.Schneider@ago.mo.govmailto:nicole.gordon@doj.ca.gov.*

Counsel for Plaintiff State of Nebraska

Leslie C. Levy, Assistant Attorney General, Nebraska Attorney General's Office, 2115 State Capital Building, Lincoln, NE 68509, Tel.: (402) 471–2683, Fax: (402) 471–4725, E-mail: *leslie.levy@nebraska.gov.*

Frederick H. Parmenter, United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, Tel.: (202) 307–0620, Fax: (202) 307–6583, E-mail: *frederick.parmenter@usdoj.gov.*

[FR Doc. 2010–1959 Filed 1–29–10; 8:45 am]

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[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Cameron International Corp., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Cameron Int'l Corp., et al.,* No. 09–cv–02165–RMC. On November 17, 2009, the United States filed a Complaint alleging that the proposed acquisition by Cameron International Corporation ("Cameron") of NATCO Group Inc. ("NATCO") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Cameron to divest certain tangible and intangible assets related to the development, production, sale, repair, and service of customized electrostatic desalters used in the downstream oil refining industry, an option to purchase either Cameron's or NATCO's pilot plant, and a license to NATCO's intellectual property and other assets primarily used in or necessary to the development, production, sale, repair, or service of downstream refinery desalters that utilize dual frequency transformers and AC/DC power supplies.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Deputy Director of Operations and Civil Enforcement.

United States of America, Antitrust Division, 450 5th Street, NW., Suite 8700, Washington, DC 20530, Plaintiff, v. *Cameron International Corporation, 1333 West Loop South, Suite 1700, Houston, TX 77027,* and *NATCO Group Inc., 11210 Equity Drive, Suite 100, Houston, TX 77041,* Defendants.

Case No.: Case: 1:09–cv–02165.
Assigned To: Bates, John D.
Assign Date: 11/17/2009.
Description: Antitrust.

Complaint

The United States of America ("United States"), acting under the direction of the Attorney General of the United States, brings this civil antitrust action against defendants Cameron International Corporation ("Cameron") and NATCO Group Inc. ("NATCO") to enjoin Cameron's proposed acquisition

of NATCO, to remedy the harm to competition caused by Cameron's acquisition of certain assets from Chicago Bridge & Iron N.V. ("CB&I"), and to obtain other equitable relief. United States complains and alleges as follows:

I. Nature of the Action

1. On June 1, 2009, Cameron and NATCO entered into an Agreement and Plan of Merger pursuant to which Cameron agreed to acquire NATCO in an all-stock transaction. On November 18, 2009, NATCO intends to hold a meeting for shareholders to vote on whether to approve the transaction.

2. Cameron is a worldwide provider of products, systems, and services used at or near oil or gas wells (upstream) and in refineries (downstream); of valves, auxiliary equipment, and flow measurement systems used in oil and gas drilling, production, transportation, and refining markets; and of compression products, systems, and services to the oil, gas, and process industries. Cameron is the leading U.S. supplier of customized electrostatic desalters used in the oil refining industry (hereafter, "refinery desalters").

3. NATCO is a worldwide provider of equipment, systems, and services used to separate oil, gas, and water within a production stream and to remove contaminants. It also sells equipment used in downstream refinery and petrochemical facilities around the world to improve processing and separation. After Cameron, NATCO is the next most significant U.S. supplier of refinery desalters.

4. In the United States, Cameron's proposed acquisition of NATCO would reduce from three to two the number of companies that bid on refinery desalter projects and would give Cameron virtual monopoly power in the U.S. refinery desalter market. Unless the proposed acquisition is enjoined, competition for the supply of refinery desalters will be substantially reduced in the United States. The proposed acquisition likely would result in higher prices, less favorable terms of sale, and less innovation in the U.S. refinery desalter market.

5. On October 7, 2005, Cameron, through Petreco International, Inc., and CB&I, through Howe Baker Engineers Ltd. ("Howe Baker"), entered into an agreement for the sale of assets of the desalting, dehydration, distillate treating, and gas oil separation equipment business of Howe Baker (hereafter, the "Howe Baker assets") for $8.25 million. Cameron acquired the Howe Baker assets in late 2005.

6. In the United States, Cameron's acquisition of the Howe Baker assets reduced from two to one the number of sellers of refinery desalters in the United States and created a monopoly in the U.S. refinery desalter market. After Cameron acquired the Howe Baker assets, NATCO entered the market for refinery desalters.

7. The United States brings this action to prevent the proposed acquisition of NATCO by Cameron because that acquisition would substantially lessen competition in the development, production, and sale of refinery desalters in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18 and to remedy the loss of competition caused by Cameron's acquisition of the Howe Baker assets because that acquisition substantially lessened competition in the development, production, and sale of refinery desalters in the United States also in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Parties

8. Cameron is incorporated in Delaware and has its principal place of business in Houston, Texas. In 2008, Cameron reported total sales of approximately $5.85 billion, and its sales of refinery desalters in the United States were approximately $10.2 million in 2008.

9. NATCO also is incorporated in Delaware and has its principal place of business in Houston, Texas. NATCO reported 2008 revenues of $657 million, and its sales of refinery desalters in the United States were approximately $10.55 million.

III. Jurisdiction and Venue

10. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 4 and 25, as amended, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

11. Defendants develop, produce, and sell refinery desalters and other products in the flow of interstate commerce. Defendants' activities in the development, production, and sale of these products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

12. Defendants have consented to venue and personal jurisdiction in this judicial district.

IV. Trade and Commerce

A. The Relevant Product Market

13. When oil is produced "upstream" at a production well head, it may be mixed with water, dissolved salt, and other impurities including solids. Upstream, a variety of separation equipment is used to remove such impurities from the oil, and electrostatic separation equipment sometimes is required to meet transportation specifications. If electrostatic separation equipment is required upstream, water typically is specified to be removed to a volume of about one percent. Outside of the United States, producers sometimes also must use electrostatic equipment upstream to remove salt to levels of approximately two to ten pounds per thousand barrels prior to transport, but more often salt is not removed upstream.

14. In the United States, refinery desalters are used to remove salt from crude oil "downstream" at the oil refining stage of production. Prior to introduction of the crude into the refinery desalter, fresh water is mixed into the incoming crude at a volume of about three to ten percent in order to dissolve the salt. Separation of the resulting salt-water mixture from the oil results in removal of salt to levels of no more than two pounds of salt per thousand barrels, and often significantly less, and of water to levels of approximately 0.2 to 0.5 percent by volume. Desalting is a critical initial stage of the refining process.

15. Compared to upstream electrostatic separation equipment, refinery desalters remove water and salt to lower specified levels and must produce cleaner effluent water. Refinery desalters handle higher oil volumes than upstream electrostatic separation equipment because refinery capacity typically is much greater than output at a single production wellhead. Unlike most upstream electrostatic separation equipment, refinery desalters often must remove solids; must handle oil that has been pre-heated to approximately 230 to 300 degrees, which changes the electrical properties of oil; must handle water droplets of a much smaller size and tighter emulsions of oil and water; and must be able to perform effectively with blends of incoming crudes and changing feedstocks. Both upstream electrostatic separation equipment and refinery desalters are used in conjunction with chemicals that enhance their performance, but optimizing chemical usage for refinery desalters is much more difficult than optimizing chemical usage upstream.

16. Refinery desalters consist of a steel pressure vessel with an external transformer and controller as well as a set of "internals" that include electrodes. Inside the desalter pressure vessel, high-voltage electrical charges cause water droplets containing dissolved salt to coalesce into larger and larger droplets. As water droplets reach a critical size, they sink to the bottom of the vessel because water is more dense than oil. Oil is removed from the top of the vessel for further processing in the refinery; waste water is removed from the vessel bottom. Solids that sink to the bottom of the vessel also are removed. When incoming oil has especially high salt content and/or is particularly dense, refineries may have to use two successive refinery desalter units (or, in rare cases, three units) to meet their salt removal requirements.

17. Refineries vary widely in processing capacity. In addition, the characteristics of feedstock oil purchased by refineries vary across refineries and within refineries over time in terms of density, the blends of crudes mixed together, electrical properties, salt content, and the amount of other impurities. Refineries also differ in the levels of salt and entrained water that they specify may remain in the oil. As a result, refinery desalters are custom-designed to be able to remove salt and water from different crude feedstocks to different customer-specified levels, and to handle different customer-specified volumes. Further, some customers demanding refinery desalters require only new internals to replace worn-out internals, to accommodate a capacity expansion, or to handle a new type of crude feedstock, whereas other customers require a complete system including the pressure vessel and internals.

18. Chemicals frequently are added to enhance the separation of oil from the water containing salt in refinery desalters. However, chemicals alone cannot remove salt to desired levels, and the cost of adding chemicals to achieve a given level of salt removal is significantly higher than the cost of purchasing and operating a refinery desalter to achieve a similar level of salt removal.

19. Refinery desalters are sold pursuant to bids, which are based on technical specifications from the customer and include commercial terms. Suppliers of refinery desalters use patented and/or proprietary technology and know-how—including expertise gained through years or decades of trial and error and experience with prior installations—to custom-design refinery desalters that satisfy technical specifications.

20. Refineries (and the firms that they consult) evaluate competing bids based on their compliance with technical specifications and commercial considerations such as price, delivery schedule, and terms of sale. The combined technical and commercial needs of the customer differ for each refinery desalter project.

21. A small but significant post-acquisition increase in refinery desalter prices would not cause customers to substitute upstream electrostatic equipment (or any other type of equipment) or to utilize a chemicals-only solution with sufficient frequency so as to make such price increases unprofitable. Accordingly, refinery desalters are a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

B. The Relevant Geographic Market

22. Those competitors that could constrain Cameron from raising prices on bids for refinery desalters in the United States typically are suppliers with a substantial physical United States presence, including sales, technical, and support personnel and parts distribution.

23. Refineries prefer such suppliers because, during the design, bid, execution, and installation phases of a desalter project, customers interact with suppliers to address design recommendations and changes, track construction progress, and ensure successful installation. Further, customers purchasing refinery desalters can avoid costly delays or downtime in refinery operations by selecting a desalter supplier that is able to respond to requests for service or replacement parts during the operating life of the desalter.

24. A small but significant increase in the price of refinery desalters would not cause a sufficient number of customers in the United States to turn to manufacturers of refinery desalters that do not have a substantial physical presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

C. Competitive Effects

1. The Proposed Acquisition of NATCO by Cameron

25. The proposed acquisition of NATCO by Cameron would substantially lessen competition in the U.S. refinery desalter market. The competition between Cameron and NATCO in the development, production, and sale of refinery desalters has benefitted customers. Cameron and NATCO compete directly on price, terms of sale, and technology. For many oil refineries, NATCO is the preferred alternative to Cameron. The proposed acquisition would eliminate Cameron's most significant competitor in the sale of refinery desalters in the United States.

26. Only three competitors, including Cameron and NATCO, have sold refinery desalters in the United States since 2007. The third company often does not submit bids on U.S. refinery desalter projects and has sold just one refinery desalter in the United States, which occurred in 2008.

27. Most desalter sales are competitive, with the customer seeking alternative bidders. When sales are competitive, each bidder may be aware of its competitors, but it does not know the technical or commercial terms of its competitors' bids prior to submitting its own bid. That uncertainty restrains each bidder's pricing.

28. Cameron's acquisition of NATCO would eliminate many customers' preferred alternative to Cameron and reduce from three to two—or for some bids, reduce from two to one—the number of bidders. Post-acquisition, Cameron would gain the incentive and ability to profitably raise its bid prices significantly above pre-acquisition levels.

29. The response of the remaining refinery desalter manufacturer would not be sufficient to constrain a unilateral exercise of market power by Cameron after the acquisition. Cameron would be aware that many customers strongly prefer it as a supplier, allowing it to raise prices above pre-acquisition levels. The sole remaining bidder would have an incentive to increase its bid price in response. Thus, the acquisition of NATCO by Cameron creates an incentive for Cameron and the remaining bidder to bid a higher amount than each otherwise would if NATCO were still a competitor. Likewise, elimination of NATCO as a competitor would reduce the remaining bidders' incentives to offer quick delivery or other terms of sale attractive to customers and to invest in certain technology improvements, such as NATCO's dual frequency technology.

30. Therefore, the proposed acquisition would substantially lessen competition in the development, production, and sale of refinery desalters in the United States and lead to higher prices, less favorable terms of sale, and less innovation in the refinery

desalter market, in violation of Section 7 of the Clayton Act.

2. The Acquisition of the Howe Baker Assets

31. When Cameron acquired the Howe Baker assets in 2005, Cameron accounted for approximately 75 percent of refinery desalter sales in the United States, and CB&I accounted for approximately 25 percent of such sales, between 2003 and 2005. Through its purchase of the Howe Baker assets, Cameron willfully acquired a monopoly in refinery desalter sales.

32. The acquisition of the Howe Baker assets by Cameron substantially lessened competition in the U.S. refinery desalter market. Competition between Cameron and CB&I in the development, production, and sale of refinery desalters benefitted customers. Cameron and CB&I competed directly on price, terms of sale, and technology. The acquisition eliminated Cameron's then only competitor in the sale of refinery desalters in the United States and gave Cameron the market power to raise prices, offer less favorable terms of sale, and invest less in technology.

33. Through its purchase of the Howe Baker assets, Cameron substantially lessened competition and willfully acquired a monopoly in the development, production, and sale of refinery desalters in the United States, in violation of Section 7 of the Clayton Act.

V. Entry

34. Substantial, timely entry of additional competitors is unlikely and, therefore, will not prevent the harm to competition caused by elimination of NATCO as a bidder.

35. A small number of companies have sold refinery desalters outside the United States, but these companies have no relevant, substantial U.S. presence. Given the small size of the U.S. refinery desalter market, they are unlikely to invest in establishing the personnel and parts distribution presence required to compete effectively in the United States. When NATCO entered the U.S. refinery desalter market in 2007, it had made numerous sales of refinery desalters outside the United States. However, NATCO was uniquely motivated and well-situated to enter the market because of its status as a worldwide leader in electrostatic technology and because it already had a relevant, substantial U.S. presence in other products.

36. Firms attempting to enter into the development, production, and sale of refinery desalters in the United States face a combination of barriers to entry. The technology and expertise involved in developing and producing refinery desalters capable of handling U.S. crude feedstocks is a significant entry barrier. To develop the technical expertise necessary to produce a reliable refinery desalter, it is not sufficient that a producer be successful in meeting customer specifications for separation equipment sold upstream at the production wellhead. For many years, NATCO has been the leading supplier of electrostatic dehydrators sold upstream. Nonetheless, NATCO technical personnel have spent approximately three years improving their understanding of the nuances of refinery desalters to meet the needs of U.S. customers.

37. The crude feedstock purchased by U.S. refineries has grown heavier and more difficult to process over time as lighter crude sources are being depleted. In recent years, several U.S. refinery customers have needed to upgrade existing refining desalters in order to process heavier feedstocks than the refinery desalters were initially designed to handle. Similar upgrades are likely to be a source of refinery desalter demand in the United States in the years ahead. As a result, NATCO has invested in research to develop and improve technologies specifically aimed at processing heavy crude oils. To compete effectively in the U.S. refinery desalter market, a supplier must offer a product capable of processing heavy crude oils, which contributes to the technical and expertise-related barrier to entry facing potential entrants.

38. Establishing a reputation for successful performance and/or gaining customer confidence is a second significant barrier to entry. If a refinery desalter is not performing up to specification in terms of removing salt and water from oil, removing oil from produced water, or removing solids, refinery equipment can be damaged, a customer may run afoul of environmental waste water regulations, and refinery operations may even need to be shut down to carry out repairs. As a result of these costly consequences of poor refinery desalter performance, U.S. oil refineries are reluctant to purchase a refinery desalter from a supplier that does not have either a reputation and track record of successful performance on crude oil comparable to the crude oil the customer expects to treat or a significant new technology that the customer is satisfied will work on its expected crude.

39. Establishing a reputation for successful performance and/or gaining customer confidence in a significant new technology can take years and the expenditure of substantial sunk costs. Since 2007, NATCO has had several employees and consultants partly or fully devoted to developing relationships with U.S. refineries. It has also invested significant funds in developing and improving its latest electrostatic technology and making other improvements related to refinery desalters.

40. Financial scale is an additional barrier to entry. Customers prefer suppliers able to stand financially behind a multi-million dollar order, and to respond quickly and effectively to a request for service or parts and to meet warrantee obligations years after the initial sale. A supplier of refinery desalters therefore must be able to prove that it is financially sound and has sales far in excess of the price of a refinery desalter.

41. For these reasons, entry or expansion by any other firm into the U.S. refinery desalter market would not be timely, likely, and sufficient to defeat the substantial lessening of competition that would result if Cameron acquires NATCO.

VI. Violations Alleged

First Cause of Action

Violation of Section 7 of the Clayton Act: Proposed Acquisition of NATCO

42. The United States incorporates the allegations of paragraphs 1 through 41 above.

43. The proposed acquisition of NATCO by Cameron would substantially lessen competition and tend to create a monopoly in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

44. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. Actual and potential competition between Cameron and NATCO in the development, production, and sale of refinery desalters in the United States will be eliminated;

b. Competition generally in the development, production, and sale of refinery desalters in the United States will be substantially lessened; and

c. Prices for refinery desalters in the United States likely will increase, the terms of sale to customers in the United States likely will be less favorable, and innovation relating to refinery desalters in the United States likely will decline.

Second Cause of Action

Violation of Section 7 of the Clayton Act: Acquisition of Howe Baker Assets

45. The United States incorporates the allegations of paragraphs 1 through 41 above.

46. The acquisition of the Howe Baker assets by Cameron substantially lessened competition and created a monopoly in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

47. The transaction had the following anticompetitive effects, among others:

a. Actual and potential competition between Cameron and CB&I in the development, production, and sale of refinery desalters in the United States was eliminated; and

b. Competition generally in the development, production, and sale of refinery desalters in the United States was substantially lessened, and Cameron acquired a monopoly.

VII. Request for Relief

48. Plaintiff requests that this Court:

a. Adjudge and decree Cameron's proposed acquisition of NATCO to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. Adjudge and decree Cameron's acquisition of the Howe Baker assets to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

c. Preliminarily and permanently enjoin and restrain defendants and all persons acting on their behalf from consummating the proposed acquisition of NATCO by Cameron or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Cameron with the operations of NATCO;

d. Compel Cameron to divest the Howe Baker assets and to take any further actions necessary to restore the U.S. refinery desalter market to the competitive position that existed prior to the acquisition of the Howe Baker assets by Cameron;

e. Award the United States its costs for this action; and

f. award the United States such other and further relief as the Court deems just and proper.

Dated: November 17, 2009.

Respectfully submitted for Plaintiff United States of America.

Christine A. Varney,
Assistant Attorney General.

Molly S. Boast,
Deputy Assistant Attorney General.

Patricia A. Brink,
Deputy Director of Operations.

Maribeth Petrizzi,
Chief, Litigation II Section, DC Bar #435204.

Dorothy B. Fountain,
Assistant Chief, Litigation II Section, DC Bar #439469.

Christine A. Hill,
DC Bar#461048.

James K. Foster.
Warren A. Rosborough,
DC Bar#495063.

Alexander G. Krulic,
DC Bar#490070.

Attorneys, United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street NW., Suite 8700, Washington, DC 20530. (202) 305–2738.

United States of America, Plaintiff, v. *Cameron International Corporation,* and *NATCO Group Inc.,* Defendants.

Case No.: 1:09–cv–02165.
Deck Type: Antitrust.
Date Stamp: November 17, 2009.
Judge: Bates, John D.

Proposed Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on November 17, 2009, the United States and defendants, Cameron International Corporation ("Cameron") and NATCO Group Inc. ("NATCO"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18, as amended.

II. Definitions

As used in this Final Judgment:

A. "Acquirer" or "Acquirers" mean the entity or entities to whom defendants shall divest the Divestiture Assets.

B. "Cameron" means defendant Cameron International Corporation, a Delaware corporation with its headquarters in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and all of their directors, officers, managers, agents, and employees.

C. "NATCO" means defendant NATCO Group Inc., a Delaware corporation with its headquarters in Houston, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and all of their directors, officers, managers, agents, and employees.

D. "Closing Date" means the date upon which each transfer of the Divestiture Assets from the defendants to the Acquirer or Acquirers takes place.

E. "Dual Frequency Products" means downstream refinery desalters that utilize dual frequency transformers and AC/DC power supplies.

F. "Dual Frequency Technology" means any and all intellectual property, data, drawings, ideas, designs, concepts, know-how, procedures, processes, and any other assets primarily used in or necessary to the development, production, sale, repair, or service of Dual Frequency Products owned or controlled by defendants as of the time of the Closing Date.

G. "EDGE Business" means the desalter and dehydrator assets purchased by Petreco International, Inc. from Howe Baker Engineers Ltd., a wholly owned subsidiary of Chicago Bridge & Iron N.V., pursuant to an Asset Purchase Agreement dated October 7, 2005, and any additions or improvements to such assets made through the Closing Date. The EDGE Business includes all inventory specifically related to the EDGE Business as of the Closing Date.

H. "Pilot plant" means equipment used to evaluate and simulate performance of desalter technologies on oil samples.

I. "Refinery desalter" means customized electrostatic desalters used in the downstream oil refining industry.

J. "Divestiture Assets" means:

1. All tangible assets primarily used in the EDGE Business, including, but not limited to, the inventory of spare parts for the EDGE Business; engineering drawings and documents related to all prior sales; all licenses, permits, and authorizations issued by any governmental organization relating to the EDGE Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating principally to the EDGE Business, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the EDGE Business;

2. All intangible assets primarily used in the EDGE Business, including, but not limited to, the EDGE Desalter Installation Database and any accompanying design information; the unregistered trademarks "Edge" and "EDGE"; all data concerning installations or pilot testing; the EDGE Desalter Sizing Software Program and related documentation; any other intellectual property including patents and patent applications, licenses and sublicenses, copyrights, trademarks, trade names, service marks, service names, slogans, domain names, logos, and trade dress related to the EDGE Business; any other technical information, software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, manuals and technical information used principally for the EDGE Business; all repair, performance, financial, and operational records, and all other records relating to the EDGE Business; and all research data concerning historic and current research and development efforts relating to the EDGE Business, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments;

3. At the Acquirer's option, Cameron's pilot plant located in Houston, Texas or NATCO's pilot plant located in Tulsa, Oklahoma;

4. A fully paid-up, non-exclusive, worldwide, non-sublicensable (except to subcontractors of the Acquirer solely for the purpose of having Dual Frequency Products made for the Acquirer) license to the Dual Frequency Technology for the development, production, sale, repair, and service of refinery desalters. This license shall be transferable two years after divestiture of the Divestiture Assets. Defendants shall retain the right and discretion to file and prosecute patent applications and maintain patents in the United States relating to any Dual Frequency Technology developed by defendants prior to the Closing Date, and any such patent shall be considered part of the Dual Frequency Technology and be licensed to the Acquirer. Any improvements or modifications to the Dual Frequency Technology (whether or not patentable) developed by either the defendants or the Acquirer shall be owned solely by such party.

III. Applicability

A. This Final Judgment applies to Cameron and NATCO, as defined above, and all other persons in active concert or participation with either of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser or purchasers to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer or Acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirers or Acquirers and the United States information relating to the personnel involved in the development, production, sale, repair, and service of refinery desalters to enable them to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer or Acquirers to employ any defendant employee whose primary responsibility is development, production, sale, repair, and service of refinery desalters.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities used for the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer or Acquirers that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. At the option of the Acquirer or Acquirers, defendants shall enter into a transition services agreement sufficient to meet all or part of the Acquirers' needs for assistance in matters relating to the utilization of the Divestiture Assets (including, but not limited to, the use of EDGE Desalter Sizing Software Program and the interpretation of test and field data) for a period of at least six (6) months. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance.

H. Defendants shall warrant to the Acquirer or Acquirers that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other

permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer or Acquirers as part of viable, ongoing businesses for the development, production, sale, repair, and service of refinery desalters. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that the Divestiture Assets listed in paragraphs II(J)(1) and (2), above, are divested to the same Acquirer, that all the assets listed in paragraphs II(J)(3) and (4), above, are divested to the same Acquirer, and that in each instance the divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

1. Shall remedy the harm alleged in the Complaint;

2. Shall be made to an Acquirer or Acquirers that, in the United States's sole judgment, have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively for the development, production, sale, repair, and service of refinery desalters; and

3. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer or Acquirers and defendants gives defendants the ability unreasonably to raise the Acquirers' costs, to lower the Acquirers' efficiency, or otherwise to interfere in the ability of the Acquirers to compete effectively.

V. Appointment of Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the sale of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to one or more Acquirers acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, defendants or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify the defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer or Acquirers, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer or Acquirers, and any other potential

Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the Acquirer or Acquirers or any proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate Stipulation and Order

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on the information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division ("United States"), including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1. Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notification of Future Transactions

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), defendants, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or interest, including any financial, security, loan, equity or management interest, in any entity that has sold, at any time in the three years prior to the Closing Date, a downstream refinery desalter that was used in or purchased by a customer in the United States during the term of this Final Judgment.

Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5

through 9 of the instructions must be provided only about refinery desalters. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge.

United States of America, Plaintiff, v. *Cameron International Corporation,* and *NATCO Group Inc.,* Defendants.

Case No.: 09–cv–02165.
Judge: Hon. Rosemary M. Collyer.
Deck Type: Antitrust.
Date Stamp: Filed 1/20/2010.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants Cameron International Corporation ("Cameron") and NATCO Group Inc. ("NATCO") entered into an Agreement and Plan of Merger, dated June 1, 2009, pursuant to which Cameron agreed to acquire NATCO in an all-stock transaction. On November 18, 2009, NATCO shareholders voted to approve the transaction and defendants closed the transaction that same day.

The United States filed a civil antitrust Complaint on November 17, 2009, seeking to enjoin Cameron's acquisition of NATCO. The Complaint alleged that the acquisition likely would substantially lessen competition for customized electrostatic desalters used in the oil refining industry (hereinafter, "refinery desalters") in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. That loss of competition likely would result in higher prices, less favorable terms of sale, and less innovation in the U.S. refinery desalter market.

The United States's Complaint also sought to remedy the harm resulting from Cameron's acquisition of certain refinery desalter assets from Chicago Bridge & Iron N.V. ("CB&I") in 2005. In that acquisition, Cameron, through Petreco International, Inc., acquired the desalting, dehydration, distallate treating, and gas oil separation equipment business of Howe Baker Engineers Ltd., which was a wholly owned subsidiary of CB&I (hereinafter, the "Howe Baker assets"). These assets primarily comprise the intellectual property and data necessary to manufacture desalters and dehydrators utilizing Howe Baker's Enhanced Deep-Grid Electrical ("EDGE") technology, and the trademark to the EDGE name. Cameron's acquisition of the Howe Baker assets reduced from two to one the number of sellers of refinery desalters in the U.S. market at that time. The Complaint alleged that the acquisition substantially lessened competition for refinery desalters in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. That loss of competition gave Cameron the power to raise prices, offer less favorable terms of sale, and invest less in technology in the U.S. refinery desalter market.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of Cameron's proposed acquisition of NATCO and Cameron's consummated acquisition of the Howe Baker assets. Under the proposed Final Judgment, which is explained more fully below, Cameron is required to divest the Howe Baker desalter and dehydrator assets that it purchased from CB&I, as well as any additions to or improvements of those assets. In addition, Cameron is required to divest a fully paid-up, non-exclusive, worldwide, irrevocable license to NATCO's refinery desalter technology that utilizes dual frequency transformers and AC/DC power supplies (hereinafter, "dual frequency technology"). Finally, Cameron is required to divest an option to purchase either Cameron's or NATCO's pilot plant, which is equipment used to evaluate and simulate performance of desalter technologies on oil samples. Under the terms of the Hold Separate, Cameron and NATCO will take certain steps to ensure that the Howe Baker assets and the pilot plants are fully maintained in operable condition and that Cameron and NATCO maintain and adhere to normal repair and maintenance schedules for these assets.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violations

A. The Defendants

Cameron is a worldwide provider of equipment used at or near oil or gas wells and in refineries. It also manufactures valves and flow measurement systems used in oil and gas drilling, production, transportation,

and refining, as well as compression products, systems, and services to the oil and gas industries. In 2008, Cameron reported total sales of approximately $5.85 billion. Cameron is the leading U.S. supplier of refinery desalters. Its sales of refinery desalters in the United States were approximately $10.2 million in 2008.

NATCO is a worldwide provider of equipment used to separate oil, gas, and water within a production stream and to remove contaminants. It also sells equipment used in refinery and petrochemical facilities around the world to improve processing and separation. NATCO reported revenues of $657 million in 2008. After Cameron, NATCO is the next most significant U.S. supplier of refinery desalters. NATCO's sales of refinery desalters in the United States were approximately $10.55 million in 2008.

B. The Competitive Effects of the Acquisitions on the U.S. Market for Refinery Desalters

1. Relevant Markets

Desalting is a critical initial stage of the refining process. Refinery desalters are used to remove salt from crude oil "downstream," which is the oil refining stage of production.

Refinery desalters consist of a steel pressure vessel with an external transformer and controller and a set of "internals," consisting primarily of electrostatic separation grids. In a refinery desalter, fresh water is mixed into the incoming crude oil to dissolve various salts. Inside the pressure vessel, high-voltage electrical charges cause water droplets containing dissolved salts to coalesce into larger droplets. As the water droplets reach a critical size, they sink to the bottom of the vessel. Oil is removed from the top of the vessel for further processing in the refinery and waste water is removed from the vessel bottom. Solids that sink to the bottom of the vessel also are removed.

Similarly, when oil is removed "upstream" from a production wellhead, it may be mixed with water, dissolved salts, and other impurities, including solids. A variety of separation equipment is used at the wellhead to remove these impurities from the oil. At times, electrostatic separation equipment is required to meet the specifications that are necessary for the oil to be transported away from the wellhead, with water typically removed to a volume of about one percent. Often there are no specifications for salt removal at the wellhead.

Compared to the electrostatic separation equipment used at the wellhead, refinery desalters remove water and salt to lower specified levels. For example, in a refinery desalter, separation of the water from the oil results in the removal of salt to levels of no more than two pounds of salt per thousand barrels, and often significantly less, and of water to levels of approximately 0.2 to 0.5 percent by volume. Refinery desalters must also produce cleaner effluent water than electrostatic separation equipment used at the wellhead.

Further, refinery desalters are more complex than electrostatic separation equipment used at the wellhead. For example, upstream electrostatic separation equipment removes water from only one kind of crude oil and the properties of that crude oil are known when purchasing the equipment. In contrast, refinery desalters are designed to be able to remove salt and water from different blends of crude oils. The different crude oils coming into refineries typically vary in density, the blends of crudes mixed together, electrical properties, salt content, and the amount of other impurities. In addition, refinery desalters handle higher oil volumes than electrostatic separation equipment used at the wellhead because refinery capacity is often much greater than output at a single production wellhead. And, unlike most electrostatic separation equipment used at the wellhead, refinery desalters often must: (1) Remove solids; (2) handle oil that has been pre-heated to approximately 230 to 300 degrees, which changes the electrical properties of oil; (3) handle water droplets of a much smaller size and tighter emulsions of oil and water; and (4) be able to perform effectively with changing feedstock crude oil. Finally, although electrostatic separation equipment used at the wellhead and refinery desalters each use chemicals that enhance their performance, optimizing the use of chemicals in a refinery desalter is far more difficult than optimizing their use at the wellhead.

A small but significant increase in the price of refinery desalters would not cause customers to substitute electrostatic separation equipment used at the wellhead, or any other type of equipment or chemicals, with sufficient frequency so as to make such a price increase unprofitable. Accordingly, the United States alleged that refinery desalters are a relevant product market within the meaning of Section 7 of the Clayton Act.

Refinery desalters are sold pursuant to bids, which are based on technical specifications from the customer and include commercial terms. Suppliers of refinery desalters use patented or proprietary technology and know-how—including expertise gained through years of trial and error and experience with prior installations—to custom-design refinery desalters that satisfy customer specifications. Refineries evaluate the competing bids based on compliance with technical specifications and commercial considerations such as price, delivery schedule, and terms of sale. The exact technical and commercial needs of the customer differ for each refinery desalter project.

Those competitors that could constrain Cameron from raising prices on bids for refinery desalters in the United States typically are suppliers with a substantial U.S. presence, including sales, technical, and support personnel and parts distribution within the United States. Refineries prefer such suppliers because, during the design, bid, execution, and installation phases of a project, customers interact with suppliers to address design recommendations and changes, track construction progress, and ensure successful installation. Further, customers purchasing refinery desalters can avoid costly delays or downtime in refinery operations by selecting a desalter supplier that is able to respond quickly and effectively to requests for service or replacement parts during the operating life of the desalter.

A small but significant increase in the price of refinery desalters in the United States would not cause a sufficient number of customers in the United States to turn to manufacturers of refinery desalters that do not have a substantial physical presence in the United States so as to make such a price increase unprofitable. Accordingly, the United States alleged that the United States is a relevant geographic market with the meaning of Section 7 of the Clayton Act.

2. Anticompetitive Effects

The proposed acquisition of NATCO by Cameron would substantially lessen competition in the U.S. refinery desalter market. Most new desalter sales in the United States result from competitive bids and customers typically seek alternative bidders. When the bidding is competitive, each bidder may be aware of its competitors, but does not know the technical or commercial terms of its competitors' bids prior to submitting its own bid. That uncertainty likely restrains each bidder's pricing.

Currently only three competitors—including Cameron and NATCO—have sold refinery desalters in the United States since 2007. The third competitor

often does not submit bids on U.S. refinery desalter projects and has sold only one refinery desalter in the United States. Cameron's acquisition of NATCO therefore would reduce the current number of bidders on U.S. refinery desalter projects from three to two or, when the third competitor does not or cannot bid, from two to one. It would also eliminate many customers' preferred alternative to Cameron. As a result, after acquiring NATCO, Cameron would gain the incentive and ability to profitably raise its bid prices significantly above the level they would be absent the acquisition. Post-acquisition, Cameron would be aware that many customers strongly prefer it as a supplier to the sole remaining competitor. The remaining refinery desalter manufacturer cannot fully constrain a unilateral exercise of market power by Cameron, and it would have the incentive to increase its bid price in response to such an exercise of market power. The elimination of NATCO as a competitor would also reduce the remaining bidder's incentive to offer quick delivery or other terms of sale attractive to customers and to invest in certain technology improvements, such as NATCO's innovative dual frequency technology.

Entry or expansion by any other firm into the U.S. refinery desalter market likely would not prevent the substantial lessening of competition that would likely result if Cameron acquired NATCO. Firms attempting to enter into the development, production, and sale of refinery desalters in the United States face several barriers to entry. First, the technology and expertise involved in developing and producing refinery desalters capable of handling U.S. crude feedstocks is difficult to obtain. Second, establishing a reputation for successful performance and gaining customer confidence is difficult to do and can take years and the expenditure of substantial sunk costs. And, the small size of the U.S. refinery desalter market may deter firms from investing in establishing the personnel and parts distribution presence required to compete effectively in the United States. Finally, suppliers of refinery desalters must demonstrate that they are financially sound and will be able to respond quickly and effectively to a request for service or parts and to meet warranty obligations years after the sale.

Therefore, the United States alleged that Cameron's acquisition of NATCO would substantially lessen competition in the development, production, and sale of refinery desalters in the United States. The acquisition would likely lead to higher prices, less favorable terms of sale, and less innovation in the U.S. refinery desalter market, in violation of Section 7 of the Clayton Act.

Moreover, Cameron's acquisition of the Howe Baker assets did substantially lessen competition in the U.S. market for refinery desalters. Competition between Cameron and CB&I benefitted customers because Cameron and CB&I competed directly based on price, terms of sale, and technology. In 2005, when Cameron acquired the Howe Baker assets, Cameron and CB&I accounted for approximately 75 and 25 percent, respectively, of refinery desalter sales in the United States. Therefore, Cameron's acquisition of the Howe Baker assets resulted in a reduction in the number of competitors selling refinery desalters in the United States from two to one. As a result, Cameron gained the power to raise prices, offer less favorable terms of sale, and invest less in technology.

III. Explanation of the Proposed Final Judgment

The divestitures required by the proposed Final Judgment will eliminate the anticompetitive effects that would otherwise likely result from Cameron's acquisition of NATCO. The divestitures will also eliminate the anticompetitive effects that resulted from Cameron's acquisition of the Howe Baker assets. These divestitures make available assets that will facilitate the creation of at least one additional independent, economically viable competitor to Cameron in the U.S. refinery desalter market.

The proposed Final Judgment requires Cameron and NATCO to divest the following assets, among other things, within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later: (1) The Howe Baker desalter and dehydrator assets, including all tangible and intangible property associated with them; (2) a license to NATCO's dual frequency technology; and (3) an option to purchase either Cameron's or NATCO's pilot plant. The proposed Final Judgment also requires Cameron and NATCO to provide the Acquirer or Acquirers of the divestiture assets information relating to personnel involved in the development, production, sale, repair, or service of refinery desalters to enable them to make offers of employment, and prevents Cameron and NATCO from interfering with any negotiations by the Acquirer or Acquirers to employ any employee whose primary responsibility is the development, production, sale, repair, or service of refinery desalters. In addition, at the option of the Acquirer or Acquirers, the proposed Final Judgment requires Cameron and NATCO to provide a transition services agreement. This agreement must be sufficient to meet all or part of the Acquirers' needs for assistance in matters relating to the utilization of the divestiture assets for a period of at least six months.

The assets required to be divested must be divested in such a way as to satisfy the United States in its sole discretion that these assets can and will be operated by the Acquirer or Acquirers as viable, ongoing businesses that can compete effectively in the development, production, sale, repair, and service of refinery desalters in the United States. These assets may be divested to one or more Acquirers, provided that the assets listed in paragraphs II(J)(1) and (2) of the proposed Final Judgment (the Howe Baker assets) are divested to the same purchaser and that all of the assets listed in paragraphs II(J)(3) and (4) of the proposed Final Judgment (the dual frequency license and pilot plant option) are divested to the same purchaser. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price and terms obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects that likely would result if Cameron acquired NATCO because the Acquirer will have a license to NATCO's innovative dual

frequency technology as well as an option to purchase a pilot plant to test crude oils. Those provisions also will eliminate the anticompetitive effects that resulted from Cameron's acquisition of the Howe Baker assets because the Acquirer will obtain the desalter and dehydrator assets that Cameron purchased from CB&I in 2005.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions preventing Cameron's acquisition of NATCO and an order compelling Cameron to divest the Howe Baker assets. The United States is satisfied, however, that the divestiture of the assets described in the proposed Final Judgment will preserve competition for the development, production, and sale of refinery desalters in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination in accordance with the statute, the court is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").

As the United States Court of Appeals for the District of Columbia has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a proposed settlement is in the public interest, the court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). Therefore, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating: "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

[1] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

[2] The 2004 amendments substituted the word "shall" for "may" when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January 20, 2010.

Respectfully submitted.

Christine A. Hill,

DC Bar #461048, U.S. Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530. (202) 305–2738.

Certificate of Service

I, Christine A. Hill, hereby certify that on January 20, 2010, I caused a copy of the foregoing Competitive Impact Statement to be served upon defendants Cameron International Corporation and NATCO Group Inc. by mailing the documents electronically to the duly authorized legal representatives of defendants as follows:

Counsel for Defendant Cameron International Corporation

Sean F.X. Boland, Esquire, Paul Cuomo, Esquire, Howrey LLP, 1299 Pennsylvania Avenue, NW., Washington, DC 20004. *bolands@howrey.com. cuomop@howrey.com.*

Counsel for Defendant NATCO Group Inc.

Bradley C. Weber, Esquire, Locke Lord Bissell & Liddell LLP, 2200 Ross Avenue, Suite 2200, Dallas, Texas 75201. *bweber@lockelord.com.*

Christine A. Hill, Esquire,

DC Bar #461048, United States Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530. (202) 305–2738.

[FR Doc. 2010–1961 Filed 1–29–10; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

January 26, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for

review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including, among other things, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/*e-mail: DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor—Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/*Fax:* 202–395–5806 (these are not toll-free numbers), *E-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB 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 submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title of Collection: Personal Protective Equipment (PPE) for General Industry (29 CFR part 1910, subpart I).

OMB Control Number: 1218–0205.

Affected Public: Business or other for-profits.

Estimated Number of Respondents: 3,500,000

Estimated Total Annual Burden Hours: 3,552,171.

Estimated Total Annual Costs Burden (excludes hourly wage costs): $0.

Description: 29 CFR part 1910, subpart I of the Departments regulations requires that employers perform hazard assessments of the workplace to determine if personal protective equipment (PPE) is necessary and to communicate PPE selection decisions to affected workers. Subpart I also requires that employers train affected workers in the use of PPE and provide training under certain circumstances. Employers must document that the hazard assessment and training/retraining have been conducted. For additional information, see the related 60-day preclearance notice published in the **Federal Register** at Vol. 74 FR 61175 on November 23, 2009. PRA documentation prepared in association with the preclearance notice is available on *http://www.regulations.gov* under docket number OSHA–2009–0028.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–1963 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,375]

AK Steel Corporation, Mansfield Works Division, Mansfield, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated December 10, 2009, the United Steel Workers, Local 169, requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on November 2, 2009. The Notice of Determination will soon be published in the **Federal Register.**

The initial investigation resulted in a negative determination based on the findings that imports of steel coils did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding customers of the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 8th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–1892 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,453]

ThyssenKrupp Crankshaft Company, LLC, Fostoria Machining, a Subsidiary of ThyssenKrupp AG Including On-Site Leased Workers From Kelly Services, Manpower Temporary Agency, Express Personnel and Trillium Fostoria, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 23, 2009, applicable to workers of ThyssenKrupp Crankshaft Company, LLC, a subsidiary of ThyssenKrupp AG, Fastoria, Ohio. The notice was published in the **Federal Resister** on February 10, 2009 (74 FR 6653).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of crankshafts.

New information shows that workers leased from Kelly Services, Manpower Temporary Agency, Express Personnel and Trillium were employed on-site by the Fostoria, Ohio location of ThyssenKrupp Crankshaft Company, LLC. The Department has determined that these workers were sufficiently

under the control of and in support of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Kelly Services, Manpower Temporary Agency, Express Personnel and Trillium working on-site at the Fostoria, Ohio location of ThyssenKrupp Crankshaft Company, LLC.

The amended notice applicable to TA–W–64,453 is hereby issued as follows:

All workers of ThyssenKrupp Crankshaft Company, Fostoria Machining, a subsidiary of ThyssenKrupp AG, including on-site leased workers from Kelly Services, Manpower Temporary Agency, Express Personnel and Trillium, Fostoria, Ohio, who became totally or partially separated from employment on or after November 5, 2007 through January 23, 2011 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 13th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–1886 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,565; TA–W–70,565A]

Hewlett Packard Company Business Critical Systems, Mission Critical Business Software Division, OpenVMS Operating System Development Group, Including Employees Working Off Site in New Hampshire, Florida, New Jersey and Colorado, Marlborough, MA; Hewlett Packard Company Business Critical Systems, Mission Critical Business Software Division, OpenVMS Operating System Development Group, Including an Employee Operating Out of the State of Kansas, Marlborough, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 27, 2009, applicable to workers of Hewlett Packard Company, Business Critical Systems, Mission Critical Business Software Division, OpenVMS Operating System Development Group, including employees working off site in New Hampshire, Florida, New Jersey and Colorado, Marlborough, Massachusetts. The notice was published in the **Federal Register** November 5, 2009 (74 FR 57341).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of Hewlett Packard OpenVMS Operating System and related applications.

New information shows that a worker separation has occurred involving an employee in support of the Marlborough, Massachusetts location of Hewlett Packard Company, Business Critical Business Software Division, OpenVMS Operating System Development Group, operating out of the state of Kansas. Mr. Rick Desko provided engineering functions supporting the Marlborough, Massachusetts production facility of the subject firm.

Based on these findings, the Department is amending this certification to include an employee in support of the Marlborough, Massachusetts facility operating out of the state of Kansas.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production of Hewlett Packard OpenVMS Operating System and related applications to India.

The amended notice applicable to TA–W–70,565 is hereby issued as follows:

All workers of Hewlett Packard Company, Business Critical Systems, Mission Critical Business Software Division, OpenVMS Operating System Development Group, Marlborough, Massachusetts including employees working off-site in New Hampshire, Florida, New Jersey and Colorado (TA–W–70,565), and also including an employee in support of Hewlett Packard Company, Business Critical Systems, Mission Critical Business Software Division, OpenVMS Operating System Development Group, Marlborough, Massachusetts working off-site in the state of Kansas (TA–W–70,565A), who became totally or partially separated from employment on or after May 21, 2008, through August 27, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 14th day of January 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–1887 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,226; TA–W–71,226A]

Tempel Steel Company Including On-Site Leased Workers From Aerotek Staffing Chicago, IL; Tempel Steel Company Including On-Site Leased Workers From Aerotek Staffing Libertyville, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 23, 2009, applicable to workers of Tempel Steel Company, including on-site leased workers from Aerotek Staffing, Chicago, Illinois. The notice was published in the **Federal Register** on December 11, 2009 (74 FR 65799).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of lamination sheet steel for electric motors and transformers.

New findings show that worker separations occurred at the Libertyville, Illinois location of the subject firm during the relevant time period.

Accordingly, the Department is amending the certification to include workers of the Libertyville, Illinois location of Temple Steel Company and on-site leased workers from Aerotek Staffing.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in production of lamination sheet steel for electric motors and transformers to Mexico.

The amended notice applicable to TA–W–71,226 and TA–W–71,226A are hereby issued as follows:

All workers of Tempel Steel Company, including on-site leased workers from Aerotek Staffing, Chicago, Illinois (TA–W–71,226) and Tempel Steel Company, including on-site leased workers from Aerotek Staffing, Libertyville, Illinois (TA–W–71,226A), who became totally or partially separated from employment on or after June

15, 2008, through October 7, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 13th day of January 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–1890 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,581]

Global Engine Manufacturing Alliance a Subsidiary of the Chrysler Group LLC Including On-Site Leased Workers From Premier Services and Intra Technical Services Dundee, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 22, 2009, applicable to workers of Global Engine Manufacturing Alliance, a subsidiary of The Chrysler Group LLC, including on-site leased workers from Premier, Dundee, Michigan. The notice was published in the **Federal Register** on November 17, 2009 (74 FR 59254).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of 4-cylinder engines for automobiles.

The company reports that on-site leased workers from Intra Technical Services were employed on-site at the Dundee, Michigan location of Global Engine Manufacturing Alliance, a subsidiary of The Chrysler Group LLC. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Intra Technical Services working on-site at the Dundee, Michigan location of Global Engine Manufacturing Alliance, a subsidiary of The Chrysler Group LLC.

The amended notice applicable to TA–W–71,581 is hereby issued as follows:

All workers of Global Engine Manufacturing Alliance, a subsidiary of The Chrysler Group LLC, including on-site leased workers from Premier Services and Intra Technical Services, Dundee, Michigan, who became totally or partially separated from employment on or after July 6, 2008, through September 22, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 13th day of January 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–1893 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,170]

Corning, Inc. Including On-Site Leased Workers From Adecco, Pro Unlimited, Piedmont Prime Care Computer Task Group and Guardsmark Danville, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 8, 2009, applicable to workers of Corning, Inc., including on-site leased workers from Adecco, Pro Unlimited, Piedmont Prime Care, and Computer Task Group, Danville, Virginia. The notice will soon be published in the **Federal Register.**

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of glass and ceramics.

The company reports that on-site leased workers from Guardsmark were employed on-site at the Danville, Virginia location of Corning, Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Guardsmark working on-site at the Danville, Virginia location of Corning, Inc. The amended notice applicable to the TA–W–71,170 is hereby issued as follows:

All workers of Corning, Inc., including on-site leased workers from Adecco, Pro Unlimited, Piedmont Prime Care, Computer Task Group and Guardsmark, Danville, Virginia, who became totally or partially separated from employment on or after June 10, 2008, through December 8, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 13th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–1888 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,763; TA–W–71,763A; TA–W–71,763B]

Acushnet Company a Subsidiary of Fortune Brands Including On-Site Leased Workers From Olsten Staffing Services Fairhaven, MA; Acushnet Company a Subsidiary of Fortune Brands Including On-Site Leased Workers From Olsten Staffing Services New Bedford, MA; Acushnet Company a Subsidiary of Fortune Brands Including On-Site Leased Workers From Olsten Staffing Services Dartmouth, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 3, 2009 applicable to workers of Acushnet Company, a subsidiary of Fortune Brands, including on-site leased workers from Olsten Staffing Services, Fairhaven, Massachusetts. The notice will soon be published in the **Federal Register**.

At the request of the State agency and company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of golf balls.

New findings show that the Dartmouth, Massachusetts and New Bedford, Massachusetts locations of Acushnet Company also experienced an employment decline during the relevant period. Workers at the Dartmouth, Massachusetts and New Bedford,

Massachusetts facilities, including on-site leased workers from Olsten Staffing Services, were engaged in activities related to the production of golf balls in direct support of and sufficiently under the control of the Fairhaven, Massachusetts facility of the subject firm.

Accordingly, the Department is amending the certification to include workers of the Dartmouth, Massachusetts and New Bedford, Massachusetts locations of Acushnet Company as well as leased workers of Olsten Staffing Services working on-site at these locations.

The intent of the Department's certification is to include all workers of the Acushnet Company who were adversely affected by the shift in production of golf balls.

The amended notice applicable to TA–W–71,763 is hereby issued as follows:

All workers of Acushnet Company, a subsidiary of Fortune Brands, Fairhaven, Massachusetts, including on-site leased workers from Olsten Staffing Services, (TA–W–71,763), Acushnet Company, a subsidiary of Fortune Brands, Dartmouth, Massachusetts, including on-site leased workers from Olsten Staffing Services, (TA–W–71–763A) and Acushnet Company, a subsidiary of Fortune Brands, New Bedford, Massachusetts, including on-site leased workers from Olsten Staffing Services, (TA–W–71,763B), who became totally or partially separated from employment on or after July 21, 2008, through December 3, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 13th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–1881 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 11, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 11, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of January 2009.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 12/28/09 and 12/31/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73147	Shaw Fabricator (State)	Addis, LA	12/28/09	12/22/09
73148	Regal Ware, Inc. (Comp)	Kewaskum, WI	12/28/09	12/22/09
73149	Ashland Hercules Water Technology (State)	Kearny, NJ	12/28/09	12/18/09
73150	Manchester Grand Hyatt (State)	San Diego, CA	12/28/09	12/17/09
73151	Trimble Navigation Ltd. (Comp)	Corvallis, OR	12/28/09	12/16/09
73152	Dell, Inc. (Wkrs)	Round Rock, TX	12/28/09	12/18/09
73153	Kimberly-Clark Global Sales, Inc. (Wkrs)	Neenah, WI	12/28/09	12/18/09
73154	Transcom Enhanced Services, Inc. (State)	Fort Worth, TX	12/28/09	12/21/09
73155	Air Cruisers Company (Comp)	Liberty, MS	12/28/09	12/21/09
73156	American Spring Wire Corporation (Wkrs)	Kankakee, IL	12/28/09	12/17/09
73157	FCI USA, LLC (Comp)	Mount Union, PA	12/28/09	12/22/09
73158	Siemens Medical Solutions, Inc. (Comp)	Concord, CA	12/28/09	12/22/09
73159	Roscommon Manufacturing Company (Comp)	Roscommon, MI	12/28/09	12/18/09
73160	Fisher Controls International, LLC (Comp)	Portsmouth, NH	12/28/09	12/21/09
73161	Carmeuse Industrial Sands (Wkrs)	Brady, TX	12/28/09	12/18/09
73162	Imation Corporation (State)	Oakdale, MN	12/29/09	12/21/09
73163	Siemns Medical Solution (Wkrs)	Malvern, PA	12/29/09	12/15/09
73164	General Motors Corporation (Wkrs)	Detroit, MI	12/29/09	12/18/09
73165	James Hamilton Construction Company (Wkrs)	Silver City, NM	12/29/09	12/23/09
73166	Gormac Products, Inc. (Comp)	Racine, WI	12/29/09	12/28/09
73167	Veeco Instruments, Inc. (State)	Camarillo, CA	12/29/09	12/24/09
73168	Riverside Mechanical, Inc. (Comp)	Groveport, OH	12/29/09	12/12/09
73169	MIC Group, Inc. (Wkrs)	Brenham, TX	12/29/09	11/28/09
73170	Idearc Media Corporation (Wkrs)	Troy, NY	12/29/09	12/14/09
73171	Hallmark Jewelry (Comp)	Warwick, RI	12/29/09	12/10/09
73172	Rusnak (Pasadena) (State)	Pasadena, CA	12/29/09	12/18/09
73173	Muller Martini Mailroom Systems, Inc. (Comp)	Allentown, PA	12/29/09	12/15/09
73174	EMD Chemicals (Wkrs)	Gibbstown, NJ	12/29/09	12/21/09

APPENDIX—Continued

[TAA petitions instituted between 12/28/09 and 12/31/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73175	Caraco Pharmaceutical labs, LTD (Wkrs)	Detroit, MI	12/29/09	12/18/09
73176	Valeo Electrical Systems, Inc. (Wkrs)	Troy, MI	12/29/09	12/08/09
73177	Century Aluminum of Kentucky, GP (Union)	Hawesville, KY	12/29/09	12/15/09
73178	Alcatel-Lucent (Wkrs)	Murray Hill, NJ	12/29/09	12/10/09
73179	Axiom XCell, Inc. (Wkrs)	San Diego, CA	12/29/09	12/11/09
73180	Protingent Staffing (State)	Redmond, WA	12/29/09	12/04/09
73181	Advanced Technology Services, Inc. (Wkrs)	Peoria, IL	12/30/09	12/18/09
73182	Thomas Petroleum (Wkrs)	Nomsa, TX	12/30/09	12/16/09
73183	Halliburton Energy Services, Inc. (Comp)	Carrollton, TX	12/30/09	12/16/09
73184	Transguard Industries (Wkrs)	Angola, IN	12/30/09	12/22/09
73185	Belcan Corporation (Comp)	Cincinnati, OH	12/30/09	12/28/09
73186	The North Carolina Moulding Company (Wkrs)	Lexington, NC	12/30/09	12/28/09
73187	Cascade Wood Products (Wkrs)	White City, OR	12/30/09	12/18/09
73188	Hagemeyer North America (Wkrs)	Charleston, SC	12/30/09	12/11/09
73189	Lear Corporation (Wkrs)	El Paso, TX	12/30/09	12/18/09
73190	Stanley Assembly Technologies (Comp)	Cleveland, OH	12/30/09	12/09/09
73191	HSBC Bank USA NA (Wkrs)	Brooklyn, NY	12/31/09	12/22/09
73192	Hewlett Packard (HP) (State)	Rancho Cordova, CA	12/31/09	12/30/09
73193	Bassett Fiberboard (Comp)	Bassett, VA	12/31/09	12/29/09
73194	Jim Beam Brands Company (Comp)	Cincinnati, OH	12/31/09	12/29/09
73195	PIAD Precision Casting Corporation (Wkrs)	Greensburg, PA	12/31/09	12/29/09
73196	GMAC Insurance (Wkrs)	Maryland Heights, MO	12/31/09	12/29/09
73197	Rexam Consumer Plastics, Inc. (Wkrs)	Holden, MA	12/31/09	12/29/09
73198	Thomson Reuters (State)	Eagan, MN	12/31/09	12/30/09
73199	Dow Jones and Company (Wkrs)	West Middlesex, PA	12/31/09	12/30/09

[FR Doc. 2010–1885 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 11, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 11, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of January 2009.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

TAA petitions instituted between 12/14/09 and 12/18/09

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73082	Yellow Roadway Corporation, Site 457 (Wkrs)	Mechanicsburg, PA	12/14/09	12/08/09
73083	Viewpointe Archive Services (State)	Parsippany, NJ	12/14/09	12/11/09
73084	Thyssen Krypp Elevator (Wkrs)	Walnut, MS	12/14/09	12/11/09
73085	Inspire Technologies, Inc. (Comp)	Caldwell, ID	12/14/09	12/10/09
73086	J.I.T Tool & Die, Inc. (Comp)	Brockport, PA	12/14/09	12/11/09
73087	Dover Parkersburg (Union)	Parkersburg, WV	12/14/09	12/11/09
73088	Emerson Process Management (State)	Chanhassen, MN	12/14/09	12/11/09
73089	Talhar, Inc. (Wkrs)	Meadville, PA	12/14/09	12/11/09
73090	Cambridge Filter Corp (Wkrs)	Gilbert, AZ	12/14/09	12/01/09
73091	Basic Aluminum Castings Company (Union)	Cleveland, OH	12/14/09	12/02/09
73092	Sun Microsystems (State)	Santa Clara, CA	12/14/09	12/01/09
73093	Ruan Transport (State)	Marshalltown, IA	12/14/09	12/11/09

APPENDIX—Continued

TAA petitions instituted between 12/14/09 and 12/18/09

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73094	Trane Springhill (State)	Springhill, LA	12/14/09	12/11/09
73095	Avon Products, Inc. (Comp)	Springdale, OH	12/15/09	12/13/09
73096	U.S.F. Holland Motor Freight (Wkrs)	Romulus, MI	12/15/09	11/18/09
73097	Coventry Health Care, Inc. (Comp)	Bethesda, MD	12/15/09	12/14/09
73098	Valspar Coatings (Wkrs)	High Point, NC	12/15/09	11/24/09
73099	Siemen Medical Solutions (Wkrs)	Malvern, PA	12/15/09	12/15/09
73100	Superior Tire and Rubber Corporation (Wkrs)	Warren, PA	12/15/09	11/30/09
73101	Tyler Pipe Company (Comp)	Tyler, TX	12/16/09	12/10/09
73102	Hewlett Packard, PSG's Desktop Organization (State)	Cupertino, CA	12/16/09	12/09/09
73103	Marine Corps Logistics Base (State)	Barstow, CA	12/16/09	12/15/09
73104	United Steelworkers (Union)	Dawson, PA	12/16/09	12/11/09
73105	Avis Budget Group (Wkrs)	Wichita Falls, TX	12/16/09	12/14/09
73106	Open Solutions (State)	Windsor Locks, CT	12/16/09	12/15/09
73107	Infrasoft International (Wkrs)	State College, PA	12/16/09	12/15/09
73108	Allegis Group (Tek Systems) (Wkrs)	Pittsburgh, PA	12/16/09	11/30/09
73109	Dayco Products, LLC (Comp)	Walterboro, SC	12/16/09	12/09/09
73110	Robin Industries, Inc. (Wkrs)	Cleveland, OH	12/16/09	12/10/09
73111	Monahan SFI, LLC (Comp)	Middlebury, VT	12/16/09	12/15/09
73112	Sundance Spas, Inc. (State)	Chino, CA	12/16/09	12/15/09
73113	Foamex International (State)	Novi, MI	12/16/09	11/19/09
73114	Maddox Drilling (Wkrs)	San Angelo, TX	12/16/09	12/15/09
73115	Solvay Advanced Polymers (Comp)	Marietta, OH	12/16/09	12/02/09
73116	Teradyne, Inc. (Comp)	Agoura Hills, CA	12/16/09	12/03/09
73117	New Hampshire Oncology-Hematology (Comp)	Hooksett, NH	12/17/09	12/15/09
73118	First Express Remittance Processing/First Tennessee Bank (Rep).	Louisville, KY	12/17/09	12/16/09
73119	Crown Paper Box (Comp)	Indianapolis, IN	12/17/09	12/02/09
73120	SPX–PE (Wkrs)	Buffalo, NY	12/17/09	12/16/09
73121	Hyosung USA, Inc. (Wkrs)	Scottsville, VA	12/17/09	12/11/09
73122	General Mills (State)	Golden Valley, MN	12/18/09	12/17/09
73123	Garland Commercial Industries, LLC (Comp)	Freeland, PA	12/18/09	12/17/09
73124	Suite Simplicity, LLC (Wkrs)	Greensboro, NC	12/18/09	12/17/09
73125	Baker Hughes (Wkrs)	Houston, TX	12/18/09	12/16/09
73126	Freescale Semiconductor, Inc. (Wkrs)	Austin, TX	12/18/09	12/11/09
73127	Freescale Semiconductor, Inc. (Wkrs)	Austin, TX	12/18/09	12/09/09

[FR Doc. 2010–1883 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 11, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than February 11, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 22nd day of January 2010.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 12/7/09 and 12/11/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73028	TRW Automotive (Wkrs)	Galesville, WI	12/07/09	10/11/09
73029	Faurecia Exhaust Systems, Inc. (Comp)	Troy, OH	12/07/09	12/07/09

APPENDIX—Continued

[TAA petitions instituted between 12/7/09 and 12/11/09]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73030	Apex Systems (s)	Denver, CO	12/07/09	12/03/09
73031	Bruckner Supply Company, Inc. (Wkrs)	Port Washington, NY	12/07/09	11/25/09
73032	JM Producs, Inc. (State)	Little Rock, AR	12/07/09	12/03/09
73033	Fujifilm (State)	Valhalla, NY	12/07/09	11/27/09
73034	Alfs Manufacturing Company (State)	Sioux City, IA	12/07/09	12/03/09
73035	Brown Corporation of America (Wkrs)	Ionia, MI	12/07/09	11/15/09
73036	Assurant Specialty Property (State)	Orange, CA	12/07/09	12/04/09
73037	Top Fashion 947, Inc. (Wkrs)	Brooklyn, NY	12/07/09	12/05/09
73038	Vaquero Services, Inc. (Wkrs)	Godley, TX	12/08/09	11/25/09
73039	Oce North America (Wkrs)	Trumbull, CT	12/08/09	11/26/09
73040	Thyssenkrupp Presta Steering Group (State)	Ladson, SC	12/08/09	12/01/09
73041	Pilkington, North America (USW)	Lathrop, CA	12/08/09	12/02/09
73042	American Express (Wkrs)	Salt Lake City, UT	12/08/09	12/02/09
73043	I–Level Weyerhaeuser Trucking Operation (State)	Albany, OR	12/08/09	12/04/09
73044	Avaya (Wkrs)	Coppell, TX	12/08/09	12/07/09
73045	Techline USA (Wkrs)	Waunakee, WI	12/08/09	09/01/24
73046	Quality Logic, Inc. (Wkrs)	Boise, ID	12/08/09	12/03/09
73047	Keewatin Taconite Plant, U.S. Steel Corporation (State)	Keewatin, MN	12/08/09	12/07/09
73048	Mohawk Flush Door (UBC)	South Bend, IN	12/08/09	12/07/09
73049	Vertafore, Inc. (Rep)	Bothell, WA	12/08/09	12/02/09
73050	United Southern (Wkrs)	Forest City, NC	12/09/09	12/08/09
73051	Maco, Inc. (Comp)	Shelby, NC	12/09/09	11/30/09
73052	Fabric Processing Center (FPC) (Comp)	Florence, SC	12/09/09	12/08/09
73053	Homes Servicing (Wkrs)	Boone, NC	12/09/09	12/08/09
73054	Spririt AeroSystems, Inc. (SPEEA)	Wichita, KS	12/09/09	12/03/09
73055	Nuart, Inc. (Comp)	Bedford Park, IL	12/09/09	12/08/09
73056	Curtiss-Wright (Comp)	Long Beach, CA	12/09/09	12/07/09
73057	Lamjen, Inc. (Wkrs)	Erie, PA	12/09/09	12/07/09
73058	Honeywell International, Inc. (Comp)	Spring Valley, IL	12/09/09	11/18/09
73059	Honeywell International, Inc. (Comp)	Pawtucket, RI	12/09/09	11/12/09
73060	Harly-Davidson Motor Company (Comp)	York, PA	12/09/09	12/07/09
73061	Honeywell International, Inc. (Comp)	Springfield, IL	12/09/09	11/18/09
73062	Maggy London (Wkrs)	New York, NY	12/09/09	09/14/09
73063	Bank of America (Wkrs)	Concord, CA	12/10/09	08/03/09
73064	Hoerbiger Drivetech USA, Inc. (Comp)	Auburn, AL	12/10/09	12/10/09
73065	Domtar Paper Company (Comp)	Plymouth, NC	12/10/09	12/03/09
73066	Nortel (Wkrs)	Research Triangle Park, NC	12/10/09	12/09/09
73067	Slash Support (Comp)	South Jordan, UT	12/10/09	10/28/09
73068	Grede Foundries. Inc., Vassar Foundry (Wkrs)	Vassar, MI	12/10/09	12/08/09
73069	Allen Edmonds (Wkrs)	Lewiston, ME	12/10/09	12/08/09
73070	Oakley Industries (Union)	Belvidere, IL	12/10/09	12/09/09
73071	Arvin Meritor (Union)	Belvidere, IL	12/10/09	12/09/09
73072	Android Industries (Union)	Belvidere, IL	12/10/09	12/09/09
73073	Ventra Belvidere, LLC (Union)	Belvidere, IL	12/10/09	12/09/09
73074	Johnson Controles (Union)	Sycamore, IL	12/10/09	12/09/09
73075	ABB, Inc. (Wkrs)	Auburn Hills, MI	12/10/09	12/04/09
73076	TRI–DIM Filter Corp. (Union)	Belvidere, IL	12/10/09	12/09/09
73077	Grupo Antolin (Union)	Belvidere, IL	12/10/09	12/09/09
73078	HSBC (Wkrs)	Elmhurst, IL	12/11/09	11/23/09
73079	Leviton Manufacturing Company (Wkrs)	West Jefferson, NC	12/11/09	12/10/09
73080	ATK Space Systems (Wkrs)	Corinne, UT	12/11/09	12/10/09
73081	Paramount Pictures Corporation (Wkrs)	Hollywood, CA	12/11/09	11/30/09

[FR Doc. 2010–1882 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,174]

General Electric Company Transportation Division; Erie, PA; Notice of Negative Determination on Reconsideration

By application dated October 28, 2009, the petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of General Electric Company, Transportation Division, Erie, Pennsylvania. The Department's Notice of Affirmative Determination Regarding Application for Reconsideration was signed on November 16, 2009, and published in the **Federal Register** on December 8, 2009 (74 FR 64712).

The investigation resulted in a negative determination based on the finding that workers' separations or threat of separations were not related to an increase in imports or shift/acquisition of production of locomotives, locomotive parts, marine and stationary engines, and various propulsion systems to/from a foreign country. The subject firm did not import locomotives, locomotive parts, marine and stationary engines, and various propulsion systems and did not shift production of these articles abroad.

In the request for reconsideration the petitioner alleged that General Electric operates facilities in Brazil, China and Kazakhstan, and that General Electric has been shifting production and "employment levels" from the subject firm offshore "in order to produce locomotives in country for specific customers."

The Department contacted an official of General Electric to address the above allegations. The company official confirmed that General Electric has several manufacturing facilities abroad, which were established to supply new markets of those countries because of the localization requirements as well as to satisfy the demand of new markets. The company official further stated that there was no shift in production from the Erie facility to any foreign country during the relevant period. The official also confirmed that the layoffs at the subject firm were due to volume reductions in the U.S. market and that there was no employment increase at General Electric foreign facilities during the relevant period.

To support their allegations, the petitioners attached several newspaper articles citing company's expansion plans into the emerging markets. The articles do not imply that General Electric is planning or is in process of shifting production from the Erie, Pennsylvania facility abroad. Rather the articles confirm the statements made by the company official and describe the growth of General Electric on a global scale, its ability to sustain competition via advanced technology and innovation, and outline company's successful penetration into the new markets through joint ventures.

The petitioners further alleged that General Electric imports like or directly competitive articles into the United States.

According to the data collected from General Electric during the initial investigation, the subject firm did report imports of locomotives and like or directly competitive articles with products manufactured at the subject firm. However, the data analysis illustrates that imports have decreased during the period under investigation.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of General Electric Company, Transportation Division, Erie, Pennsylvania.

Signed at Washington, DC, this 22nd day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–1889 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,251]

Ancor Specialties: A Division of Hoeganaes Corporation Ridgway, PA; Notice of Revised Determination on Reconsideration

On November 25, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on December 11, 2009 (73 FR 65790).

The previous investigation initiated on June 17, 2009, resulted in a negative determination issued on October 15, 2009, was based on the finding that imports of alloyed powders and powder metal parts did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioners supplied additional information regarding products manufactured by workers of the subject firm and customers of the subject firm.

Upon further investigation, it was revealed that Ancor Specialties, a division of Hoeganaes Corporation, Ridgway, Pennsylvania manufactured and supplied alloyed powders for powder metal parts and a loss of business with a manufacturer of powder metal parts whose workers were certified eligible to apply for adjustment assistance contributed importantly to the separation or threat of separation of workers at the subject firm.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Ancor Specialties, a division of Hoeganaes Corporation, Ridgway, Pennsylvania, who are engaged in activities related to the production of alloyed powders meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Ancor Specialties, a division of Hoeganaes Corporation, Ridgway, Pennsylvania, who became totally or partially separated from employment on or after June 12, 2008, through two years from the date of this certification, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 15th day of January 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–1891 Filed 1–29–10; 8:45 am]

BILLING CODE 4510–FN–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17j–1; SEC File No. 270–239; OMB Control No. 3235–0224.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Conflicts of interest between investment company personnel (such as

portfolio managers) and their funds can arise when these persons buy and sell securities for their own accounts ("personal investment activities"). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Beginning in the early 1960s, Congress and the Securities and Exchange Commission ("Commission") sought to devise a regulatory scheme to effectively address these potential conflicts. These efforts culminated in the addition of section 17(j) to the Investment Company Act of 1940 (the "Investment Company Act") (15 U.S.C. 80a–17(j)) in 1970 and the adoption by the Commission of rule 17j–1 (17 CFR 270.17j–1) in 1980.[1] The Commission proposed amendments to rule 17j–1 in 1995 in response to recommendations made in the first detailed study of fund policies concerning personal investment activities by the Commission's Division of Investment Management since rule 17j–1 was adopted. Amendments to rule 17j–1, which were adopted in 1999, enhanced fund oversight of personal investment activities and the board's role in carrying out that oversight.[2] Additional amendments to rule 17j–1 were made in 2004, conforming rule 17j–1 to rule 204A–1 under the Investment Advisers Act of 1940 (15 U.S.C. 80b), avoiding duplicative reporting, and modifying certain definitions and time restrictions.[3]

Section 17(j) makes it unlawful for persons affiliated with a registered investment company ("fund") or with the fund's investment adviser or principal underwriter (each a "17j–1 organization"), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission's rules and regulations. Section 17(j) also authorizes the Commission to promulgate rules requiring 17j–1 organizations to adopt codes of ethics.

In order to implement section 17(j), rule 17j–1 imposes certain requirements on 17j–1 organizations and "Access Persons"[4] of those organizations. The rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a 17j–1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires each 17j–1 organization, unless it is a money market fund or a fund that does not invest in Covered Securities,[5] to: (i) Adopt a written codes of ethics, (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval, (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code, (iv) submit a written report to the fund describing any issues arising under the code and procedures and certifying that the 17j–1 entity has adopted procedures reasonably necessary to prevent Access Persons form violating the code, (v) identify Access Persons and notify them of their reporting obligations, and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,[6] to file: (i) Within 10 days of becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the access person's securities and accounts; (ii) dated quarterly transaction reports within 30 days of the end of each calendar quarter providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter; and (iii) dated annual holding reports providing information with respect to each Covered Security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j–1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

The requirements that the management of a rule 17j–1 organization provide the fund's board with new and amended codes of ethics and an annual issues and certification report are intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of Access Persons. The requirements that Access Persons provide initial holdings reports, quarterly transaction reports, and annual holdings reports and request approval for purchases of securities through IPOs and private placements are intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist the organization and the Commission's examinations staff in determining if there have been violations of rule 17j–1.

[1] Prevention of Certain Unlawful Activities with Respect to Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) (45 FR 73915 (Nov. 7, 1980)).

[2] Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821–01 (Aug. 27, 1999)).

[3] Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (Jul. 2, 2004) (69 FR 41696 (Jul. 9, 2004)).

[4] Rule 17j–1(a)(1) defines an "access person" as "Any advisory person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund." The definition of Access Person also includes "Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities." Rule 17j–1(a)(1).

[5] A "Covered Security" is any security that falls within the definition in section 2(a)(36) of the Act, except for direct obligations of the U.S. Government, bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements, and shares issued by open-end funds. Rule 17j–1(a)(4).

[6] Rule 17j–1(d)(2) contains the following exceptions: (i) An Access Person need not file a report for transactions effected for, and securities held in, any account over which the Access Person does not have control; (ii) an independent director of the fund, who would otherwise not need to report and who does not have information with respect to the fund's transactions in a particular security, does not have to file an initial holdings report or a quarterly transaction report,; (iii) an Access Person of a principal underwriter of the fund does not have to file reports if the principal underwriter is not affiliated with the fund (unless the fund is a unit investment trust) or any investment adviser of the fund and the principal underwriter of the fund does not have any officer, director, or general partner who serves in one of those capacities for the fund or any investment adviser of the fund; (iv) an Access Person to an investment adviser need not make quarterly reports if the report would duplicate information provided under the reporting provisions of the Investment Adviser's Act; and (v) an Access Person need not make quarterly transaction reports if the information provided in the report would duplicate information received by the 17j–1 organization in the form of broker trade confirmations or account statements or information otherwise in the records of the 17j–1 organization.

We estimate that annually there are approximately 75,757 respondents under rule 17j–1, of which 5,757 are rule 17j–1 organizations and 70,000 are Access Persons. In the aggregate, these respondents make approximately 105,125 responses annually. We estimate that the total annual burden of complying with the information collection requirements in rule 17j–1 is approximately 292,740 hours. This hour burden represents time spent by Access Persons that must file initial and annual holdings reports and quarterly transaction reports, investment personnel that must obtain approval before acquiring beneficial ownership in any securities through an IPO or private placement, and the responsibilities of Rule 17j–1 organizations arising from information collection requirements under rule 17j–1. These include notifying Access Persons of their reporting obligations, preparing an annual rule 17j–1 report and certification for the board, documenting their approval or rejection of IPO and private placement requests, maintaining annual rule 17j–1 records, maintaining electronic reporting and recordkeeping systems, amending their codes of ethics as necessary, and, for new fund complexes, adopting a code of ethics.

We estimate that there is an annual cost burden of approximately $5,000 per fund complex, for a total of $3,275,000, associated with complying with the information collection requirements in rule 17j–1. This represents the costs of purchasing and maintaining computers and software to assist funds in carrying out rule 17j–1 recordkeeping.

These burden hour and cost estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. 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 control number. Rule 17j–1 requires that records be maintained for at least five years in an easily accessible place.[7]

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 26, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1951 Filed 1–29–10; 8:45 am]

BILLING CODE 8011–01–P

[7] If information collected pursuant to the rule is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. See section 31(c) of the Investment Company Act (15 U.S.C. 80a–30(c)).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29125; File No. 812–13746]

Assurant, Inc., et al.; Notice of Application and Temporary Order

January 26, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Assurant, Inc. ("Assurant") on January 26, 2010 by the United States District Court for the Southern District of New York ("Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: Assurant, Union Security Insurance Company ("USIC") and Union Security Life Insurance Company of New York ("USLICNY," and, together with USIC, the "Depositor Applicants").[1]

DATES: *Filing Date:* The application was filed on January 21, 2010, and amended on January 26, 2010.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 22, 2010, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; *Applicants:* Assurant, One Chase Manhattan Plaza, 41st Floor, New York, NY 10005; USIC, 2323 Grand Boulevard, Kansas City, MO 64108–2670; USLICNY, 212 Highbridge Street, Suite D, Fayetteville, NY 13066.

FOR FURTHER INFORMATION CONTACT: John Yoder, at (202) 551–6878, or Michael W. Mundt, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations:

1. Assurant, through its subsidiaries and affiliates, is a provider of specialized insurance products and related services. The Depositor Applicants are indirect wholly-owned subsidiaries of Assurant and, before 2002, issued and sold variable life insurance and annuity contracts. In April 2001, Assurant's predecessor, Fortis, Inc., sold its entire variable life insurance and annuity contract business to The Hartford Financial Services Group, Inc. ("Hartford") through modified coinsurance (the "Hartford Transaction"). As a result, the Depositor Applicants remained the issuers of the outstanding life insurance and annuity products, but Hartford has assumed all day-to-day responsibility for the administration of the policies. The Depositor Applicants currently serve as depositors for three separate accounts organized as unit investment trusts and

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which Assurant is or may become an affiliated person (together with the Applicants, the "Covered Persons").

registered under the Act ("Separate Accounts").

2. On January 26, 2010, the United States District Court for the Southern District of New York entered the Injunction against Assurant in a matter brought by the Commission.[2] The Commission alleged in the complaint ("Complaint") that Assurant violated sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and rules 12b–20, 13a–11 and 13a–13 under the Exchange Act, in connection with Assurant's accounting and public reporting practices. The Complaint related to Assurant's inaccurate recording of income for third quarter of 2004 in the consolidated financial statements included in its periodic and other filings for 2004. The inaccuracies in the financial statements relate to recorded income from a purported reinsurance contract. The Complaint alleged that Assurant violated the corporate reporting, recordkeeping, and internal controls provisions of the Exchange Act. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, Assurant consented to the entry of the Injunction.

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company (the registered investment companies are collectively referred to as "Funds"). Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person and any person directly or indirectly owning, controlling, or holding with the power to vote, 5 percent or more of the outstanding voting securities of such other person. Applicants state that Assurant is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3). Applicants state that, as a result of the Injunction, they would be subject to the disqualification provisions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to applicants, are unduly or disproportionately severe or that the conduct of the applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting them from the disqualification provisions of section 9(a).

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that it would not be against the public interest or the protection of investors to grant the requested exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor or principal underwriter for any Fund. Applicants state that the alleged conduct did not involve the assets of any of the Separate Accounts. Applicants state that, except as discussed below, since the closing of the Hartford Transaction in 2001, (i) none of the current or former directors, officers or employees of the Applicants (other than Assurant itself and its predecessor entities) had any knowledge of or had any involvement in, the conduct alleged in the Complaint and (ii) the personnel at Assurant who were involved in the violations alleged in the Complaint have had no, and will not have any future, involvement in the Covered Persons' serving as investment adviser, depositor, or principal underwriter for any Fund. In addition, Applicants represent that since the closing of the Hartford Transaction, Applicants have not been involved in any investment decisions with respect to the Separate Accounts.

5. Applicants state that three persons who are current or former officers of Assurant received Wells notices in connection with the Commission's investigation into the facts underlying the Complaint ("Wells Notice Recipients"). Applicants state that these persons have served as officers or directors of the Depositor Applicants. Applicants further state that one of the Wells Notice Recipients has overall responsibility for Assurant's health insurance business and therefore continues to serve as an officer of USIC to perform necessary services solely in connection with that business segment. Applicants state that neither of the other Wells Notice Recipients is currently an officer, director or employee of either of the Depositor Applicants.

6. Applicants state that, other than signing certain public filings required under the federal securities laws containing representations with respect to the Separate Accounts and receiving communications that referenced the Separate Accounts, since the closing of the Hartford Transaction in 2001, the Wells Notice Recipients have not been involved in the Depositor Applicants' serving as a depositor for the Separate Accounts and will not be involved in that capacity in the future.[3] Applicants further state that, to the extent other current or former officers, directors, or employees of the Depositor Applicants had any knowledge of, or any involvement in, the conduct alleged in the Complaint ("Certain Depositor Applicant Personnel"), since the closing of the Hartford Transaction in 2001, those individuals have not been involved in the Depositor Applicants' serving as a depositor for the Separate Accounts and will not be involved in that capacity in the future.

7. Applicants state that the inability of the Depositor Applicants to continue to serve as depositors to the Separate Accounts would result in potential hardships for the Depositor Applicants and the variable annuity contract holders and variable life insurance policyholders. If disqualified from serving as depositors for the Separate Accounts, the Depositor Applicants could no longer hold those assets and would be forced to cancel and unwind the variable annuity contracts and variable life insurance policies. Contract holders and policyholders, through no fault of their own, would incur the costs of seeking and purchasing viable alternatives. Applicants also state that the Depositor Applicants have committed substantial resources to serve as depositors to the Separate Accounts and that prohibiting the Depositor Applicants from serving as depositors to the Separate Accounts would render critical terms of the Hartford

[2] *Securities and Exchange Commission* v. *Assurant, Inc.,* Final Judgment as to Defendant Assurant, Inc., 10–CV–0484 (S.D.N.Y, January 26, 2010).

[3] Certain Wells Notice Recipients may, however, pursuant to their roles as officers of Assurant, sign, and receive information regarding the Separate Accounts from the Applicants in connection with the signing of, Assurant filings required under the applicable Federal securities laws that make reference to Depositor Applicants.

Transaction void and would require significant and costly restructuring of the modified coinsurance transaction structure.

8. Applicants state that they have not previously applied for an exemptive order under section 9(c) of the Act.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Wells Notice Recipients and Certain Depositor Applicant Personnel will not be involved in the Covered Persons' serving as an investment adviser, depositor, or principal underwriter to any Fund. Applicants will develop and implement procedures designed reasonably to assure compliance with this condition.

2. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption. Accordingly,

It Is Hereby Ordered, pursuant to section 9(c) of the Act, that Assurant, USIC, USLICNY, and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the conditions in the application, from January 26, 2010, until the Commission takes final action on their application for a permanent order.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1950 Filed 1–29–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, February 3, 2010 at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Wednesday, February 3, 2010 will be:

institution and settlement of injunctive actions; institution and settlement of administrative proceedings; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

January 27, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–2075 Filed 1–28–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Monday, February 1, 2010 at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the item listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Monday, February 1, 2010 will be:

A litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: January 27, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–2076 Filed 1–28–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Ariel Corp., Classica Group, Inc., Commodore Environmental Services, Inc., Dupont Direct Financial Holdings, Inc., New Paradigm Software Corp. (n/k/a Brunton Vineyards Holdings, Inc.), Polymer Research Corp. of America, and Shopnet.Com, Inc., Order of Suspension of Trading

January 28, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ariel Corp. because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Classica Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Commodore Environmental Services, Inc. because it has not filed any periodic reports since the period ended June 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dupont Direct Financial Holdings, Inc. because it has not filed any periodic reports since the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a

lack of current and accurate information concerning the securities of New Paradigm Software Corp. (n/k/a Brunton Vineyards Holdings, Inc.) because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Polymer Research Corp. of America because it has not filed any periodic reports since the period ended September 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Shopnet.Com, Inc. because it has not filed any periodic reports since the period ended June 30, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on January 28, 2010, through 11:59 p.m. EST on February 10, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–2123 Filed 1–28–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61417; File No. SR–FINRA–2009–086]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 5160 (Disclosure of Price and Concessions in Selling Agreements) in the Consolidated FINRA Rulebook

January 25, 2010.

On December 2, 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 adopt NASD Rule 2770 (Disclosure of Price in Selling Agreements) as FINRA Rule 5160 in the consolidated FINRA rulebook without material change. The proposed rule change was published for comment in the **Federal Register** on December 22, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

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 association.[4] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is appropriate to assure the integrity of the public offering process. The Commission notes that new FINRA Rule 5160 will continue to require that selling syndicate agreements or selling group agreements [6] set forth the price at which securities are to be sold to the public or the formula by which such price can be ascertained and state clearly to whom and under what circumstances concessions, if any, may be allowed. The Commission also notes that FINRA is adopting NASD Rule 2770 into the consolidated FINRA rulebook as FINRA Rule 5160 with a new title, but without material change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–FINRA–2009–086) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1949 Filed 1–29–10; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61171 (December 15, 2009), 74 FR 68081 ("Notice").

[4] 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).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] In the Notice, FINRA noted that the terms "selling group" and "selling syndicate" are defined in NASD Rules 0120(p) and (q), respectively. FINRA also represented that other than to reflect the new conventions of the consolidated FINRA rulebook, FINRA does not propose to alter these two definitions, which will be addressed later in the rulebook consolidation process.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61419; File No. SR–BATS–2009–031]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Establish Rules Governing the Trading of Options on the BATS Options Exchange

January 26, 2010.

I. Introduction

On November 10, 2009, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] to adopt rules governing the trading of options on the BATS Options Exchange Market ("BATS Options Exchange" or "BATS Options"), which will be an options trading facility of the Exchange. The proposed rule change was published for comment in the **Federal Register** on December 8, 2009.[3] On January 21, 2010, BATS filed Amendment 1 to the proposed rule change.[4] The Commission received no

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61097 (December 2, 2009), 74 FR 64788 ("Notice").

[4] In Amendment No. 1, the Exchange: (1) Clarified the Form 19b–4 discussion regarding establishing strike prices for Quarterly Options Series to conform to the proposed rule text; (2) clarified in its Form 19b–4 that the Exchange will not include options classes in its pilot program for quoting certain options in one-cent increments when the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company or is in bankruptcy and that, for purposes of assessing average daily volume, the Exchange will use Options Clearing Corporation data; (3) amended its Form 19b–4 and rules relating to that pilot program to provide for the quoting of all options on IWM and SPY in one-cent increments; (4) included in its Exhibit 5 an updated table of contents; (5) made technical changes to defined terms in BATS Rule 2.12(d) and proposed BATS Options Rule 21.1(d)(6) to conform to the terms as defined in proposed BATS Options Rule 16.1(a); (6) deleted proposed BATS Option Rule 16.2(d); (7) added references to "BATS

Continued

comments on the proposal. This order provides notice of the filing of Amendment No. 1 and approves the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

II. Discussion and Commission 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.[5] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, and 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers. Further, the Commission finds that the proposal is consistent with Sections 6(b)(1) of the Act,[7] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange.

Overall, the Commission believes that approving the proposed rule change could confer important benefits on the public and market participants. In particular, BATS Options' entry into the marketplace could provide market participants with an additional venue for executing orders in standardized options, enhance innovation, and increase competition between and among the options exchanges, resulting in better prices and executions for investors.

This discussion does not review every detail of the proposal, but focuses on the most significant rules and policy issues considered in review of the proposal.

A. BATS Options Members

Only Options Members may transact business on BATS Options via the System.[8] There will be two types of Options Members: Options Order Entry Firms ("OEFs") and Options Market Makers. An Options Member must be a member of BATS Exchange, and another registered options exchange that is not registered solely under Section 6(g) of the Act [9] or FINRA.[10] As a BATS Exchange Member, Options Members must satisfy the requirements in Chapter II of the Exchange Rules, as well as additional requirements set forth in the BATS Options Rules.[11] An OEF may only transact business with Public Customers if such Options Member also is an Options Member of another registered national securities exchange or association with which the Exchange has entered into an agreement under Rule 17d–2 under the Act pursuant to which such other exchange or association shall be the designated options examining authority for the OEF.[12] Further, Options Members that transact business with Public Customers must at all times be members of FINRA.[13]

Among other things, each Options Member must be registered as a broker-dealer and have as the principal purpose of being an Options Member the conduct of a securities business, which shall be deemed to exist if and so long as: (1) The Options Member has qualified and acts in respect of its business on BATS Options as either an OEF or an Options Market Maker or both; and (2) all transactions effected by the Options Member are in compliance with Section 11(a) of the Act and the rules and regulation adopted thereunder. Participants may trade options for their own proprietary accounts or, if authorized to do so under applicable law, may conduct business on behalf of customers.[14]

OEFs are those Options Members representing as agent Customer Orders on BATS Options or trading as principal on BATS Options. OEFs also may register as Market Makers.[15] A Market Maker that engages in specified Other Business Activities, or that is affiliated with a broker-dealer that engages in Other Business Activities, including functioning as an OEF, must have an Information Barrier between the market making activities and the Other Business Activities.[16] Options Market Makers are Options Members registered with the Exchange as Options Market Makers and registered with BATS Options in an option series listed on BATS Options. To become an Options Market Maker, an Options Member is required to register by filing a written application with BATS, which will consider an applicant's market making ability and other factors it deems appropriate in determining whether to approve an applicant's registration.[17] Such registration will consist of at least one options series and may include all series traded on the Exchange.[18] All Market Makers are designated as specialists on BATS Options for all purposes under the Act or rules thereunder. The Exchange will not place any limit on the number of entities that may become Options Market Makers.[19] The good standing of a Market Maker may be suspended, terminated, or withdrawn if the conditions for approval cease to be maintained or the Market Maker violates any of its agreements with BATS or any provision of the BATS Options Rules.[20]

The Exchange will not list an options series for trading unless at least one Options Market Maker is registered in the options series.[21] In addition, before

Options" in the title of Chapters XVI and XVII of the proposed rules; (8) stated its intent to amend its existing regulatory services agreement with FINRA to capture certain aspects of regulation specifically applicable to BATS Options and the regulation and discipline of Options Members; (9) clarified proposed BATS Options Rule 26.14(a) to conform to FINRA Rule 2150(c)(1); and (10) represented that it will comply with the specifications of the Consolidated Options Audit Trail System ("COATS") in submitting data for purposes of creating a consolidated audit trail, as well as receive COATS data for purposes of its surveillance operations.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(1).

[8] *See* proposed BATS Options Rule 17.1(a). An Options Member means a firm or organization that is registered with the Exchange pursuant to Chapter XVII of the BATS Options Rules for purposes of participating in options trading on BATS Options. *See* proposed BATS Options Rule 16.1(a)(38).

[9] 15 U.S.C. 78f(g).

[10] *See* proposed BATS Options Rule 17.2(f).

[11] *See* Chapter XVII of the proposed BATS Options Rules. Except to the extent that specific rules relating to options govern or unless the context otherwise requires, the provisions of the Exchange Rules shall be applicable to Options Members and to the trading of option contracts on BATS Options. *See* proposed BATS Options Rule 16.2(b). Exchange Rules is defined to mean the rules of the Exchange, including those for equities and options. *See* proposed BATS Options Rule 16.1(a)(5).

[12] *See* proposed BATS Options Rule 26.1.

[13] *See id.*

[14] *See* proposed BATS Options Rule 17.1(a).

[15] *See* proposed BATS Options Rule 22.1.

[16] *See* proposed BATS Options Rule 17.1(a).

[17] *See* proposed BATS Options Rule 22.2.

[18] *See* proposed BATS Options Rule 22.3.

[19] *See* proposed BATS Options Rule 22.2(c).

[20] *See* proposed BATS Options Rule 22.4(b).

[21] *See* proposed BATS Options Rule 19.5(a).

the Exchange opens trading for any additional series of an options class, it will require at least one Options Market Maker to be registered for trading that particular series.[22]

BATS Options Market Makers are required to electronically engage in a course of dealing to enhance liquidity available on BATS Options and to assist in the maintenance of fair and orderly markets.[23] Among other things, an Options Market Maker must: (1) On a daily basis maintain a two-sided market on a continuous basis in at least 75% of the options series in which it is registered; (2) enter a size of at least one contract for its best bid and its best offer; and (3) maintain minimum net capital in accordance with Commission and Exchange rules.[24] Substantial or continued failure by an Options Market Maker to meet any of its obligations and duties would subject the Options Market Maker to disciplinary action, suspension, or revocation of the Options Market Maker's registration in one or more options series.[25]

The Commission finds that BATS Options Market Maker qualification requirements are consistent with the Act and notes that they are similar to those of other options exchanges.[26] The Commission also finds that the BATS Options Market Maker participation requirements are consistent with the Act. Market Makers receive certain benefits for carrying out their responsibilities. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is used to finance a broker-dealer's activities as a specialist or market maker on a national securities exchange.[27] In addition, market makers are exempted from the prohibition in Section 11(a) of the Act. The Commission believes that a market maker must have sufficient affirmative obligations, including the obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis, to justify this favorable treatment. The Commission believes that BATS Options Market Maker participation requirements impose sufficient affirmative obligations on BATS Options Market Makers and, accordingly, that BATS Options requirements are consistent with the Act.

B. BATS Options Trading System

The BATS Options trading system will leverage the Exchange's current technology, including its customer connectivity, messaging protocols, quotation and execution engine, order router, data feeds, and network infrastructure. BATS Options will operate an electronic trading system to trade options ("System") that will provide for the electronic display and automatic execution of orders in price/time priority, without regard to the status of the entities that are entering orders.[28] The System will operate between the hours of 9:30 a.m. Eastern Time and 4 p.m. Eastern Time, with all orders being available for execution during that time frame.[29] The System will include a proprietary data feed, which will display the bid and offer at multiple price levels on an anonymous basis using the minimum price variation applicable to that security.[30]

Options Members will be able to enter the following types of orders into the System: Market Orders; Limit Orders; Reserve Orders;[31] Minimum Quantity Orders;[32] Discretionary Orders;[33] Price Improving Orders;[34] Destination Specific Orders;[35] BATS Only Orders;[36] BATS Post Only Orders;[37] Partial Post

[22] *See id.*

[23] *See* proposed BATS Options Rule 22.5.

[24] *See, e.g.,* proposed BATS Options Rules 22.5 and 22.6.

[25] *See* proposed BATS Options Rule 22.5(c).

[26] *See, e.g.,* ISE Rule 804, and NOM Rules, Chapter VII, Sections 5 and 6.

[27] 12 CFR 221.5(c)(6).

[28] The System includes: (1) An order execution service that enables Options Members to automatically execute transactions in securities listed and traded on BATS Options; (2) a trade reporting service that submits "locked-in" trades for clearing to a registered clearing agency for clearance and settlement, transmits last-sale reports of transactions automatically to OPRA for dissemination to the public and industry, and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment; and (3) a data feed(s) that can be used to display without attribution to Options Members' MPIDs Displayed Orders on both the bid and offer side of the market for price levels then within BATS Options using the minimum price variation applicable to that security. *See* proposed BATS Options Rule 21.1(a). *See* Notice, *supra* note 3, for a more complete description of BATS Options operation and rules. The Commission notes that the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan") requires each party to the Plan to collect and promptly transmit to the Options Price Reporting Authority ("OPRA") all last sale reports relating to its market. *See* OPRA Plan, Article V, Section 5.2(a).

[29] *See* proposed BATS Options Rule 21.2(a).

[30] *See* proposed BATS Options Rule 21.1(a)(3).

[31] Reserve Orders are limit orders that have both a displayed size as well as an additional non-displayed amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the displayed portion of a Reserve Order is fully executed, the System will replenish the display portion from reserve up to the size of the original display amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the timestamp of its original entry.

[32] Minimum Quantity Orders are orders that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of Immediate or Cancel.

[33] Discretionary Orders are orders that have a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party is also willing to buy or sell. When displayed contracts become available on the opposite side of the market or an execution takes place at any price within the discretionary price range, the displayed price and size is automatically cancelled and an IOC buy (sell) order is generated priced at the highest (lowest) price in the discretionary price range. If more than one Discretionary Order is available for conversion to an IOC order, the System will convert and process all such orders in the same priority in which such Discretionary Orders were entered. If the IOC order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the BATS Options Book with a new time stamp, at its original displayed price, and with its non-displayed discretionary price range.

[34] Price Improving Orders are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders. Unless a User has entered instructions not to do so, Price Improving Orders will be subject to the "displayed price sliding process." Pursuant to the displayed price sliding process, a Price Improving Order that after rounding to the minimum price variation, or any other order to be displayed on the BATS Book that at the time of entry, would lock or cross a Protected Quotation (collectively, "the original locking price"): (a) will be displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers); and (b) in the event the NBBO changes such that the order at the original locking price would not lock or cross a Protected Quotation, the order will receive a new timestamp, and will be displayed at the original locking price.

[35] Destination Specific Orders are market or limit orders that instruct the System to route the order to a specified away trading center, after exposing the order to the BATS Options Book. Destination Specific Orders that are not executed in full after routing away are processed by the Exchange, as described in proposed BATS Options Rules 21.8 and 21.9.

[36] BATS Only Orders are orders that are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another trading center. A BATS Only Order that, at the time of entry, would cross a Protected Quotation will be repriced to the locking price and ranked at such price in the BATS Options Book. A BATS Only Order will be subject to the displayed price sliding process unless a User has entered instructions not to use the displayed price sliding process.

[37] BATS Post Only Orders are orders that are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another trading center. Such orders will not remove liquidity from the BATS Options Book. A BATS Post Only Order will be subject to the displayed price sliding process unless a User has entered instructions not to use the displayed price sliding process.

Only at Limit Orders;[38] Intermarket Sweep Orders;[39] and Directed Intermarket Sweep Orders,[40] with characteristics and functionality similar to what is currently approved for use in the Exchange's equities trading facility or on other options exchanges.[41] Orders entered into the System will be designated for display (price and size) on an anonymous basis in the order display service of the System.[42]

The System will execute trading interest within the System in price/time priority, meaning it will execute all trading interest at the best price level within the System before executing trading interest at the next best price.[43] At each price level, displayed trading interest[44] will be executed before non-displayed trading interest.[45]

The Commission believes that BATS' proposed execution priority rules and order types are consistent with the Act, and in particular, with the requirements in Section 6(b)(5) of the Act, which requires an exchange's rules be, among other things, designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission further finds that BATS Options proposed trading rules are consistent with the requirements of the Options Order Protection and Locked/Crossed Market Plan. Specifically, subject to the exceptions contained in proposed BATS Options Rule 27.2(b), the System will ensure that an order is not executed at a price that trades through another options exchange.[46] In this regard, the Commission notes that BATS is required under Rule 608(c) of Regulation NMS to comply with and enforce compliance by its members with the Options Order Protection and Locked/Crossed Market Plan, including the requirement to avoid trading through better prices available on other markets.[47] Any order entered with a price that would lock or cross a Protected Quotation that is not eligible for either routing or the displayed price sliding process, as defined in proposed BATS Options Rule 21.1(d)(6), will be cancelled.[48]

Proposed BATS Options Rule 22.12 prohibits Options Members from executing, as principal, orders they represent as agent unless the agency order is first exposed on BATS Options for at least one second or the Options Member has been bidding or offering on BATS Options for at least one second prior to receiving an agency order that is executable against such bid or offer.

The Commission believes that in the electronic environment of BATS Options, a one second exposure period could facilitate the prompt execution of orders while continuing to provide option members with an opportunity to compete for exposed bids and offers. The Exchange represents that market participants are sufficiently automated that a one second exposure period allows an adequate time for market participants to electronically respond to an order.[49] In addition, the Exchange's trading system for BATS Options is identical to the trading system currently used for equities trading on the Exchange today. The Exchange believes, based on its experience with that trading system, that one second is an adequate exposure period. Further, the Exchange believes that many of its current Members will be Options Members and that such current Members have demonstrated an ability to respond to orders in a timely fashion.[50] Accordingly, the Commission believes it is consistent with the Act to have an order exposure time of one second.

C. Openings

The System will open options, other than index options, for trading based on the first transaction after 9:30 a.m. Eastern Time in the securities underlying the options as reported on the first print disseminated pursuant to an effective national market system plan.[51] With respect to index options, the System will open such options for trading at 9:30 a.m. Eastern Time.[52] Because the exchange does not propose to adopt an opening cross or similar process, the opening trade that occurs on the Exchange will be a trade in the

[38] Partial Post Only at Limit Orders are orders that are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another trading center. Such orders will only remove liquidity from the BATS Options Book under the following circumstances: (a) a Partial Post Only at Limit Order will remove liquidity from the BATS Options Book up to the full size of the order if, at the time of receipt, it can be executed at prices better than its limit price (*i.e.,* price improvement); (b) regardless of any liquidity removed from the BATS Options Book under the circumstances described in paragraph (a) above, a User may enter a Partial Post Only at Limit Order instructing the Exchange to also remove liquidity from the BATS Options Book at the order's limit price up to a designated percentage of the remaining size of the order after any execution pursuant to paragraph (a) above ("Maximum Remove Percentage") if, after removing such liquidity at the order's limit price, the remainder of such order can then post to the BATS Options Book. If no Maximum Remove Percentage is entered, such order will only remove liquidity to the extent such order will obtain price improvement as described in paragraph (a) above. A Partial Post Only at Limit Order will be subject to the displayed price sliding process unless a User has entered instructions not to use the displayed price sliding process.

[39] Intermarket Sweep Orders ("ISOs") are orders that have the meaning provided in proposed BATS Options Rule 27.1, which relates to intermarket trading. Such orders may be executed at one or multiple price levels in the System without regard to Protected Quotations at other options exchanges (*i.e.,* may trade through such quotations). The Exchange relies on the marking of an order by a User as an ISO order when handling such order, and thus, it is the entering Options Member's responsibility, not the Exchange's responsibility, to comply with the requirements relating to ISOs. ISOs are not eligible for routing.

Nothwithstanding the Exchange's reliance on a User's marking of an order as an ISO, the Exchange has an obligation under Rule 608(c), 17 CFR 242.608(c), and Section 19(g)(1) of the Act, 15 U.S.C. 78s(g)(1), to enforce members' compliance with the plan and exchange rules related to the plan. Accordingly, BATS must have a robust regulatory program, including surveillance, examination, investigative, and disciplinary programs, to enforce its members' compliance with its rules and the plan provisions.

[40] Directed Intermarket Sweep Orders are ISOs entered by a User that bypass the System and are immediately routed by the Exchange to another options exchange specified by the User for execution. It is the entering Member's responsibility, not the Exchange's responsibility, to comply with the requirements relating to ISOs.

[41] *See* proposed BATS Options Rule 21.1(d). Options Members entering orders into the System may designate such orders to remain in force and available for display and/or potential execution for varying periods of time. Unless cancelled earlier, once these time periods expire, the order (or the unexecuted portion thereof) is returned to the entering party. Such "Time in Force" designations for orders include "Good Til Day" or "GTD," "Immediate Or Cancel" or "IOC," "DAY," and "WAIT." *See* proposed BATS Options Rule 21.1(f).

[42] *See* proposed BATS Options Rules 21.8 and 21.10.

[43] *See* proposed BATS Options Rule 21.8(a).

[44] Trading interest at each price level where the price is not displayed will be executed in the following priority: (a) Price Improving Orders and orders subject to displayed price sliding, and then (b) discretionary portion of discretionary orders as set forth in proposed BATS Options Rule 21.1(d)(4).

[45] After orders that are displayed within the System at each price level are executed, the non-displayed portion of Reserve Orders will be executed followed by the discretionary portion of discretionary orders. *See* proposed BATS Options Rules 21.8(a)(1) and 21.8(a)(2).

As with its equities market, the Exchange will allow Options Members to use Member Match Trade Prevention ("MMTP") Modifiers. *See* proposed BATS Options Rule 21.1(g). Any incoming order designated with an MMTP modifier would be prevented from executing against a resting opposite side order also designated with an MMTP modifier and originating from the same market participant identifier ("MPID"), Exchange Member identifier, or Exchange Sponsored Participant identifier. *Id.*

[46] *See* proposed BATS Options Rules 21.6(e) and 27.2.

[47] *See* 17 CFR 242.608(c).

[48] *See* proposed BATS Options Rule 21.6(f).

[49] *See* Notice, *supra* note 3, at 64791.

[50] *Id.*

[51] *See* proposed BATS Options Rule 21.7(a).

[52] *See id.*

ordinary course of dealings on the Exchange. Accordingly, the System will ensure that the opening trade in an options series will not trade through a Protected Quotation (as defined in proposed BATS Options Rule 27.1) at another options exchange, consistent with the general standard regarding trade-throughs articulated in proposed BATS Options Rule 21.6(e). The Commission believes that BATS Options rules regarding the opening of trading on BATS Options, particularly the fact that a trade will not occur until the underlying security has begun trading and that any opening trade will be subject to the trade-through provisions of BATS Options Rule 21.6(e), is reasonably designed to provide for an orderly opening and is consistent with the Act.

D. Routing

Options Members may designate orders to be routed to another options exchange when trading interest is not available on BATS Options or to execute only on BATS Options. An order that is designated as routable will be routed to other options markets to be executed when the Exchange is not at the NBBO consistent with the Options Order Protection and Locked/Crossed Market Plan. Orders routed to other options exchanges do not retain time priority with respect to orders in the System, and the System will continue to execute orders while routed orders are away at another exchange.[53] If a routed order is returned, in whole or in part, that order (or its remainder) will receive a new time stamp reflecting the time of its return to the System.[54] Options Members whose orders are routed away will be obligated to honor trades executed on other exchanges to the same extent they would be obligated to honor a trade executed on BATS Options.[55]

BATS Options will route orders in options via BATS Trading, Inc. ("BATS Trading"), which currently serves as the Outbound Router of the Exchange, pursuant to Rule 2.11.[56] The function of the Outbound Router will be to route orders in options listed and open for trading on BATS Options to other options exchanges pursuant to BATS Options rules solely on behalf of BATS Options.[57] The Outbound Router will be subject to regulation as a facility of the Exchange, including the requirement to file proposed rule changes under Section 19 of the Act.[58]

Pursuant to Rule 2.11, BATS Trading is required to be a member of an SRO unaffiliated with BATS that is its designated examining authority, and BATS Trading is required to establish and maintain procedures and internal controls reasonably designed to restrict the flow of confidential and proprietary information between BATS and its facilities, including BATS Trading, and any other entity.[59] In addition, the books, records, premises, officers, directors, agents, and employees of BATS Trading, as a facility of BATS, are deemed to be those of the Exchange for purposes of and subject to oversight pursuant to the Act.[60]

In the event the Exchange is not able to provide order routing services through its affiliated broker-dealer, the Exchange would route orders to other options exchanges in conjunction with one or more routing brokers that are not affiliated with the Exchange ("Routing Services").[61] The Exchange will determine the logic that provides when, how, and where orders are routed away to other options exchanges.[62] The routing broker will receive routing instructions from the Exchange to route orders to other options exchanges and report the executions back to the Exchange.[63] The routing broker cannot change the terms of an order or the routing instructions, nor does the routing broker have any discretion about where to route an order.[64] The Exchange would enter into an agreement with each routing broker used by the Exchange that would, among other things, restrict the use of any confidential and proprietary information that the routing broker receives to legitimate business purposes necessary for the routing of the order at the direction of the Exchange.[65] Further, the Exchange would establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between (1) the Exchange and the routing broker, and any other entity, including any affiliate of the routing broker; and (2) if the routing broker or any of its affiliates engages in any other business activities, other than providing routing services to the Exchange, the segment of the routing broker or affiliate that provides the other business activities and the segment of the routing broker that provides the routing services.[66]

The Exchange may not use a routing broker for which the Exchange or any affiliate of the Exchange is the designated examining authority.[67] In addition, the Exchange will provide its Routing Services in compliance with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[68] Any bid or offer entered on the Exchange routed to another options exchange through a routing broker that results in an execution shall be binding on the Options Member that entered such bid or offer.[69]

Use of BATS Trading or the Routing Services to route orders to other market centers is optional.[70] Parties that do not desire to use BATS Trading or other Routing Services provided by the Exchange must designate orders as not available for routing.[71]

In light of these protections, for both the use of BATS Trading or an unaffiliated router, the Commission believes that BATS rules and procedures regarding the use of BATS Trading or an unaffiliated router to route orders to away exchanges are consistent with the Act.

E. Minimum Quoting and Trading Increments

The Exchange is proposing to apply the following minimum quoting increments: (1) if the option price is less than $3.00, five (5) cents; and (2) if the option price is $3.00 or higher, ten (10) cents. In addition, the Exchange proposes to participate in a pilot program, until December 31, 2010, to allow quoting in certain options in smaller increments ("Pilot Program"). BATS will include in the Pilot Program all classes that are, on that date, included by other options exchanges in substantially similar pilot programs. The Exchange further proposes to expand the classes subject to the Pilot

[53] *See* proposed BATS Options Rule 21.9(b).
[54] *Id.*
[55] *See* proposed BATS Options Rule 21.9(c).
[56] *See* proposed BATS Options Rule 21.9(d).
[57] *Id.*
[58] *Id.*
[59] *See* BATS Rule 2.11(a)(5).
[60] *See* BATS Rule 2.11(b).
[61] *See* proposed BATS Options Rule 21.9(e).
[62] *See* proposed BATS Options Rule 21.9(e)(5).
[63] *See* proposed BATS Options Rule 21.9(e)(6).
[64] *Id.*
[65] *See* proposed BATS Options Rule 21.9(e)(1).
[66] *See* proposed BATS Options Rule 21.9(e)(2).
[67] *See* proposed BATS Options Rule 21.9(e)(3).
[68] *See* proposed BATS Options Rule 21.9(e)(4). *See also* 15 U.S.C. 78f(b)(4) and (5).
[69] *See* proposed BATS Options Rule 21.9(e)(7).
[70] *See* proposed BATS Options Rule 21.9(d).
[71] *See id.*

Program on a quarterly basis, by adding 75 classes at a time through August 2010.[72] If an options class is included in the Pilot Program, BATS will allow quoting in one (1) cent increments any option priced less than $3.00 or options on QQQQs, IWM, and SPY. Options priced at $3.00 or higher that are in the Pilot Program will be quoted in five (5) cent increments.[73]

In addition, the Exchange is proposing that the minimum *trading* increment for options contracts traded on BATS Options would be one (1) cent for all series.[74]

The Commission believes that BATS' proposal to commence quoting pursuant to the Pilot Program, which is consistent with the rules of the other options exchanges, is consistent with the Act. As the Commission noted in approving the latest expansion of the Pilot Program, allowing market participants to quote in smaller increments has been shown to reduce spreads, thereby lowering costs to investors.[75] In addition, permitting options to be quoted in smaller increments pursuant to the Pilot Program provides the opportunity for reduced spreads for a significant amount of trading volume.[76] The Commission believes that BATS' proposal to commence quoting pursuant to the Pilot Program would promote the continuing narrowing of spreads. Further, although the Pilot Program has contributed to the increase in quote message traffic, the Commission notes that it has been manageable by the exchanges and OPRA, and the Commission has not received any reports of disruptions in the dissemination of pricing information.[77] Although the Commission anticipates that BATS' proposal will contribute to further increases in quotation message traffic, the Commission believes that BATS' proposal is sufficiently limited such that it is unlikely to increase quotation message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of information.[78]

F. Securities Traded on BATS Options

The Exchange proposes to adopt initial and continued listing standards for equity and index options that are substantially similar to the listing standards adopted by other options exchanges.[79] The Commission believes that BATS' proposed initial and continued listing standards are consistent with the Act, including Section 6(b)(5), in that they are designed to protect investors and the public interest and to promote just and equitable principles of trade. BATS' operation of the BATS Options Exchange, however, is conditioned on BATS becoming a Plan Sponsor in the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Act ("OLPP"). The Exchange represents that it will join OLPP.[80] In addition, BATS will need to become a participant in the OCC.

G. Regulation

According to the Exchange, consistent with the Exchange's existing regulatory structure, the Exchange's Chief Regulatory Officer will have general supervision of the regulatory operations of BATS Options, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to BATS Options. Similarly, the Exchange's existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange's regulatory and self-regulatory organization ("SRO") responsibilities, including those applicable to BATS Options.[81]

BATS rules provide that is has disciplinary jurisdiction over its members, including Options Members, so that it can enforce its members' compliance with its rules and the federal securities laws.[82] The Exchange's rules also permit it to sanction members, including Options Members, for violations of its rules and of the federal securities laws by, among other things, expelling or suspending members, limiting members' activities, functions, or operations, fining or censuring members, or suspending or barring a person from being associated with a member.[83] BATS rules also provide for the imposition of fines for minor rule violations in lieu of commencing disciplinary proceedings.[84]

Moreover, the Exchange will: (1) Join the existing options industry agreements pursuant to Section 17(d) of the Act; (2) amend as necessary the Exchange's existing Regulatory Services Agreement ("RSA") with FINRA to cover many aspects of the regulation and discipline of Members that participate in options trading; (3) perform options listing regulation, as well as authorize Options Members to trade on BATS Options; and (4) perform automated surveillance of trading on BATS Options for the purpose of maintaining a fair and orderly market at all times.[85]

In addition, the Exchange will oversee the process for determining and implementing trading halts, identifying and responding to unusual market conditions, and administering the Exchange's process for identifying and remediating "obvious errors" by and among its Options Members. BATS proposed rules (Chapter XX) regarding halts, unusual market conditions, extraordinary market volatility, obvious errors, and audit trail are closely modeled on the approved rules of The NASDAQ Options Market LLC ("NOM")

[72] *See* Notice, *supra* note 3 (providing additional details regarding the Pilot Program). The Exchange will not include in the Pilot Program options classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company or if the issuer is in bankruptcy, and, for purposes of assessing average daily volume, the Exchange will use data compiled and disseminated by the Options Clearing Corporation ("OCC"). *See* Amendment No. 1, *supra* note 4.

[73] *See* proposed BATS Options Rule 21.5(a). *See also* Amendment No. 1, *supra* note 4.

[74] *See* proposed BATS Options Rule 21.5(b).

[75] *See* Securities Exchange Act Release No. 60711 (September 23, 2009), 74 FR 49419, 49424 (September 28, 2009) (SR–NYSEArca–2009–44) (partially approving a proposed rule change to expand the Pilot Program).

[76] *See id.*

[77] *See id.*

[78] The Commission believes that the continued operation and phased expansion of the Pilot Program will provide valuable information to the exchanges, the Commission, and others about the impact of penny quoting in the options market. *See* Securities Exchange Act Release No. 60711, *supra* note 75. In particular, extending and expanding the Pilot Program will allow further analysis of the impact of penny quoting in the Pilot Program classes over a longer period of time on, among other things: (1) spreads; (2) peak quotation rates; (3) quotation message traffic; (4) displayed size; (5) "depth of book" liquidity; and (6) market structure. *See id.* The Exchange has committed to provide the Commission with periodic reports that will analyze the impact of the expanded Pilot Program. *See* Notice, *supra* note 3. The Commission expects the Exchange to include statistical information relating to these factors in its periodic reports.

[79] *See, e.g.,* Rules of NOM, Chapters IV and XIV; Rules of BOX, Chapters IV and XIV.

[80] *See* Notice, *supra* note 3, at 64793.

[81] Pursuant to a Regulatory Services Agreement, FINRA would perform certain regulatory functions on behalf of the Exchange. *See infra* note 90 and accompanying text.

[82] *See* proposed BATS Options Rules 17.3 and 25.1.

[83] *See* BATS Rule 8.1 and proposed BATS Options Rule 25.1.

[84] *See infra* notes 100 to 107 and accompanying text.

[85] As it does with its equities trading, the Exchange will monitor BATS Options to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA. The Exchange represents that it will comply with COATS specifications in submitting data for purposes of creating a consolidated audit trail, as well as receive COATS data for purposes of its surveillance operations. *See* Amendment No. 1, *supra* note 4.

and the Boston Options Exchange Group, LLC ("BOX").[86]

The Commission finds that the Exchange's proposed rules and regulatory structure with respect to BATS Options Exchange are consistent with the requirements of the Act, and in particular with Section 6(b)(1) of the Act, which requires an exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act and the rules and regulations thereunder, and the rules of the Exchange,[87] and with Section 6(b)(6) and 6(b)(7) of the Act[88] which require an Exchange to provide fair procedures for the disciplining of members and persons associated with members.[89]

1. Regulatory Services Agreement

Currently, the Exchange and FINRA are parties to an existing RSA, pursuant to which FINRA personnel operate as agents for the Exchange in performing certain functions. According to the Exchange, the RSA between the Exchange and FINRA will be amended to capture certain aspects of regulation specifically applicable to BATS Options and the regulation and discipline of Options Members.[90] The Commission notes that BATS will continue to bear ultimate regulatory responsibility for functions performed on BATS' behalf under the RSA. Further, BATS retains ultimate legal responsibility for the regulation of its Members and its market.

The Commission believes that it is consistent with the Act to allow BATS Exchange to contract with FINRA to perform examination, enforcement, and disciplinary functions.[91] These functions are fundamental elements to a regulatory program and constitute core self-regulatory functions. It is essential to the public interest and the protection of investors that these functions are carried out in an exemplary manner, and the Commission believes that FINRA has the expertise and experience to perform these functions on behalf of BATS Exchange.[92] The Commission is conditioning the operation of BATS Options Exchange on the finalization of the provisions in the RSA that will expand the scope of that agreement to options trading and specify the BATS Exchange and Commission rules for which FINRA will provide regulatory functions for the trading of options on the BATS Options Exchange.

The Commission notes that, unless relieved by the Commission of its responsibility,[93] BATS bears the responsibility for self-regulatory conduct and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on the Exchange's behalf. In performing these functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of the Exchange to perform its regulatory functions.[94] Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for BATS relating to the operation of BATS Options, FINRA also may have secondary liability if, for example, the Commission finds the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws by BATS Exchange.[95]

2. 17d–2 Agreements

Rule 17d–2 under the Act permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Act and rules thereunder and SRO rules by, firms that are members of more than one SRO ("common members"). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO.[96]

All of the options exchanges, FINRA, and the New York Stock Exchange LLC ("NYSE") have entered into the Options Sales Practices Agreement, a Rule 17d–2 Agreement, which allocates to certain SROs ("examining SROs") regulatory responsibility for common members with respect to certain options-related sales practice matters.[97] Under this Agreement, the examining SROs would examine firms that are common members of the Exchange and the particular examining SRO for compliance with certain provisions of the Act, certain of the rules and regulations adopted thereunder, certain examining SRO rules, and certain BATS Options Rules. In addition, BATS Options Rules contemplate participation in this Agreement by requiring that any Options Member also be a member of at least one of the examining SROs.[98]

Moreover, all of the options exchanges and FINRA have entered into the Options Related Market Surveillance Agreement, which allocates regulatory responsibility for certain options-related

[86] *See* Rules of NOM, Chapter V, and Rules of BOX, Chapter V.

[87] 15 U.S.C. 78f(b)(1).

[88] 15 U.S.C. 78f(b)(6) and (b)(7).

[89] Every Options Member will be required to have at least one registered Options Principal who satisfies the criteria of that rule, including passing an appropriate qualification examination. *See* proposed BATS Options Rule 17.2(g). In addition, all Options Principals will be required to comply with the Exchange's existing continuing education requirements. *See* BATS Rule 2.5, Interpretation and Policy .02. and proposed BATS Options Rule 17.2(g)(4). The Commission believes these rules will help ensure that the Exchange can meet its obligations under Section 6(b)(1) of the Act to, among other things, enforce compliance by associated persons of its Members with the Act, the rules thereunder, and the Exchange's rules, and are consistent with the Act. The Commission further notes that Authorized Traders of Options Members will be required to comply with existing Exchange registration and continuing education requirements applicable to Authorized Traders. *See* BATS Rule 2.5, Interpretation and Policy .01 and .02, BATS Rule 11.4., and proposed BATS Options Rule 16.2(b). "Authorized Trader" is defined as a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange's trading facilities on behalf of his or her Member or Sponsored Participant. *See* BATS Rule 1.5(d).

[90] *See* Amendment No. 1, *supra* note 4.

[91] *See, e.g.,* Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998). *See also, e.g.,* Securities Exchange Act Release Nos. 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR–Amex–2004–32) (approving rule that allowed Amex to contract with another SRO for regulatory services) ("Amex Regulatory Services Approval Order"); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004) ("NOM Approval Order"); and 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) ("Nasdaq Exchange Registration Order").

[92] *See* Amex Regulatory Services Approval Order; NOM Approval Order; and Nasdaq Exchange Registration Order, *id.*

[93] *See* Section 17(d)(1) of the Act and Rule 17d–2 thereunder (15 U.S.C. 78q(d)(1) and 17 CFR 240.17d–2). The Commission notes that this order is not approving the RSA.

[94] For example, if failings by FINRA have the effect of leaving BATS Exchange in violation of any aspect of BATS Exchange's self-regulatory obligations, BATS Exchange would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. *See* Nasdaq Exchange Registration Order, *supra* note 91. *See also* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10–127) (approving the International Securities Exchange LLC's application for registration as a national securities exchange).

[95] *See id.*

[96] Rule 17d–2 provides that any two or more SROs may file with the Commission a plan for allocating among such SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. *See* 17 CFR 240.17d–2.

[97] *See* Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008) (File No. S7–966).

[98] *See* proposed BATS Options Rule 26.1.

market surveillance matters among the participants.[99] Under this agreement, the examining SRO would assume regulatory responsibility with respect to firms that are common members of the Exchange and the particular examining SRO for compliance with applicable common rules for certain accounts.

The Commission notes that, as a condition to this order, BATS must become a party to each of these 17d–2 Agreements, which will cover BATS Members that are Options Members.

3. Minor Rule Violation Plan

The Commission approved the BATS Exchange's Minor Rule Violation Plan ("MRVP") in 2008.[100] The Exchange's MRVP specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the provisions of Rule 19d–1(c)(1) under the Act[101] requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[102] The Exchange's MRVP includes the policies and procedures included in BATS Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules) and in BATS Rule 8.15, Interpretations and Policy .01.

The Exchange proposes to amend its MRVP and BATS Rule 8.15, Interpretation and Policy .01, to include proposed BATS Options Rule 25.3 (Penalty for Minor Rule Violations).[103] The rules included in proposed BATS Options Rule 25.3 as appropriate for disposition under the Exchange's MRVP are: (a) Position Limit violations for both customer accounts as well as the accounts of Options Members that are Exchange Members; (b) Order Entry violations regarding restrictions on orders entered by Market Makers, and (c) Continuous Quote violations regarding Market Maker continuous bids and offers.

The Commission notes that the rules included in proposed BATS Options Rule 25.3 are similar to rules included in the MRVPs of other options exchanges.[104] The Commission finds that BATS' MRVP, as amended to include the rules listed in proposed BATS Options Rule 25.3, is consistent with Sections 6(b)(1), 6(b)(5), and 6(b)(6) of the Act, which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange.[105] In addition, because BATS Rule 8.15 will offer procedural rights to a person sanctioned for a violation listed in proposed BATS Options Rule 25.3, the Commission believes that BATS' rules provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Act.[106]

The Commission also finds that the proposal to include the provisions in proposed BATS Options Rule 25.3 in BATS' MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[107] because it should strengthen BATS' ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving the proposed change to BATS' MRVP, the Commission in no way minimizes the importance of compliance with BATS rules and all other rules subject to the imposition of fines under BATS' MRVP. The Commission believes that the violation of any SRO rules, as well as Commission rules, is a serious matter. However, BATS' MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that BATS will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under BATS' MRVP or whether a violation requires a formal disciplinary action.

H. Section 11(a) of the Act

Section 11(a)(1) of the Act[108] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, "covered accounts") unless an exception applies. Rule 11a2–2(T) under the Act,[109] known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[110] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, BATS requests that the Commission concur with BATS' conclusion that Options Members that enter orders into the System satisfy the requirements of Rule 11a2–2(T).[111] For the reasons set forth below, the Commission believes that Options Members entering orders into the System would satisfy the conditions of the Rule.

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. The BATS Options System receives orders electronically through remote terminals or computer-to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor

[99] *See* Securities Exchange Act Release No. 58765 (October 9, 2008), 73 FR 62344 (October 20, 2008) (File No. 4–551).

[100] *See* Securities Exchange Act Release No. 58807 (October 17, 2008), 73 FR 63219 (October 23, 2008) (File No. 4–568) ("BATS MRVP Order").

[101] 17 CFR 240.19d–1(c)(1).

[102] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (File No. S7–983A). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission would not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[103] In the BATS MRVP Order, the Commission noted that any amendments to Rule 8.15.01 made pursuant to a rule filing submitted under Rule 19b–4 would automatically be deemed a request by the Exchange for Commission approval of a modification to its MRVP. *See* BATS MRVP Order, *supra* note 100, at note 6.

[104] *See, e.g.,* Rules of NOM, Chapter X, Section 7, and Rules of BOX, Chapter X, Section 2.

[105] 15 U.S.C. 78f(b)(1), 78f(b)(5), and 78f(b)(6).

[106] 15 U.S.C. 78f(b)(7).

[107] 17 CFR 250.19d–1(c)(2).

[108] 15 U.S.C. 78k(a)(1).

[109] 17 CFR 240.11a2–2(T).

[110] The member may, however, participate in clearing and settling the transaction.

[111] *See* Letter from Eric Swanson, Senior Vice President and General Counsel, BATS Exchange, to Elizabeth M. Murphy, Secretary, Commission, dated January 20, 2010 ("BATS 11(a) Letter").

transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[112] Because the BATS Options System receives orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the System satisfies the off-floor transmission requirement.

Second, the Rule requires that the member not participate in the execution of its order. BATS has represented that at no time following the submission of an order is an Options Member able to acquire control or influence over the result or timing of an order's execution.[113] According to BATS, the execution of a member's order is determined solely by what other orders, bids, or offers are present in the System at the time the Options Member submits the order and on the priority of those orders, bids, and offers.[114] Accordingly, the Commission believes that an Options Member does not participate in the execution of an order submitted to the System.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the BATS Options System, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[115] BATS has represented that the design of the System ensures that no Options Member has any special or unique trading advantage in the handling of its orders after transmitting its orders to the Exchange.[116] Based on BATS' representation, the Commission believes that the BATS Options System satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T).[117] BATS represents that Options Members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[118]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2009–031 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–BATS–2009–031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2009–031 and should be submitted on or before February 22, 2010.

IV. Accelerated Approval of the Proposal, as Amended

The Commission finds good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing of the amended proposal in the **Federal Register.** The changes proposed in Amendment No. 1 are technical or non-substantive in nature, or are designed to clarify BATS Options Rules or make them consistent with the rules adopted by other options exchanges. Specifically, in Amendment No. 1, the Exchange (1) clarified its discussion regarding the establishment of strike prices for Quarterly Options Series to conform to the proposed rule text, the substance of which is consistent with the rules of other SROs; (2) clarified,

[112] *See, e.g.,* NOM Approval Order, *supra* note 91; Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) ("1979 Release").

[113] *See* BATS 11(a) Letter, *supra* note 111.

[114] *See id.* An Options Member may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

[115] In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *supra* note 112.

[116] *See* BATS 11(a) Letter, *supra* note 111.

[117] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 114 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

[118] *See* BATS 11(a) Letter, *supra* note 111.

consistent with the rules of other SROs, that it will not include options classes in the Pilot Program when the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company or is in bankruptcy and that, for purposes of assessing average daily volume, it will use OCC data; (3) amended its rules relating to the Pilot Program to provide for the quoting of all options on IWM and SPY in one-cent increments, consistent with what the Commission has previously approved for another options exchange; (4) included in its Exhibit 5, as a technical matter, an updated table of contents; (5) made non-substantive changes to defined terms in BATS Rule 2.12(d) and proposed BATS Options Rule 21.1(d)(6) to conform to the terms as defined in proposed BATS Options Rule 16.1(a); (6) deleted proposed BATS Option Rule 16.2(d) as unnecessary; (7) added references to "BATS Options" in the title of Chapters XVI and XVII of the proposed rules; (8) stated its intent to amend its existing RSA with FINRA to capture certain aspects of regulation specifically applicable to BATS Options and the regulation and discipline of Options Members; (9) in the interest of protecting investors, amended proposed BATS Options Rule 26.14(a) (Profit Sharing) to make it consistent with FINRA Rule 2150(c)(1); and (10) made clear that it will comply with COATS specifications in submitting data for purposes of creating a consolidated audit trail, as well as receive COATS data for purposes of its surveillance operations. For these reasons, the Commission finds good cause for approving the proposed rule change, as amended, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[119] that the proposed rule change (SR–BATS–2009–031), as modified by Amendment No. 1 thereto, be, and hereby is, approved on an accelerated basis.

Although the Commission's approval of the proposed rule change is final, and the proposed rules are therefore effective, it is further ordered that the operation of BATS Options Exchange is conditioned on the satisfaction of the requirements below:

A. *Participation in National Market System Plans Relating to Options Trading.* BATS must join the OPRA, the OLPP, the Options Order Protection and Locked/Crossed Market Plan, and the National Market System Plan of the Options Regulatory Surveillance Authority.

B. *Examination by the Commission.* BATS must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it has adequate surveillance procedures and programs in place to effectively regulate the BATS Options Exchange.

C. *RSA and 17d–2 Agreements.* BATS must ensure that all necessary changes are made to its Regulatory Services Agreement with FINRA and must become a party to the multi-party Rule 17d–2 agreements concerning sales practice regulation and market surveillance.[120]

D. *Participation in the Options Clearing Corporation.* BATS must join the Options Clearing Corporation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[121]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–1969 Filed 1–29–10; 8:45 am]

BILLING CODE 8011–01–P

[119] 15 U.S.C. 78s(b)(2).

[120] *See supra* notes 97 and 99 and accompanying text. *See also* 17 CFR 240.17d–2.

[121] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2009–0043]

Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration/Railroad Retirement Board (SSA/RRB))—Match Number 1308

AGENCY: Social Security Administration (SSA).

ACTION: Notice of renewal of an existing computer matching program, scheduled to expire on April 1, 2010.

SUMMARY: In accordance with the Privacy Act, as amended, this notice announces renewal of an existing computer matching program we conduct with RRB.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). Renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–0201 or writing to the Deputy Commissioner for Budget, Finance and Management, 800 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Deputy Commissioner for Budget, Finance and Management as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 Public Law (Pub. L.) 100–503, amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for persons applying for, and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: January 25, 2010.

Michael G. Gallagher,

Deputy Commissioner for Budget, Finance and Management.

Notice of Computer Matching Program, SSA With RRB

A. Participating Agencies

SSA and RRB.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions, terms and safeguards under which RRB agrees to disclose RRB annuity payment data to us. This disclosure provides us with information necessary to verify a person's self-certification of eligibility for prescription drug subsidy assistance under the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). The disclosure enables us to implement a Medicare outreach program mandated by section 1144 of title XI of the Social Security Act (Act). Information disclosed by RRB helps us identify and determine eligibility for Medicare Savings Programs (MSP) and subsidized Medicare prescription drug coverage and to identify these persons to the State agencies that administer these programs.

C. Authority for Conducting the Matching Program

Legal authority for us to conduct this matching activity is contained in section 1860D–14 (42 U.S.C. 1395w-114) and section 1144 (42 U.S.C. 1320b-14) of the Act.

D. Categories of Records and Persons Covered by the Matching Program

1. SPECIFIED DATA ELEMENTS USED IN THE MATCH

a. RRB electronically furnishes us with the following RRB annuitant data: name, Social Security number, date of birth, RRB claim number, and annuity payment.

b. We will match this file against the Medicare database (MDB).

2. SYSTEMS OF RECORDS

RRB provides us with electronic files containing RRB annuity payment, address changes and subsidy changing events data on qualified Medicare eligible RRB beneficiaries from its systems of records, RRB–22 Railroad Retirement Survivors and Pension Benefits Systems (CHICO). RRB also provides us with electronic files of all qualified RRB beneficiaries from its system of records, RRB–20 (Medicare) and newly qualified RRB beneficiaries from RRB's Post-Entitlement System (PSRRB). Pursuant to 5 U.S.C. 552a(b)(3), RRB has established routine uses to disclose the subject information.

We will match the RRB information with the electronic data from our system of records, No. 60–0321, MDB.

E. Inclusive Dates of the Matching Program

The matching program will become effective no sooner than 40 days after notice of the matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register,** whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2010–2024 Filed 1–29–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays In Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5 117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on January 21, 2010.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

MODIFICATION TO SPECIAL PERMITS

Application No.	Applicant	Reason for delay	Estimated date of completion
13736–M	ConocoPhillips Anchorage, AK	4	03–31–2010
14466–M	Alaska Pacific Powder Company Anchorage, AK	4	03–31–2010
11156–M	Alaska Pacific Powder Company Anchorage, AK	4	03–31–2010
10945–M	Structural Composites Industries, LLC Pomona, CA	4	03–31–2010
12629–M	TEA Technologies, Inc. Amarillo, TX	1	03–31–2010
14167–M	Trinityrail Dallas, TX	4	03–31–2010
14810–N	Olin Corporation, Chlor Alkai Products Division Cleveland, TN	4	03–31–2010
14813–N	Organ Recovery Systems Des Plaines, IL	4	03–31–2010
14831–N	Gasitech Industries—Gas—Handelsgesellschaft mbH	1	03–31–2010
14832–N	Trinity Industries, Inc. Dallas, TX	4	03–31–2010
14835–N	The Reusable Industrial Packaging Association Washington, DC	4	03–31–2010
14845–N	Progress Rail Services Albertville, AL	4	03–31–2010
14839–N	Matheson Tn-Gas, Inc. Basking Ridge, NJ	4	03–31–2010
14864–N	Balchem Corporation New Hampton, NY	4	03–31–2010

MODIFICATION TO SPECIAL PERMITS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
14865–N	Alaska Railroad Corporation Anchorage, AK	4	03–31–2010
14851–N	Alaska Air Group, Inc. Seattle, WA	4	03–31–2010
14849–N	Rechargeable Battery Recycling Corporation Atlanta, GA	4	03–31–2010
14868–N	Wal-Mart Stores, Inc. Bentonville, AR	4	03–31–2010
14861–N	Gliko Aviation Inc. Belt, MT	4	03–31–2010
14862–N	U.S. Custom Harvesters, Inc. Hutchinson, KS	4	01–31–2010
14859–N	Minuteman Aviation Inc. (MAI) Missoula, MT	4	03–31–2010
14878–N	Humboldt County Waste Management Authority Eureka, CA	4	03–31–2010
14872–N	Arkema, Inc. Philadelphia, PA	4	03–31–2010
14875–N	Canton Railroad Company Baltimore, MD	4	03–31–2010
14883–N	Structural Composites Industries (SCI) Pomona, CA	4	03–31–2010
14885–N	Kinsbursky Brothers Supply, Inc.	4	03–31–2010
14890–N	Liquid Transport Corp. Indianapolis, IN	4	03–31–2010

[FR Doc. 2010–1738 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Action on Proposed Highway in Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the proposed Illinois Route 29 (IL 29) highway project, for construction of an access-controlled, four-lane freeway on new right-of-way between the existing IL 6 interchange near Mossville and the proposed Chillicothe interchange north of Chillicothe in Peoria County, and the widening of IL 29 to four-lanes, largely on existing right-of-way, from north of Chillicothe to Interstate 180 (I–180) in Peoria, Marshall, Putnam, and Bureau Counties, Illinois. Those actions grant licenses, permits and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions of the highway project will be barred unless the claim is filed on or before August 2, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600, e-mail address: *Norman.Stoner@dot.gov.* The FHWA Illinois Division Office's normal business hours are 7:30 a.m. to 4:15 p.m. You may also contact Mr. Joseph E. Crowe, P.E., Illinois Department of Transportation, Deputy Director of Highways, Region Three Engineer, 401 Main Street, Peoria, Illinois 61602, Phone: (309) 671–3333. The Illinois Department of Transportation Region Three's normal business hours are 8 a.m. to 4:30 p.m.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits and approvals for the following highway project in the State of Illinois: Construction of an approximately 10-mile, access-controlled, four-lane freeway on new right-of-way between the existing IL 6 interchange near Mossville and the proposed Chillicothe interchange north of Chillicothe, and the approximately 25-mile widening to a four-lane expressway of IL 29, largely on existing right-of-way, from north of Chillicothe to I–180. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project approved on April 23, 2009; and the Record of Decision (ROD) issued on January 19, 2010; and other documents in the FHWA administrative record. The FEIS, ROD and other documents in the FHWA administrative record are available by contacting FHWA or the Illinois Department of Transportation at the addresses above. Project information can be viewed and downloaded from the project Web site *http://www.dot.il.gov/il29/default.aspx.* The FEIS can also be downloaded from *http://www.dot.il.gov/desenv/env.html,* or hard copies of the FEIS and the ROD are available upon request.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351] Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. *Wetlands and Water Resources:* Clean Water Act (Section 401 and 404) [33 U.S.C. 1251–1377]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Authority: 23 U.S.C. 139(l)(1)

Issued on: January 26, 2010.

Norman R. Stoner, P.E.,

Division Administrator, Springfield, Illinois.

[FR Doc. 2010–2044 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2008–0032]

Insurance Cost Information Regulation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces publication by NHTSA of the 2008 text and data for the annual insurance cost information booklet that all car dealers must make available to prospective purchasers, pursuant to 49 CFR 582.4. This information is intended to assist prospective purchasers in comparing differences in passenger vehicle collision loss experience that could affect auto insurance costs.

ADDRESSES: Interested persons may obtain a copy of this booklet or read background documents by going to *http://regulations.dot.gov* at any time or to Room W12–140 on the ground level of the West Building, 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: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Pursuant to section 201(e) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1941(e), on March 5, 1993, 58 FR 12545, the National Highway Traffic Safety Administration (NHTSA) amended 49 CFR Part 582, *Insurance Cost Information Regulation,* to require all dealers of automobiles to distribute to prospective customers information that compares differences in insurance costs of different makes and models of passenger cars based on differences in damage susceptibility.

Pursuant to 49 CFR 582.4, all automobile dealers are required to make available to prospective purchasers booklets that include this comparative information as well as certain mandatory explanatory text that is set out in section 582.5. Early each year, NHTSA produces a new version of this booklet to update the Highway Loss Data Institute's (HLDI) December Insurance Collision Report.

NHTSA is mailing a copy of the 2008 booklet to each dealer that the Department of Energy uses to distribute the "Gas Mileage Guide." Dealers will have the responsibility of reproducing a sufficient number of copies of the booklet to assure that they are available for retention by prospective purchasers by March 3, 2010. Dealers who do not receive a copy of the booklet within 15 days of the date of this notice should contact Ms. Ballard of NHTSA's Office of International Policy, Fuel Economy, and Consumer Programs (202) 366–0846 to receive a copy of the booklet and to be added to the mailing list. Dealers may also obtain a copy of the booklet through the NHTSA Web page at: *http://www.nhtsa.dot.gov/.* From there, click on the Laws/Regulations tab on the far right side at the top of the page. On the Laws/Regulations page, the Comparison of Insurance Costs is located under the heading Articles & Information.

(49 U.S.C. 32302; delegation of authority at 49 CFR 1.50(f).)

Issued on: January 26, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–1956 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[Docket No. FHWA–2009–0123]

Listening Session Regarding Notice of Funding Availability for Applications for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program; Clarification of TIFIA Selection Criteria; and Request for Comments on Potential Implementation of Pilot Program To Accept Upfront Payments for the Entire Subsidy Cost of TIFIA Credit Assistance and TIFIA Reauthorization

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Maritime Administration (MARAD), Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of listening session.

SUMMARY: The DOT's TIFIA Joint Program Office (JPO) announces a listening session for the public to discuss the topics identified in the notice of funding availability (NOFA) published in the **Federal Register** at 74 FR 63497, that had an original deadline of December 31, 2009, and was later extended to March 1, 2010 (75 FR 506). This listening session will facilitate stakeholder feedback in a timely manner, consistent with the extension of the comment period and the March 1, 2010, deadline for comments to the docket.

DATES: The DOT will conduct a listening session on Friday, February 12, 2010, from 10:30 a.m. to 4:30 p.m. *e.t.*

ADDRESSES: The listening session will be held in the West Atrium of the U.S. Department of Transportation located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Due to security procedures and space limitations, participants will need to register online in advance using the following URL *http://www.housmanandassociates.com/usdot/* to gain admittance to the meeting.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact Oscar Bedolla via e-mail at *TIFIACredit@dot.gov* or via telephone at (202) 366–0368. A TDD is available at (202) 366–7687.

SUPPLEMENTARY INFORMATION:

I. Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat.107, 241, (as amended by sections 1601–02 of Pub. L. 109–59) established the Transportation Infrastructure Finance and Innovation Act of 1998, authorizing the DOT to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private applicants for eligible surface transportation projects. The TIFIA JPO, a component of the FHWA Office of Innovative Program Delivery, has responsibility for coordinating program implementation.

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144), which made a number of amendments to TIFIA including lowering the thresholds and expanding eligibility for TIFIA credit assistance. Discussions regarding the pending reauthorization of the TIFIA program are anticipated in the coming months, and we are looking to stakeholders to provide feedback on potential program improvements for consideration during reauthorization discussions.

Because the demand for credit assistance now exceeds budgetary resources, it is no longer feasible for DOT to maintain, as it had since 2002, an open process whereby the TIFIA JPO accepted applications on a "first come, first serve" basis as defined by the optimal schedule of the applicant. Instead, the DOT is returning to periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against the TIFIA program objectives.

The eight TIFIA selection criteria are described in statute at 23 U.S.C. 602(b) and assigned relative weights via regulation at 49 CFR 80.15. The criteria were restated in the December 3, 2009, **Federal Register** notice at 74 FR 63497 with, where appropriate, clarifying language that indicated how the DOT will interpret them. In general, these clarifications indicated the DOT's desire to give priority to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region.

As detailed in the December 3, 2009, **Federal Register** notice, beginning in fiscal year 2008, the total credit requests from TIFIA applicants exceeded available resources. In response, the Department suspended consideration of new applications and reserved anticipated fiscal years 2009 and 2010 appropriations with the expectation that existing applicants would contribute to the Government's cost of providing credit assistance. Several potential applicants, however, rather than waiting to compete for scarce TIFIA funds in fiscal year 2010 and beyond, have indicated an interest paying a fee to offset the entire budgetary cost to the Federal Government. As a result, the DOT announced that it is exploring the potential of implementing a pilot program under which the DOT would accept applications for projects where the borrowers are willing and able to pay a fee to offset the entire subsidy cost of TIFIA credit assistance. The purpose of this pilot program would be to extend credit, consistent with policy objectives, to qualified projects that DOT otherwise cannot provide TIFIA assistance merely due to insufficient budgetary resources.

Finally, with the pending discussions regarding reauthorization of the TIFIA credit program, the DOT is soliciting stakeholder reauthorization proposals at this listening session regarding potential changes to improve the TIFIA program.

II. Purpose of the Listening Session

At the listening session, the DOT will receive the public's feedback on the following four issues.

Because demand for the TIFIA program now exceeds budgetary resources, the DOT recently announced the suspension of the program's open application process and the return to periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against program objectives.

Additionally, the DOT provided new language clarifying its use of the TIFIA selection criteria, incorporating explicit consideration of these policy objectives: livability, economic competitiveness, safety, sustainability, and state of good repair.

In light of constrained resources vis-à-vis demand for TIFIA assistance, the DOT requested comments regarding the potential implementation of a pilot program to accept, from qualified borrowers, an upfront fee payment to offset the entire subsidy cost of TIFIA credit assistance.

Finally, the DOT will utilize this listening session to seek feedback from stakeholders regarding potential changes to strengthen and/or expand the TIFIA program.

The DOT is committed to providing all interested parties an opportunity to discuss perspectives on pertinent issues that could affect the TIFIA program. While the NOFA published on December 3, 2009, sought public comment on specific issues related to TIFIA, the DOT recognizes that it would be useful to obtain additional information on a broader range of TIFIA-related subjects. Notwithstanding this listening session, however, individuals are encouraged to submit official comments to the docket. Participants are discouraged from reading prepared statements.

III. Meeting Information

The meeting will be held from 10:30 a.m. to 4:30 p.m., *e.t.,* on Friday, February 12, 2010, in the West Atrium of the U.S. Department of Transportation located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Because access to the DOT building is controlled, all visitors must sign in with the security office located at the west building entrance, present valid picture identification, be escorted, and wear a visitor's badge at all times while in the building.

Due to security procedures and space limitations, individuals who wish to attend the listening session must pre-register online by no later than 5 p.m., *e.t.,* on Monday, February 8, 2010, to gain admittance to the meeting. Interested participants must register through the following link *http://www.housmanandassociates.com/usdot/*. Anyone having difficulties registering online should contact Oscar Bedolla at *TIFIACredit@dot.gov,* (202)366–0638, for assistance with the online registration. All participants must be registered online. The first 200 participants to register will be granted entrance to the listening session. No formal presentations by participants will be permitted.

Notwithstanding this session, individuals who wish to submit formal written comments to the docket are encouraged to follow the instructions provided in the original NOFA issued on December 3, 2009, at 74 FR 63497 prior to the closing date of March 1, 2010.

Authority: 23 U.S.C. 601–609; 49 CFR 1.48(b)(6); 23 CFR Part 180; 49 CFR Part 80; 49 CFR Part 261; 49 CFR Part 640.

Issued on: January 26, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–1966 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board, DOT.

ACTION: Proposed Railroad Cost Recovery Procedures Productivity Adjustment.

SUMMARY: In a decision served on February 1, 2010, we proposed to adopt 1.010 (1.0% per year) as the measure of average change in railroad productivity for the 2004–2008 (5-year) averaging period. This is a decline of 0.5 of a percentage point from the current measure of 1.5% that was developed for the 2003–2007 period. The Board's February 1, 2010 decision in this proceeding stated that comments may be filed addressing any perceived data and computational errors in our calculation. It also stated that, if there were no further action taken by the Board, the proposed productivity adjustment would become effective on March 1, 2010.

DATES: The productivity adjustment is effective March 1, 2010. Comments are due by February 22, 2010.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Michael Smith, (202) 245–0322. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site at *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0235. Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: January 26, 2010.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Nottingham.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–1993 Filed 1–29–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2010 0009]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ANN PATRICE.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0009 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 3, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0009. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel ANN PATRICE is:

Intended Commercial Use of Vessel: "Fishing Charter operations in Puget Sound (inland)."

Geographic Region: "Washington".

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: January 25, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–1992 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2010 0010]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DRAGON LADY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0010 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 3, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0010. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version

of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel DRAGON LADY is:

Intended Commercial Use of Vessel: "Captained charters in which clients are taken to coastal town and scenic anchorages in the specific states."

Geographic Region: "North Carolina, South Carolina, Virginia, Delaware and Maryland."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: January 25, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–1996 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0008]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SUPER NOVA.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0008 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 3, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0008. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel SUPER NOVA is:

Intended Commercial Use of Vessel: "Doing day and cruising charters for six or fewer passengers on a cruising catamaran sailboat."

Geographic Region: "Maryland and Virginia based out of Solomons, MD."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: January 25, 2010.

By Order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–1994 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Solicitation of Nominations for Members of the Transit Rail Advisory Committee for Safety

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice to solicit nominees.

SUMMARY: The Federal Transit Administration (FTA) is seeking nominations for individuals to serve on the Transit Rail Advisory Committee for Safety (TRACS). The Advisory Committee meets at least twice a year to advise FTA on transit safety issues. The recommendations of the TRACS will help FTA develop new policies, practices, and regulations for enhancing safety in rail transit should FTA be given authority to promulgate new transit safety requirements.

DATES: Applications must be submitted no later than February 26, 2010.

FOR FURTHER INFORMATION CONTACT: Mike Flanigon, Director, Office of Safety and Security, Federal Transit Administration, 202–366–0235 or *Mike.Flanigon@dot.gov*. Applications should be submitted to *TRACS@dot.gov* or mailed to the Federal Transit Administration, Office of Safety and Security, Room E46–338, 1200 New Jersey Ave., SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Nationwide, rail transit is considered one of the safest modes of transportation with more than seven million people boarding rail transit vehicles in the United States each day. Transit systems have fewer fatalities and injuries than does any other mode of transportation. Even so, major accidents in Chicago, Washington, DC, San Francisco, and Boston have captured the attention of the public and raised widespread

concern regarding the industry's commitment to the safety of its passengers and employees. For example, the 2006 derailment of a CTA Blue Line train in Chicago involved aging infrastructure that did not meet agency safety standards and yet remained in service.

In response to this series of accidents, the Secretary of Transportation established TRACS for the purpose of providing a forum for the development, consideration, and communication of information from knowledgeable and independent perspectives regarding transit rail safety. The committee is chartered under the Federal Advisory Committee Act (5 U.S.C. App. 2) and became effective on December 8, 2009.

In addition, the Secretary of Transportation transmitted to Congress in December proposed legislation outlining comprehensive transit safety reforms. While Congress debates this important piece of legislation, the Department has decided to move forward with the selection process for the TRACS. The Department acknowledges that FTA cannot promulgate final regulations without new safety legislation, but given the urgent need for reform in this area, convening affected parties now will only help strengthen FTA's decision-making process later.

TRACS will be composed of no more than 25 voting members representing key constituencies affected by rail transit safety requirements. These key constituencies will include, but are not limited to: rail safety experts, labor unions, transit agencies, rider advocacy groups, State safety oversight agencies, and industry associations. Members are recommended for appointment by the FTA Administrator and appointed by and serve at the pleasure of the Secretary of Transportation. Terms of office will normally be two years, and members' terms of office will be staggered to assure adequate continuity of TRACS membership. Therefore, at least initially, some members may be appointed under this announcement to a one-year term of office.

Qualified individuals interested in serving on this committee are invited to apply to FTA for appointment. Nominations are sought from highly qualified individuals and should possess demonstrable expertise in the field of safety and/or rail transit operations/maintenance or represent stakeholder interests that would be affected by rail transit safety requirements. Nominees will also be evaluated based on the following factors: policy experience, leadership and organizational skills, region of country represented, and diversity characteristics. Each nomination should include: proposed committee member's name and organizational affiliation, a cover letter describing the nominee's qualifications or interest in serving on the committee, a curriculum vitae or resume of the nominee's qualifications, and whether the nominee would like to be considered for a one year or two year term. Self-nominations are acceptable and each submission should include the following contact information: nominee's name, address, phone number, fax number, and e-mail address. FTA prefers electronic submission for all applications to *TRACS@dot.gov*. Applications will also be accepted via U.S. mail at the address identified in the **FOR FURTHER INFORMATION CONTACT** section of this notice. All applications must be submitted by February 26, 2010. Finally, in furtherance of the President's efforts to reduce the influence of special interests in Washington, we are interested in keeping TRACS free of individuals who currently are registered Federal lobbyists.

The TRACS will meet approximately twice a year, usually in Washington, DC, but may meet more often if the need arises. Members serve at their own expense and receive no salary, or other compensation from the Federal Government. FTA retains authority to review the participation of any TRACS member and to recommend changes at any time. TRACS meetings will be open to the public and one need not be a member to attend. Interested individuals may view the charter for TRACS at *http://fta.dot.gov*. The Secretary of Transportation expects to make final decisions regarding committee membership by April 30, 2010.

Issued this 27th day of January 2010 in Washington, DC.

Peter Rogoff,

Administrator.

[FR Doc. 2010–2011 Filed 1–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Indianapolis International Airport, Indianapolis, IN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 13.992 acres of vacant airport property for highway development. The land consists of portions of eight original airport acquired parcels. These parcels were acquired under grants: FAAP 9–12–008–10, FAAP 9–12–008–12, ADAP 6–18–0038–01, ADAP 6–18–0038–02, AIP 3–18–0038–54 or without Federal participation. There are no impacts to the airport by allowing the Indianapolis Airport Authority to dispose of the property. The land is not needed for aeronautical use. Approval does not constitute a commitment by the FAA to financially assist in the sale or lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before March 3, 2010.

ADDRESSES: Written comments on the Sponsor's request must be delivered or mailed to: Melanie Myers, Program Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Melanie Myers, Program Manager, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI–ADO 609, 2300 East Devon Avenue, Des Plaines, IL 60018 Telephone Number (847–294–7525)/ FAX Number (847–294–7046). Documents reflecting this FAA action may be reviewed at this same location or at Indianapolis International Airport, Indianapolis, Indiana.

SUPPLEMENTARY INFORMATION:

Parcel 99: A part of the West Half of Southwest Quarter of Section 25, Township 15 North, Range 3 East in Marion County, Indiana and being that part of the granter's land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat marked Exhibit "B", described as follows: Commencing at the southwest corner of said half quarter section; thence North 88 degrees 37 minutes 37 seconds East 1,328.93 feet along the south line of said quarter section to the prolonged west boundary of I–465; thence North 0 degrees 19 minutes 10 seconds West 59.82 feet along the prolonged west boundary of said I–465

to the point of beginning of this description, which point is where the west boundary of said I–465 meets the north boundary of Hanna Avenue; thence South 90 degrees 00 minutes 00 seconds West 12.86 feet along the north boundary of Hanna Avenue to point "98008" designated on said plat; thence North 6 degrees 30 minutes 58 seconds West 197.03 feet to point "98002" designated on said plat; thence North 3 degrees 28 minutes 32 seconds West 484.17 feet to point "98001" designated on said plat; thence North 12 degrees 12 minutes 50 seconds West 47.06 feet to the north line of the grantor's land; thence North 88 degrees 37 minutes 37 seconds East 58.00 feet along said north line to the west boundary of said I–465; thence South 2 degrees 09 minutes 28 seconds East 390.53 feet along the boundary of said I–465 thence South 0 degrees 18 minutes 49 seconds East 336.28 feet along said boundary to the point of beginning and containing 0.647 acres, more or less.

Parcel 99A: A part of the West Half of the Southwest Quarter of Section 25, Township 15 North, Range 3 East, in Marion County, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat marked Exhibit "B" described as follows: Commencing at the southwest corner of said half quarter section, thence North 0 degrees 04 minutes 10 seconds West 20.31 feet along the west line of said section to the prolonged north boundary of Hanna Avenue; thence North XX degrees 39 minutes 19 seconds East 415.42 feet along the prolonged boundary of said Hanna Avenue and along the north boundary of said Hanna Avenue to the point of beginning of this description, designated as point "98006" on said plat: thence North 61 degrees 16 minutes 55 seconds East 56.32 feet to point "98005" designated on said plat; thence North 84 degrees 42 minutes 35 seconds East 288.96 feet to the north boundary of Hanna Avenue designated as point "98004" on said plat; thence South 9 degrees 45 minutes 49 seconds West 26.23 feet along the boundary of said Hanna Avenue; thence South 79 degrees XX minutes 37 seconds West 131.31 feet along said boundary; thence South 89 degrees XX minutes 19 seconds West 203.46 feet along said boundary to the point of beginning and containing 0.218 acres, more or less.

Parcel 13E: A part of the Southwest Quarter of Section 13 and a part of the Northwest Quarter of Section 24, all in Township 15 North, Range 2 East, Marion County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat marked EXHIBIT "B", described as follows: Beginning at a point on the south line of said Section 13 North 88 degrees 50 minutes 02 seconds East 1,378.87 feet from the southwest corner of said Section 13, which point of beginning is on the west boundary of I–465; thence South 21 degrees 28 minutes 28 seconds West 10.33 feet along the boundary of said I–465; thence South 0 degrees 05 minutes 18 seconds East 367.01 feet along said boundary; thence South 3 degrees 25 minutes 31 seconds West 394.20 feet along said boundary; thence along said boundary Southwesterly 435.19 feet along an arc to the right having a radius of 661.18 feet and subtended by a long chord having a bearing of South 19 degrees 58 minutes 17 seconds West and a length of 427.37 feet to point "1030113" designated on said plat; thence North 19 degrees 00 minutes 41 seconds East 423.57 feet to point "1030114" designated on said plat; thence North 0 degrees 13 minutes 26 seconds East 3,391.47 feet to point "51419" designated on said plat on the southern boundary of Minnesota Street; thence along the boundary of said Minnesota Street Northeasterly 26.69 feet along an arc to the right having a radius of 355.00 feet and subtended by a long chord having a bearing of North 82 degrees 19 minutes 01 seconds East and a length of 26.69 feet to the west boundary of said I–465; thence South 1 degree 29 minutes 51 seconds East 318.45 feet along the boundary of said I–465; thence South 2 degrees 38 minutes 18 seconds East 120.15 feet along said boundary; thence South 0 degrees 29 minutes 32 seconds East 240.02 feet along said boundary; thence South 0 degrees 13 minutes 26 seconds West 1,295.65 feet along said boundary; thence South 0 degrees 13 minutes 26 seconds West 126.35 feet along said boundary; thence South 3 degrees 05 minutes 11 seconds West 200.25 feet along said boundary; thence South 0 degrees 13 minutes 26 seconds West 315.00 feet along said boundary; thence South 21 degrees 28 minutes 28 seconds West 8.99 feet along said boundary to the point of beginning and containing 2.486 acres, more or less in said Section 13, and containing 0.691 acres, more or less, in said section 24; and containing in all 3.177 acres more or less.

Parcel 13F: A part of the Northwest Quarter of Section 13, Township 15 North, Range 2 East, Marion County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat marked EXHIBIT "B", described as follows: Commencing at the southwest corner of said quarter section; thence North 88 degrees 44 minutes 08 seconds East 1,365.63 feet along the south line of said quarter section to the west boundary of I–465; thence North 5 degrees 30 minutes 56 seconds East 20.80 feet along the boundary of said I–465; thence North 0 degrees 13 minutes 26 seconds East 24.71 feet along said boundary to the northern boundary of Minnesota Street and the point of beginning of this description: thence along the boundary of said Minnesota Street Southwesterly 22.12 feet along an arc to the left having a radius of 445.00 feet and subtended by a long chord having a bearing of South 84 degrees 17 minutes 11 seconds West and a length of 22.12 feet to point "35154" designated on said plat; thence North 0 degrees 13 minutes 26 seconds East 119.31 feet to point "35155" designated on said plat on the southern line of CSX Railroad; thence North 71 degrees 57 minutes 42 seconds East 23.17 feet along said southern line to the west boundary of said I–465; thence South 0 degrees 13 minutes 26 seconds West 124.29 feet along the boundary of said I–465 to the point of beginning and containing 0.061 acres, more or less.

Parcel 13G: A part of Lots 253 to 259, both inclusive in Arthur V. Brown's Second Section Western Heights, an Addition to the City of Indianapolis, Indiana, the plat of which is recorded in Plat Book 15, pager 152, in the Office of the Recorder of Marion County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat marked EXHIBIT "B", described as follows: Beginning at a point on the south line of said Lots 253 South 89 degrees 17 minutes 57 seconds West 11.49 feet from the southeast corner of said Lot 253, which point of beginning is on the west boundary of Lawndale Avenue; thence South 89 degrees 17 minutes 57 seconds West 72.51 feet along said south line to point "51430" designated on said parcel plat; thence North 0 degrees 13 minutes 26 seconds East 420.01 feet to the point "51437" designated on said parcel plat on the north line of said Lot 259; thence North 89 degrees 17 minutes 57 seconds East 72.51 feet along said north line to the west boundary of said Lawndale Avenue; thence South 0 degrees 13 minutes 26 seconds West 420.01 feet along the boundary of said Lawndale Avenue to the point of beginning and containing 30,451 square feet, more or less.

Parcel 13H: A part of Lots 260 to 264, both inclusive, in Arthur V. Brown's Section Western Heights, an Addition to

the City of Indianapolis, Indiana, the plat of which is recorded in Plat Book 15, page 152 in the Office of the Recorder of Marion County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat marked EXHIBIT "B", described as follows: Beginning at a point on the south line of said Lot 260 South 89 degrees 17 minutes 57 seconds West 10.44 feet from the southeast corner of said Lot 260, which point of beginning is on the west boundary of Lawndale Avenue; thence South 89 degrees 17 minutes 57 seconds West 72.51 feet along said south line to point "51438" designated on said parcel plat; thence North 0 degrees 13 minutes 26 seconds East 300.01 feet to point "51433" designated on said parcel plat on the north line of said Lot 264; thence North 89 degrees 17 minutes 57 seconds East 42.50 feet along said north line to the western boundary of said Lawndale Avenue; thence South 26 degrees 31 minutes 35 seconds East 66.65 feet along the boundary of said Lawndale Avenue to the south line of said Lot 264; thence South 0 degrees 13 minutes 26 seconds West 240.01 feet along said boundary to the point of beginning and containing 23,851 square feet, more or less.

Parcel 105: A part of the Northwest Quarter and part of the Southwest Quarter of Section 24, and a part of the Northwest Quarter and a part of the Southwest Quarter of Section 25; all in Township 15 North, Range 2 East, Marion County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of-Way Parcel Plat marked EXHIBIT "B", described as follows: Beginning at a point on the west line of said Section 25 South 0 degrees 04 minutes 10 seconds East 250.84 feet from the southwest corner of the Northwest Quarter of said Section 25 designated "101025" on said plat; thence North 89 degrees 16 minutes 45 seconds East 146.80 feet to point "101026" designated on said plat; thence Northeasterly 730.77 feet along an arc to the left having a radius of 721.00 feet and subtended by a long chord having a bearing of North 60 degrees 14 minutes 35 seconds East and a length of 699.89 feet to point "101027" designated on said plat; thence North 31 degrees 12 minutes 25 seconds East 514.66 feet to point "40558" designated on said plat; thence Northeasterly 911.91 feet along an arc to the left having a radius of 1,821.00 feet and subtended by a long chord having a bearing of North 16 degrees 51 minutes 39 seconds East and a length of 902.41 feet to point "40066" designated on said plat; thence North 2 degrees 32 minutes 51 seconds East 752.51 feet to point "40507" designated on said plat; thence North 1 degree 16 minutes 19 seconds East 328.05 feet to point "40508" designated on said plat; thence North 0 degrees 13 minutes 26 seconds East 2,178 feet to point "40086" designated on said plat; thence North 1 degree 45 minutes 04 seconds West 58.03 feet to point "40087" designated on said plat; thence North 5 degrees 42 minutes 27 seconds West 77.41 feet to point "40088" designated on said plat; thence North 0 degrees 13 minutes 26 seconds East 255.00 feet to point "40089" designated on said plat; thence North 10 degrees 09 minutes 01 second East 40.61 feet to point "40090" designated on said plat; thence North 12 degrees 05 minutes 03 seconds West 56.29 feet to point "40091" designated on said plat; thence North 3 degrees 14 minutes 39 seconds West 165.30 feet to point "40092" designated on said plat; thence North 22 degrees 36 minutes 35 seconds West 103.08 feet to point "40093" designated on said plat; thence North 35 degrees 36 minutes 49 seconds West 111.02 feet to point "40094" designated on said plat; thence North 47 degrees 29 minutes 45 seconds West 170.94 feet to the southwestern boundary of the Sam Jones Expressway—I–465 interchange designated as point "40516" on said plat; thence along the boundary of said Sam Jones Expressway—I–465 interchange Southeasterly 524.85 feet along an arc to the right having a radius of 505.96 feet and subtended by a long chord having a bearing of South 30 degrees 31 minutes 16 seconds East and a length of 501.64 feet to the western boundary of I–465 thence South 11 degrees 47 minutes 29 seconds East 96.15 feet along the boundary of said I–465; thence South 1 degree 39 minutes 27 seconds East 274.15 feet along said boundary; thence South 0 degrees 13 minutes 26 seconds West 226.00 feet along said boundary; thence South 0 degrees 00 minutes 45 seconds West 271.00 feet along said boundary; thence South 0 degrees 13 minutes 26 seconds West 29.00 feet along said boundary; thence South 0 degrees 27 minutes 49 seconds West 239.00 feet along said boundary; thence South 0 degrees 13 minutes 26 seconds West 461.00 feet along said boundary; thence South 0 degrees 30 minutes 03 seconds West 207.00 feet along said boundary; thence South 0 degrees 03 minutes 10 seconds West 669.00 feet along said boundary; thence South 0 degrees 14 minutes 01 seconds West 21.47 feet along said boundary; thence South 0 degrees 59 minutes 38 seconds West 1,322.37 feet along said boundary; thence South 1 degree 20 minutes 13 seconds East 278.46 feet along said boundary to the northwestern boundary of the I–70—I–465 interchange; thence along the boundary of said I–70 I–465 interchange Southwesterly 355.49 feet along an arc to the right having a radius of 666.20 feet and subtended by a long chord having a bearing of South 17 degrees 01 minutes 33 seconds West and a length of 351.29 feet; thence South 24 degrees 47 minutes 18 seconds West 76.28 feet along said boundary; thence South 32 degrees 19 minutes 17 seconds West 76.28 feet along said boundary; thence South 32 degrees 19 minutes 17 seconds West 600.00 feet along said boundary; thence South 36 degrees 36 minutes 38 seconds West 200.56 feet along said boundary; thence South 28 degrees 39 minutes 43 seconds West 156.67 feet along said boundary; thence along said boundary Southwesterly 610.17 feet along an arc to the right having a radius of 671.20 feet and subtended by a long chord having a bearing of South 58 degrees 24 minutes 9 seconds West and a length of 589.37 feet to the north boundary of I–70; thence South 87 degrees 53 minutes 49 seconds West 185.37 feet along the boundary of said I–70 to the west line of the Southwest Quarter of said Section 25; thence North 0 degrees 04 minutes 10 seconds West 188.80 feet along said west line to the point of beginning and containing 6.716 acres, more or less, in said Section 25, and containing 1.789 acres, more or less, in said Section 24; and containing in all 8.505 acres, more or less.

Parcel 105B: A part of the East Half of the Northeast Quarter of Section 14, Township 15 North, Range 2 East, Marion County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the attached Right-of Way Parcel Plat marked EXHIBIT "B", described as follows: Commencing at the southeast corner of said quarter section; thence North 0 degrees 05 minutes 34 seconds East 730.26 feet along the east line of said quarter section; thence North 89 degrees 22 minutes 24 seconds West 28.00 feet to point "51463" designated on said plat on the west boundary of High School Road and the point of beginning of this description: thence North 89 degrees 2 minutes 24 seconds West 9.381 feet to point "51460" designated on said plat; thence North 3 degrees 39 minutes 45 seconds West 200.56 feet to point "51461" designated on said plat; thence North 3 degrees 11 minutes 15 seconds West 103.91 feet to

the north line of the grantor's land; thence North 88 degrees 15 minutes 36 seconds East 28.91 feet along said north line to the west boundary of said High School Road; thence South 0 degrees 05 minutes 34 seconds West 304.88 feet along the boundary of said High School Road to the point of beginning and containing 0.137 acres, more or less.

Issued in Des Plaines, Illinois on January 19, 2010.

James G. Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2010–2006 Filed 1–29–10; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Monday,
February 1, 2010

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 284

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM08–2–001; Order No. 720–A]

Pipeline Posting Requirements under Section 23 of the Natural Gas Act

January 21, 2010.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order on Rehearing and Clarification.

SUMMARY: The Federal Energy Regulatory Commission modifies its regulations requiring major non-interstate pipelines to post daily scheduled volume information and other data for certain points. These modifications include a requirement that major non-interstate pipelines post information for receipt and delivery points at which design capacity is unknown. The Commission denies requests to revise its regulations requiring interstate natural gas pipelines to post information regarding the provision of no-notice service. The posting requirements will facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement section 23 of the Natural Gas Act, 15 U.S.C. 717t–2 (2000 & Supp. V 2005).

Effective Date: This rule will become effective March 3, 2010.

FOR FURTHER INFORMATION CONTACT:

Steven Reich (Technical), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6446, *Steven.Reich@ferc.gov.*

Gabe S. Sterling (Legal), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8891, *Gabriel.Sterling@ferc.gov.*

SUPPLEMENTARY INFORMATION:

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Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

Order on Rehearing and Clarification

Issued January 21, 2010

I. Introduction

1. On November 20, 2008, the Federal Energy Regulatory Commission (Commission) issued Order No. 720,[1] requiring interstate and certain major non-interstate natural gas pipelines to post limited information on publicly accessible Internet Web sites regarding their operations. In this order, the Commission grants and denies requests for rehearing and clarification of Order No. 720.

2. The Commission issued Order No. 720 and promulgated related regulations consistent with the Energy Policy Act of 2005 (EPAct 2005).[2] In EPAct 2005, Congress added section 23 to the Natural Gas Act (NGA), 15 U.S.C. 717t–

[1] *Pipeline Posting Requirements under section 23 of the Natural Gas Act,* 73 FR 73494 (Dec. 2, 2008), FERC Stats. & Regs. 31,283 (2008) (Order No. 720).

[2] Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 594 (2005).

2 (2000 & Supp. V 2005) authorizing the Commission "to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of those markets * * * and the protection of consumers."[3] Section 23 further provides that the Commission may issue such rules as it deems necessary and appropriate to "provide for the dissemination, on a timely basis, of information about the availability and prices of natural gas sold at wholesale and interstate commerce to the Commission, State commissions, buyers and sellers of wholesale natural gas, and the public."[4]

3. On December 21, 2007, the Commission issued a Notice of Proposed Rulemaking (NOPR), proposing to require both interstate and certain major non-interstate natural gas pipelines to post daily information regarding their capacity, scheduled flow volumes, and actual flow volumes at major points and mainline segments.[5] The Commission proposed regulations that would make available the information needed to track daily flows of natural gas adequately throughout the United States.[6] The posting proposal would facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce to implement section 23 of the Natural Gas Act.[7]

4. Order No. 720 required major non-interstate pipelines, defined as those natural gas pipelines that are not natural gas companies under the NGA and deliver more than 50 million MMBtu per year, to post scheduled flow and other information for each receipt or delivery point with a design capacity greater than 15,000 MMBtu per day.[8] While Order No. 720 required major non-interstate pipelines to comply with the new rules within 150 days of the Final Rule's publication,[9] a subsequent order in this docket extended the compliance deadline for major non-interstate pipelines until 150 days following the issuance of an order on rehearing.[10]

5. Regarding interstate natural gas pipelines, Order No. 720 expanded the Commission's existing posting requirements under 18 CFR 284 to include no-notice service. Interstate natural gas pipelines were required to comply with this posting requirement no later than 60 days following Order No. 720's publication,[11] and should therefore be currently complying with the regulations.

6. Twenty-six requests for rehearing or clarification of Order No. 720 were submitted.[12] On January 16, 2009, the Commission issued an order granting rehearing for the purpose of providing additional time to respond to the requests for rehearing.[13]

7. A staff technical conference was held on March 18, 2009, to gather additional information on three issues raised in the requests for rehearing.[14] The technical conference addressed: (1) The definition of major non-interstate pipelines; (2) what constitutes "scheduling" for a receipt or delivery point; and (3) how a 15,000 MMBtu per day design capacity threshold would be applied.[15] Panelists making presentations at the conference and commenters from the audience represented a broad cross-section of the U.S. natural gas industry[16] and the conference was widely attended.[17]

8. On July 16, 2009, the Commission issued an order requesting supplemental comments in response to limited issues raised in requests for rehearing of Order No. 720 and at the technical conference, with comments due within 30 days.[18] Eight supplemental comments were filed.[19]

9. As discussed below, the Commission affirms Order No. 720, granting a number of requests for rehearing and clarification and adopting regulations consistent with our findings. As a whole, the modifications that are adopted substantially reduce the number of major non-interstate pipelines that must comply with the proposed transparency regulations.

10. Major non-interstate pipelines must comply with the revised regulations within 150 days following publication in the **Federal Register**. Interstate pipelines must continue their current compliance with our transparency regulations.

II. Discussion

A. Authority for the Rule

11. Order No. 720 implemented the Commission's authority under section 23 of the NGA,[20] as added by EPAct 2005,[21] to facilitate transparency in markets for the sale or transportation of natural gas in interstate commerce by requiring major non-interstate pipelines and interstate pipelines to post certain data on publicly-accessible Internet Web sites. Congress granted the Commission this statutory authority to ensure transparency of natural gas prices, natural gas availability, and the price formation in the interstate natural gas market.[22]

12. The Commission held in Order No. 720 that NGA section 23 authorizes the Commission to obtain and disseminate information, including information regarding non-interstate natural gas markets that affect the interstate natural gas market. The Commission's decision substantially relied on the language of NGA section 23(a)(3)(A), which allows the Commission to "obtain the information * * * from *any market participant.*"[23] The Commission identified Congress' use of the term "any market participant" as an intentional expansion of "the universe of entities subject to the Commission's transparency authority beyond the entities subject to the Commission's traditional rates, terms, and conditions jurisdiction under other sections of the NGA."[24] Order No. 720 took particular note of Congress' use of "any" in section 23 as a descriptor, attaching jurisdiction to market participants independently of the

[3] NGA § 23, 15 U.S.C. 717t–2(a)(1) (2000 & Supp. V 2005).

[4] 15 U.S.C. 717t–2(a)(2).

[5] *Pipeline Posting Requirements under section 23 of the Natural Gas Act,* 73 FR 1116 (Jan. 7, 2008), FERC Stats. & Regs., Proposed Regulations 2004–2007 ¶ 32,626, at P 3 (2007).

[6] *Id.*

[7] *Id.* P 5.

[8] Order No. 720 at P 1.

[9] *Id.* P 168.

[10] *Pipeline Posting Requirements under section 23 of the Natural Gas Act,* 126 FERC ¶ 61,047, at P 4 (2009).

[11] Order No. 720 at P 167.

[12] A list of petitioners requesting rehearing and/or clarification is provided at Appendix A. All requests for rehearing, clarification, or both are referred to herein as "Requests for Rehearing and Clarification."

[13] *Pipeline Posting Requirements under section 23 of the Natural Gas Act,* Docket No. RM08–2–001, at 1 (Jan. 16, 2009).

[14] *Pipeline Posting Requirements under section 23 of the Natural Gas Act* , Notice of Technical Conference, Docket No. RM08–2–001 (issued Feb. 24, 2009); *Pipeline Posting Requirements under section 23 of the Natural Gas Act,* Notice of Agenda for Technical Conference, Docket No. RM08–2–001 (issued March 11, 2009).

[15] Notice of Agenda for Technical Conference, at P 1.

[16] *In the Matter of Pipeline Posting Requirements under section 23 of the Natural Gas Act Docket No. RM08–2–001,* at 2–3 (Mar. 18, 2009) (Transcript of Technical Conference).

[17] A transcript of this conference is available on the Commission's e-Library system.

[18] *Pipeline Posting Requirements under section 23 of the Natural Gas Act,* 128 FERC ¶ 61,030, at P 1 (2009) (Order Requesting Supplemental Comments).

[19] A list of persons submitting supplemental comments is provided at Appendix B. These comments are referred herein as "Supplemental Comments."

[20] 15 U.S.C. 717t–2.

[21] Energy Policy Act of 2005, Public Law 109–58, sections 1261 *et seq.,* 119 Stat. 594 (2005).

[22] *Id.* P 8.

[23] 15 U.S.C. 717t–2(a)(3)(A) (emphasis added).

[24] Order No. 720 at P 17.

limitations prescribed elsewhere in the NGA.[25]

13. The NGA limits the scope of the Commission's traditional regulatory authority to "natural gas companies" as the term is utilized in the NGA.[26] The Commission held in Order No. 720 that Congress contemplated different jurisdictional parameters for its transparency authority.[27] Additionally, the Commission found that the scope of section 23 is not limited by section 1(b) of the NGA.

14. The Commission emphasized that the regulations promulgated by Order No. 720 reflect the limitations that Congress placed on the Commission's authority in section 23. Order No. 720 explained that section 23 extends the Commission's authority *only* to the collection and dissemination of information for the purposes of promoting price transparency in the natural gas market.[28] The Commission's traditional regulatory authority remains limited to "natural gas companies" under section 1(b) of the Act.[29]

1. Requests for Rehearing and Clarification

15. Some petitioners support the Commission's assertion of jurisdiction, with at least one petitioner supporting Order No. 720's requirement that certain major non-interstate pipelines post daily scheduled volume information and design capacity for certain receipt and delivery points "pursuant to [the Commission's] authority under section 32 [sic] of the NGA."[30] Yates and Agave particularly commend the Commission's new regulations and assertion of jurisdiction, stating that "the major non-interstate pipeline posting requirements adopted in Order No. 720 are a good first step towards the Commission's stated goal of facilitating transparency in markets for the sale or transportation of physical natural gas in interstate commerce."[31]

16. Several petitioners requesting rehearing argue that the Commission unlawfully expanded its statutory authority by imposing posting requirements on major non-interstate pipelines, including natural gas gathering lines.[32] They claim that the Commission does not have jurisdiction to impose posting requirements on intrastate pipelines, and that its transparency jurisdiction does not extend to intrastate activities at receipt and delivery points that are not involved in the Commission's jurisdictional activities.[33]

17. Many petitioners reiterated arguments, made in comments to the NOPR, that the reference in NGA section 23 to "any market participant" is restricted to participants in the interstate market.[34] Gas Processors suggests that the Commission has derived its expanded jurisdictional powers from an ambiguous term without sufficient support, and that Congressional intent over that term "must not be read in a vacuum."[35] It also argues that the term "market participant" was not intended to extend the Commission's jurisdiction to intrastate pipelines because: (1) Section 23 was not intended to cover intrastate pipelines; (2) the Commission has never had jurisdiction over intrastate pipelines; and (3) Congress did not "expressly or implicitly" provide such jurisdiction in section 23.[36] Quoting section 23, Gas Processors points out the repeated use of the term "interstate" throughout the section, emphasizing that if Congress intended an expansion into the intrastate pipelines, they would have selected different language.[37] RRC agrees, stating that "[n]othing in the plain language of Section 23 of the NGA or the legislative history of [EPAct 2005] evinces Congressional intent to expand the FERC's authority over intrastate pipelines."[38]

18. TPA opines that the plain language of section 23 provides that "market participant" be limited to the interstate natural gas market.[39] It further argues that Congress had no need to exclude intrastate pipelines from the Commission's transparency jurisdiction because those entities are not subject to the Commission's jurisdiction "in the first place."[40]

19. TPA repeats arguments made in its NOPR comments, and seeks rehearing of the Commission's determination that it has authority to issue the posting regulations. TPA argues that expansion of the jurisdiction of the Commission usually occurs through amendment of NGA section 1(b) by Congress.[41] TPA asserts that Order No. 720 expands the Commission's jurisdiction using a process that is not supported by the Commission's own precedent.[42] TPA cites Order No. 670,[43] discussing the procedures used to process market manipulation allegations, in support of its claim that the Commission should wait until Congress explicitly expands its jurisdiction to assert such authority over traditionally non-jurisdictional entities.[44] TPA further argues that the Natural Gas Policy Act of 1978 (NGPA) section 311 shows a clear distinction between intrastate and interstate jurisdiction, and concludes that, if Congress had intended to expand the Commission's jurisdiction, it would have amended NGA section 1(b) in a similar fashion.[45]

20. Several petitioners, echoing comments that the Commission addressed in Order No. 720, argue that the regulations exceed the Commission's jurisdiction under section 1(b) of the NGA.[46] Petitioners argue that NGA section 23 is not "a stand alone

[25] *Id.* P 18.

[26] *Id.* P 19 citing 15 U.S.C. 717.

[27] *Id.*

[28] *Id.* P 22.

[29] Natural gas producers, processors, or users who have a *de minimis* market presence are explicitly exempted from the reporting requirements. *Id.* at P 23.

[30] Yates and Agave Request for Rehearing and Clarification at 1; Williston Basin Request for Rehearing and Clarification at 1 (acknowledging that the Commission has the authority to promulgate Order No. 720's new regulations pursuant to its authority under section 23 of the NGA).

[31] Yates and Agave Request for Rehearing and Clarification at 3–4.

[32] Enogex Request for Rehearing and Clarification at 5–10; Gas Processors Request for Rehearing and Clarification at 3–7; LOC Request for Rehearing and Clarification at 3–10; California LDCs Request for Rehearing and Clarification at 13–15; Railroad Commission of Texas Request for Rehearing and Clarification at 5–10; Southwest Gas Request for Rehearing and Clarification at 3–5, 13–14; Targa Request for Rehearing and Clarification at 8–9; TPA Request for Rehearing and Clarification at 8–24.

[33] *See, e.g.,* TPA Request for Rehearing and Clarification at 31–32.

[34] California LDCs Request for Rehearing and/or Clarification at 14–15; Gas Processors Request for Rehearing at 3–4; LOC Request for Rehearing at 8–9; Railroad Commission of Texas Request for Rehearing at 5–8; Southwest Gas Request for Clarification and Rehearing at 13–14; Targa Request for Rehearing at 8–9; TPA Request for Rehearing and Clarification at 9–11.

[35] Gas Processors Request for Rehearing and Clarification at 3–4.

[36] *Id.* at 4.

[37] *Id.; see also* RRC Request for Rehearing and Clarification at 6–8; TPA Request for Rehearing and Clarification at 8–12; LOC Request for Rehearing and Clarification at 10.

[38] RRC Request for Rehearing and Clarification at 6; *see also* LOC Request for Rehearing and Clarification at 9.

[39] TPA Request for Rehearing and Clarification at 9–11.

[40] *Id.* at 11.

[41] TPA Request for Rehearing and Clarification at 12; Gas Processors Request for Rehearing and Clarification at 4–5; LOC Request for Rehearing and Clarification at 6; RRC Request for Rehearing and Clarification at 7–8.

[42] TPA Request for Rehearing and Clarification at 12.

[43] *Prohibition of Energy Market Manipulation,* Order No. 670, 71 FR 4244 (Jan. 26, 2006), FERC Stats. & Regs. ¶ 31,202 (2006).

[44] TPA Request for Rehearing and Clarification at 12.

[45] *Id.* at 21 (citing 15 U.S.C. 3371(a)(2)).

[46] Enogex Request for Rehearing and Clarification at 6–7; LOC Request for Rehearing and Clarification at 3–4; Railroad Commission of Texas Request for Rehearing and Clarification at 8–9; TPA Request for Rehearing and Clarification at 8, 16–19.

provision," but is subject to the jurisdictional limits established in section 1(b).[47] Thus, they contend that the fact that Congress did not amend the language in section 1(b) demonstrates that Congress did not intend to modify the Commission's jurisdiction with section 23.[48] Petitioners state that section 1(b) is "unequivocally clear" regarding the entities to which section 23 applies.[49] The petitioners argue that because section 1(b) expressly bars the Commission from jurisdiction over intrastate pipelines, section 23 does as well.[50]

21. Several petitioners also state that section 311 of the NGPA [51] limits the Commission's transparency jurisdiction to only interstate activities.[52] These petitioners claim that, although section 311 "vests the Commission with the power to authorize an intrastate pipeline to transport natural gas on behalf of interstate pipelines," section 311 did not expand the Commission's jurisdiction under the NGA.[53] In fact, the NGPA explicitly defines "intrastate pipeline" as one "not subject to the jurisdiction of the Commission under the NGA." [54] LOC states, for example, that the Commission cannot "destroy" this jurisdictional distinction placing intrastate pipelines beyond its NGA authority without express amendment from Congress.[55] Moreover, TPA cites to *Associated Gas Distributors* v. *FERC,*[56] where the court held that it was unreasonable for the Commission to presume that "obscure" language in section 311 authorized an expansion of its jurisdiction without legislative history to support an expansion.[57] TPA, LOC, and RRC also focus on previous case-law limiting the Commission's traditional rates, terms, and conditions jurisdiction under section 311.[58]

22. Other petitioners focus on NGA section 23(d)(2) which provides that the Commission shall not require natural gas producers, processors, or users who have a *de minimis* market presence to comply with the reporting requirements of section 23.[59] On rehearing, RRC renews arguments made in response to the NOPR regarding the *de minimis* exception. Contrary to the Commission's interpretation, RRC believes that, had Congress intended to give the Commission even limited jurisdiction over intrastate pipelines, it would have listed them in section 23(d)(2).[60] Because section 23(d)(2) makes no such reference, RRC contends that the Commission's findings are contrary to the plain language of section 23.[61]

23. Some petitioners assert that the Commission is seeking information on gas flows that are outside of the Commission's jurisdiction, regardless of the facilities at issue.[62] TPA argues that the collection of design capacity and gas flow data does not relate to the availability and prices of natural gas, thereby exceeding the Commission's transparency jurisdiction.[63] Enogex argues that the new regulations make it impossible to discern the Commission's jurisdiction from State jurisdiction because the intrastate and interstate volumes of gas that move on the Enogex system are so commingled that they cannot be distinguished for capacity posting purposes.[64]

24. Targa, California LDCs, RRC, and TPA all contend that Order No. 720 is an improper regulation of intrastate operations and rates.[65] These petitioners argue that the Final Rule may adversely interfere with State regulation of non-interstate pipelines.[66] California LDCs challenge the Commission's claim that it is not regulating intrastate operations of non-interstate pipelines. The petitioner alleges that compliance with Order No. 720 entails daily postings of customer-specific and facility-specific information, effectively regulating intrastate operations.[67]

2. Commission Determination

25. After consideration, the Commission rejects the requests for rehearing and reaffirms its holding that it has jurisdiction over the matters addressed in Order No. 720. NGA section 23 provides the Commission limited jurisdiction over major non-interstate pipelines for the purpose of requiring public disclosure of information to enhance market transparency.

26. Most petitions for rehearing reiterate arguments the Commission considered and addressed at length in Order No. 720. For example, petitioners take issue with the Commission's interpretation of the expansive language used in NGA section 23. In Order No. 720, the Commission held that Congress deliberately chose the term "any market participant" in section 23 to expand the Commission's jurisdiction beyond the universe of natural gas companies to which it would otherwise be limited, recognizing that the public needs information from a wide variety of entities in order to facilitate transparency.[68] Section 1 is not referenced in section 23 and the term "natural gas company" is not used in section 23. Petitioners have not raised any new arguments regarding the meaning of "any market participant" in section 23. The Commission continues to believe that Congress did not intend to limit the Commission's transparency jurisdiction to entities it traditionally regulates.[69]

27. As stated in Order No. 720, section 23(d)(2) would be unnecessary surplusage if Congress did not intend to give the Commission authority over entities otherwise excluded by section 1(b) of the NGA.[70] Petitioners raise no new arguments regarding this issue.

[47] LOC Request for Rehearing and Clarification at 3; Enogex Request for Rehearing and Clarification at 7; Railroad Commission of Texas Request for Rehearing and Clarification at 8–9; TPA Request for Rehearing and Clarification at 22–23.

[48] LOC Request for Rehearing and Clarification at 9; RRC Request for Rehearing and Clarification at 8.

[49] RRC Request for Rehearing and Clarification at 8.

[50] RRC Request for Rehearing and Clarification at 8, LOC Request for Rehearing and Clarification at 8–9; Enogex Request for Rehearing and Clarification at 6–7; TPA Request for Rehearing and Clarification at 28–29.

[51] 15 U.S.C. 3371(a)(2).

[52] Enogex Request for Rehearing and Clarification at 9; LOC Request for Rehearing and Clarification at 5–8; Railroad Commission of Texas Request for Rehearing at 9; TPA Request for Rehearing and Clarification at 18–22.

[53] LOC Request for Rehearing and Clarification at 5–6; RRC Request for Rehearing and Clarification at 9; TPA Request for Rehearing and Clarification at 18–22.

[54] LOC Request for Rehearing and Clarification at 5–6; RRC Supplemental Comments at 9; TPA Request for Rehearing and Clarification at 18–22.

[55] LOC Request for Rehearing and Clarification at 6.

[56] *Assoc. Gas Distrib.* v. *FERC,* 899 F.2d 1250 (D.C. Cir. 1990).

[57] TPA Request for Rehearing and Clarification at 19–20.

[58] TPA Request for Rehearing and Clarification at 21–22; LOC Request for Rehearing and Clarification at 6–10; RRC Request for Rehearing and Clarification at 16. TPA and LOC also raise arguments linking section 311 to section 601 of the NGPA. LOC Request for Rehearing and Clarification at 5–8; TPA Request for Rehearing and Clarification at 18–21.

[59] 15 U.S.C. 717t–2(d)(2).

[60] RRC Request for Rehearing and Clarification at 7; *see also* TPA Request for Rehearing and Clarification at 23–24.

[61] RRC Request for Rehearing and Clarification at 7–8.

[62] Enogex Request for Rehearing at 9–10; TPA Request for Rehearing and Clarification at 13–15.

[63] TPA Request for Rehearing and Clarification at 13–15.

[64] Enogex Request for Rehearing and Clarification at 9–10.

[65] Targa Request for Rehearing and Clarification at 9; California LDCs Request for Rehearing and Clarification at 14–15; RRC Request for Rehearing and Clarification at 9–11; TPA Request for Rehearing and Clarification at 25–28.

[66] California LDCs Request for Rehearing and Clarification at 14–15; RRC Request for Rehearing and Clarification at 9–11; TPA Request for Rehearing and Clarification at 3, 25–28.

[67] California LDCs Request for Rehearing and Clarification at 14–15.

[68] Order No. 720 at P 18.

[69] *Id.* P 19.

[70] *Id.* P 23.

Likewise, no new arguments were presented regarding the Commission's authority to enact rules under sections 23(a)(1) and 23(a)(2). These subsections grant discretion to the Commission to achieve interstate price transparency and to provide for public dissemination of information.[71]

28. The Commission also finds no merit in arguments raised by petitioners related to section 311 of the NGPA. While section 311 limits the Commission's jurisdiction regarding some intrastate natural gas pipeline activities, section 23 of the NGA provides a different jurisdictional basis promoting different Congressional goals. Section 23 grants the Commission authority to ensure that the information necessary for interstate market transparency is available to the public. The term *any market participant* includes non-interstate pipelines, thus the Commission has the authority to require those participants to post certain information to facilitate market transparency.

29. Petitioners also reiterated arguments, addressed in Order No. 720, that previous case law limits the Commission's transparency jurisdiction.[72] The Commission affirms its conclusion that the cases cited by commenters apply only to the jurisdictional limits set forth in section 1 of the NGA prior to the enactment of EPAct 2005.[73] Such case law is not applicable to regulations adopted by the Commission pursuant to section 23 of the NGA.

30. In response to Enogex, it is immaterial for purposes of our transparency jurisdiction whether non-interstate and interstate volumes of gas are commingled. Under section 23, if natural gas volumes have a greater than *de minimis* effect on the interstate natural gas market, and the other requirements of section 23 are met, the Commission has the authority to require posting of such volumes regardless of whether flowing natural gas is characterized as "interstate" or "non-interstate."

31. The Commission emphasizes that its transparency jurisdiction is limited to the dissemination of information that will aid in market transparency. Section 23 gives the Commission no jurisdiction related to, and our regulations do not govern the rates, terms, and conditions of service of major non-interstate pipeline operations. The Commission is requiring only the posting of essential information to ensure market transparency and is not engaging in traditional regulation of rates, terms, and conditions of service.

32. The Commission finds that Order No. 720 accurately implemented its authority under the limited jurisdiction Congress conferred in NGA section 23.[74] Therefore, we deny rehearing.

B. Need for the Rule

33. Order No. 720 found that a broad cross-section of the natural gas industry supports the transparency goals of the pipeline posting requirements.[75] In Order No. 720, the Commission exercised the authority conferred by Congress following consideration of comments on the NOPR, and based on its experience regulating the interstate natural gas market. Order No. 720 discussed interstate pipeline postings as well as other sources of market information, determining that additional information by non-interstate pipelines would enhance transparency further.[76]

34. Order No. 720 found that information regarding wholesale natural gas price fundamentals was incomplete given the lack of access to scheduled flow information from major non-interstate pipelines.[77] This informational gap exists because, while interstate pipelines must post daily scheduled flow information under our current regulations, no similar information is available regarding scheduled flows prior to or following transportation on interstate pipelines. Order No. 720 attempted to fill this informational gap with supply-related information from large non-interstate pipelines upstream of interstate pipelines and demand-related information from large non-interstate pipelines downstream of interstate pipelines. Supply and demand fundamentals for the interstate natural gas market can be more fully understood utilizing information from non-interstate pipelines.

1. Requests for Rehearing and Clarification

35. On rehearing, a limited number of petitioners object to Order No. 720's findings that transparency needs to be increased in the interstate natural gas market, and question whether the regulations adopted in Order No. 720 actually increase transparency.

36. For example, LOC states that Order No. 720 "failed to support its finding that there exists any necessity for the enactment of the proposed rules."[78] RRC argues that our pipeline posting regulation is "a solution in search of a problem," adding that recent Commission initiatives have improved market transparency and that there has been no showing that additional transparency is required.[79]

37. TPA requests rehearing on the grounds that the Commission has not demonstrated that interstate market transparency is enhanced by major non-interstate pipeline information. It alleges that the Commission has "consistently disregarded the consensus among market participants" on this point.[80]

38. TPA takes Order No. 720 to task for focusing on comments "of a handful of intervenors expressing general support for the [NOPR]" rather than acknowledging the substantial number of intrastate pipelines and other participants that see no need for increased transparency.[81] TPA argues, citing *National Fuel Gas Supply Corporation* v. *FERC,*[82] that the Commission must cite evidence of an industry problem prior to rulemaking action.[83] TPA particularly objects to Order No. 720's finding that the transparency rule assists market participants to understand the impact of hurricanes and other natural disasters on natural gas supply. Further, TPA argues that "nowhere in this proceeding has the Commission or any market participant provided an adequate explanation of how the proposed rule would detect market manipulation."[84]

39. Southwest Gas argues that the transparency rule did not specifically demonstrate a need for information from LDCs related to daily capacity and

[71] *Id.* P 16.

[72] Railroad Commission of Texas Request for Rehearing and Clarification at 15–16; LOC Request for Rehearing and Clarification at 6–7; Enogex Request for Rehearing and Clarification at 6–7.

[73] Order No. 720 at P 20.

[74] The Commission's conclusion here is consistent with its findings in Order No. 704 regarding the annual reporting requirement for market participants adopted pursuant to our NGA section 23 authority. *See Transparency Provisions of section 23 of the Natural Gas Act,* Order No. 704, 73 FR 1014 (Jan. 4, 2008), FERC Stats. and Regs. ¶ 31,260 (2007), *order on reh'g,* Order No. 704–A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275 (2008), *order on reh'g,* Order No. 704–B, 125 FERC ¶ 61,302 (2008).

[75] Order No. 720 at P 29.

[76] *Id.* P 39–50. Additionally, the Commission determined that increased transparency regarding no-notice natural gas flows was needed on interstate pipelines. *Id.* P 161.

[77] *Id.* P 40.

[78] LOC Request for Rehearing and Clarification at 11. *See also* TRC Request for Rehearing and Clarification at 14–15.

[79] RRC Request for Rehearing and Clarification at 11–15.

[80] TPA Request for Rehearing and Clarification at 33.

[81] *Id.* at 35–37.

[82] 468 F.3d 831, 843 (D.C. Cir. 2006).

[83] TPA Request for Rehearing and Clarification at 37.

[84] *Id.* at 39.

scheduled retail transportation.[85] Southwest Gas complains that Order No. 720 did not adequately explain the nexus between data provided by State-regulated LDCs and price formation for natural gas sold at wholesale and in interstate commerce.[86]

40. Additionally, some petitioners request rehearing on the grounds that Order No. 720 failed to fully consider the existing sources of data regarding non-interstate natural gas flows as required by section 23.[87]

2. Supplemental Comments

41. In its supplemental comments, AGA makes arguments similar to Southwest Gas.[88] AGA states that LDCs are fundamentally distributors of natural gas and that LDC scheduled flow postings would not further the Commission's transparency goals.[89] AGA notes that no wholesale natural gas price formation occurs on an LDC's system[90] and argues that available capacity calculations for LDCs may be misleading.[91]

3. Commission Determination

42. The Commission continues to believe that the major non-interstate pipeline posting requirements are needed and denies the requests for rehearing.

43. The Commission notes, as an initial matter, that some of the requests for rehearing appear to argue that the Commission has substantially increased transparency in interstate markets in recent years, but that such transparency is sufficient and more need not be done. However, these petitioners misconstrue section 23 of the NGA and Congress' transparency objectives. As discussed in Order No. 720, the Commission has been *directed* by Congress to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce[92] and given the authority to prescribe such rules as may be necessary to effectuate the Congressional goal.[93] As the Congressional mandate implicitly acknowledges, lack of transparency is not a "problem" readily susceptible to a single regulatory solution. Transparency enhances the ability of market participants to make informed, efficient decisions based upon public information. In other words, enhanced transparency is typically beneficial to markets, even markets, such as the U.S. wholesale natural gas market, that are already competitive. It is not a necessary prerequisite to adoption of our regulations to find, as some petitioners appear to demand, that the interstate natural gas market cannot function without the rule. As petitioners acknowledge, the Commission has improved market transparency in several different ways in recent years and the interstate natural gas market is competitive and robust. These successes, however, do not preclude other means of further enhancing transparency. This is particularly true where the Commission has identified a "gap" in relevant market information available to market participants.

44. Many of the petitions for rehearing repeat arguments made in response to the NOPR and addressed in Order No. 720. As the Commission found in Order No. 720, there presently exists a gap in information available to interstate market participants necessary to more fully understand supply and demand fundamentals and therefore price formation.[94] A significant amount of natural gas flows from producing basins to interstate markets on non-interstate pipelines. These scheduled flows impact supply considerations in interstate markets. Similarly, flows on non-interstate pipelines at the end of the delivery chain impact demand considerations in the interstate market.[95] These considerations are fundamental to Order No. 720's determination that information about scheduled non-interstate pipeline natural gas flows would enhance transparency in the interstate natural gas market. Without access to information about supply and demand, interstate natural gas market participants are left with incomplete information to understand interstate wholesale prices. Incomplete information leads to market inefficiencies because wholesale buyers and sellers of natural gas have inconsistent levels of market knowledge and are less able to understand price outcomes.[96]

45. Existing interstate pipeline posting data is used extensively by the public to understand daily market conditions and price formation. The public can access an interstate pipeline's Internet Web site to ascertain capacity availability and operational conditions. Also, data aggregators scour these Web sites and sell analysis and services based on this data, with many market participants, including producers, pipelines, end users, marketers, traders, and financial firms paying subscription fees to these data aggregators to evaluate the interstate natural gas market. The demand for such data by market participants is a persuasive factor regarding its transparency value. Based upon the comments in this rulemaking and our natural gas market experience, the Commission believes that there is robust interest by the public regarding similar scheduled flow data from non-interstate pipelines to form a more complete picture of the U.S. wholesale natural gas market. We therefore disagree with commenters arguing that such data is not valued by the public.

46. As discussed below, data provided by major non-interstate pipelines will help interstate natural gas market participants understand both supply and demand and, thus, price formation.

Understanding of Supply Fundamentals Will Be Enhanced

47. Some petitioners, including TPA, argue that information from non-interstate pipelines that provide natural gas supplies would not enhance interstate market transparency. Order No. 720 notes the substantial impact that non-interstate pipelines have on the establishment of national wholesale natural gas prices. Non-interstate pipelines, particularly those in the south-central United States, connect large production areas with interstate pipelines.[97]

48. Despite TPA's protestations, obtaining data from TPA's members is particularly important for interstate market transparency. Onshore Texas locations account for thirty percent

[85] Southwest Gas Request for Rehearing and Clarification at 12.

[86] *Id.* at 13–14.

[87] LOC Request for Rehearing and Clarification at 11; RRC Request for Rehearing and Clarification at 11–15; TPA Request for Rehearing and Clarification at 30–31.

[88] The Order Requesting Supplemental Comments requested additional comments on discrete issues raised by commenters in requests for rehearing and clarification. Order Requesting Supplemental Comments at P 7–10. Some commenters submitted supplemental comments on subjects outside the requested scope. While the Commission did not request such extraneous supplemental comments, such as AGA's supplemental comments regarding need for the rule, we nevertheless address such comments in this order to ensure that the record is complete.

[89] AGA Supplemental Comments at 10.

[90] *Id.* at 13.

[91] *Id.* at 16–17. *See also* California LDCs Supplemental Comments at 8.

[92] 15 U.S.C. 717f–2(a)(1).

[93] 15 U.S.C. 717f–2(a)(2).

[94] Order No. 720 at P 39.

[95] Of course, non-interstate pipelines that deliver natural gas to end-users may also deliver gas to other pipelines for subsequent transportation similar to transportation provided by interstate pipelines.

[96] Transparency plays a fundamental role in the fairness, efficiency, and functioning of orderly markets. Greater transparency results in greater market efficiency because price signals to market participants more accurately reflect underlying supply and demand fundamentals.

[97] Order No. 720 at P 45.

(approximately 5.7 Tcf in 2007) of U.S. natural gas production.[98] Texas has more non-interstate pipelines than any other State—45,000 of the 58,600 miles of natural gas pipelines in the State are intrastate pipelines and account for almost 16 Bcf/d of pipeline capacity.[99] The pipeline network in Texas has experienced significant growth over the past several years as a result of increased demand for pipeline capacity caused by the rapid development and expansion of natural gas production in the Barnett Shale Formation.[100] New pipelines have been built, and expansions to existing ones undertaken, to meet increased demand. The importance of Texas non-interstate transportation to understanding interstate price fundamentals is growing as production shifts from old depleting gas basins to new gas basins.

49. The value of non-interstate pipeline supply flows is not confined to Texas. In Colorado, Wyoming, and Utah, development of new, large-diameter intrastate pipelines is proceeding at a fast pace, as proved reserves of coalbed methane, tight sands, and conventional natural gas supplies are identified.[101] During the past several years, at least eight large-capacity pipeline header systems have been built in Wyoming to transport natural gas from local gathering systems.[102] In the Piceance Basin in western Colorado and the Uinta Basin in eastern Utah, several new large gathering systems have been developed to feed expanding natural gas production into the interstate pipeline network.[103] These supply sources have a significant effect on interstate price formation because new supply can reduce regional and national gas prices. The faster the implications of new supply are assessed, the better the market can integrate those implications into pricing decisions.

50. In these states and elsewhere, capacity could be limited at key points, impacting regional, interstate wholesale prices. Supply or demand driven events on non-interstate pipelines that impact regional wholesale prices cannot be fully understood by market participants without access to receipt and delivery point information.

51. Existing data sources on gas supply flows are insufficient for participants to adequately evaluate physical daily market activity. As the Commission discussed in Order No. 720, the Energy Information Administration (EIA) publishes data on monthly production by State based on a survey and with a three month lag.[104] Similarly, monthly consumption data is published by State with a four month lag.[105]

Understanding of Demand Fundamentals Will Be Enhanced

52. Petitioners not only question the value of increased transparency of the operations of non-interstate pipelines at the beginning of the delivery chain, but also at the end of the delivery chain. For example, Southwest Gas and AGA argue that the Commission has not articulated an adequate nexus between data provided by LDCs (oftentimes companies that primarily deliver natural gas to end-users) and interstate natural gas price formation. The Commission disagrees and continues to believe that the pipeline posting regulations will enhance understanding of demand fundamentals.

53. Order No. 720 not only identified the information gap now present, but also provided data explaining the possible scope of the transparency problem regarding demand for natural gas. For example, we noted that up to 90 percent of daily consumption of natural gas in Texas is not captured through the Commission's current interstate pipeline posting requirements.[106] Instead, such consumption data is available only from EIA in aggregated format several months following actual delivery.[107] Such stale data is unhelpful for interstate market participants seeking to understand price formation in today's rapidly-changing energy markets.

54. Demand clarity is a persistent problem in U.S. interstate natural gas markets. For example, California accounts for 10 percent of U.S. natural gas consumption, of which one-third is utilized for electric power generation.[108] About 13 percent of California's consumption is met by in-State production with the rest met by imports from surrounding states.[109] Interstate pipelines serving California, with four exceptions, terminate at the State border.[110] Market participants can currently "see" imports into California, flows between PG&E and Southern California Gas Company (SoCal Gas), and flows into SoCal Gas producing zones by virtue of the Commission's existing interstate pipeline posting regulations and using PG&E's and SoCal Gas' Pipe Ranger and Envoy systems.[111] However, market participants have limited information regarding gas receipts and deliveries once gas is delivered to PG&E's and SoCal Gas' systems. Non-interstate transportation and distribution are dominated by: PG&E, with 6,136 miles of transportation pipelines); SoCal Gas, with 2,890 miles of transmission and storage pipelines; and SDG&E, with 168 miles of transmission pipelines.[112]

[98] U.S. Energy Information Administration, *Natural Gas Annual 2007,* Gross Withdrawals and Marketed Production of Natural Gas by State and the Gulf of Mexico 2003–2007 (2007), p. 8 (*available at http://www.eia.doe.gov/pub/oil_gas/natural_gas/data_publications/natural_gas_annual/current/pdf/table_003.pdf*).

[99] Energy Information Administration, *Intrastate Natural Gas Segment* (*available at http://www.eia.doe.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/intrastate.html*). The size and importance of non-interstate transportation in Texas is manifest. Sixteen Bcf/d is enough gas to serve all the industrial or power load in the U.S.

[100] U.S. Energy Information Administration, *Expansion of the U.S. Natural Gas Pipeline Network: Additions in 2008 and Projects through 2011,* (Sept. 2009) (*available at http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2009/pipelinenetwork/pipelinenetwork.pdf*) ("About 10 percent of all newly added natural gas pipeline capacity for 2008, or 4.6 Bcf per day, was attributable to new intrastate pipelines built to transport expanding Barnett shale production specifically").

[101] U.S. Energy Information Administration, *supra* note 97.

[102] *Id.*

[103] *Id.*

[104] Energy Information Administration, *Natural Gas Deliveries to All Consumers by State 2007–2009* (Nov. 2009) (*available at http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm/current/pdf/table_16.pdf*).

[105] Energy Information Administration, *Marketed Production of Natural Gas in Selected States and the Federal Gulf of Mexico* (Nov. 2009) (*available at http://www.eia.doe.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/current/pdf/table_05.pdf*).

[106] Order No. 720 at P 44.

[107] *Id.*

[108] U.S. Energy Information Administration, *Natural Gas Annual 2007: Consumption of Natural Gas 2003–2007 by State, 2007* (2007) at 41 (*available at http://www.eia.doe.gov/pub/oil_gas/natural_gas/data_publications/natural_gas_annual/current/pdf/table_015.pdf*).

[109] *Id.*

[110] Interstate pipelines currently serving California include El Paso Natural Gas Company (El Paso), Kern River Transmission Company, Mojave Pipeline Company, Gas Transmission-Northwest, Transwestern Pipeline Company (Transwestern), Questar Southern Trails Pipeline, Tuscarora Pipeline and the Bajanorte/North Baja Pipeline. Kern River, Mojave, Tuscarora, and North Baja pipeline have significant capacity in California, while all other pipelines terminate at the California border. *See* California Public Utilities Commission, *Natural Gas Market Study* (Feb. 2006) at 28 (*available at http://www.docs.cpuc.ca.gov/WORD_PDF/REPORT/54256.pdf*).

[111] Sempra's Envoy system posts daily information at SoCal Gas' interconnection with interstate pipelines, PG&E, and five "producer zones." PG&E's Pipe Ranger system posts daily information only at interconnects with interstate pipelines and SoCal Gas' system. Most of the gas flow information posted on Envoy and Pipe Ranger is readily available from interstate pipeline postings and provides little additional market information useful for understanding the intrastate flow of gas. *Envoy Interactive Map* (available at *https://www.envoyproj.sempra.com/help/help_pipeline_map.html*).

[112] Pacific Gas and Electric Co., *Fast Facts* (*available at http://www.pge.com/about/company/*

55. SoCal Gas and PG&E are two of the largest distribution companies in the U.S. When major natural gas transportation interruptions occur on these systems inside California, market participants are unable to accurately assess interstate market implications.[113] For example, the western energy crisis of 2000–2001 resulted in high power and natural gas prices in California which were compounded by restricted flows of gas into California due to an explosion on the El Paso pipeline that connects west Texas production to California earlier in 2000. The ability to observe flows on the PG&E and SoCal systems would have enabled market participants, the California Public Utility Commission, and the public to better understand the severity of local gas shortages and their impact on prices and gas supply.

56. The frequent price differences observed between PG&E and SoCal Gas city gate prices provide a further example of the need for greater transparency in the California intrastate market. Intrastate pipeline constraints within California likely cause these price divergences, but the nature and extent of these constraints is unobservable to the public. The public has access to flow data at the interconnects of PG&E with two interstate pipelines in southern California (with El Paso at the Topock receipt point and Transwestern at the Needles receipt point). Capacity at the Topock receipt point is not fully utilized and cheaper gas should theoretically flow north on PG&E's system to equalize prices between PG&E and SoCal Gas. In order to effectively understand constraints on intrastate pipelines (and the effects on interstate market prices), it is imperative that the public have access to better, more timely information on intrastate scheduled gas flows in California.

57. Lack of demand transparency in California markets is detrimental to well functioning and competitive interstate markets in a number of ways. For example, a holder of pipeline capacity on PG&E's non-interstate pipeline system could potentially hoard capacity at key points, driving up gas prices in California, while depressing interstate prices at the California border. Such non-interstate activity not only would have an immediate impact on interstate wholesale prices at the border, but would have a ripple effect outward, perhaps affecting prices throughout the southwest. In another example, the regional impact of a surge in California gas demand by power generators, perhaps due to hot weather or a nuclear outage, could be more easily understood and assessed if the location of such surges could be identified at individual delivery points. Again, obtaining information only at the California border would be insufficient to understand interstate market prices since the price-affecting constraints may be occurring within the State.

58. Based upon the foregoing examples and the Commission's discussion in Order No. 720, the Commission believes that there is sufficient nexus between demand-side non-interstate flow information and interstate price formation to sustain the Commission's regulations, contrary to the position of AGA and Southwest Gas.

Non-Interstate Pipeline Scheduled Flow Postings During Times of Natural Disaster Would Benefit Interstate Market Participants

59. TPA objects to Order No. 720's conclusion that information regarding supply flowing through non-interstate pipelines is particularly important during times of natural disaster or when pipelines are unexpectedly shut down. TPA contends that most non-interstate pipelines will not be able to post scheduled flow data during an emergency.[114] The Commission disagrees and continues to believe that non-interstate pipeline postings are crucial to ameliorate market misunderstandings during hurricanes and other situations that occasion pipeline outages.

60. Even if, as TPA suggests without support, major non-interstate pipelines would be unable to meet their posting obligations during hurricanes, the fact that an emergency is so severe as to preclude postings would provide an important signal to the market regarding the emergency's impact on natural gas supply. Further, posting information up to and following an emergency would give crucial insight regarding staged shutdown of supply before an emergency event and renewed operation of supply infrastructure following an emergency event.

61. For example, in September 2005, hurricanes Katrina and Rita forced the shut down of Henry Hub for 11 days.[115] Henry Hub is the location for interconnection of four non-interstate and nine interstate pipelines. Because of these interconnections, the location is of vital importance for transportation of natural gas from the producing region in the Gulf to the consuming markets in the Northeast and the Midwest.[116] It is also a crucial pricing point for interstate natural gas. Although no interstate pipeline flows were scheduled or prices reported for this fourteen day period, the lack of postings reflected the outage status of Henry Hub. Resumption of scheduled flow postings by interstate pipelines sent an important signal to market participants that markets were beginning to normalize.

Scheduled Flow Information Posted by Major Non-Interstate Pipelines Could Be Utilized To Detect Manipulation and Discriminatory Behavior

62. We also reject TPA's assertion that non-interstate scheduled flow information could not be utilized to detect market manipulation and discriminatory behavior. As we discussed in Order No. 720, the Commission and other market participants regularly review supply and demand fundamentals to determine if prices are the result of such market forces.[117] Understanding supply in large non-interstate pipelines leading into the interstate market and demand in large non-interstate pipelines downstream of the interstate market will enable market observers to better understand prices and, therefore, identify potential cases of market manipulation.

63. The Commission has utilized interstate scheduled flow postings in its investigations of market manipulation and unduly discriminatory behavior. The Commission will now include relevant non-interstate posting data in its evaluations of such allegations.

C. Definition of Major Non-Interstate Pipeline

1. Delivery Threshold

64. Consistent with the need for greater transparency in the interstate natural gas market and Congress' directive in section 23 of the NGA, Order No. 720 required major non-interstate pipelines to post daily information regarding scheduled volumes at specified points of receipt

profile/); Securities and Exchange Commission, *Sempra Energy Form 10–K Annual Report* at 25 (Feb. 24, 2009) (*available at http://www.investor.shareholder.com/sre/secfiling.cfm?filingID=86521-09-10&CIK=1032208*).

[113] Since most information is only posted at major interconnections with interstate pipelines and between PG&E and SoCal Gas, conditions in-state are not readily discernible.

[114] TPA Request for Rehearing and Clarification at 38.

[115] 2008 State of Markets Report, Federal Energy Regulatory Commission, Division of Energy Market Oversight at 6 (*available at http://www.ferc.gov/market-oversight/st-mkt-ovr/2008-som-final.pdf*).

[116] Henry Hub is the interconnecting location of twelve pipelines and transportation capacity at the Hub is more than 1.8 Bcf per day.

[117] Order No. 720 at P 50.

and delivery. The Commission adopted a definition of "major non-interstate pipeline" as a pipeline that: (1) Is not a "natural gas pipeline" under section 1 of the NGA; and (2) delivers annually more than 50 million MMBtu of natural gas measured in average deliveries over the past three years.[118] The Commission found that a delivery threshold of 50 million MMBtu would capture large non-interstate pipelines with operations that have a substantial impact on interstate natural gas prices. Further, the 50 million MMBtu threshold is consistent with the threshold that the Commission has adopted for interstate pipelines to file FERC Form No. 2.[119] The Commission also held that such a threshold would eliminate compliance burdens for smaller non-interstate pipelines.[120]

a. Requests for Rehearing and Clarification

65. Encana requests that the Commission clarify that new pipelines will not be required to post information until at least three years following initial operation as they will not have average deliveries for the three previous calendar years upon which to determine if they exceed the threshold.[121] TPA supports Encana's requested clarification.[122] Shell requests clarification that a major non-interstate pipeline is one that delivered annually more than 50 million MMBtus for each of the preceding three years.[123]

b. Commission Determination

66. Section 284.1(d)(2) of the Commission's regulations provides that major non-interstate pipelines are pipelines that deliver "annually more than fifty (50) million MMBtus (million British thermal units) of natural gas measured in average deliveries for the previous three calendar years."[124] We believe this language to be unambiguous, requiring the aggregation of pipeline deliveries over the previous three calendar years and division by three. Shell's request for clarification is therefore denied.

67. As Encana argues,[125] the Commission did not explicitly state how the threshold calculation would apply to pipelines with less than three years of operational data. The Commission finds that the appropriate threshold to determine if a new pipeline qualifies as major non-interstate pipeline is whether the pipeline has the capability to deliver more than 50 million MMBtu of natural gas annually. That is, until a non-interstate pipeline has experienced three years of operational flow, it must utilize its maximum delivery capacity to determine whether it is a major non-interstate pipeline subject to this transparency rule. Section 284.1(d), defining "major non-interstate pipeline," is amended accordingly.

68. The Commission disagrees with Encana and TPA that new pipelines, including large non-interstate pipelines with possible natural gas flows that could have significant effects on the interstate markets, should be wholly exempt from the posting requirements of this rule for the first three years of their existence. New major non-interstate pipelines have more than a *de minimis* impact on interstate markets and, as such, the Commission's posting requirements shall apply.

69. Further, the Commission will not adopt a threshold for new pipelines that utilizes projected three-year natural gas deliveries as a proxy for actual deliveries. The Commission agrees with Encana that a non-interstate pipeline that gathers production may "have difficulty in projecting the volume of natural gas that it will deliver."[126] Thus, the Commission will not require new non-interstate pipelines to develop natural gas delivery projections simply to determine whether they are a major non-interstate pipeline subject to our transparency rules.

70. Instead, the Commission determines that, until a new pipeline develops three years of operational flow data, it must utilize design capacity to determine whether the pipeline is a major non-interstate pipeline subject to the rule. As discussed in Order No. 720, the Commission believes that design capacity data typically will be readily accessible to pipelines, especially newly constructed pipelines. As such, the Commission expects that a design capacity threshold will be the least burdensome method for most new pipelines to determine if they are subject to our transparency regulations. Further, in the absence of scheduled flow data, capacity is the best measure of the potential impact of a new pipeline on the interstate natural gas markets.

71. Accordingly, the Commission denies Encana's and TPA's requested clarification. However, the Commission requires pipelines without three years' operational data to utilize design capacity to determine whether they are major non-interstate pipelines. Section 284.1(d) of our regulations is modified to include this requirement.

2. Treatment of Non-Contiguous Pipeline Systems

72. In Order No. 720, the Commission defined major non-interstate pipelines utilizing a 50 million MMBtu annual delivery threshold.[127] The order clarified that the threshold would be applied on a "facility-by-facility" basis.[128]

a. Requests for Rehearing and Clarification

73. AGA, Southwest Gas, and Bear Paw/ONEOK Gathering Companies request either clarification, rehearing, or both regarding the meaning of "facility-by-facility." Particularly, petitioners request clarification as to how the delivery threshold for major non-interstate pipelines applies to pipeline systems that are non-contiguous (*i.e.,* pipelines that are not directly interconnected with each other).[129] AGA argues that non-contiguous pipeline systems should be viewed separately to determine whether each pipeline system is a major non-interstate pipeline or is eligible for the exceptions for posting in section 284.14(b)(2).[130]

74. Southwest Gas requests that the Commission clarify that separate facilities should be based, at least for an LDC, upon the LDC's own "operational grouping of lines and facilities within an operational area."[131] Southwest Gas also requests clarification that its separate operating systems need not comply with the posting regulations based upon factual representations made in its comments.[132]

75. Bear Paw/ONEOK supports the Commission's determination that major non-interstate pipelines be determined on a facility-by-facility basis. However, they request clarification that "facility-by-facility" analysis is appropriate where "physically separate facilities are

[118] *See* 18 CFR 284.1(d). Fifty million MMBtu of natural gas deliveries per year is roughly equivalent to 136 MMcf of deliveries per day.

[119] Order No. 720 at P 66.

[120] *Id.* P 67.

[121] Encana Request for Clarification and Clarification at 3.

[122] TPA Request for Rehearing and Clarification at 51–52.

[123] Shell Request for Rehearing and Clarification at 6–8.

[124] 18 CFR 284.1(d)(2).

[125] Encana Request for Rehearing and Clarification at 3.

[126] Encana Request for Rehearing and Clarification at 4.

[127] This threshold is included in the definition of "major non-interstate pipeline" in 18 CFR 284.1(d).

[128] Order No. 720 at P 64.

[129] AGA Request for Rehearing and Clarification at 27–28; SWG Request for Rehearing and Clarification at 7; Bear Paw/ONEOK Request for Rehearing and Clarification at 10–11.

[130] AGA Request for Rehearing and Clarification at 27–28.

[131] Southwest Gas Request for Rehearing and Clarification at 7.

[132] *Id.* at 7–9.

not operated on an integrated basis."[133] Bear Paw/ONEOK claims that such a clarification would eliminate incentives for non-interstate pipelines to splinter their facilities into individual companies to avoid posting obligations.[134]

b. Commission Determination

76. The Commission clarifies that the phrase "facility-by-facility" as used in Order No. 720 applies both to determine whether a pipeline is a major non-interstate pipeline under 18 CFR 284.1(d) and also whether a major non-interstate pipeline is nevertheless exempted from the posting requirements as provided in 18 CFR 284.14(b). The phrase "facility-by-facility" was intended by the Commission to indicate that major non-interstate pipelines would be defined by a common sense grouping of related facilities.

77. Identifying all of the facilities within a major non-interstate pipeline requires consideration of both physical interconnection and operational integration. Put differently, a major non-interstate pipeline is composed of a set of facilities that is *both* physically interconnected and operationally integrated. We believe that this clarification captures the impact that major non-interstate pipelines have on price formation. If a set of facilities is physically interconnected and operationally integrated, then the facilities, as a whole, impact the natural gas market as one entity rather than as multiple entities.

78. By "operationally integrated," the Commission means transportation of natural gas through a centralized scheduling process. It is at this level of integration that the facilities can be coordinated to such an extent that they may have the effect of a single entity in the natural gas market. Whether pipelines are organized into separate corporate divisions or formal operating systems is not relevant to this analysis. For example, if two interconnected sets of facilities are operated jointly from a central dispatch center, then the facilities together constitute a single pipeline for purposes of evaluation under the rule, even if the facilities are separately owned. On the other hand, even if two interconnected sets of facilities are owned by a single entity, they are nevertheless separate pipelines for purposes of the rule if they do not schedule natural gas through a joint scheduling process.

79. Finally, the Commission will not address Southwest Gas's requested clarification regarding whether 18 CFR 284.14 applies to Southwest Gas's operating systems in Arizona, Nevada, and California. Southwest Gas did not provide sufficient information for the Commission to make such a determination. Southwest Gas should review its pipeline system based upon the clarifications granted herein.

D. Posting Requirements for Major Non-Interstate Pipelines

1. Posting Requirements at Points Where Design Capacity Is Unknown or Does Not Exist

80. In Order No. 720, the Commission required all major non-interstate pipelines subject to our posting regulations to post scheduled natural gas flow and design capacity information for each receipt and delivery point with a design capacity equal to or greater than 15,000 MMBtu/day.

81. In the Commission's request for supplemental comments, it sought additional input on proposals submitted at the March 18, 2009 technical conference and subsequent post-conference comments regarding application of our posting regulations to receipt and delivery points at virtual or pooling points.[135] Specifically, the Commission requested comment on requirements to post at such points with a maximum flow equal to or greater than 15,000 MMBtu per day.[136] The request for supplemental comments included possible revisions to our regulations, including revisions that would require posting by major non-interstate pipelines at eligible virtual and pooling points.[137] Further, the order requesting supplemental comments proposed exempting from posting receipt points where actual flows were less than 5,000 MMBtu each day for the prior three years.[138]

a. Requests for Rehearing and Clarification

82. Many petitioners requested rehearing or clarification regarding how Order No. 720's major non-interstate pipeline posting regulations apply to points where design capacity is unknown or does not exist. Such points may include, but are not limited to, virtual points, pooling points, points that are not operated by the pipeline, and other physical points for which the pipeline cannot reasonably determine the design capacity.

83. AGA states that many LDCs schedule volumes to paper pooling points without reference to individual physical points.[139] AGA suggests that the Commission consider requiring posting scheduled volumes at paper pooling points where the scheduled volumes exceed 15,000 MMBtu per day.[140]

84. Both ONEOK Gathering and Nicor request that the Commission clarify whether scheduled volumes to virtual points should be posted.[141] TPA also requests clarification that historical data utilized for planning purposes is not required to be posted.[142]

b. Supplemental Comments

85. Atmos generally supports the regulatory language proposed in the Commission's order requesting supplemental comments stating that the proposal "represents a good compromise between the expensive and extensive reporting required under [the NOPR] and the very limited reporting requirements proposed by others."[143] Atmos suggests, however, that the Commission allow major non-interstate pipelines to utilize historical data rather than actual flow data to determine posting eligibility for each point.[144]

86. ONEOK Gathering likewise supports the regulations proposed in the order requesting supplemental comments with "minor clarifications."[145] It requests clarification that the three-year review of receipt point flows to determine whether the point is exempted from posting is three calendar years rather than a rolling three year period.[146]

87. Occidental supports the Order Requesting Supplemental Comments' proposal to limit posting only to scheduled points, and requests modification of the regulatory language to further clarify this subject, including a definition of virtual and pooling points.[147] Occidental suggests utilizing an average of multiple days' actual flow rather than peak day actual flow to determine posting eligibility for each

[133] Bear Paw/ONEOK Request for Rehearing and Clarification at10–11.

[134] *Id.*

[135] Order Requesting Supplemental Comments at P 7.

[136] *Id.* P 10.

[137] *Id.* P 7.

[138] *Id.*

[139] AGA Request for Rehearing and Clarification at 25.

[140] *Id.* at 26.

[141] Nicor Request for Rehearing and Clarification at 5–7; ONEOK Gathering Request for Rehearing and Clarification at 10–11.

[142] TPA Request for Rehearing and Clarification at 48–49.

[143] Atmos Supplemental Comments at 2.

[144] *Id.* at 3.

[145] ONEOK Gathering Supplemental Comments at 4.

[146] *Id.* at 5.

[147] Occidental Supplemental Comments at 3.

point.[148] Occidental states that it is inappropriate to require posting based upon a single-day anomaly in gas flow.[149]

88. TPA requests that the Commission extend the proposed exemption for receipt points with less than 5,000 MMBtu of flow each day both to delivery points and to points for which a design capacity is known.[150] TPA argues that points "flowing less than 15,000 MMBtu every day for three years have no significant impact on pricing."[151] TPA also suggests utilizing an average throughput as a threshold to determine whether a point with no known design capacity must be posted.[152] KM Intrastate Pipelines support TPA's supplemental comments.[153] Atmos likewise suggests that the proposed exemption be extended to delivery points.[154]

89. AGA's supplemental comments request clarification as to how posted capacity is determined for non-physical points where volumes are scheduled.[155] AGA also suggests that the Commission clarify the manner in which volumes are calculated for non-physical receipt and delivery points.[156] AGA suggests that the Commission adopt a threshold based upon scheduled volumes for posting of points with no known design capacity.

c. Commission Determination

90. The Commission grants the requests for rehearing and clarification. As petitioners note, Order No. 720 did not address the posting of virtual, pooling, or other points to which natural gas volumes are scheduled and yet where design capacity is unknown or does not exist. Based on the additional information received, the Commission finds that major non-interstate pipelines must post scheduled flow data for points where design capacity is unknown or does not exist with scheduled maximum natural gas volumes equal to or greater than 15,000 MMBtu on any day within the prior three calendar years. The Commission amends 18 CFR 284.14(a)(1) to implement this requirement.

91. As petitioners and commenters have stated, some major non-interstate pipelines schedule natural gas flows to virtual or pooling points where there is no physically-measurable design capacity.[157] Further, there exist a small number of physical receipt and delivery points where major non-interstate pipelines cannot reasonably determine a physical design capacity. Nevertheless, transportation to these points may be substantial and have a significant effect on interstate natural gas price formation. Petitioners have presented no arguments that scheduled volumes to such points have only *de minimis* effects on interstate price formation.

92. For purposes of determining whether a point with no known design capacity must be posted, major non-interstate pipelines shall use the largest scheduled natural gas flow over the past three calendar years.[158] If the largest daily scheduled flow is equal to or greater than 15,000 MMBtu, then the point is subject to posting. The potential impact on the natural gas market of a physically metered point is best understood through reference to its design capacity. The greater the capacity of the point, the greater the natural gas flows that could occur at the point and the greater the market impact. For this reason, the Commission adopted in Order No. 720 a design capacity threshold for posting at points where design capacity is known. For a point with no known design capacity, the closest approximation for design capacity is the maximum flow scheduled to the point. Additionally, maximum scheduled daily flow will not be burdensome for major non-interstate pipelines to calculate for points with no known design capacity.

93. The Commission clarifies that, as with posting related to points with a known design capacity, postings at points with no known design capacity are required only for *scheduled* volumes. The Commission is not requiring the posting of unscheduled natural gas volumes or actual flow. Nor is it requiring posting regarding points to which no volumes are scheduled. As discussed in Order No. 720, the posting of unscheduled volumes would be unduly burdensome.[159]

94. The Commission's regulations further reduce the burden on posting pipelines with virtual points by requiring posting based upon calendar year data. Thus, major non-interstate pipelines need only review scheduled volume data annually to determine whether points where no design capacity is known must be posted. Points with scheduled natural gas flows equal to or greater than 15,000 MMBtu per day become eligible for posting on January 1 of the following year.

95. The Commission will not adopt alternative proposals regarding the appropriate posting threshold for points with no known design capacity. Atmos suggests that the Commission adopt a threshold utilizing historical metered flows. TPA suggests utilizing an average of maximum scheduled flows at each point. Neither of these suggestions more closely approximates design capacity than a single-day maximum scheduled flow. Further, identifying multiple maximum scheduled flow days or appropriate historical actual metered flow would be more burdensome than identifying a single-day maximum scheduled flow.[160]

96. The Commission also finds that the appropriate timeframe for the scheduled flow threshold that we adopt is three years. A three calendar year review is sufficient to identify reportable points on major non-interstate pipelines while allowing pipelines to remove points that are no longer significant.[161] We also clarify, as TPA requests, that historical data need not be posted for points at which no design capacity is known.

2. Posting Requirements at Points Where Design Capacity Is Known

97. In Order No. 720, the Commission required major non-interstate pipelines to post information for receipt and delivery points with design capacity equal to or greater than 15,000 MMBtu per day.[162] The Commission found that market participants could utilize design capacity and scheduled volume information to help determine available capacity at a particular point and, therefore, required posting of both design capacity and scheduled volumes.[163] Order No. 720 clarified that, where the design capacity of a receipt or delivery point could vary according to operational or usage conditions, major

[148] *Id.* at 4–5.

[149] *Id.* at p. 5.

[150] TPA Supplemental Comments at 5.

[151] *Id.*

[152] *Id.* at 4.

[153] KM Supplemental Comments at 1.

[154] Atmos Supplemental Comments at 5.

[155] AGA Supplemental Comments at 25.

[156] *Id.* at 26.

[157] The Commission will not amend its regulations to define "virtual points" or "pooling points" as suggested by some petitioners. These terms are not utilized in the regulations. Instead, the posting regulations distinguish between points at which design capacity is known, on the one hand, or is unknown or does not exist.

[158] We discuss, *infra,* the timing of postings for all newly-eligible receipt and delivery points, including both points for which design capacity is known and unknown.

[159] Order No. 720 at P 57.

[160] Consistent with TPA's suggestion, we have clarified section 284.14(a)(4) of our regulations to reflect that the "Method of Determining Posted Capacity" includes "Maximum Volume" rather than "Maximum Average Volume."

[161] We note, as we did in Order No. 720, that our regulations do not require that pipelines remove any points from points that are posted. Indeed, we welcome the greater transparency afforded by postings at receipt and delivery points even where the Commission's regulations permit posting to terminate.

[162] Order No. 720 at P 82; *see* 18 CFR 284.14(a).

[163] Order No. 720 at P 82, 84.

non-interstate pipelines must post the design capacity for the most common usage conditions of its system during peak periods.[164]

98. In the Order Requesting Supplemental Comments, the Commission sought comment on a proposal to exempt from posting all receipt points at which design capacity was known that experienced actual flow of less than 5,000 MMBtu per day on every day within the prior three years.[165] The Commission explained that this proposal was based upon its understanding, from the record in this proceeding, that many major non-interstate pipelines have receipt points with design capacities greater than 15,000 MMBtu per day and yet consistently flow far less natural gas than this design capacity.[166] The proposal balanced the transparency goal of the rule with the costs associated with posting at such receipt points.

a. Requests for Rehearing and Clarification

99. ONEOK Gathering, Nicor, Atmos, Shell, and TPA request clarification regarding whether posting is required for a physical point if natural gas flows are not scheduled to the point.[167]

100. Enogex argues that the Commission erred in concluding that the posting of scheduled volumes and design capacity at a given point will allow shippers to determine how much capacity is available at the point.[168] Enogex states, without further explanation, that "capacity constraints and other conditions on a pipeline's system affect the amount of capacity that can be made available on a daily basis." [169]

101. ONEOK Gathering requests clarification regarding the calculation of design capacity for points with meters for which the major non-interstate pipeline does not have control.[170] In such circumstances, ONEOK Gathering suggests that the Commission permit major non-interstate pipelines to rely upon representations made by the entity controlling the point or to make reasonable estimates of design capacity. ONEOK Gathering also requests clarification regarding design capacity postings for receipt and delivery points on major non-interstate pipelines with greater capacity than interconnected interstate pipelines.[171] Further, ONEOK Gathering requests clarification regarding how pipeline design capacity should be calculated as a general matter or, in the alternative, establishment of a safe harbor for calculations regarding design capacity.[172]

b. Supplemental Comments

102. In its supplemental comments, Atmos requests that the Commission extend the proposed exemption for receipt points with less than 5,000 MMBtu of flow each day both to points for which design capacity is unknown.[173] Atmos argues that extension of the exemption to points for which design capacity is unknown would provide regulatory consistency in that points with a known design capacity would be treated similarly to points with an unknown design capacity.[174] TPA echoes these comments, urging also that the exemption threshold be raised to 15,000 MMBtu per day for all points, including points where design capacity is known or not known.[175] TPA argues that points flowing less than 15,000 MMBtu per day every day for three years have no significant impact on pricing in the U.S.[176]

103. NGSA also urges that the proposed exemption should be adopted and extended to points at which design capacity is known. NGSA claims that the proposed exemption "exposes a problem inherent in using design capacity as a threshold—it may capture points that are not truly significant." [177] NGSA requests that the Commission modify its regulations to provide that points with physically metered design capacity are eligible for the exemption and also that the exemption threshold be increased to 12,000 MMBtu per day.[178]

c. Commission Determination

104. The Commission denies the requests for rehearing and clarification. Regarding Enogex's comments, the Commission continues to believe, as stated in Order No. 720, that, as a general matter, "[m]arket observers may estimate availability by subtracting scheduled volumes from design capacity." [179] The Commission understands that day-to-day operational factors can sometimes affect available capacity in ways that are not readily apparent. However, just as we have observed regarding similar postings made by interstate pipelines, market participants will very often be able to ascertain available capacity from the data to be posted by major non-interstate pipelines.

105. Additionally, the Commission's regulations do not prohibit major non-interstate pipelines from posting additional information, including, for example, operational considerations that could affect available capacity.

106. Regarding the calculation of design capacity, the Commission confirms the statement in Order No. 720: "[i]n the circumstance where the design capacity of a receipt or delivery point could vary according to operational or usage conditions, a major non-interstate pipeline must post the design capacity for the most common operating conditions of its system during peak periods." [180] This guidance is consistent with the guidance that we have provided to interstate pipelines subject to our long standing posting requirements.[181] Regarding ONEOK Gathering's specific request for guidance regarding major non-interstate points with greater capacity than an interconnected interstate pipeline, the Commission clarifies that the obligation to post design capacity relates to the major non-interstate pipeline's facilities. As such, major non-interstate pipelines must post design capacity of their facilities even if an interconnecting facility's capacity is less than the major non-interstate pipeline's.

107. Major non-interstate pipelines must use reasonable efforts to determine design capacity at physical receipt and delivery points. To the extent that a major non-interstate pipeline is uncertain as to how to calculate design capacity at a point, they are free to contact the Commission's compliance help desk for informal guidance.[182] Therefore, the Commission will not adopt a safe harbor for the posting of design capacity.

108. No commenter objected to the proposal, contained in the Commission's order requesting

[164] *Id.* at P 92.

[165] Order Requesting Supplemental Comments at P 10.

[166] *Id.*

[167] Nicor Request for Rehearing and Clarification at 7–8; ONEOK Gathering Request for Rehearing and Clarification at 11; Atmos Request for Rehearing and Clarification at 2–3; Shell Request for Rehearing and Clarification at 8–9; TPA Request for Rehearing and Clarification at 48–50.

[168] Enogex Request for Rehearing and Clarification at 11.

[169] *Id.* at 11.

[170] ONEOK Gathering Request for Rehearing and Clarification at 9–10.

[171] *Id.*

[172] *Id.*

[173] Atmos Supplemental Comments at 5.

[174] *Id.* at 6.

[175] TPA Supplemental Comments at 4–5.

[176] *Id.* at 5.

[177] NGSA Supplemental Comments at 5.

[178] *Id.*

[179] Order No. 720 at P 84.

[180] *Id.* P 92.

[181] *Id.*

[182] As we reminded major non-interstate pipelines in Order No. 720, the Commission's help desk can facilitate responses to questions regarding compliance with our regulations. *See Obtaining Guidance on Regulatory Requirements,* 123 FERC ¶ 61,157 (2008).

supplemental comments, to adopt an exemption from posting for receipt points with actual flow of less than 5,000 MMBtu per day on each day within the prior three years. With two minor modifications, the Commission adopts this exemption. Namely, the exemption shall apply to receipt points with *scheduled* natural gas volumes of less than 5,000 MMBtu per day on each day within the prior three *calendar* years. These modifications are consistent with the Commission's determination to post scheduled volumes rather than actual flow and should be less burdensome for major non-interstate pipelines to implement than a rolling exemption based upon actual flow.[183]

109. The Commission will not further extend this exemption as requested by some commenters. The Commission clarifies that the exemption applies to only receipt points, not delivery points or points that operate both as receipt and delivery points. The exemption is intended primarily to apply to pipelines that receive gas from declining production areas.[184] These pipelines may have receipt points that were designed to accommodate natural gas flows of 15,000 MMBtu per day, but, because of declining production over time, flows into these points have dwindled to consistently *de minimis* levels. In such circumstances, it is unlikely that excess capacity at the point could become utilized in the future and the burden of posting at the point may exceed the transparency value.

110. As Order No. 720 explained, one of the chief goals of our posting regulations for major non-interstate pipelines is to assist the public's estimates of available capacity on large non-interstate pipelines, and the potential impacts on interstate price formation. Delivery points with excess capacity may often be utilized to provide additional service. As just one example, a delivery point that supplies several industrial consumers of natural gas may encounter reduced scheduled flows during economic downturns caused by reduction of output from the industrial consumers. Capacity is available, however, and use of the point may increase as economic conditions improve. This data would be useful for market participants to review as they consider the effect of increased demand on interstate natural gas prices.[185]

111. Additionally, the Commission clarifies that the exemption applies only to points with a stated design capacity—we decline to extend the exemption to points for which no design capacity is known.[186] As discussed above, the exemption is intended to apply to receipt points that were designed to accommodate natural gas flows of 15,000 MMBtu per day, but, because of declining production over time, flows into these points have dwindled to *de minimis* levels. Extending this exemption to points for which design capacity is unknown would be inconsistent with our determination that such points should be subject to posting if scheduled flows exceed 15,000 MMBtu per day on any day within the prior three years.

112. Lastly, the Commission clarifies that the posting exemption for receipt points with scheduled natural gas volumes of less than 5,000 MMBtu per day on each day within the prior three calendar years does not require that pipelines remove points that have been subject to posting. We emphasize, as we did in Order No. 720, that our posting regulations are *minimum* posting requirements. Major non-interstate pipelines may elect to post additional data regarding their operations.

3. Timing of Posting of Eligible Points

113. In the Order Requesting Supplemental Comments, the Commission sought additional comment on the appropriate time for posting to begin for newly eligible points. The order sought comments on one proposal that would require posting for each receipt and delivery point to begin within 45 days of the point's eligibility for posting.[187]

a. Supplemental Comments

114. TPA's supplemental comments claim that 45 days is insufficient time for review of flow data to determine if posting is required, even if such determinations utilize monthly billing data.[188] AGA urges the Commission to require new receipt and delivery points to be added annually rather than on a rolling 45-day basis. AGA claims that such a modification would reduce compliance burdens for major non-interstate pipelines.[189] TPA requests that the Commission require major non-interstate pipelines to determine, on a semi-annual basis, whether points with no known design capacity must be posted. ONEOK Gathering supports TPA's request that eligible points be determined on a bi-annual basis.[190]

b. Commission Determination

115. The Commission grants rehearing and revises section 284.14(a)(3) of its regulations to require major non-interstate pipelines to begin Internet postings for newly eligible receipt and delivery points within 45 days of the point's eligibility for posting.

116. The Commission understands commenters' arguments that posting new points on a rolling basis would be burdensome for major non-interstate pipelines, but believes that these burdens are overstated and substantially outweighed by the transparency benefit of timely posting of newly eligible points.[191] Major non-interstate pipelines have access to, and utilize on a daily basis, all of the information necessary to determine whether a receipt or delivery point must be posted under our regulations. The posting of newly eligible points is of substantial value to market participants as new receipt and delivery points or increased scheduled flow to points could have *immediate,* substantial effect on market prices. Balancing the transparency benefits of timely posting for newly eligible points with this burden, we believe that a 45-day requirement for the posting of newly eligible points is appropriate. Such a requirement would allow major non-interstate pipelines to utilize monthly billing and report data to determine the eligibility of new points.[192]

[183] TPA Supplemental Comments at 5; NGSA Supplemental Comments at 4–6; Atmos Supplemental Comments at 5.

[184] While the exemption could be utilized to exempt receipt points under other circumstances, we decline to further restrict the exemption. Such restrictions would complicate application of the exemption, increasing the burden on major non-interstate pipelines.

[185] Further, given the determination to require updating of posted points only on a bi-annual basis, a delivery point that was "dropped" from posting could experience resurgent flow for over seven months before posting resumed. Such a result is contrary to the transparency goals expressed in NGA section 23.

[186] 18 CFR 284.14(a)(2) of the regulations adopted herein by its terms applies to the entirety of section 284.14(a)(1), including both points for which a design capacity is posted and those that are not. Section 284.14(a)(2) applies only to receipt points with scheduled volumes of less than 5,000 MMBtu per day for each day within the prior three years. Points where no design capacity is posted, by definition, have experienced scheduled flows equal to or greater than 15,000 MMBtu per day and are thus not eligible for the exemption.

[187] Order Requesting Supplemental Comments at P 9.

[188] TPA Supplemental Comments at 3.

[189] AGA Supplemental Comments at 27.

[190] ONEOK Gathering Supplemental Comments at 4.

[191] The Commission notes that newly eligible points may be newly constructed receipt and delivery points or existing points that have become eligible for posting due to an increase in scheduled natural gas volumes.

[192] To the extent that a major non-interstate pipeline does not believe that it can, using reasonable efforts, determine the eligibility of new points and begin posting within 45 days of their eligibility, it may request waiver from the Commission of this requirement.

117. We decline to require only an annual or semi-annual review of new points as AGA and others suggest. Volumes at points that are large enough to require posting may have a significant impact on wholesale natural gas price formation. Delaying posting for a full year at such points would be contrary to the Commission's transparency goals.

4. Clarifications Regarding the Major Non-Interstate Posting Requirements

a. Confidentiality of Data To Be Posted

118. In Order No. 720, the Commission rejected requests to abandon this rule on the grounds that posted information would competitively disadvantage non-interstate pipelines or non-interstate pipeline transportation customers.[193] This determination was based upon the Commission's substantial experience with interstate posting requirements and the general, aggregated nature of the information to be posted by non-interstate pipelines.

119. AGA argues on rehearing that posting at delivery points with one or few transportation customers could have anti-competitive effects in certain situations.[194] Additionally, AGA believes that, in certain circumstances, the Commission's posting requirements could require LDCs to violate other regulatory requirements regarding the posting of customer-specific data.[195]

120. California LDCs make similar arguments in their request for rehearing of Order No. 720, echoing arguments previously made in response to the NOPR. They request that the Commission clarify that major non-interstate pipelines are not required to post confidential customer information.[196] Enogex argues that the posting of certain information could disclose the identity of end-users on an LDCs system.[197]

121. California LDCs' supplemental comments provide additional detail regarding their position. California LDCs' supplemental comments argue that posting scheduled flow information may violate the California Public Utility Commission's (CPUC's) confidentiality regulations. Specifically, according to these commenters, posting information required by Order No. 720 may cause the California LDCs to violate the CPUC's directives to preserve customer privacy.[198] Further, the comments repeat arguments made in their request for rehearing and comments in response to the NOPR that disclosure of scheduled flows could competitively disadvantage generators that receive natural gas at a delivery point.[199] Additionally, the California LDCs expand on prior comments that disclosure of location names or location information could disclose critical energy infrastructure information or information about military installations with national security implications.[200]

122. In supplemental comments, NGSA requests clarification that posting is required only for aggregated scheduled volumes, not specific delivery accounts.[201] NGSA also requests that the Commission permit market participants to seek exemptions for posting at certain points to protect commercially sensitive information.[202]

123. Most of the arguments raised by petitioners and commenters were discussed and rejected in Order No. 720.[203] The regulations therein adopted required only posting of aggregated, not account-specific, scheduled flow data.[204] The Commission noted that its interstate pipeline posting regulations require posting at receipt and delivery points even if the points are customer-specific and the industry has benefitted from the transparency afforded by such postings.[205] Congress clearly expressed an intent in NGA section 23 to ensure that relevant market data is made available to the public.[206] For these reasons, we reject petitioners' requests to limit the posting of information.

124. Additionally, the Commission does not believe its regulations require the disclosure of potentially sensitive information regarding the physical location of receipt and delivery points or actual natural gas flows that would implicate national security. Our major non-interstate posting requirements do not mandate disclosure of the physical location or composition of receipt and delivery point facilities.

125. Lastly, the Commission does not believe that its regulations are in conflict with State public utility commissions' general prohibitions regarding disclosure of private customer data. We note that the CPUC itself has not raised this issue in this proceeding—nor have any other non-interstate pipelines within California other than the California LDCs. The California LDCs' claim that our posting regulations "likely" would identify particular customers on their systems and customer's usage.[207] Such concerns are speculative and commenters fail to identify any specific points where application of our posting requirements would be inconsistent with the CPUC's privacy guidelines. The Commission therefore denies rehearing and declines to modify its regulations as requested by the petitioners.

b. Duplicate Postings

126. AGA and National Grid request clarification regarding posting of information by major non-interstate pipelines at points of interconnection with interstate pipelines.[208] They argue that such postings are duplicative of postings made by interstate pipelines. Additionally, Bear Paw/ONEOK argues that postings should not be required by major non-interstate pipelines at locations downstream of processing facilities if such postings would be duplicative of postings made by interstate pipelines.[209]

127. In response to AGA's, National Grid's, and Bear Paw/ONEOK's requests, the Commission clarifies that major non-interstate pipelines must post at eligible points at interconnections with interstate pipelines and denies the requests for rehearing. Postings at interconnections with interstate pipelines are not necessarily duplicative as the Commission's posting requirements for interstate pipelines differ from the requirements for major non-interstate pipelines. Further, available capacity at points of interconnection may differ between interstate and major non-interstate pipelines and this information would be unavailable if only interstate pipelines posted data. Even if posted information is, on occasion, duplicative, market participants can utilize posted information from one pipeline to better evaluate the accuracy of information posted by the interconnected pipeline. It has been the Commission's experience administering our interstate posting requirements that "duplicative" postings at interconnections between interstate

[193] Order No. 720 at P 88–89.

[194] AGA Request for Rehearing and Clarification at 24.

[195] *Id.*

[196] California LDCs Request for Clarification and Rehearing at 17–18.

[197] Enogex Request for Rehearing and Clarification at 10.

[198] PG&E and SoCal Gas Supplemental Comments at 6.

[199] *Id.* at 5–6.

[200] *Id.* at 5.

[201] NGSA Supplemental Comments at 6.

[202] *Id.*

[203] Order No. 720 at P 88–89.

[204] While our major non-interstate pipeline posting regulations do not require the posting of account-specific data, they do not prohibit such postings.

[205] Order No. 720 at P 88–89.

[206] *Id.*

[207] PG&E and SoCal Gas Supplemental Comments at p. 6.

[208] AGA Request for Rehearing and Clarification at 22–24; National Grid Request for Rehearing and Clarification at 9–10.

[209] Bear Paw/ONEOK Supplemental Comments at 9–10.

pipelines are very helpful to market participants.

c. Monthly and Weekly Scheduling

128. In Order No. 720, the Commission concluded that major non-interstate natural gas pipelines should post data on a daily basis.[210] Less frequent postings would not provide sufficient transparency for market observers to understand price fluctuations in a timely manner.

129. On rehearing, Targa claims that the requirement to post scheduled data on a daily basis "likely would require [Targa] to redefine the nature of its relationships with current and future customers."[211] Targa explains that it does not utilize daily scheduling or nominations, but that it reads its system meters on a monthly basis.[212] Targa reads Order No. 720 as requiring it "to establish an internal gas control function" to comply with the Commission's posting regulations.[213]

130. As the Commission stated in Order No. 720, the Commission's major non-interstate pipeline posting regulations do not regulate the rates, terms, or conditions of service for major non-interstate pipelines.[214] To the extent that Targa complains of the need to designate personnel to ensure compliance with the data posting requirements, we deny the company's rehearing request. Compliance with the Commission's regulations is mandatory for all non-exempt major non-interstate pipelines. However, to the extent that Targa's comments assume that Order No. 720 requires major non-interstate pipelines to schedule natural gas transportation on a daily basis, we clarify that Order No. 720 imposes no such requirement. Natural gas transportation that is not scheduled need not be posted. If natural gas transportation is scheduled on a daily basis, then such scheduled volumes should be posted along with other required data.

131. Further, the Commission clarifies that, if a major non-interstate pipeline schedules natural gas transportation using a timeframe different from daily scheduling (*e.g.,* weekly or monthly scheduling), postings must nevertheless occur on a daily basis utilizing the most recent scheduling data. Major non-interstate pipelines that engage in such scheduling practices must use reasonable efforts to estimate daily natural gas scheduled flows. Further, major non-interstate pipelines must explain the basis for such estimates on their Internet Web sites. For example, if a major non-interstate pipeline schedules natural gas transportation for the upcoming week, it could post daily scheduled flows in equal amounts each day (i.e., 1/7 of the weekly scheduled amount) if it believes that deliveries will be uniform each day.

d. Postings for Bi-Directional Scheduled Volumes

132. In Order No. 720, the Commission required major non-interstate pipelines to post, for each eligible point and on a daily basis, "Scheduled Volume"[215] and incorporated this requirement in 18 CFR 284.14(a)(4).

133. Atmos requests clarification regarding posting of Scheduled Volume at points with bi-directional scheduled natural gas flows (i.e., points of both receipt and delivery).[216] Atmos urges the Commission to determine that net volumes be posted at such points. Similarly, Atmos requests clarification regarding posting at points where bi-directional scheduled transportation results in displacement.[217]

134. In response to Atmos' request, the Commission clarifies that bi-directional scheduled volumes should not be netted against each other prior to posting. The Commission modifies 18 CFR 284.14(a)(4) consistent with this determination and requires Scheduled Volume to be posted for each direction of scheduled natural gas flow. While the Commission agrees, as Atmos argues, that market observers should be aware that Atmos' and other major non-interstate pipelines' bi-directional scheduling affects available capacity, the Commission believes that, for transparency purposes, posting more information about such scheduling is preferable than less information. Postings for points that operate as both receipt and delivery points should include Scheduled Volume in each direction separately.[218] To the extent that a major non-interstate pipeline believes that such posting would provide misleading data regarding available capacity at the point, it may post a narrative explaining how such scheduled volumes affect available capacity.

e. Timing of Postings

135. In Order No. 720, the Commission determined postings by major non-interstate pipelines should be made no later than 10:00 p.m. central clock time on the day prior to scheduled gas flow.[219] AGA and National Grid request that the Commission include this requirement in the regulations adopted.[220] The Commission agrees and section 284.14(a)(4) of our regulations has been modified to require postings by 10 p.m. central clock time the day prior to scheduled flow.

f. Reporting by Customer Class

136. In Order No. 720, the Commission required major non-interstate pipelines to post information regarding scheduled flows on an aggregated basis.[221] Yates requests that the Commission expand this requirement to include postings at each point by customer class and to identify affiliate relationships.[222] Yates argues that such postings could enable market participants to detect unduly discriminatory activities by major non-interstate pipelines.[223]

137. The Commission will not require the posting of additional data by customer class. As explained in Order No. 720, the Commission's primary goal is to enhance the transparency of the interstate natural gas market by requiring major non-interstate pipelines to post information regarding scheduled natural gas volumes that may impact interstate natural gas price formation. Requiring customer class-specific data would not further this goal.

g. Conversion From Standard Cubic Feet (scf)

138. The pipeline posting regulations adopted in Order No. 720 provided for measurements in Btu to determine whether major non-interstate pipelines were subject to the rule and the receipt and delivery points to be posted. In supplemental comments, NGSA suggests that the Commission clarify that it is acceptable for major non-interstate pipelines to utilize a standard conversion of 1,000 Btu per scf to

[210] This requirement is contained in section 284.14(a)(4) of the Commission's regulations.

[211] Targa Request for Rehearing and Clarification at 9.

[212] *Id.*

[213] *Id.*

[214] Order No. 720 at P 24.

[215] Order No. 720 at P 94.

[216] Atmos Request for Rehearing and Clarification at 5–6.

[217] *Id.* at 6–7.

[218] The Commission will leave the manner of posting such bi-directional flows to the major non-interstate pipeline's discretion. For example, a major non-interstate pipeline may choose to reflect bi-directional scheduled volumes at a single point as two separate points, one for each direction of scheduled flow. Alternatively, it could list two separate volumes for a single point, identifying the direction of each scheduled volume.

[219] Order No. 720 at P 97.

[220] AGA Request for Rehearing and Clarification at 28; National Grid Request for Rehearing and Clarification at 10.

[221] Order No. 720 at P 137.

[222] Yates Request for Rehearing and Clarification at 5–7.

[223] *Id.* at 7.

determine whether a point is required to be posted.[224]

139. We grant the requested clarification. To the extent that a pipeline cannot reasonably determine scheduled volumes utilizing Btu, it may choose to utilize 1,000 Btu per scf as a conversion factor. This conversion factor may be used to establish whether a pipeline is a major non-interstate pipeline subject to the Commission's regulations and also whether specific receipt and delivery points must be posted.

h. Clarification of Information To Be Posted

140. California LDCs request clarification that available capacity should be calculated, for purposes of postings by major non-interstate pipelines, by subtracting Design Capacity from Scheduled Volume.[225] The Commission agrees and clarifies that Available Capacity for physical points is calculated by subtracting Design Capacity from Scheduled Volume. To the extent that Available Capacity is not an appropriate estimate of the additional volumes of natural gas that could be scheduled at a point, pipelines may provide an explanation accompanying their postings.

E. Exemptions

1. Pipelines Upstream of Processing Plants

141. In Order No. 720, the Commission adopted an exemption to the posting requirements contained in § 284.14(a) for major non-interstate pipelines that lie entirely upstream of a processing, treatment, or dehydration plant.[226] The Commission declared that a pipeline may be upstream of a processing plant if it flows into another line that flows into a processing plant.[227] The Commission did not provide a general exemption for gathering pipelines.[228] The Commission also declined to adopt an exemption for pipelines that lie partially upstream and partially downstream of a processing, treatment, or dehydration plant, instead holding that the increased threshold mitigated compliance difficulties posed for such pipelines.[229] The Commission held that, in contrast to the "primary function test," the new regulation exemptions served as an easily-applied bright-line test for determining whether a major non-interstate pipeline should post information in compliance with this rule.[230]

a. Requests for Rehearing and Clarification

142. Anadarko and Encana request rehearing, and Shell requests clarification, regarding whether the Commission should extend the exemption to major non-interstate pipelines that are entirely upstream of processing, treatment or dehydration plants but for the presence of stub lines incidental to the operation of those plants.[231] Anadarko comments that if the only portion of a major non-interstate pipeline system that is downstream of a processing, treatment, or dehydration plant is a stub line incidental to that plant, solely used to connect that plant to an interstate pipeline, then that major non-interstate pipeline should not be required to comply with the reporting requirements of section 284.14(a).[232]

143. Anadarko cites Commission precedent, claiming that stub lines are generally held to be incidental to the provision of gathering services and, as such, are not subject to Commission jurisdiction under section 1 of the NGA.[233] Anadarko and Encana both state that the relevant information for the gas flowing through the stub lines would be captured at the receipt point on whatever pipeline that sub line flows into; thus requiring posting under Order No. 720 would be duplicative.[234] Encana further urged the Commission to adopt such an exemption to avoid unnecessary burdens on gathering and processing companies in exercising its transparency authority.[235]

144. Copano seeks clarification that the exemption for pipelines lying entirely upstream of processing applies to a pipeline where, under normal operating conditions, the entire gas stream flowing on the pipeline is delivered into a downstream pipeline and is contractually committed to be processed at a processing plant located on the downstream pipeline.[236]

145. Enogex comments the Commission should exempt non-contiguous systems located entirely upstream of processing plants.[237] Enogex states that Enogex Gas Gathering LLC operates several separate, non-contiguous systems. Enogex also requests that the Commission apply the modified primary function test to determine whether facilities are exempt under the Final Rule rather than the bright-line test promulgated therein.[238] Enogex cites Commission precedent applying the primary function test, claiming that the modified primary function test is the standard the Commission has consistently applied to determine whether a given facility performs a gathering or transmission function.[239]

b. Commission Determination

146. The Commission is persuaded that a major non-interstate pipeline with a stub line incidental to a processing plant and that delivers all of its transported gas directly into a single pipeline should not be required to comply with the posting requirements. The Commission, therefore, grants rehearing on this issue. However, if a major non-interstate pipeline's stub line delivers gas to multiple pipelines or to end-users, then the major non-interstate pipeline will not be exempt.

147. The Commission agrees with Anadarko and Encana that major non-interstate pipelines with stub lines that deliver gas entirely into a single pipeline are in a substantially similar position regarding impact on interstate natural gas price formation as pipelines that lie entirely upstream of processing plants. As the Commission stated in Order No. 720, natural gas that requires processing is not fungible with interstate pipeline quality natural gas and, therefore, data regarding the transportation of such natural gas has substantially less transparency value.[240] While natural gas that enters a stub line following processing is of "pipeline quality," transportation of that gas directly to a single pipeline has no different price effect than if natural gas flowed directly from a processing plant into an adjacent, interconnected interstate pipeline.

148. If a pipeline downstream of a processing plant makes deliveries of natural gas to more than one pipeline or to end-users, then such deliveries could have an effect on the supply of natural gas to different portions of the interstate market and, therefore, on price

[224] NGSA Supplemental Comments at 3–4.

[225] California LDCs Request for Rehearing and Clarification at 19.

[226] Order No. 720 at P 113.

[227] *Id.*

[228] *Id.* at P 114.

[229] *Id.* at P 115.

[230] *Id.*

[231] Anadarko Request for Rehearing and Clarification at 6–7; Encana Request for Rehearing and Clarification at 5–7; Shell Request for Rehearing and Clarification at 4–6.

[232] Anadarko Request for Rehearing and Clarification at 6.

[233] *Id.*

[234] *Id.* at 7; Encana Request for Rehearing and Clarification at 6–7.

[235] Encana Request for Rehearing and Clarification at 6.

[236] Copano Request for Rehearing and Clarification at 5.

[237] Enogex Request for Rehearing and Clarification at 9.

[238] *Id.* at 7–9.

[239] *Id.* at 7.

[240] Order No. 720 at P 113.

formation. To the extent that Anadarko and Encana request rehearing to expand the exemption beyond stub line delivery directly to a single pipeline, the Commission rejects the requests.

149. Further, the Commission rejects Copano's request for rehearing. Order No. 720 stated that, for purposes of this exemption, "a pipeline may be upstream of a processing plant if it flows into another line that flows into a processing plant." [241] Copano requests that we extend this analysis to contractual agreements to process gas downstream from a major non-interstate pipeline. We understand Copano's request to include situations where, although a contractual commitment exists to deliver natural gas to a processing plant, some or all of the delivered natural gas molecules may be delivered into interstate or non-interstate pipelines without processing.[242] In this circumstance, at least some of the delivered natural gas is fungible with pipeline quality natural gas and, for the reasons we expressed in Order No. 720, the Commission will not extend the exemption to major non-interstate pipelines that deliver pipeline quality natural gas.[243]

150. Regarding Enogex's request for clarification of the exemption regarding non-contiguous pipelines, the Commission directs Enogex and other non-contiguous gathering pipelines to our clarifications regarding companies operating non-contiguous pipelines, *supra* at P 71 *et seq.* To the extent that Enogex operates separate pipelines, it must determine whether each pipeline is a major non-interstate pipeline subject to the posting requirements.

151. For the reasons expressed in Order No. 720, the Commission denies Enogex's request for rehearing regarding use of the modified primary function test to define the exemption for unprocessed gas transportation. As Enogex correctly observes, the test is the method utilized by the Commission "to determine whether a given facility performs a gathering or transmission function." [244] The test was created to assist the Commission to determine whether facilities are transmission facilities subject to our traditional rates, terms, and conditions regulation. NGA section 23 embodies a different purpose (*i.e.,* transparency of interstate natural gas price formation) with a different jurisdictional reach (i.e., any market participant) and the modified primary function test is therefore inapposite. Further, application of the test would require case-by-case evaluation by each potential major non-interstate pipeline to determine its status under the rule. As Order No. 720 held, application of the test would be unnecessarily burdensome for pipelines and the Commission.[245]

2. Pipelines That Deliver Primarily to End Users

152. Order No. 720 adopted an exemption to the posting requirements in section 284.14 of the Commission's regulations for major non-interstate pipelines that deliver more than 95 percent of their volumes to retail customers as measured by average deliveries over the preceding three calendar years.[246] This exemption is codified at 18 CFR 284.14(b)(2).

153. The Commission explained that many sales to end-users have substantial impacts on wholesale energy markets.[247] In part, the Commission relied upon its findings in Order No. 704–A to define "retail" sales of natural gas as bundled transactions through an LDC at State-approved tariff rates.[248] Order No. 720 concluded that, where such transactions dominate a major non-interstate pipeline's deliveries, the transparency importance of a pipeline's postings is diminished. Balancing this lessened transparency benefit with the burdens on LDCs to post data, the Commission decided to exempt LDCs from posting if a pipeline's retail deliveries exceed 95 percent of the total deliveries averaged over three calendar years. The Commission also noted that, by increasing the threshold to become a major non-interstate pipeline from 10 million MMBtu (as proposed in the NOPR) to 50 million MMBtu, it had already exempted a large number of small LDCs from the posting regulations.[249]

a. Requests for Rehearing and Clarification

154. AGA, MidAmerican, National Grid, NICOR, Dow Pipeline, ONEOK Gathering, and California LDCs argue on rehearing that the Commission should extend the retail delivery exemption to major non-interstate pipelines with the requisite deliveries to all end-users, not just retail transactions.[250]

155. AGA, MidAmerican, and National Grid complain that Order No. 720 substantially departed from the NOPR in that the NOPR proposed to exempt pipelines based upon deliveries to end-users rather than retail deliveries.[251] These companies argue that, as a result, affected companies had no opportunity to comment on the scope of this exemption.

156. MidAmerican states that the only rationale provided by the Commission explaining the exclusion of unbundled transactions was a reference to Order No. 704.[252] MidAmerican understands Order No. 704–A as confirming the Commission's concern regarding interstate transportation to end-users and not transportation from LDCs to end-users.[253] MidAmerican argues that data regarding deliveries to any customers under State-approved transmission tariffs is not useful to understand wholesale natural gas prices.

157. Nicor argues that the Commission's analogy to Order No. 704–A is misplaced. Nicor states that Order No. 704–A imposed an annual reporting requirement for wholesale purchases and sales by market participants while Order No. 720 imposes posting requirements for major non-interstate pipelines.[254] Nicor argues that all sales of natural gas on its system are either being sold at retail or "just delivered." [255] Nicor's argument stems from its conclusion that "flows on a LDC's system would not meaningfully add to * * * understanding of the supply and demand fundamentals that affect wholesale natural gas prices." [256] Even if the Commission does not modify the exemption, Nicor argues that the regulatory text should be clarified that retail transactions are only those bundled transactions at a tariff rate.[257]

[241] *Id.* P 113.

[242] To the extent that Copano, or another major non-interstate pipeline, delivers natural gas to another pipeline that must then physically flow through a processing plant, then the exemption would apply as the Commission stated in Order No. 720. *Id.*

[243] *Id.*

[244] Enogex Request for Rehearing and Clarification at p. 7.

[245] Order No. 720 at P 114.

[246] *Id.* P 120.

[247] *Id.* P 121 (citing Order No. 704–A at P 40–43).

[248] *Id.*

[249] *Id.* P 122.

[250] AGA Request for Rehearing and Clarification at 10–16; MidAmerican Request for Rehearing and Clarification at 3–5; National Grid Request for Rehearing and Clarification at 4–8; NICOR Request for Rehearing and Clarification at 2–5; Dow Pipeline Request for Rehearing and Clarification at 3–5; ONEOK Gathering Request for Rehearing and Clarification at 6–8; California LDCs Request for Rehearing and Clarification at 18–19.

[251] AGA Request for Rehearing and Clarification at 5–6; MidAmerican Request for Rehearing and Clarification at 6–9; National Grid Request for Rehearing and Clarification at 4–8.

[252] MidAmerican Request for Rehearing and Clarification at 7.

[253] *Id.* at 7–10. MidAmerican suggests that the paragraphs cited in Order No. 704–A relate to interstate transportation only.

[254] Nicor Request for Rehearing and Clarification at 3–4.

[255] *Id.*

[256] *Id.* at 4.

[257] *Id.* at 2–5.

158. Targa claims that the Commission's determination in Order No. 720 to exempt only major non-interstate pipelines with greater than 95 percent of deliveries to retail customers is unsupported by the record in this proceeding.[258] Targa points to the fact that the only comments received on this point were submitted by pipelines and pipeline representatives counseling against this type of limitation to the exclusion.[259] Targa also claims that the Commission has not drawn a legally cognizable distinction between pipelines that deliver more than 95 percent of annual flows to end-users and pipelines that deliver 95 percent of flows to retails customers.[260]

159. Other petitioners seek to expand the exemption not only to cover deliveries to all end-users, but to other transactions as well. For example, Targa argues for further expansion of the exemption to cover Hinshaw pipelines that supply natural gas to end-users and other pipelines within a State. Targa states that there is no justification for disparate treatment of such supply pipelines and LDCs for purposes of the exemption.[261] AGA agrees with Targa on this point.

160. National Grid and AGA argue that two other transactions should also be part of the 95 percent of deliveries included in the exclusion: volumes delivered to and from a liquefied natural gas storage facility behind an LDC's city-gate and volumes that flow through delivery points shared with other LDCs.[262] National Grid states that these transactions, like all deliveries to end-users, cannot contribute to an understanding of wholesale price formation.

161. AGA additionally argues that deliveries from one LDC to another should be deemed a delivery to end use customers.[263] California LDCs request that the Commission require LDCs to post information only at citygates and not within the LDC systems themselves.[264]

b. Commission Determination

162. The Commission grants rehearing to provide an exemption from the posting requirements for all major non-interstate pipelines that deliver more than 95 percent of their annual flows to end-users as measured by average deliveries over the preceding three calendar years. We agree with AGA, MidAmerican, National Grid, NICOR, Dow Pipeline, ONEOK Gathering, and California LDCs that deliveries to end-users generally have the same effect on deliveries to retail customers (a subset of all end-users). As the Commission explained elsewhere in Order No. 720 and above, transparency is enhanced through an understanding of natural gas scheduled flows on non-interstate systems. The structure of natural gas price sales and transportation transactions by an LDC to end-users is irrelevant for purposes of interstate price formation.[265]

163. The Commission also clarifies, as National Grid and AGA suggest, that deliveries to on-system storage facilities (including deliveries to on-system liquefied natural gas (LNG) storage) are included within the exemption. Such deliveries have no effect on interstate natural gas price formation. The Commission modifies section 284.14(b)(2) to include deliveries to on-system storage.

164. We deny AGA's request to include deliveries from one LDC to another in the end-use exemption and California LCDs' request to limit posting by LDCs only to citygates. In such circumstances, LDCs are not providing service to end-users, but are operating in essentially the same fashion as traditional intrastate pipelines. To the extent that National Grid's and AGA's requests regarding shared points relate to deliveries and receipts from one LDC to another, those requests are also denied.

165. The Commission will also clarify that major non-interstate pipelines other than LDCs can qualify for this exemption if they meet the delivery threshold. However, we deny rehearing as requested by Targa and AGA to broadly exempt Hinshaw pipelines that supply natural gas to end-users and other pipelines within a State. Pipelines that deliver substantial quantities of natural gas to other pipelines for subsequent re-delivery to end-users are not similarly situated with pipelines that deliver 95 percent of their volumes to end-users. Receipts and deliveries at interconnections between pipelines provide useful market information to understand changes in daily flows in response to such things as regional prices; pipeline maintenance; and pipeline disruptions, for example caused by a compressor outage.

166. Lastly, the Commission notes that reference to NGA section 23(d)(2) is unavailing to most non-interstate pipelines seeking to avoid posting of data.[266] That section prohibits the Commission from requiring compliance from "natural gas producers, processors, or users who have a *de minimis* market presence." Most non-interstate pipelines are not producers, processors, or users of natural gas.

3. Storage Facilities

167. In Order No. 720, the Commission adopted an exemption for major non-interstate pipelines that function as stand-alone storage providers.[267] This exemption is codified in 18 CFR 284.14(b)(3). The Commission reasoned that much of the flow data that could be obtained from storage providers would be provided by interconnected interstate or major non-interstate pipeline postings.[268] Further, the Commission clarified that flow data affecting interstate price formation, not natural gas storage inventory, would enhance transparency and, thus, posting of storage-specific data was unnecessary.[269] Given these facts, the Commission exempted major non-interstate pipeline storage providers from the posting requirements of the rule as such postings would be unduly burdensome.[270]

a. Requests for Rehearing and Clarification

168. Enogex argues on rehearing that the exemption should be extended to all major non-interstate pipelines that provide storage service in addition to transportation service.[271] Enogex states that the Commission provided no explanation for excluding from the exemption major non-interstate pipelines with storage and transportation service.[272]

b. Commission Determination

169. The Commission denies Enogex's request for rehearing. As explained in Order No. 720 and *supra* at P 33 *et*

[258] Targa Request for Rehearing and Clarification at 10–14.

[259] *Id.* at 12.

[260] *Id.* at 14.

[261] Targa Request for Rehearing and Clarification at 10–14.

[262] National Grid Request for Rehearing and Clarification at 9–10; AGA Request for Rehearing and Clarification at 11–17.

[263] AGA Request for Rehearing and Clarification at 20–21.

[264] California LDCs Request for Rehearing and Clarification at 15–17; California LDCs Supplemental Comments at 6–9.

[265] Because we grant the rehearing request and revise our regulations consistent with the proposal contained in the NOPR, we need not address AGA's, MidAmerican's, and National Grid's arguments regarding the notice provided regarding the Final Rule or Dow Pipeline's alternative request for waiver.

[266] 15 U.S.C. 717t–2(d)(2).

[267] Order No. 720 at P 136.

[268] *Id.* P 136–37.

[269] *Id.* P 136.

[270] *Id.* P 137.

[271] Enogex Request for Rehearing and Clarification at 10.

[272] *Id.*

seq.,[273] the posting of scheduled flow information on major non-interstate pipelines will enhance interstate transparency and market efficiency. In Order No. 720, the Commission exempted non-interstate storage providers from the posting regulations because it determined that scheduled flow, not natural gas storage inventory information, furthered the rule's transparency goal. The Commission also noted that, because major non-interstate pipelines that provide transportation service would provide scheduled flow information to receipt and delivery points connected to non-interstate storage providers, at least some flow data into and out of storage providers would be publicly available. Given these facts, the Commission determined that the exemption was warranted.

F. Safe Harbor

170. In response to the NOPR, certain commenters requested a safe harbor for postings made by major non-interstate pipelines under the promulgated regulations to excuse inadvertent posting errors by non-interstate pipelines that make a good-faith effort to comply with the posting requirements. The Commission declined to adopt a safe harbor, differentiating between the posting requirements set forth in the order and the very limited circumstances where the Commission has, in the past, provided a safe harbor.[274]

a. Requests for Rehearing and Clarification

171. Certain petitioners and commenters request rehearing of the Commission's determination to not adopt a safe harbor provision based on claimed uncertainties and ambiguities in the posting requirements.[275]

172. TPA and Occidental seek clarification that the Commission will not penalize unintentional mistakes by parties acting in good faith.[276] TPA comments that enforcement of our regulations regarding major non-interstate pipelines within six months is a narrow timeframe and that such pipelines will be hard pressed to design and implement systems to post the required data.[277] TPA also notes that errors are likely to occur during the normal course of business.[278] Occidental comments that the potential for inadvertent posting errors is particularly significant based on the fact that the posting requirements apply to parties who historically have not been subject to posting requirements and because many have not tracked the data that the Commission is requiring them to report.[279]

173. California LDCs do not take issue with the Commission's determination to not adopt a safe harbor provision in perpetuity. Instead, it recommends that the Commission adopt a limited safe harbor for the first six months after the new regulations are implemented so that non-interstate pipelines which make a good faith effort to comply will not be penalized if they make inadvertent errors in reporting.[280]

b. Commission Determination

174. Nothing in the supplemental comments persuades the Commission to depart from the reasoning in Order No. 720 and the petitioners' requests are denied. While the Commission has, on rare occasions, adopted a safe harbor in other contexts, it does not believe one is warranted here. The safe harbor adopted in the Policy Statement on Price Indices was a direct extension of our policy goal to "encourage [industry participants] voluntarily to report energy transactions to providers or price indices."[281] The posting requirements set forth in Order No. 720 and this order are *mandatory* posting requirements adopted consistent with the directives of EPAct 2005, and are not the voluntary reporting of price data to an index developer; therefore, there is no policy need to provide an incentive for posting the information required.[282] As discussed in Order No. 720, other mandatory requirements, such as the filing of FERC Form No. 2, generally do not include a safe harbor.[283]

175. The Commission further distinguishes the decision here not to adopt a safe harbor from the temporary safe harbor adopted in Order No. 704–A. There, the Commission determined that, as FERC Form No. 552 would be completed by a large number of relatively unsophisticated companies with little experience filing materials with the Commission, a one-time safe harbor for initial filings of the form was appropriate.[284] Major non-interstate pipelines tend to be large, sophisticated natural gas transportation businesses, often with substantial experience complying with State public service commission reporting requirements, and with dedicated regulatory staff available to ensure compliance with our regulations.

176. Further, the Commission does not believe that the posting requirements set forth in Order No. 720 were unclear or ambiguous; however, to the extent that commenters believed they were unclear or ambiguous, they have been provided an opportunity to request clarification or rehearing, which many did. Additionally, major non-interstate pipelines will have 150 days following publication of this Order No. 720–A in the **Federal Register** before they must comply with the posting regulations. The Commission expects that all major non-interstate pipelines will have sufficient opportunity to create internal operating procedures to ensure compliance.[285]

177. The Commission will exercise discretion evaluating non-compliance by major non-interstate pipelines with our posting requirements. As the Commission has explained,[286] Office of Enforcement staff considers a number of factors to determine whether investigations involving noncompliance are warranted and whether a violation of the Commission's regulations warrants sanctions or other remedies. In fact, Office of Enforcement staff "frequently exercises prosecutorial discretion to resolve minor infractions with voluntary compliance measures rather than with penalties."[287] The most recent Office of Enforcement Annual Report is replete with examples of self-reports of minor errors which were not pursued by the Office of Enforcement.[288]

G. Interstate Pipeline Posting of No-Notice Service

178. Order No. 720 required interstate natural gas pipelines to post volumes of

[273] Order No. 720 at P 39–56.

[274] *Id.* P 151–52.

[275] California LDCs Request for Rehearing and Clarification at 17; Occidental Request for Rehearing and Clarification at 6–7; TPA Supplemental Comments at 46.

[276] TPA Supplemental Comments at 46; Occidental Supplemental Comments at 6–7.

[277] TPA Supplemental Comments at 46.

[278] *Id.*

[279] Occidental Request for Rehearing and Clarification at 7.

[280] California LDCs Request for Rehearing and Clarification at 17.

[281] *Price Discovery in Natural Gas and Electric Markets; Policy Statement on Natural Gas and Electric Price Indices,* 104 FERC ¶ 61,121 (2003), *clarified,* 109 FERC ¶ 61,184 (2004).

[282] Order No. 720 at P 152.

[283] *Id.*

[284] Order No. 720 at P 71.

[285] We remind major non-interstate pipelines that they may contact our Compliance Help Desk for assistance regarding compliance with our regulations, including questions regarding posting scheduled flow data at receipt and delivery points.

[286] *Enforcement of Statutes, Regulations and Orders, Revised Policy Statement on Enforcement,* 123 FERC ¶ 61,156, at P 23–26 and P 31–32 (2008).

[287] *Id.* P 9.

[288] 2009 Report on Enforcement, Docket No. AD07–13–002 at 10–14 (2009) (inadvertent errors in Electric Quarterly Report submissions not sanctioned; inadvertent violation of price reporting guidelines not sanctioned).

no-notice service flows at each receipt and delivery point before 11:30 a.m. central clock time (the timely cycle under NAESB Nomination Standard 1.32) three days after the day of gas flow.[289] In the NOPR, the Commission considered requiring interstate natural gas pipelines to post actual flow information within twenty-four hours, but upon further consideration in Order No. 720, the Commission required the posting of only no-notice volumes within three days after the day of gas flow. Order No. 720 found that this would achieve the goals of the Commission with less of a burden than full posting of actual flows with a twenty-four hour deadline.[290] Because the Commission gave interstate pipelines more time to post and because an interstate pipeline should already have the no-notice information that we are requiring them to post, the Commission found that this requirement was not unduly burdensome.[291]

179. The Commission explained that making information on no-notice volumes available is important because it allows interstate natural gas market participants and other market observers to better understand price formation and historical patterns of flow.[292] Without no-notice information, the market cannot see large and unexpected increases in gas demand and, therefore, cannot understand price formation both during and after no-notice service is utilized.

180. The Commission noted that no-notice service information would be of particular importance in understanding price behavior in the northern tier of the country during extreme weather conditions.[293] The Commission also noted that no-notice information could also prevent manipulation and unduly discriminatory behavior because it would increase transparency and therefore discourage such activities.[294] In addition, the Commission noted that no-notice postings would help shippers understand why capacity that appears to be available is actually not available during situations when no-notice service is being used.[295]

a. Requests for Rehearing and Clarification

181. Williston Basin seeks rehearing and INGAA requests clarification and rehearing of the Commission's decision to require interstate natural gas pipelines to post volumes of no-notice service flows, both claiming that the requirement is arbitrary and capricious.[296]

182. Williston Basin comments that the requirement to post information on no-notice service would not provide any useful market information and would therefore have no impact on market decisions.[297] Williston Basin claims that the majority of no-notice service relates to storage activity which is based on weather-driven demand, and because most no-notice shippers inject in the summer months at prevailing market rates and withdraw at a different time when prices are different, the true market price of the gas on that particular day is not reflected.[298] Williston Basin states that the posting of scheduled pipeline capacity and volume data provides the timeliest and accurate information for assessing market fundamentals, and reporting no-notice service is not necessary and would not provide any relevant market information.[299]

183. Williston Basin and INGAA both request that the Commission adopt the same *de minimis* standard for no-notice interstate pipeline postings as applied to major non-interstate pipeline postings.[300] Williston Basin claims that it is discriminatory for the Commission to not apply the same standard for interstate pipelines.[301] INGAA states that there are certain delivery points that are so small that they have no measureable impact on market fundamentals and are not worth the cost and administrative burden necessary to comply with the rule; therefore, INGAA suggests that the Commission establish a *de minimis* rule that would exempt delivery points with an average annual delivery rate of less than 2,500 Mcf per day.[302]

184. On rehearing, INGAA argues that the no-notice reporting requirement is not supported by a substantial record of evidence because the Commission did not develop a record on the various ways pipelines provide and measure no-notice service.[303] INGAA asks the Commission to consider that interstate pipelines have varying tariffs and contracts for how they provide no-notice transportation services for customers. INGAA requests that the Commission clarify that a pipeline can satisfy the no-notice posting requirement by providing data corresponding to how it provides no-notice transportation service.[304] For example, INGAA claims that in the majority of cases, there is no way for a pipeline to determine a receipt point for its no-notice service, therefore, it recommends that the Commission clarify that interstate pipelines are not required to post no-notice volumes at receipt points.[305] In addition, INGAA asks the Commission to recognize the role of aggregation in the administration of no-notice service and asks the Commission to clarify that interstate pipelines who report aggregate volume to customers and who use aggregate volume to administer no-notice service contracts satisfy the no-notice posting requirement by posting aggregate volumes.[306]

185. INGAA also asks that the Commission take into consideration that interstate pipelines have varying metering and measurement equipment, and INGAA requests that the Commission clarify that a pipeline can satisfy the no-notice posting requirement by posting estimated volumes when a pipeline estimates its no-notice volumes for operational purposes (e.g., volumes are posted on a monthly or weekly basis; meters are controlled by third parties).[307] INGAA states that it would not be economic for pipelines to install real-time measurements equipment at each delivery point; therefore, INGAA asks the Commission to clarify that it is appropriate for a pipeline to report whatever information is available to the pipeline within the three days allowed for posting.

b. Commission Determination

186. The Commission denies Williston Basin's and INGAA's requests for rehearing. The Commission believes that the posting of information about no-notice service will enhance transparency and that this requirement is not unduly burdensome. The Commission continues to believe that no-notice service has an impact on market decisions and price formation as described in Order No. 720. The Commission recognizes that a large percentage of no-notice service relates to

[289] Order No. 720 at P 160.

[290] *Id.* P 162, 166.

[291] *Id.* P 166.

[292] *Id.* P 165.

[293] *Id.* P 163.

[294] *Id.* P 165.

[295] *Id.* P 164.

[296] Williston Basin Request for Rehearing and Clarification at 1; INGAA Request for Rehearing and Clarification at 1–2.

[297] Williston Basin Request for Rehearing and Clarification at 1–2.

[298] *Id.* at 2.

[299] *Id.*

[300] *Id.* at 3; INGAA Request for Rehearing and Clarification at 6–7.

[301] Williston Basin Request for Rehearing and Clarification at 3.

[302] INGAA Request for Rehearing and Clarification at 7.

[303] *Id.* at 1–2.

[304] *Id.* at 2.

[305] *Id.* at 2–3.

[306] *Id.* at 3–5.

[307] *Id.* at 5–6.

weather-driven storage activity, and many no-notice shippers inject in the summer months at prevailing market rates and withdraw at a different time when prices are different; however, during such occasions, when no-notice shippers withdraw gas, the absence of posting of no-notice service means that the market cannot see these large responses to gas demand at a time when the market is particularly sensitive to variations in natural gas availability. Market participants do not have access to information necessary to understand price formation during such occasions, and for this very reason, the Commission believes that the posting of no-notice service volumes is necessary to achieve transparency.

187. The Commission denies petitioners' requests for rehearing and clarification that would establish a *de minimis* standard for posting of information about no-notice service. The Commission is not persuaded to adopt a *de minimis* standard for no-notice posting because it believes that all interstate no-notice volumes are relevant to interstate wholesale price formation.[308] Even very small or transitory no-notice volumes can have a substantial impact on natural gas prices during times of system stress. Indeed, it is precisely at these times when no-notice service is most utilized.

188. The Commission's conclusion is reinforced by our authority, exercised in Order No. 637 and elsewhere, to require interstate pipelines to post substantial data regarding their operations.[309] However, if a pipeline believes that its no-notice service is so insubstantial so as to not influence price formation, the pipeline may submit a detailed description of its no-notice operations and request a waiver from our regulations. The Commission will consider such requests on a case-by-case basis.

189. The Commission takes into consideration the fact that interstate pipelines have varying tariffs and contracts for providing no-notice service. The Commission recognizes that sometimes there is no way for a pipeline to determine a receipt point for its no-notice service; however, the Commission denies the request that interstate pipelines not be required to post no-notice volumes at receipt points. To the extent that the receipt point data is available for no-notice service, pipelines must post that information. In the event that a pipeline does not have receipt point data, then the pipeline may indicate that the required data field is left intentionally blank. The Commission also recognizes that some pipelines traditionally report aggregate no-notice volumes to their customers. However, posting aggregate volumes does not satisfy the no-notice posting requirement if a pipeline has access to the records of the daily volumes. If the data is available or could be made available, then the pipeline must post the non-aggregated volume data, even if it prefers a different format when dealing with customers. If a pipeline does not have access to non-aggregated data, then it should post aggregated data.

190. Finally, the Commission assures petitioners that it has taken into consideration the fact that interstate pipelines have varying metering and measurement equipment and clarifies that pipelines must only post information that is available to them. Our transparency regulations do not require the construction of new metering equipment. Instead, an interstate pipeline should post whatever data it has available within three days of the flow, noting any deficiencies in the posting on its Web site. A pipeline should not post estimated volumes, but rather actual flow. If, subsequent to an initial posting, more complete no-notice service data becomes available, interstate pipelines must update previously posted information.

H. Additional Exemptions

1. Natural Gas Companies With Service Area Determinations Under NGA Section 7(f)

191. In Order No. 720, the Commission stated that local distribution companies with service area determinations under section 7(f) of the NGA were not categorically excluded from the posting requirements as such companies that exceed the 50 million MMBtu annual threshold may have a substantial impact on regional interstate natural gas markets.[310]

192. WGL requests clarification and, in the alternative, rehearing regarding the definition of "major non-interstate pipeline" as applied to natural gas companies that have obtained service area determinations under section 7(f) of the NGA.[311] Our pipeline posting requirements apply to "major non-interstate pipelines." As provided in 18 CFR 284.1(d), major non-interstate pipelines are comprised only of those pipelines not subject to our NGA jurisdiction as "natural gas companies."[312] WGL contends that a strict reading of the regulation would exclude local distribution companies with service area determinations under section 7(f) as such companies are "natural gas companies" under the NGA.

193. AGA requests clarification that LDCs that have service area determinations under section 7(f) can qualify for the posting exemptions contained in 18 CFR 284.14(b).

194. The Commission grants WGL's request for rehearing and modifies 18 CFR 284.1(d) to provide that pipelines with a Commission-approved service area determination may be major non-interstate pipelines if they exceed the delivery threshold and otherwise do not qualify for an exemption. The Commission agrees with WGL that there is no practical difference between an LDC operating entirely within a single State and LDCs operating in multiple states under a section 7(f) service area determination. Consistent with WGL's and AGA's requests, the Commission also clarifies that LDCs with service area determinations may be major non-interstate pipelines for purposes of this rule.

2. Pipelines Owned or Operated by End Users

195. Dow Chemical requests clarification, or in the alternative rehearing, regarding application of the Commission's pipeline posting regulations to pipelines that are owned and/or operated by an end-user to transport natural gas to that end-user.[313] Dow Chemical argues that price transparency in the interstate market would not be enhanced by requiring such pipelines to post scheduled flow information.[314]

196. The Commission grants the requested clarification. Where a pipeline delivers all of its transported natural gas directly to an end-user that owns or operates the pipeline, the pipeline is an extension of the end-user's plant or other natural gas consumption facilities. To require

[308] Unlike non-interstate transportation that has an indirect effect on interstate natural gas price formation, interstate transportation has a direct effect on prices.

[309] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,091, at 31,332, *clarified,* Order No. 637–A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied,* Order No. 637–B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America* v. *FERC,* 285 F.3d 18 (D.C. Cir. 2002), *order on remand,* 101 FERC ¶ 61,127 (2002), *order on reh'g,* 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n* v. *FERC,* 428 F.3d 255 (D.C. Cir. 2005).

[310] Order No. 720 at P 149.

[311] WGL Request for Rehearing and Clarification at 3.

[312] 18 CFR 284.1(d).

[313] Dow Chemical Request for Rehearing and Clarification at 3.

[314] *Id.* at 4.

posting in such circumstances would be the functional equivalent of requiring each large consumer of natural gas to post consumption information on a daily basis. However, if a pipeline delivers natural gas to entities other than the owner or operator of the pipeline, then it is not exempted from the regulation. The Commission modifies section 284.14(b) of our regulations to incorporate this exemption.

III. Cost of Compliance

197. In Order No. 720, the Commission estimated the compliance costs of the pipeline posting regulations for both interstate and major non-interstate pipelines.[315] The order found that the average annual cost of compliance for interstate pipelines and major non-interstate pipelines was approximately $5,000 and $30,000, respectively.[316]

A. Requests for Rehearing and Clarification

198. No petitioner objects to the Commission's estimate of compliance costs for interstate pipelines. However, two petitioners question the compliance costs for major non-interstate companies. California LDCs claim that initial compliance costs for each LDC may exceed $500,000 to calculate and record the design capacity of delivery points as well as establishing procedures to capture new delivery points for which posting is required. Based upon these costs, the California LDCs conclude that the cost of compliance far outweighs the benefits of the rule.[317]

199. TPA argues that some TPA members will encounter increased compliance costs to design and implement scheduling processes at points where they currently do not schedule natural gas.[318] Further, TPA notes that non-interstate pipelines may schedule delivery of natural gas to LDCs at sets of delivery points rather than individual delivery points. TPA claims that the rule would require such pipelines to establish mechanisms to account for scheduled flows to each point.[319] Further, TPA claims that "[s]ome TPA members * * * estimate implementation and start-up costs in the hundreds of thousands of dollars."[320] While TPA acknowledges that Order No. 720 did not adopt posting requirements for segments or actual flow, and thus, reduced the potential cost of compliance, it argues that Order No. 720 ignores other costs estimated by TPA members.[321]

B. Commission Determination

200. The Commission disagrees with the California LDCs and TPA and finds, as it did in Order No. 720, that the benefits of our transparency regulations substantially outweigh the cost of compliance. Enhanced transparency will result in a more efficient wholesale natural gas market, more informed and better market choices made by market participants, and, ultimately, lower natural gas prices for consumers.

201. The Commission notes that Order No. 720's cost of compliance estimates were based upon comments received in response to the NOPR and the substantial reduction in compliance costs attendant in the Commission's decision not to require posting of actual natural gas flows or on pipeline segments. Further, Order No. 720 acknowledged that both start-up and annual compliance costs would vary among pipelines.[322]

202. The Commission emphasizes that only scheduled natural gas volumes are to be posted. The comments by TPA do not dissuade the Commission from the determination that "most if not all of the gas control divisions of the affected companies currently have ready access to the information captured" by the rule.[323] In large part, it appears that TPA's concerns stem from fundamental misunderstandings of the Final Rule. For example, TPA notes that some of its member pipelines do not schedule flows at certain points, but that the rule requires such pipelines to restructure their operations to adopt a scheduling process.[324] The regulations do not require pipelines to modify their operations so as to schedule natural gas flows at point where such flows have not heretofore been scheduled. Section 284.14(a) of the Commission's regulations makes clear that major non-interstate pipelines must post the amount of natural gas scheduled at each relevant point "whenever capacity is scheduled."[325] Likewise, TPA assumes that volumes scheduled to an aggregated receipt point for an LDC customer must be broken out by physical receipt point. As clarified in this order, the Commission's regulations will allow for posting of aggregated scheduled flows to virtual or pooling points. The Commission does not believe that major non-interstate pipelines will incur significant expenses adopting new scheduling procedures as our regulations do not require such changes.

203. TPA and the California LDCs claim that the major non-interstate pipelines that they represent may incur start-up costs of hundreds of thousands of dollars to comply with Order No. 720. Such costs seem disproportionately high given that other major non-interstate pipelines have not expressed similar concerns on rehearing. The Commission also finds such claims doubtful given the sophistication of these pipelines, their experience with electronic data capture, their familiarity with the receipt and delivery points on their systems, and, for at least some of these pipelines, their substantial experience with posting flow data on electronic databases. For these reasons and given the generality of the compliance cost claims by TPA and the California LDCs, the Commission will not modify the conclusion that compliance costs for the rule exceed the substantial value of enhanced market transparency.

IV. Information Collection Statement

204. The Office of Management and Budget (OMB) regulations require it to approve certain reporting and recordkeeping (information collection) requirements imposed by an agency.[326] In the Final Rule and in this Order on Rehearing and Clarification, the Commission addresses two requirements for the posting or collection of information, one for interstate and one for major non-interstate pipelines.[327] The Commission adopts no changes to its regulations regarding posting requirements for interstate pipelines. However, the Commission has submitted notification of the modified information collection requirements for major non-interstate pipelines to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[328]

205. The requirement for major non-interstate pipelines to post scheduled volume information would impose an information collection burden on major non-interstate pipelines. Certain non-interstate pipelines have asserted on rehearing that costs would be high if

[315] Order No. 720 at P 86.

[316] *Id.* P 171.

[317] California LDCs Request for Rehearing and Clarification at 12–13.

[318] TPA Request for Rehearing and Clarification at 41.

[319] *Id.*

[320] *Id.* at 42.

[321] *Id.* at 43.

[322] Order No. 720 at P 171.

[323] *Id.* P 56.

[324] TPA Request for Rehearing and Clarification at p. 41.

[325] 18 CFR 284.14(a).

[326] 5 CFR 1320.11.

[327] The OMB regulations cover both the collection of information and the posting of information. 5 CFR 1320.3(c). Thus, the proposal to post information would create an information collection burden.

[328] 44 U.S.C. 3507(d).

additional equipment were needed to meet quick posting deadlines. However, the Commission does not believe that installation of additional equipment will be necessary to meet major non-interstate pipelines' obligations. The burden that is imposed by these regulations is largely for the collection and posting of this information in the required format.[329] Elsewhere in this preamble, the Commission has further addressed requests for rehearing and clarification regarding the burden of the requirements.

206. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission submitted notification of this rule to OMB.

Public Reporting Burden:

The start-up and annual burden estimates for complying with this rule are as follows:

Data collection	Number of respondents	Number of daily postings per respondent	Estimated annual burden hours per respondent	Total annual hours for all respondents	Estimated start-up burden per respondent
Part 284					
FERC–551:					
Major Non-Interstate Pipeline Postings	70	2	365	25,550	40

The total annual hours for collection (including recordkeeping) for all respondents is estimated to be 25,550 hours.

Information Posting Costs: The average annualized cost for each respondent is projected to be the following (savings in parenthesis):

	Annualized capital/startup costs (10 year amortization)	Annual costs	Annualized costs total
FERC–551:			
Major Non-Interstate Pipeline Postings	$142	$30,000	$30,142

Title: FERC–551.

Action: Proposed Information Posting and Information Filing.

OMB Control No.: 1902–0243.

Respondents: Business or other for profit.

Frequency of Responses: Daily posting requirements.

Necessity of the Information: The daily posting of additional information by interstate and major non-interstate pipelines is necessary to provide information regarding the price and availability of natural gas to market participants, State commissions, the Commission and the public. The posting would contribute to market transparency by aiding the understanding of the volumetric/availability drivers behind price movements; it would provide a better picture of disruptions in natural gas flows in the case of disturbances to the pipeline system; and it would allow the monitoring of potentially manipulative or unduly discriminatory activity.

V. Regulatory Flexibility Act

207. The Regulatory Flexibility Act of 1980 (RFA)[330] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA requires consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on such entities. A natural gas pipeline is considered a small entity for the purposes of the Regulatory Flexibility Act if its average annual receipts are less than $7.0 million.[331] In Order No. 720, the Commission stated its belief that none of the pipelines required to comply with requirements in the rule had receipts of less than $7.0 million annually and therefore, the daily posting proposal will not impact small entities.

208. In keeping with the provisions of the RFA, the Commission established a delivery threshold of 50 million MMBtu which would eliminate compliance burdens for smaller non-interstate pipelines by taking into account the resources that are available to small entities in order to comply with the posting requirements. In response to the comments on rehearing and supplemental comments, the Commission is also exercising an additional regulatory alternative by exempting some major non-interstate pipelines with certain operational characteristics from the posting requirements and otherwise modifying the requirements to lessen the burden on posting pipelines. For example, the Commission is directing major non-interstate pipelines to review points with no known design capacity annually, rather on a rolling basis, to determine whether information for the point must be posted. Further, major non-interstate pipelines are exempt from posting scheduled natural gas volumes at points that have scheduled flows less than 5,000 MMBtu per day on each day within the prior three calendar years.

209. Additional exemptions include: Major non-interstate pipeline that have stub lines incidental to a processing plant and that delivers all of its transported gas directly into a single pipeline; major non-interstate pipelines that deliver more than 95 percent of their annual flows to end-users as measured by average deliveries over the preceding three calendar years; major non-interstate pipelines that deliver to on-system storage facilities (including deliveries to on-system LNG storage);

[329] *See* 5 CFR 1320.3(b)(2) ("The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.,* in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.").

[330] 5 U.S.C. 601–612.

[331] *See* U.S. Small Business Administration, *Table of Small Business Size Standards, http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf* (effective July 31, 2006).

pipelines that transport all of their natural gas directly to an end-user that owns or operates the pipeline.

VI. Document Availability

210. In addition to publishing the full text of this document in the **Federal Register,** the Commission will provide all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

211. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

212. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Compliance Deadlines

213. Order No. 720 set compliance deadlines for interstate and major non-interstate pipelines to comply with the transparency posting requirements.[332] The Commission ordered interstate pipelines subject to the new posting requirements to comply with the promulgated regulations no later than 60 days following publication in the **Federal Register**; major non-interstate pipelines were given 150 days after such publication to comply.[333] On January 15, 2009, in response to motions from major non-interstate pipelines for an extension of time to comply with Order No. 720, the Commission extended compliance for major non-interstate pipelines until 150 days following the publication of an order addressing the pending requests for rehearing.[334] The Commission did not modify the deadline by which interstate pipelines must comply with the requirements of Order No. 720.[335] The compliance deadlines were chosen to allow the applicable entities sufficient time to update their information technology systems and establish an Internet Web site for the postings.

A. Requests for Rehearing and Clarification

214. No parties submitted requests for rehearing or comments regarding the deadline for compliance with the Final Rule.

B. Commission Determination

215. The Commission's regulations regarding the posting of data related to no-notice service by interstate pipelines are not modified in this order. Interstate pipelines should continue compliance with our regulations.

216. The Commission's revised regulations regarding postings by major non-interstate pipelines will become effective 30 days following publication in the **Federal Register.** The Commission continues to believe, that, for major non-interstate pipelines, a compliance deadline of 150 days following the issuance of this order on rehearing allows sufficient time for pipelines to update their information technology systems and establish an Internet Web site for the required postings. This time frame for compliance will allow major non-interstate pipelines to complete the current heating season without the need to implement new posting procedures while ensuring that new postings are available prior to the next heating season. Therefore, major non-interstate pipelines must comply within 150 days of the issuance of this order on rehearing.

List of Subjects in 18 CFR Part 284

Continental shelf; Incorporation by reference; Natural gas; Reporting and recordkeeping requirements.

By the Commission. Commissioner Norris voting present.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ For the reasons stated in the preamble, the Federal Energy Regulatory Commission amends 18 CFR Chapter I as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

■ 2. In § 284.1, revise paragraph (d) to read as follows:

§ 284.1 Definitions.

* * * * *

(d) *Major non-interstate pipeline* means a pipeline that fits the following criteria:

(1) It is not a "natural gas company" under section 1 of the Natural Gas Act, or is a "natural gas company" and has obtained a service area determination under section 7(f) of the Natural Gas Act from the Commission;

(2) It delivers annually more than fifty (50) million MMBtu (million British thermal units) of natural gas measured in average deliveries for the previous three calendar years; or, if the pipeline has been operational for less than three years, its design capacity permits deliveries of more than fifty (50) million MMBtu of natural gas annually.

■ 3. Section 284.14 is revised to read as follows:

§ 284.14 Posting requirements of major non-interstate pipelines.

(a) *Daily posting requirement.* A major non-interstate pipeline must post on a daily basis on a publicly-accessible Internet Web site and in downloadable file format equal and timely access to information regarding receipt or delivery points, including non-physical scheduling points.

(1) A major non-interstate pipeline must post data for each receipt or delivery point, or for any point that operates as both a delivery and receipt point for the major non-interstate pipeline, to which natural gas transportation is scheduled:

(i) With a physically metered design capacity equal to or greater than 15,000 MMBtu (million British thermal units)/day; or

(ii) If a physically metered design capacity is not known or does not exist for such a point, with a maximum volume scheduled to such a point equal to or greater than 15,000 MMBtu on any day within the prior three calendar years.

(2) Notwithstanding the requirements of subsection 284.14(a)(1), a receipt point is not subject to the posting requirements of this section if the

[332] Order No. 720 at P 167–68.

[333] *Id.*

[334] *Pipeline Posting Requirements Under section 23 of the Natural Gas Act,* 126 FERC ¶ 61,047, at P 2, 4 (2009).

[335] *Id.* at P 4. Thus, interstate pipelines were required to begin posting no-notice flow no later than January 30, 2009.

maximum scheduled volume at the receipt point was less than 5,000 MMBtu on every day within the prior three calendar years. If a point has operated as both a receipt and delivery point any time within the prior three calendar years, subsection 284.14(a)(2) shall not apply to that point.

(3) A major non-interstate pipeline that must post data for a receipt or delivery point shall do so within 45 days of the date that the point becomes eligible for posting.

(4) For each delivery or receipt point that must be posted, a major non-interstate pipeline must provide the following information by 10:00 p.m. central clock time the day prior to scheduled natural gas flow: Transportation Service Provider Name, Posting Date, Posting Time, Nomination Cycle, Location Name, Additional Location Information if Needed to Distinguish Between Points, Location Purpose Description (Receipt, Delivery, Bilateral, or Non-physical Scheduling Point), Posted Capacity (physically metered design capacity or maximum flow within the last three years), Method of Determining Posted Capacity (Capacity or Maximum Volume), Scheduled Volume, Available Capacity (Calculated as Posted Capacity minus Scheduled Capacity), and Measurement Unit (Dth, MMBtu, or MCf). For receipt or delivery points with bi-directional scheduled flows, the Scheduled Volume for scheduled flow in each direction must be posted. The information in this subsection must remain posted for at least a period of one year.

(b) *Exemptions to daily posting requirement.* The following categories of major non-interstate pipelines are exempt from the posting requirement of § 284.14(a):

(1) Those that are located upstream of a processing, treatment or dehydration plant;

(2) Those that deliver more than ninety-five percent (95%) of the natural gas volumes they flow directly to end-users or on-system storage as measured in average deliveries for the previous three calendar years;

(3) Storage providers;

(4) Those that deliver the entirety of their transported natural gas directly to an end-user that owns or operates the major non-interstate pipeline.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A: List of Petitioners and Abbreviations

Petitioners	Abbreviations
1. American Gas Association	AGA.
2. Anadarko Petroleum Corporation	Anadarko.
3. Atmos Pipeline-Texas	Atmos.
4. Bear Paw Energy LLC and ONEOK Field Services Company, LLC	Bear Paw/ONEOK.
5. Copano Energy LLC	Copano Energy.
6. Dow Chemical Company	Dow Chemical.
7. Dow Pipeline Company and Dow Intrastate Gas Company	Dow Pipeline.
8. Ecana Oil & Gas (USA) Inc.	Encana.
9. Enogex LLC and Enogex Gas Gathering LLC	Enogex.
10. Gas Processors Association	Gas Processors.
11. Interstate Natural Gas Association of America	INGAA.
12. Louisiana Office of Conservation	LOC.
13. MidAmerican Energy Company	MidAmerican.
14. National Grid Gas Delivery Companies	National Grid.
15. Nicor Gas Company	Nicor.
16. ONEOK Gas Transportation, LLC and ONEOK Gas Transmission, LLC	ONEOK Gathering.
17. Pacific Gas & Electric Company	PG&E.
18. Pacific Gas & Electric Company, Southern California Gas Company, and San Diego Gas & Electric Company	California LDCs.
19. Railroad Commission of Texas	Railroad Commission of Texas.
20. Shell Offshore, Inc	Shell.
21. Southwest Gas Corporation	Southwest Gas.
22. Targa Louisiana Intrastate LLC	Targa.
23. Texas Pipeline Association	TPA.
24. Washington Gas Light Company	WGL.
25. Williston Basin Interstate Pipeline Company	Williston Basin.
26. Yates Petroleum Corporation and Agave Energy Corporation	Yates.

Appendix B: List of Supplemental Commenters and Abbreviations

Supplemental Commenters	Abbreviations
1. American Gas Association	AGA.
2. Atmos Pipeline—Texas	APT.
3. Kinder Morgan Texas Intrastate Pipeline Group	KM.
4. Occidental Permian Ltd	Occidental.
5. ONEKOK Gas Transmission, LLC and ONEOK Westex Transmission, LLC	ONEOK Gathering.
6. Natural Gas Supply Association	NGSA.
7. Pacific Gas & Electric Company, Southern California Gas, and San Diego Gas & Electric Company	California LDCs.
8. Texas Pipeline Association	TPA.

[FR Doc. 2010–1546 Filed 1–29–10; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Monday,
February 1, 2010

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 43, 61, 91, and 141

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Modifications to Rules for Sport Pilots and Flight Instructors With a Sport Pilot Rating; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 61, 91, and 141

[Docket No. FAA–2007–29015; Amdt. Nos. 43–44, 61–125, 91–311, and 141–13]

RIN 2120–AJ10

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Modifications to Rules for Sport Pilots and Flight Instructors With a Sport Pilot Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending its rules for sport pilots and flight instructors with a sport pilot rating to address airman certification and operational issues that have arisen since regulations for the certification of aircraft and airmen for the operation of light-sport aircraft were implemented in 2004. These changes will update those regulations to reflect operational experience that has been gained since the original regulations became effective.

DATES: These amendments become effective April 2, 2010. Affected parties, however, do not have to comply with the information collection requirement in § 91.419 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Larry L. Buchanan, Light-Sport Aviation Branch, AFS–610, Regulatory Support Division, Flight Standards Service, Federal Aviation Administration, 6500 South MacArthur Blvd, Oklahoma City, OK 73169; telephone (405) 954–6400; Mailing address: Light-Sport Aviation Branch, AFS–610; P.O. Box 25082; Oklahoma City, OK 73125.

For legal questions concerning this proposed rule, contact Paul Greer, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

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, including the authority to issue, rescind, and revise regulations. 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, Chapter 447—Safety Regulation. Under section 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations necessary for safety. Under section 44703, the FAA issues an airman certificate to an individual when we find, after investigation, that the individual is qualified for, and physically able to perform the duties related to, the position authorized by the certificate. In this final rule, the FAA is amending the training, qualification, certification, and operating requirements for sport pilots and flight instructors with a sport pilot rating.

These changes will ensure that these airmen have the training and qualifications necessary to enable them to operate light-sport aircraft safely. For this reason, the changes are within the scope of the FAA's authority and are a reasonable and necessary exercise of our statutory obligations.

Guide to Terms and Acronyms Frequently Used in This Document

AGL—Above ground level
AOPA—Aircraft Owners and Pilots Association
ASC—AeroSports Connection
CAS—Calibrated airspeed
CFI—Certificated Flight Instructor
DPE—Designated pilot examiner
EAA—Experimental Aircraft Association
MSL—Mean sea level
NAFI—National Association of Flight Instructors
NPRM—Notice of proposed rulemaking
SLSA—Special light-sport aircraft
USUA— U.S. Ultralight Association
VFR—Visual flight rules
V_H—Maximum airspeed in level flight with maximum continuous power

I. Summary of the NPRM

On April 15, 2008, the FAA published a Notice of proposed rulemaking (NPRM) entitled, "Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Modifications to Rules for Sport Pilots and Flight Instructors With a Sport Pilot Rating" (73 FR 20181). The NPRM proposed to address airman certification issues that have arisen since regulations for the operation of light-sport aircraft were first implemented in 2004. The FAA sought comment on changes intended to align the certification requirements for sport pilots and flight instructors with a sport pilot rating with those requirements currently applicable to other airmen certificates.

Specifically, the FAA proposed to—

1. Replace sport pilot privileges with aircraft category and class ratings on all pilot certificates.
2. Replace sport pilot flight instructor privileges with aircraft category ratings on all flight instructor certificates.
3. Remove current provisions for the conduct of proficiency checks by flight instructors and include provisions for the issuance of category and class ratings by designated pilot examiners.
4. Place all requirements for flight instructors under a single subpart (subpart H) of part 61.
5. Require 1 hour of flight training on the control and maneuvering of an airplane solely by reference to instruments for student pilots seeking a sport pilot certificate to operate an airplane with a V_H greater than 87 knots CAS and sport pilots operating airplanes with a V_H greater than 87 knots CAS.
6. Remove the requirement for persons exercising sport pilot privileges and flight instructors with a sport pilot rating to carry their logbooks while in flight.
7. Remove the requirement that persons exercising sport pilot privileges have an aircraft make-and-model endorsement to operate a specific set of aircraft while adding specific regulatory provisions for endorsements for the operation of powered parachutes with elliptical wings and aircraft with a V_H less than or equal to 87 knots CAS.
8. Remove the requirement for all flight instructors to log at least 5 hours of flight time in a make and model of light-sport aircraft before providing training in any aircraft from the same set of aircraft in which that training is given.
9. Permit persons exercising sport pilot privileges and the privileges of a student pilot seeking a sport pilot certificate to fly up to an altitude of not more than 10,000 feet mean sea level (MSL) or 2,000 feet above ground level (AGL), whichever is higher.
10. Permit private pilots to receive compensation for production flight testing powered parachutes and weight-shift-control aircraft intended for certification in the light-sport category under § 21.190.
11. Revise student sport pilot solo cross-country navigation and communication flight training requirements.
12. Clarify cross-country distance requirements for private pilots seeking to operate weight-shift-control aircraft.

13. Revise aeronautical experience requirements at towered airports for persons seeking to operate a powered parachute or weight-shift-control aircraft as a private pilot.

14. Remove the requirement for pilots with only a powered parachute or a weight-shift-control aircraft rating to take a knowledge test for an additional rating at the same certificate level.

15. Revise the amount of hours of flight training an applicant for a sport pilot certificate must log within 60 days prior to taking the practical test.

16. Remove expired ultralight transition provisions and limit the use of aeronautical experience obtained in ultralight vehicles.

17. Add a requirement for student pilots to obtain endorsements identical to those proposed for sport pilots in §§ 61.324 and 61.327.

18. Clarify that an authorized instructor must be in a powered parachute when providing flight instruction to a student pilot.

19. Remove the requirement for aircraft certificated as experimental aircraft under § 21.191(i)(3) to comply with the applicable maintenance and preventive maintenance requirements of part 43 when those aircraft have been previously issued a special airworthiness certificate in the light-sport category under § 21.190.

20. Require aircraft owners or operators to retain a record of the current status of applicable safety directives for special light-sport aircraft.

21. Provide for the use of aircraft with a special airworthiness certificate in the light-sport category in training courses approved under part 141.

22. Revise the minimum safe-altitude requirements for powered parachutes and weight-shift-control aircraft.

The comment period closed on August 13, 2008. See "III. Discussion of Public Comments" elsewhere in this preamble.

II. Summary of the Final Rule

As discussed in further detail under "III. Discussion of Public Comments and Decisions on Final Rule," the FAA is withdrawing or modifying certain changes proposed in the 2008 NPRM. In the final rule, the following proposals are withdrawn or modified. (**Note:** Proposal numbers refer to the list above.)

- Withdrawn: Replace sport pilot privileges with aircraft category and class ratings on all pilot certificates (proposal 1)
- Withdrawn: Replace sport pilot flight instructor privileges with aircraft category ratings on all flight instructor certificates (proposal 2)
- Withdrawn: Remove current provisions for the conduct of proficiency checks by flight instructors and include provisions for the issuance of category and class ratings by designated pilot examiners (proposal 3)
- Withdrawn: Place all requirements for flight instructors under a single subpart (subpart H) of part 61 (proposal 4)
- Withdrawn: Require 1 hour of flight training on the control and maneuvering of an airplane solely by reference to instruments for student pilots seeking a sport pilot certificate to operate an airplane with a V_H greater than 87 knots CAS and sport pilots operating airplanes with a V_H greater than 87 knots CAS (proposal 5)
- Withdrawn: Remove the requirement for persons exercising sport pilot privileges and flight instructors with a sport pilot rating to carry their logbooks while in flight (proposal 6)
- Withdrawn: Remove specific regulatory provisions (under proposed § 61.324) for endorsements for the operation of powered parachutes with elliptical wings (portion of proposal 7)
- Withdrawn: Add a requirement for student pilots to obtain endorsements identical to those proposed for sport pilots in § 61.324 (portion of proposal 17)
- Modified: Revise the amount of hours of flight training an applicant for a sport pilot certificate must log within the preceding 2 calendar months from the month of the practical test (proposal 15)

III. Discussion of Public Comments and Decisions on Final Rule

The FAA received approximately 150 comments on the NPRM. Most were from individual pilots and flight instructors. In addition, the Experimental Aircraft Association (EAA), the Aircraft Owners and Pilots Association (AOPA), the National Association of Flight Instructors (NAFI), the U.S. Ultralight Association (USUA), and AeroSports Connection (ASC) commented.

A. Proposals 1–4: Replace sport pilot and sport pilot flight instructor privileges with aircraft category and class ratings; require issuance of category and class ratings by designated pilot examiners; and place all requirements for flight instructors under part 61 subpart H

(§§ 61.1, 61.3, 61.5, 61.7, 61.23, 61.31, 61.51, 61.52, 61.63, 61.87, 61.181, 61.183, 61.185, 61.187, 61.191, 61.195, 61.303, 61.309, 61.311, 61.313, 61.317, 61.321, 61.413, and subparts H and K)

Currently, for a holder of a pilot certificate to obtain additional aircraft category and class privileges at the sport pilot level, that person must complete a proficiency check administered by an authorized instructor. Upon successful completion of that proficiency check, the person receives a logbook endorsement from the instructor. That endorsement permits the person to exercise sport pilot privileges in the category and class of aircraft in which the proficiency check was administered.

Similarly, for a flight instructor to obtain privileges to provide instruction leading to the issuance of a sport pilot certificate in an additional category or class of light-sport aircraft, or to the issuance of a private pilot certificate in a powered parachute or a weight-shift-control aircraft, the flight instructor must complete a proficiency check administered by an authorized instructor. Upon successful completion of the proficiency check, the flight instructor receives a logbook endorsement from the instructor who administered the proficiency check. That endorsement permits the person completing the proficiency check to provide instruction as a flight instructor with a sport pilot rating in the category and class of aircraft in which the proficiency check was administered.

The FAA initiated the proposals as a result of concerns that the agency may not be receiving documentation from authorized instructors after proficiency checks have been successfully completed. This led to concerns that—(1) In the event of an accident or incident, it may not be possible to determine if an individual was authorized and qualified to operate the aircraft; (2) if a person lost his or her logbook, it could hinder that person's ability to demonstrate that he or she had privileges to operate a specific category and class of aircraft; and (3) if the FAA does not know which airmen are authorized to exercise additional category and class privileges through logbook endorsements, the agency cannot provide safety information to affected airmen.

With these concerns in mind, the FAA proposed that—

Holders of sport pilot (or higher level) certificates with category and class privileges obtained through instructor endorsements be issued pilot certificates with the category and class ratings corresponding to the privileges previously granted through instructor endorsements; and

Flight instructors with a sport pilot rating receive flight instructor certificates with appropriate category and class ratings indicating those aircraft in which flight instruction could be provided.

Under the NPRM, there would not have been any additional burden on current certificate holders if the FAA had a record of their endorsements. However, those persons whose records were not on file with the FAA would have had to complete an Airman Certificate and/or Rating Application—Sport Pilot (FAA Form 8710–11) and present it, along with evidence of their endorsements, to an FAA designated pilot examiner (DPE) or FAA inspector before the FAA would issue that person a pilot or flight instructor certificate with corresponding category and class ratings.

Further, the FAA proposed that the practice of obtaining privileges to operate a light-sport aircraft after completion of a proficiency check by an authorized instructor would be discontinued. Instead, ratings (indicated on a person's pilot certificate rather than by endorsement in a logbook) would be issued after the completion of a practical test, typically administered by a DPE. The FAA's rationale for proposing to require applicants take a practical test was that DPEs typically conducting these tests receive initial and recurrent training in administering practical tests, and they are directly supervised by an aviation safety inspector (ASI). Also, a DPE's designation can be terminated if the FAA determines that person cannot administer a practical test in accordance with the Practical Test Standards (PTS). In contrast, authorized instructors are generally not trained to administer tests leading to the issuance of certificate privileges, and the FAA does not have procedures in place to oversee that activity.

In a related proposal the FAA sought comments on whether to move the requirements for flight instructors with a sport pilot rating currently found in part 61 subpart K to part 61 subpart H so that all flight instructor requirements would be standardized and located in one subpart. As stated in the NPRM, if the proposed changes for issuing sport pilot flight instructor certificates were adopted, the privileges and limitations of those flight instructors and the methods by which they are certificated would be so similar to those of flight instructors currently certificated under subpart H that separate subparts for the certification of all flight instructors would no longer be necessary.

A few commenters supported the proposals, or certain aspects of them. Those commenters said the changes would reduce confusion, and make the regulations clearer and more uniform among different pilot ratings and aircraft categories. One said adopting the changes would help matters in the future as more sport pilots are licensed.

Many commenters, however, opposed the changes. The Experimental Aircraft Association and NAFI stated that the FAA did not show any safety reasons for the proposed changes. They and others also said there is a shortage of sport pilot examiners and DPEs qualified in categories and classes of light-sport aircraft such as powered parachutes, weight-shift-control aircraft, and gyroplanes. Furthermore, many commenters said, these examiners are not evenly dispersed throughout the country.

Commenters also expressed concern that the proposed changes would create burdens for existing sport pilots and flight instructors who would have to spend time and money traveling to a DPE to take a practical test. Further, the commenters were concerned that affected persons would not have a means of examining their FAA records prior to the issuance of the new certificates and that they may have to visit their Flight Standards District Offices (FSDOs) to correct lapses in the FAA's airmen registry database. The commenters believed the problem was an internal FAA problem that should be fixed using mechanisms already in place, such as better training for instructors in how to comply with the existing rule, and access to electronic filing methods such as the Integrated Airman Certification and Rating Application (IACRA). Another suggestion was to provide instructors with an expedited process to become sport pilot DPEs, thereby increasing their availability and providing a less costly alternative to the proposal.

Upon further consideration, the FAA agrees with the commenters that the potential burden does not justify adoption of the proposal. The FAA is therefore withdrawing those portions of the NPRM related to replacing sport pilot and sport pilot flight instructor privileges with aircraft category and class ratings. In addition, the FAA is withdrawing the proposed requirement that proficiency checks be conducted by DPEs instead of authorized instructors, as well as the proposal to move all requirements for flight instructors with a sport pilot rating from subpart K to subpart H.

The FAA, however, is retaining that portion of the proposal that would require holders of a commercial pilot certificate with an airship or balloon rating to obtain privileges to provide instruction in an additional category and class of aircraft only after completion of a practical test and not after completion of a proficiency check. Although the FAA, in the 2004 final rule, intended to permit these airmen to be treated in a manner similar to other authorized instructors when seeking privileges to provide instruction in an additional category and class of aircraft, the FAA no longer considers such action appropriate. The agency has determined that when seeking to obtain privileges to provide instruction in an additional category and class of aircraft, these airmen should be tested to the same standards as other pilots who do not hold flight instructor certificates and are seeking similar instructional privileges. These airmen currently are not required to pass a test on the fundamentals of instructing or possess equivalent instructional experience. All other flight instructors currently certificated under subpart K of part 61 are required to pass this test or possess equivalent instructional experience. The FAA notes that for a commercial pilot with an airship or balloon rating to obtain additional privileges to provide flight instruction under subpart H of part 61, that person must pass a practical test for the issuance of a flight instructor certificate, even though that person is already considered an authorized instructor. The FAA is therefore revising current § 61.429(c) to remove provisions that would permit the holder of a commercial pilot certificate with an airship or balloon rating to obtain a flight instructor certificate with a sport pilot rating without taking a practical test for the issuance of that certificate.

Additionally, when the FAA proposed to include all requirements for flight instructors with a sport pilot rating in subpart H, the FAA clarified the limitations set forth in current § 61.415 by proposing to revise § 61.195 to indicate that a flight instructor with a sport pilot rating may only provide flight instruction in a light-sport aircraft. Although the FAA is not adopting the proposal to place all requirements for flight instructors with a sport pilot rating in part 61 subpart H, the FAA is

revising the introductory text of § 61.415 to specify that a flight instructor with a sport pilot rating may only provide flight training in a light-sport aircraft. This change clarifies the original intent of the 2004 final rule.

While the FAA is not adopting its proposal to remove provisions for the conduct of proficiency checks by flight instructors and include provisions for the issuance of category and class ratings by DPEs, the agency remains concerned that it may not have a complete record of those individuals who have received sport pilot privileges as a result of satisfactory completion of a proficiency check conducted by an authorized instructor. Accordingly, the FAA is implementing non-regulatory procedures, which will improve its ability to obtain a record of all proficiency checks conducted by flight instructors.

The FAA has included information on its Light Sport Aviation Branch's (AFS–610's) Web site (*http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/afs600/afs610/*) regarding proper procedures for filling out and submitting FAA Form 8710–11. The agency has taken action to ensure that all attendees at Flight Instructor Refresher Clinics receive instruction on how to properly fill out and submit this form. In addition, the FAA is taking action to ensure that sport pilot privileges are now specifically listed on an airman's certificate. The FAA is also conducting outreach at major aviation events to better inform flight instructors on how to file required documentation.

In order to improve the FAA's ability to receive the required documentation indicating that an airman has been endorsed for a specific sport pilot privilege, the agency has posted on the Light Sport Aviation Branch's website (referenced in the previous paragraph) a link to the Airman Registry Web site. This action will permit sport pilots and flight instructors to determine whether the FAA has a record of those airmen having obtained additional category and class privileges through proficiency checks. If an individual has successfully completed a proficiency check and received an endorsement authorizing him or her to operate, or provide training in, an additional category and class of light-sport aircraft but that individual's name is not listed on the website, the individual can contact the FAA to ensure that the agency has the appropriate records. However, if a person's name is not listed with appropriate category and class privileges, it does not automatically disqualify that person from exercising those privileges if a proper endorsement has been received.

B. Proposal 5: Require 1 hour of flight training on the control and maneuvering of an airplane solely by reference to instruments for student pilots seeking a sport pilot certificate to operate an airplane with a V_H greater than 87 knots CAS and sport pilots operating airplanes with a V_H greater than 87 knots CAS

(§§ 61.89, 61.93, and 61.327)

Current regulations require student pilots seeking a sport pilot certificate to receive and log flight training in the control and maneuvering of an airplane solely by reference to flight instruments. This training must be received before conducting a solo cross-country flight or any flight greater than 25 nautical miles from the airport from where the flight originated. It also must be received prior to making a solo flight and landing at any location other than the airport of origination. These requirements are detailed in § 61.93 and are applicable to persons seeking a student pilot certificate to operate any category and class of airplane. That section, however, does not specify any minimum flight training time to meet these requirements. In addition, current regulations for the issuance of a sport pilot certificate do not require an applicant to receive flight training on the control and maneuvering of any airplane solely by reference to instruments.

The FAA proposed to require student pilots seeking a sport pilot certificate and sport pilots operating an airplane with a maximum airspeed in level flight with maximum continuous power (V_H) greater than 87 knots calibrated airspeed (CAS) to receive and log 1 hour of flight training on the control and maneuvering of an aircraft solely by reference to instruments. The rationale for the proposal was the agency's concern that persons exercising student or sport pilot privileges in airplanes with a V_H greater than 87 knots CAS may not be adequately trained to maintain control of the airplanes they are operating if they inadvertently encounter conditions less than those specified for visual flight rules (VFR) operations. The FAA was particularly concerned that conditions less than those specified for VFR operations could be more readily encountered by persons operating airplanes with a V_H greater than 87 knots CAS due to the greater speed and potentially greater range of the aircraft.

A few commenters supported this proposed change, but did not provide substantive reasons for their support. Many commenters, however, objected to the proposed change. They asserted that—(1) the proposal would go beyond the intent of the 2004 rule because sport pilots may only fly in day VFR conditions; (2) the FAA did not offer any data to suggest that there is a safety problem that would necessitate such training; and (3) flight instructors with a sport pilot rating typically receive only 1 hour of instrument training and therefore do not have necessary instrument training to adequately train other airmen.

Although the FAA contends that inadvertent flight into instrument conditions by pilots not appropriately rated to conduct such flight constitutes a significant safety hazard, the FAA agrees with the commenters' concern that flight instructors with a sport pilot rating would not have necessary instrument training to adequately train other pilots for flight by reference to instruments. Additionally, the proposal could have required a student pilot seeking a sport certificate or a sport pilot to obtain instruction in an aircraft equipped for instrument flight when the aircraft in which he or she normally conducts flight operations is not equipped for instrument flight. Based upon these concerns and the potential burden the proposed requirement would have placed on the sport pilot community, the FAA is withdrawing the proposed change.

C. Proposal 6: Remove the requirement for persons exercising sport pilot privileges and flight instructors with a sport pilot rating to carry their logbooks while in flight

(§ 61.51)

This proposal was related to the proposals to replace privileges with aircraft category and class ratings on sport pilot and flight instructor certificates with a sport pilot rating (proposals 1 and 2 listed above). If those proposals had been adopted, sport pilots and flight instructors with a sport pilot rating would have received certificates specifically listing category and class privileges. As a result, there would no longer have been a need for these airmen to carry logbooks to demonstrate that they were authorized to exercise category and class privileges.

Many commenters supported the proposed change, regardless of whether proposed items 1 and 2 were adopted. However, a few commenters indicated that the proposed change was unnecessary because § 61.51(i)(3) permits a sport pilot to carry other evidence of existing endorsements. Similar provisions exist for flight

instructors with a sport pilot rating under § 61.51(i)(5). These commenters said it should be sufficient for airmen to carry photocopies of their logbook endorsements.

Several commenters opposed the change because they opposed the proposals to replace privileges with aircraft category and class ratings on sport pilot and flight instructor certificates with a sport pilot rating.

As a result of the FAA's decision to withdraw the proposals to replace sport pilot and flight instructor privileges with aircraft category and class ratings on certificates, the agency is withdrawing this proposed change. Persons exercising sport pilot privileges and flight instructors with a sport pilot rating therefore will need to continue to carry their logbooks or other evidence of required endorsements while in flight. The commenters are correct that § 61.51 currently allows for "other evidence" of instructor endorsements; therefore the FAA will continue to allow sport pilots and flight instructors with a sport pilot rating to carry photocopies of required authorized instructor endorsements in lieu of carrying their logbooks.

D. Proposal 7: Remove the requirement that persons exercising sport pilot privileges have an aircraft make-and-model endorsement to operate an aircraft within a specific set of aircraft while adding specific regulatory provisions for endorsements for the operation of powered parachutes with elliptical wings and aircraft with a V_H less than or equal to 87 knots CAS

(§§ 61.315, 61.319, 61.324, 61.327, 61.413, 61.415, and 61.423)

To operate any aircraft within a set of aircraft, a sport pilot must have a logbook endorsement from an authorized flight instructor for a specific category, class, and make and model of aircraft within that set of light-sport aircraft. At the time the current rules were adopted, the FAA believed that grouping makes and models of light-sport aircraft that have similar performance and operating characteristics as a set of aircraft was an effective means to permit persons exercising sport pilot privileges to operate any aircraft within that set once an endorsement had been received.

In implementing the 2004 final rule, the FAA developed standards for defining and establishing sets of aircraft within each category of aircraft (airplanes, weight-shift-control aircraft, powered parachutes, gyroplanes, and lighter-than-air aircraft). The FAA believed that incorporating a requirement for a specific endorsement based on a set of aircraft would ensure that any person exercising sport pilot privileges would receive additional flight training appropriate to the aircraft in which operations would be conducted.

As stated in the proposal, the FAA believes that the duplicative nature of currently required endorsements and proficiency checks makes a specific requirement for a make-and-model endorsement to operate any aircraft within a set of aircraft redundant.

Several commenters, including ASC, EAA, and NAFI, supported the proposal to eliminate the requirement for a make-and-model endorsement to operate a specific set of aircraft. The FAA is adopting this change as proposed for sport pilots. As the FAA's proposal to remove subpart K and incorporate the requirements for flight instructors with a sport pilot rating in subpart H is being withdrawn, the FAA is revising §§ 61.413, 61.415, and 61.423 to eliminate provisions in those sections that refer to the issuance of make-and-model endorsements to operate a specific set of aircraft by flight instructors with a sport pilot rating. These amendments are necessary to implement the changes as originally proposed.

The agency believes that safety concerns can be adequately addressed using existing endorsements and the additional endorsement proposed in the NPRM for holders of a sport pilot certificate seeking to operate a light-sport aircraft that has a V_H less than or equal to 87 knots CAS. The FAA notes that although it has removed the requirement for persons exercising sport pilot privileges to have aircraft make-and-model endorsements, the additional training requirements of § 61.31 are applicable to all pilots, to include both sport pilots and student pilots. Furthermore, while § 61.31(l)(2) excepts both holders of student pilot certificates and holders of sport pilot certificates when operating a light-sport aircraft from the rating limitations of that section, it does not except those pilots from the additional training requirements specified in that section, such as the additional training requirements for the operation of tailwheel airplanes and gliders. Sport pilots and student pilots seeking a sport pilot certificate therefore must continue to ensure that they have received the applicable training and endorsements required for the operation of those aircraft prior to acting as pilot in command.

Based on comments received, the FAA does not believe that an additional endorsement for the operation of a powered parachute with an elliptical wing is justified. A few commenters, including EAA and NAFI, objected to the proposal to add specific regulatory provisions for endorsements for the operation of powered parachutes with elliptical wings. The Experimental Aircraft Association and NAFI said elliptical wings on the market today fly essentially the same as square wings, and therefore said no additional endorsement is required, nor would it add any safety value. An individual commenter agreed that the fundamentals of inflating, taxiing, maneuvering, and landing the wings are identical, and added pilots wishing to transition from square to elliptical wings can do so with instruction without a costly endorsement from a certified flight instructor (CFI). Another commenter said without a solid definition of what constitutes an elliptical wing, it makes no sense to require a specific endorsement to fly them. One commenter, however, said that the elliptical wing for powered parachutes is a significant performance issue that should be addressed as proposed.

Although the FAA believes that an elliptical wing has different performance characteristics than a square wing, the agency agrees with the commenters that the differences are not so different that they warrant additional training and an endorsement. The FAA is therefore withdrawing this proposed change.

Regarding the proposal to require an endorsement for aircraft with a V_H less than or equal to 87 knots CAS, EAA, NAFI, and an individual commenter raised objections. The Experimental Aircraft Association and NAFI said they essentially agreed with the concept, but said that initial certification in a single-engine land airplane should be sufficient to fly other single-engine airplanes within the definition of light-sport aircraft. The individual commenter did not believe accident data support the 87-knot-CAS division any longer and suggested the distinction be withdrawn from this proposal and removed throughout other light-sport regulations.

The FAA does not believe that receiving training in an airplane with a V_H greater than 87 knots CAS will adequately prepare a sport pilot to operate a low-speed, high-drag airplane with a V_H less than or equal to 87 knots CAS without additional training. The agency maintains the proposed endorsement to operate an aircraft with a V_H less than or equal to 87 knots CAS is justified and is adopting this change.

E. Proposal 8: Remove the requirement for all flight instructors to log at least 5 hours of flight time in a make and model of light-sport aircraft before providing training in any aircraft from the same set in which that training is given

(§ 61.415)

The FAA proposed to eliminate the requirement for flight instructors with a sport pilot rating to have logged 5 hours of flight time in order to provide flight instruction in a make and model aircraft within a specific set of aircraft. The FAA believes that the aeronautical experience requirements for the issuance of a flight instructor certificate with a sport pilot rating and the endorsements necessary to exercise those privileges are sufficient for an instructor to safely provide flight instruction in any aircraft for which that instructor has privileges. An additional requirement to obtain 5 hours of aeronautical experience therefore imposes an unnecessary burden on the flight instructor and should not be required to safely provide instruction in that aircraft. In addition, the requirement would also not be consistent with the adoption of the proposal (included in item 7 above) to eliminate the requirement in § 61.319 for a person exercising sport pilot privileges to have a make and model endorsement to operate any aircraft within a specific set of aircraft.

Many commenters, including EAA, NAFI, and AOPA, supported this proposed change. Some individuals, however, objected to it.

One commenter said the change seemed "out of place," considering that the FAA also requires examiners to have the same 5 hours before administering practical exams (in accordance with FAA Order 8710.7 Sport Pilot Examiner's Handbook (Oct. 14, 2004)). The commenter said if this proposal is adopted, the same restriction should be removed from examiners.

The FAA notes that after the NPRM was published, FAA Order 8710.7 was superseded by FAA Order 8900.2 General Aviation Airman Designee Handbook (Sept. 30, 2008). FAA Order 8900.2 removed the requirement for a DPE to have 5 hours in a make and model of aircraft within a set of aircraft prior to exercising DPE privileges. The commenter's concern has therefore been addressed by the issuance of FAA Order 8900.2.

A gyroplane CFI said it would be impossible for an endorsing instructor to ensure that a sport pilot applicant would be safe to fly any gyroplane. The commenter said there needs to be some way that an endorsing instructor and/or the DPE could provide additional limitations on what new gyroplanes a new pilot could fly.

The FAA recognizes that flight instructors and DPEs cannot place additional limitations on newly certificated pilots, which would restrict those persons from exercising the privileges of those certificates. A flight instructor, however, may issue an endorsement that provides restrictions on a student pilot, and the student pilot may not act in any manner contrary to any limitations placed in his or her logbook by an authorized instructor, as set forth in § 61.89(a)(8). The FAA did not propose to establish additional authority for flight instructors and DPEs that would permit them to issue endorsements for a sport pilot that would contain limitations more restrictive than the privileges granted by that person's certificate. Such action would be outside the scope of this rulemaking.

An individual commenter said an instructor should have at least 5 hours of time in the aircraft in which he or she will be instructing. The commenter said a person should not be teaching in an aircraft with which he or she is not familiar. The FAA agrees that a person providing instruction in an aircraft should be familiar with that aircraft's operating characteristics. However, due to the variety of operating characteristics of individual aircraft, the agency does not believe that mandating a minimum aeronautical experience requirement is appropriate for instructors to provide flight training in light-sport aircraft. The agency believes that the aeronautical experience requirements for the issuance of a flight instructor certificate with a sport pilot rating and the endorsements necessary to exercise those privileges are sufficient for an instructor to safely provide flight instruction in any aircraft for which that instructor has privileges.

The FAA notes that flight instructors certificated under part 61 subpart H, like those certificated under subpart K, may provide flight instruction in light-sport aircraft that are airplanes, powered parachutes, weight-shift-control aircraft, gyroplanes, gliders, and lighter-than-air aircraft. However, flight instructors certificated under the provisions of part 61 subpart H are not required to have 5 hours of flight time in a specific make and model of aircraft (except for a multi-engine airplane, helicopter, or powered lift) prior to providing flight instruction in these aircraft. The FAA has determined that the individual flight characteristics of all makes and models of light-sport aircraft within a specific category of aircraft are not sufficiently different to warrant imposition of a requirement on flight instructors with a sport pilot rating to obtain 5 hours of aeronautical experience in each make and model of aircraft prior to providing flight instruction. Such a requirement imposes an unnecessary burden on these flight instructors that is not correspondingly imposed in § 61.195 on flight instructors with other than a sport pilot rating. The agency has determined that 5 hours of aeronautical experience in a particular make and model of light-sport aircraft therefore should not be required to safely provide flight instruction in these relatively simple, non-complex aircraft. The FAA is adopting this change as proposed.

F. Proposal 9: Permit persons exercising sport pilot privileges and the privileges of a student pilot seeking a sport pilot certificate to fly up to an altitude of not more than 10,000 feet mean sea level (MSL) or 2,000 feet above ground level (AGL), whichever is higher

(§§ 61.89 and 61.315)

Current § 61.89 (c)(3) states that student pilots seeking a sport pilot certificate may not act as pilot in command of an aircraft at an altitude of more than 10,000 feet mean sea level (MSL). Section 61.315 (c)(11) places the same limitation on sport pilots. The FAA proposed to add the words "or 2,000 feet AGL [above ground level], whichever is higher" to allow sport pilots and student pilots seeking a sport pilot certificate to operate in mountainous areas higher than 10,000 feet MSL when such operations are less than 2,000 feet AGL.

Many commenters, including AOPA and ASC, supported this change. Several commenters, including EAA and NAFI, generally supported the proposal but recommended extending the limits even higher.

The Experimental Aircraft Association, NAFI, and others recommended the FAA align the rule with § 91.211 (a)(1), which allows persons to operate civil aircraft that are not equipped with supplemental oxygen up to 12,500 feet MSL and 14,000 feet MSL for 30 minutes or less. Some commenters suggested raising the maximum altitudes to 10,500 feet MSL and 2,500 feet AGL, whichever is higher, to conform to VFR altitude requirements. Other commenters suggested raising the maximum altitudes to as much as 18,000 feet MSL, noting that glider pilots are permitted to fly at that altitude. One commenter suggested that training in the effects of high-altitude flight should be required if

flights are permitted to higher altitudes. In addition, some commenters pointed out that private pilots with instrument ratings are permitted to fly up to 25,000 feet MSL without a high-altitude endorsement. Others proposed raising both the minimum altitudes requirements applicable to both sport pilots and recreational pilots, while other commenters proposed eliminating the altitude restrictions entirely.

In addition, commenters pointed out that the higher altitudes would provide greater safety because they would allow greater flexibility in dealing with in-flight issues such as wind, glide distance, density altitude, and alternate airports and safe landing areas. Commenters also said higher altitudes would allow sport pilots to safely operate over mountains and large bodies of water, such as the Great Lakes. The commenters said that additional altitude would allow sport pilots to fly over noise-sensitive mountainous areas such as wildlife refuges, national parks, etc. where pilots are asked to maintain a minimum altitude of 2,000 feet AGL.

Further, EAA and NAFI said they are not aware of any engine or airframe or ASTM F37 standard that would prevent a sport pilot from operating a light-sport aircraft at the altitudes permitted by § 91.211(a)(1).

The FAA agrees that the current regulations unnecessarily burden sport pilots and student pilots seeking sport pilot certificates who operate light-sport aircraft in mountainous areas. The FAA notes that sport pilots and student pilots seeking a sport pilot certificate are trained in proper preflight preparation procedures, which include training in aeromedical factors, such as the effects of hypoxia. In addition, these pilots receive training in reduced aircraft performance at high-density altitudes and in the effect of operations at higher altitudes. These pilots are required to demonstrate knowledge of these factors during the practical test.

Additionally, many of the new light-sport aircraft are capable of operating above 10,000 feet MSL. By providing sport pilots with the ability to better utilize the capabilities of these aircraft and operate at higher altitudes in mountainous terrain, the revision should assist in reducing the risks associated with mountain flying. By restricting operations above 10,000 feet MSL to no more than 2,000 feet AGL, sport pilots operating light-sport aircraft should not impose a hazard to high-performance aircraft that routinely operate at higher altitudes.

The primary purpose of the proposal was to increase the safety of operations conducted in mountainous areas and eliminate unnecessary burdens imposed by the current rule. By permitting persons exercising sport pilot privileges to operate at 10,000 feet MSL or 2,000 feet AGL, whichever is higher, the FAA is eliminating significant restrictions on the operation of light-sport aircraft in all mountainous areas regardless of the height of the terrain. Additionally, the new altitude restrictions would correspond to those restrictions for recreational pilots set forth in § 61.101 (e)(8).

Many of the commenters' suggestions to permit a uniform maximum MSL altitude would not provide relief for operations over all mountainous terrain. Additionally, some of the higher maximum MSL altitudes suggested by commenters would place light-sport aircraft at altitudes typically occupied by significantly higher-performance aircraft even though operations at such altitudes are not necessary to ensure safe and adequate terrain clearance in most portions of the United States. Operations at these higher altitudes would also unnecessarily expose sport pilots to harsher physiological conditions for which their aircraft may not be properly equipped. The FAA therefore is adopting this change as proposed.

G. Proposal 10: Permit private pilots to receive compensation for production flight testing of powered parachutes and weight-shift-control aircraft intended for certification in the light-sport category in § 21.190

(§ 61.113)

The FAA proposed to allow a private pilot to act as pilot in command for compensation or hire when conducting a production flight test in a powered parachute or a weight-shift-control aircraft intended for certification in the light-sport category under § 21.190.

The 2004 final rule created two new categories of aircraft—powered parachutes and weight-shift-control aircraft—and permitted their manufacture for certification in the light-sport category under § 21.190. During the manufacturing process, these aircraft must undergo a production flight test. The 2004 final rule, however, did not create ratings at the commercial pilot level for the operation of these two new categories of aircraft. Since private pilots under the current rule cannot receive compensation when conducting production flight tests, there is not a means for a pilot conducting production flight tests of powered parachutes or weight-shift-control aircraft to be compensated for that activity unless an exemption is obtained.

Virtually all of the commenters who addressed this proposal supported it. Some commenters, however, were concerned about the level of experience that private pilots possess, and therefore recommended the FAA create an aircraft category rating at the commercial pilot certificate level for powered parachutes and weight-shift-control aircraft. Some commenters pointed out that these aircraft have numerous commercial uses for which a pilot could receive compensation if appropriate aircraft category ratings were created at the commercial pilot level (*i.e.,* search and rescue, use as camera platforms, wildlife management, etc.). Such action however, is outside the scope of this rulemaking.

Three commenters suggested that CFIs be allowed to perform production flight testing, whether they have a private pilot certificate or not. Some of the commenters pointed out that CFIs must have three times the experience of a private pilot to become an instructor. The FAA notes, though, that flight instructor privileges consist of providing training and endorsements that are required for, and relate to, certificates, ratings, privileges, tests, recency-of-experience requirements, flight reviews, and proficiency checks. Privileges to conduct flight operations for compensation or hire are granted through the issuance of pilot certificates. The FAA considers revising flight instructor certificate privileges to permit the conduct of commercial operations outside the scope of this rulemaking.

In its comments to this proposal, EAA recommended that the FAA permit gyroplanes to be certificated as special light-sport aircraft under § 21.190 and that private pilots be permitted to act as pilots in command of these aircraft for the purpose of conducting a production flight test. The FAA considers EAA's recommendation to certificate gyroplanes as special light-sport aircraft under § 21.190 to be outside the scope of the NPRM. Accordingly, the agency also considers any recommendation for private pilots to act as pilots in command of these aircraft for the purpose of conducting a production flight test to be outside the scope of the NPRM.

The FAA is adopting this change with modification. In response to commenters' concerns the FAA is including a requirement that persons conducting production flight testing be familiar with the processes and procedures applicable to those operations to include those conducted under a special flight permit and any associated operating limitations.

H. Proposal 11: Revise student sport pilot solo cross-country navigation and communication flight training requirements

(§ 61.93)

This proposal addressed those maneuvers and procedures that a student pilot seeking a sport pilot certificate should receive training in prior to conducting solo cross-country flight in single-engine airplanes, gyroplanes, and airships. Since student pilots seeking a sport pilot certificate frequently conduct solo cross-country flights in aircraft that are not equipped with radios for VFR navigation and two-way communications, the FAA does not believe that all student pilots seeking a sport pilot certificate should be required to receive training in those procedures prior to conducting solo cross-country flight. However, if this equipment is installed in the aircraft used for the solo cross-country flight, the student pilot must receive and log flight training on the use of those radios. Additionally, since sport pilots are not required to be trained in the control and maneuvering solely by reference to flight instruments, the FAA does not believe that student pilots seeking a sport pilot certificate should be required to receive training in those maneuvers and procedures prior to conducting solo cross-country flight, unless the student is receiving training for cross-country flight in an airplane with a V_H greater than 87 knots CAS. Current § 61.93 requires such training to be received prior to the operation of single-engine airplanes and airships in cross-country flight.

Many commenters, including EAA, NAFI, AOPA, and ASC, supported this proposal. An individual commenter agreed with the FAA's proposal, but did not want the FAA to retain the requirement for student pilots seeking a sport pilot certificate to receive and log flight training on control and maneuvering solely by reference to flight instruments when receiving training for cross-country flight in an airplane that has a V_H greater than 87 knots CAS. Another commenter noted that the regulations for a recreational pilot do not require flight training in the control and maneuvering of an aircraft solely by reference to instruments. In addition, a commenter did not want the FAA to require testing on radio navigation or radio communications for the issuance of a sport pilot certificate.

The FAA is adopting this change as proposed. It is removing the training requirement for student pilots seeking a sport pilot certificate to receive training in the control and maneuvering of an airplane solely by reference to flight instruments prior to conducting solo cross-country flight in aircraft other than airplanes with a V_H greater than 87 knots CAS. The agency is retaining the requirement for this training to be received if the student pilot will be conducting cross-country flight in an airplane that has a V_H greater than 87 knots CAS because such airplanes generally have greater range than airplanes with a V_H less than or equal to 87 knots CAS. These faster aircraft with greater range capability are generally more frequently used for cross-country flights of extended duration where potential instrument meteorological conditions (IMC) may be encountered. The FAA maintains that the change is consistent with the intent of the 2004 sport pilot rule, as it removes certain requirements that are not appropriate for the operation of airplanes with a V_H equal to or less than 87 knots CAS and airships.

The FAA recognizes that the regulations for the issuance of a recreational pilot certificate contained in part 61 subpart D do not require flight training in the control and maneuvering of an aircraft solely by reference to instruments. However, any change in the regulations for recreational pilots would be outside the scope of this rulemaking.

Further, in response to the comment requesting that the FAA eliminate testing on radio navigation or radio communications for the issuance of a sport pilot certificate, the FAA notes that such testing is required to ensure that a sport pilot applicant meets applicable flight-proficiency requirements for airport, seaplane base, and gliderport operations, as applicable.

I. Proposal 12: Clarify cross-country distance requirements for private pilots seeking to operate weight-shift-control aircraft

(§ 61.109)

Current § 61.109(j)(2)(i) specifies that a person applying for a private pilot certificate with a weight-shift-control rating must log "one cross-country flight over 75 nautical miles total distance" at night with an authorized instructor. Although § 61.109 uses the term "cross-country flight," persons applying for this rating frequently have overlooked the provisions of § 61.1(b)(3)(ii)(B), which states that for purposes of meeting the aeronautical experience requirements for a private pilot certificate with a weight-shift-control rating, cross-country time includes a point of landing at least a straight-line distance of more than 50 nautical miles from the original point of departure. To ensure that persons applying for a private pilot certificate with a weight-shift-control rating complete a cross-country flight that meets the requirements of both §§ 61.1 and 61.109, the FAA proposed to make § 61.109 consistent with § 61.1 by indicating that the cross-country flight must include a point of landing that is a straight-line distance of more than 50 nautical miles from the original point of departure.

Several commenters, including EAA, NAFI, and ASC, supported this proposal. One commenter, however, said the FAA's revision would not clarify § 61.109. The commenter suggested adopting the requirement for an airplane single-engine rating (one solo cross-country flight of at least 150 nautical miles total distance, with full-stop landings at a minimum of three points, and one segment of the flight consisting of a straight-line distance of at least 50 nautical miles between the take off and landing locations). If the total distance is too great to allow a person seeking a private pilot certificate with a weight-shift-control aircraft rating to accomplish the flight without refueling, the commenter believed that reducing the flight to 100 miles total distance with full stop landings at a minimum of three points would be appropriate.

The FAA notes that the proposal merely clarified the existing regulation and did not add any new requirement. The agency believes the current requirement provides adequate training and experience for private pilots seeking to operate weight-shift-control aircraft. The agency did not intend in the NPRM to create identical requirements for private pilots seeking to operate weight-shift-control aircraft and private pilots seeking to operate single-engine airplanes. The FAA therefore is adopting the change as proposed.

J. Proposal 13: Revise the aeronautical experience requirements at towered airports for persons seeking to operate a powered parachute or weight-shift-control aircraft as a private pilot

(§ 61.109)

The aeronautical experience requirements for a private pilot certificate with a powered parachute rating and weight-shift-control aircraft rating are found in § 61.109 (i) and (j) respectively. These paragraphs state that the training required for these aircraft ratings must include at least three takeoffs and landings (with each landing involving a flight in traffic pattern) at an airport with an operating control tower. These paragraphs also require the takeoffs and landings to be performed in

solo flight in the specific category of aircraft for which a rating is sought.

Currently, many persons seeking to obtain ratings in powered parachutes or weight-shift-control aircraft experience difficulty conducting operations at tower-controlled airports. These aircraft frequently experience difficulty operating in the traffic pattern with other categories and classes of aircraft due to their slower speeds, flight characteristics, and operating limitations. The FAA proposed to allow persons seeking these ratings to conduct operations at tower-controlled airports without the burden of having to conduct them in a powered parachute or weight-shift-control aircraft while in solo flight. The proposal was intended to provide applicants with additional flexibility in obtaining the aeronautical experience necessary to conduct operations at tower-controlled airports. An applicant would not only be permitted to obtain the necessary aeronautical experience in the category of aircraft for which a rating is sought while in solo flight, but also in dual flight in any category of aircraft.

Several commenters, including EAA, NAFI, and ASC, supported this proposal. One of those commenters said the proposal makes sense because it focuses on the primary value of the training—communication with the tower. Another commenter supported the change, noting that a person who is already a private pilot already has the type of experience to safely operate at a towered airport, so the requirements should be decreased.

As stated in the preamble to the NPRM, the intent of the proposal was to allow persons seeking to operate a powered parachute or weight-shift-control aircraft as a private pilot to conduct operations at tower-controlled airports without the burden of having to conduct these operations in a powered parachute or weight-shift-control aircraft while in solo flight. The change will provide applicants with additional flexibility in obtaining the aeronautical experience necessary to conduct operations at tower-controlled airports.

The FAA is adopting the change as proposed.

K. Proposal 14: Remove the requirement for pilots with only powered parachute and weight-shift-control aircraft ratings to take a knowledge test for an additional rating at the same certificate level

(§ 61.63)

Knowledge tests for applicants for category or class ratings for powered aircraft at the same certificate level address identical aeronautical knowledge areas. Persons who hold a category rating for a powered aircraft (other than powered parachutes and weight-shift-control aircraft) are not currently required to take a knowledge test when applying for an additional category or class rating for a powered aircraft at their certificate level. The 2004 final rule created two additional categories and classes of powered aircraft. In that rule, applicants who hold category ratings for powered parachutes or weight-shift-control aircraft seeking additional category and class ratings were not provided the same relief as that provided to persons who hold category and class ratings for other powered aircraft. The FAA therefore proposed to provide applicants who hold category ratings for powered parachutes or weight-shift-control aircraft with this relief.

All persons who commented on this issue, including EAA, NAFI, and ASC, supported the proposal, some "strongly." The FAA is adopting the change as proposed, except that in the final rule, the proposed revisions to paragraphs (b)(5) and (c)(5) of § 61.63 are adopted as paragraphs (b)(4) and (c)(4) respectively. This modification is being made because after the proposed rule was published, § 61.63 was revised in the "Pilot, Flight Instructor, and Pilot School" final rule, (74 FR 42500, Aug. 21, 2009). The modification, therefore, aligns the changes with the current structure of § 61.63.

L. Proposal 15: Revise the amount of hours of flight training an applicant for a sport pilot certificate must log within the preceding 2 calendar months from the month of the practical test

(§ 61.313)

Currently § 61.313 requires an applicant for a sport pilot certificate to log at least "3 hours of flight training with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test, within the preceding 2 calendar months from the month of the test." In developing the 2004 rule, the FAA based this requirement on the corresponding aeronautical experience requirements for the issuance of higher-level pilot certificates. Those certificates, however, require applicants to log more flight time than is required for the issuance of a sport pilot certificate and to prepare for testing on a higher number of tasks. Due to the lower number of hours required for a person to apply for a sport pilot certificate and the lower number of tasks for which preparation is necessary, the number of hours currently required to be logged within 2 calendar months prior to the date of the practical test is proportionately higher than that required for other certificates. Accordingly, the FAA proposed to reduce the number of hours that must be logged in preparation for the practical test from 3 hours to 2 hours, for aircraft other than gliders. For gliders, the FAA proposed to reduce the aeronautical experience that must be logged in preparation for the practical test from 3 hours to 3 training flights.

Many commenters, including EAA, NAFI, AOPA, and ASC, supported this proposal. Two commenters were concerned, though, that the reduction in flight training could allow people who are not current or have not had adequate practice within the allotted time to test and become sport pilots when they may not have the recent experience necessary to operate the aircraft. The FAA notes, however, that an applicant cannot take a practical test unless that person has received an endorsement from an instructor certifying that he or she is prepared for the practical test.

One commenter did not believe the proposal went far enough for powered parachutes. He said the flight portion of a sport pilot practical test for powered parachutes takes less than one half hour in flight. Therefore, the commenter said, a flight instructor should be able to fly with a student and determine that person's readiness for a check ride in one hour or less. The commenter believed that requiring more than one hour of flight training in preparation for the practical test is a burden since often flight windows for operating a powered parachute are little more than one hour in the morning or evening. The commenter recognized that if the student needs more training, it will remain the flight instructor's decision as to whether the instructor will endorse that pilot for a practical test.

The FAA agrees with the commenter. In addition, the agency notes that the proposed uniform reductions in the numbers of hours of flight training in preparation for the practical test for all aircraft categories did not take into account the varying amounts of flight time required to be logged for the issuance of a sport pilot certificate with differing aircraft category and class privileges. An applicant for—(1) powered-parachute category land- or sea-class privileges; or (2) lighter-than-air category and balloon-class privileges need only log 12 and 7 hours of flight time, respectively, to meet the applicable aeronautical experience requirements for the issuance of a sport pilot certificate. An applicant for—(1)

airplane category and single-engine land- or sea-class privileges; (2) rotorcraft category and gyroplane-class privileges; (3) lighter-than-air category and airship class privileges; and (4) weight-shift-control category land- or sea-class privileges must log at least 20 hours of flight time to meet applicable aeronautical experience requirements for the issuance of a sport pilot certificate. Due to the fewer hours of flight time required to be logged for the issuance of a sport pilot certificate with—(1) powered-parachute category land- or sea-class privileges; and (2) lighter-than-air category and balloon-class privileges, the FAA is revising its proposal to require that applicants for a sport pilot certificate with these privileges must only log 1 hour of flight training on those areas of operation specified in § 61.311 in preparation for the practical test.

M. Proposal 16: Remove expired ultralight transition provisions and limit the use of aeronautical experience obtained in ultralight vehicles

(§§ 61.52, 61.301, 61.309, 61.311, 61.313, 61.329, and 61.431)

Current §§ 61.329 and 61.431 describe special provisions for obtaining sport pilot certificates and flight instructor certificates with a sport pilot rating for persons who are registered with FAA-recognized ultralight organizations. These rules were intended to provide a means for pilots and flight instructors who received training from an FAA-recognized ultralight organization to transition to sport pilot certificates and flight instructor certificates with a sport pilot rating. As provided in the rules, the transition period for obtaining a sport pilot certificate expired on January 31, 2007, and the transition period for obtaining a flight instructor certificate with a sport pilot rating expired on January 31, 2008. Because January 31, 2007, and January 31, 2008, have passed, the FAA proposed to remove §§ 61.329 (except for the ultralight pilot record provisions of paragraph (a)(2)(iv), which will be transferred to § 61.52) and 61.431. The FAA also proposed to amend §§ 61.309, 61.311, and 61.313 to remove references to § 61.329. In addition, the agency proposed to remove the reference to the expired transition provisions in § 61.301 (a)(7).

Several commenters, including USUA and EAA, supported this proposal to remove expired ultralight transition provisions from the regulations. The FAA is adopting the changes affecting §§ 61.301, 61.309, 61.311, 61.313, 61.329, and 61.431 as proposed.

Additionally, the FAA proposed to change § 61.52 (a) and (b) to limit the use of aeronautical experience obtained in ultralight vehicles. The proposal was intended to permit persons to use aeronautical experience obtained in ultralight vehicles to meet the requirements for certain airman certificates and ratings and also to meet the provisions of § 61.69 (for glider and unpowered ultralight towing) until January 31, 2012. The FAA originally adopted the provisions of current § 61.52 to facilitate the process for operators of ultralight vehicles to obtain airman certificates established by the 2004 rule and to meet the requirements of § 61.69. The FAA did not intend for these transition provisions to be indefinite in duration. Since operators of ultralight vehicles should have transitioned to the new airman certificates prior to the date of the proposal, or have used their aeronautical experience to meet the provisions of § 61.69, the agency determined that retaining the provisions for the use of aeronautical experience in § 61.52 is no longer warranted. The agency recognizes, however, that operators of ultralight vehicles may have acquired aeronautical experience in ultralight vehicles with the intent of obtaining airman certificates established by the 2004 rule, or to meet the experience requirements of § 61.69. To provide these persons with a sufficient amount of time to use this aeronautical experience to obtain the new certificates, or meet the requirements of § 61.69, the FAA proposed a date of January 31, 2012, after which the provisions of § 61.52 may no longer be used.

Some commenters did not believe the proposal would have a safety or efficiency benefit. Although the FAA recognizes the benefits of aeronautical experience obtained in ultralight vehicles, the agency believes the rule will increase safety by promoting training in aircraft that have characteristics closer to those of the specific aircraft that sport pilots will be authorized to operate. The rule will also encourage training in certificated aircraft that meet airworthiness standards.

A few commenters were concerned with the higher costs associated with training in 2-place light-sport aircraft as opposed to ultralight vehicles. Many commenters said the proposal would discourage new flight instructor applicants and pilots. The commenter noted that, even though FAA-recognized ultralight organizations still exist, there are no longer any formal flight training programs for ultralight vehicles that meet the definition of a "light-sport aircraft." The FAA agrees that the rule may increase the cost that applicants for flight instructor and sport pilot certificates may incur as a result of requiring that aeronautical experience be obtained in light-sport aircraft as opposed to ultralight vehicles.

Many commenters, including EAA, NAFI, ASC, and USUA, opposed limiting the use of aeronautical experience obtained in ultralight vehicles. The Experimental Aircraft Association and NAFI pointed out that the FAA said in the preamble to the 2002 proposed sport pilot rule that it intended to allow § 61.329 (a)(2) provisions to continue without setting an end date.

The FAA acknowledges that at the time of the 2002 NPRM, the agency did not consider limiting the time period in which a person could credit aeronautical experience obtained in an ultralight vehicle toward the requirements in §§ 61.309, 61.311 and 61.313. However, the agency proposed to limit the time period in this rulemaking action because the agency believed that operators of ultralight vehicles have been provided sufficient time to obtain airman certificates using aeronautical experience gained in ultralight vehicles. The agency recognizes that certain operators of ultralight vehicles may not have already obtained sport pilot certificates and will therefore allow the provisions of § 61.52 to remain in effect until January 31, 2012.

One commenter said many ultralight vehicle operators are still planning to use their ultralight experience to obtain sport pilot certificates, but have not done so because of the shortage of flight instructors and DPEs.

The FAA recognizes that in certain circumstances, persons seeking to obtain sport pilot certificates may experience difficulties in obtaining the services of appropriately rated flight instructors or authorized DPEs, especially when seeking certification in powered parachutes and weight-shift-control aircraft. The FAA notes, however, that the withdrawal of the proposal to replace sport pilot and flight instructor privileges with aircraft category and class ratings and the retention of current provisions permitting additional aircraft category and class privileges to be obtained after completion of a proficiency check by an authorized instructor (discussed in III.A. above) should assuage the commenters' concerns regarding the shortage of DPEs.

Some individual commenters, urging the FAA not to modify § 61.52, said that many individuals who provide training

to persons who are seeking a sport pilot certificate are unable to obtain adequate insurance for students to fly a light-sport aircraft solo. However, the commenters said, a student could fly an ultralight vehicle solo under the same insurance historically available for ultralight flying. The commenters believed withdrawing this proposed rule change would relieve flight instructors of being forced to allow students to fly solo without insurance.

Another commenter, referring to other comments in the docket regarding the inability of flight instructors to obtain insurance for their students while conducting solo flights, noted that he had no problem obtaining insurance for his registered light-sport airplanes; rather, he found that obtaining insurance for an ultralight vehicle is more difficult. The commenter went on to say that if the proposal were adopted, persons providing instruction would have until January 31, 2012, to alter their training structure, which should be enough time. The commenter noted that after the 2012 deadline, the net effect of the change could be to establish a more definitive dividing line between ultralight training and sport pilot training.

The FAA notes that persons providing flight instruction in light-sport aircraft are able to obtain insurance for their students to conduct solo operations in certain categories and classes of light-sport aircraft, such as airplanes. The FAA recognizes that obtaining insurance for students to conduct solo operations in other categories of aircraft, such as powered parachutes and weight-shift-control aircraft, is often difficult to obtain or is unavailable in certain areas. In addition, the agency recognizes that insurance to conduct solo operations in ultralight vehicles is also not readily available. Although these difficulties in obtaining insurance limits the ability of certain persons to provide flight instruction, the FAA does not believe that continuing to permit the use of aeronautical experience in ultralight vehicles to meet the requirements for certain certificates and ratings would improve the ability of the persons conducting those operations (or operations in powered parachutes and weight-shift-control aircraft) to obtain adequate insurance. The FAA believes that the benefits of conducting solo flight in a light-sport aircraft that meets specified airworthiness standards support adoption of the proposal.

The FAA is adopting this change to § 61.52(a) and (b) to limit the use of aeronautical experience obtained in ultralight vehicles as proposed.

N. Proposal 17: Add a requirement for student pilots to obtain endorsements identical to those proposed for sport pilots in §§ 61.324 and 61.327

(§ 61.89)

The FAA proposed to require student pilots seeking sport pilot certificates to obtain endorsements identical to those specified for sport pilots in proposed §§ 61.327 (to operate a light-sport aircraft based on V_H) and 61.324 (to operate a powered parachute with an elliptical wing), respectively. By proposing to require student pilots seeking a sport pilot certificate to receive these identical endorsements prior to the issuance of a sport pilot certificate, the FAA sought to ensure that newly certificated sport pilots would be able to continue to operate those aircraft in which they exercised pilot-in-command privileges as student pilots. Currently, sport pilots are required to obtain specific make-and-model endorsements for the operation of a particular set of light-sport aircraft. These endorsements, including the endorsements to operate a light-sport airplane based on V_H, have not been required for student pilots seeking a sport pilot certificate because student pilots are required to have a make-and-model endorsement for each particular aircraft they operate. If a student pilot does not obtain an endorsement to operate a light-sport airplane based on V_H, that person is precluded from operating any airplane within the range of airspeeds that would have been covered by that endorsement upon issuance of the sport pilot certificate. The FAA proposed similar requirements for student pilots seeking to operate powered parachutes with elliptical wings.

Several commenters, including ASC, supported the proposal. The Experimental Aircraft Association and NAFI opposed the change to add a specific endorsement for operating powered parachutes with elliptical wings for student pilots. In addition, two commenters did not want the FAA to require all students to get an extra endorsement to operate an aircraft with a V_H of 87 knots or greater. One of the commenters said student pilots are endorsed for a specific make and model already; therefore an endorsement for V_H is redundant.

As stated in the preamble to the NPRM, the rule will ensure that newly certificated sport pilots will be able to continue to operate aircraft in which they have exercised pilot-in-command privileges as student pilots. The FAA therefore has decided to adopt the change as proposed with regard to those endorsements addressing V_H. Since the FAA has decided to withdraw the proposed elliptical-wing endorsement for sport pilots, the agency is withdrawing the proposal to require a corresponding endorsement for student pilots. See discussion in III.D.

O. Proposal 18: Clarify that an authorized instructor must be in a powered parachute when providing flight instruction to a student pilot

(§ 61.313)

In § 61.313(g)(1), which describes the requirements for logging aeronautical experience to obtain powered parachute category land or sea class ratings, the FAA proposed to add the words "from an authorized instructor in a powered parachute aircraft" to clarify that an authorized instructor must be in the aircraft for a student pilot to log flight training time. The FAA was concerned that there is confusion in the sport pilot community whether the 2004 rule allows for "radio flight training" (i.e., flight training when an authorized instructor is not in the aircraft). "Radio flight training" is not permitted. The intent of the proposed change was to make the rule consistent with other provisions for logging the aeronautical experience necessary to apply for a sport pilot certificate and clarify that all flight training must be received from an authorized instructor in flight in an aircraft, as specified in § 61.1(b)(6).

In addition, the FAA proposed to change the words "at least 2 hours of solo flight training" to "at least 2 hours of solo flight time." Although the FAA stated that the word "training" implies that an instructor should be in the aircraft, the agency notes that it has consistently used the term "solo flight training" to refer to solo flight conducted by an applicant for an airman certificate that is conducted under the supervision of an authorized instructor. In accordance with this convention, the agency is not adopting this change as proposed.

Several commenters, including ASC, supported the proposed change to clarify that an authorized instructor must be in a powered parachute when providing flight instruction to a student pilot. The Experimental Aircraft Association and NAFI opposed the change, however. They said a structured professional training program for powered parachutes benefits from including supervised solo flight with an authorized instructor using established radio communications as he or she observes from the ground. For instruction in powered parachutes, the commenters said, this training ideally

takes place during the first few lessons prior to the instructor being on board the aircraft. Once the student has reached an acceptable level of competency with the added cushion of single-pilot aircraft performance, then the instructor continues the training syllabus with several lessons of actual (in the aircraft) dual instruction.

One commenter said that powered parachute instruction has been successfully done for years using established radio communications where the instructor on the ground supervises a soloing student pilot.

Although the FAA recognizes the benefits of solo flight training, the agency has never recognized radio flight training as "dual flight instruction." The FAA notes that neither the current regulation nor the proposed change permits radio flight training to be logged as training time to meet the flight training requirements necessary for the issuance of an airman certificate. The FAA is therefore adopting the change to § 61.313(g)(1), with a minor non-substantive revision, to clarify that an authorized instructor must be in a powered parachute when providing instruction to a student pilot.

The Experimental Aircraft Association and NAFI also said the FAA needs to clarify what constitutes loggable time when powered parachute dual flight instruction is being conducted. The Experimental Aircraft Association stated that loggable time begins when the instructor and student start to prepare to taxi the aircraft with the intent to fly, and ends with the completion of the last pilot-in-command duties. This, EAA said, would include any taxi to the final take-off area, setting up and inspecting the wing (chute), the takeoff, the flight, the landing, and the post flight inspection/stowage of the wing.

An individual commenter said that the problem with the proposed change is that a large part of the take-off procedure is done on the ground with the instructor coaching the student in how to properly lay out a canopy before flight. That coaching, the commenter said, is done on the runway, often after the aircraft is taxied into position for takeoff. The commenter pointed out that powered parachuting is the only form of powered flight that requires the pilot to get out of the aircraft and position a wing on the runway surface before flight, but currently that time is logged as part of the dual training by most instructors since it is one-on-one instruction. The proposal, the commenter believed, would preclude that time from being logged and effectively lengthen the experience requirements for those obtaining a powered parachute rating. The commenter concluded that it would not be a bad idea to limit the amount of time that could be logged as dual training, but it should not be eliminated unless the FAA reduced the total amount of dual flight time received for a rating.

These comments are outside the scope of this rulemaking. The agency notes that the time spent inspecting the general condition of the canopy of a powered parachute is part of the preflight inspection of the aircraft. The agency does not consider the time spent by a pilot performing this inspection to constitute flight time. Section 1.1 defines "flight time" as "pilot time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing."

P. Proposal 19: Remove the requirement for aircraft certificated as experimental aircraft under § 21.191(i)(3) to comply with the applicable maintenance and preventive maintenance requirements of part 43 when those aircraft have been previously issued a special airworthiness certificate in the light-sport category under § 21.190

(§ 43.1)

Currently, aircraft that have been issued a special airworthiness certificate in the light-sport category under § 21.190 must continue to meet the applicable maintenance and preventive maintenance requirements of part 43 when those aircraft are subsequently certificated as experimental light-sport aircraft under § 21.191(i)(3) or as experimental aircraft certificated for any other purpose.

A manufacturer may produce a special light-sport aircraft for certification under the provisions of § 21.190, and the maintenance provisions of part 43 will apply to that aircraft. The manufacturer may continue to produce that same aircraft model as an aircraft kit under the provisions of § 21.191(i)(2), and part 43 will not apply to the maintenance of that aircraft. However, that same aircraft model, when originally certificated under § 21.190 and subsequently re-certificated as an experimental light-sport aircraft under the provisions of § 21.191(i)(3) (or any other paragraph of § 21.191) must continue to comply with the provisions of part 43.

Additionally, currently part 43 precludes non-certificated persons from approving an aircraft for return to service after the performance of maintenance when that aircraft was originally certificated under § 21.190 and subsequently re-certificated under § 21.191, even though these experimental aircraft are restricted to personal use. This procedure, however, unnecessarily burdens operators of aircraft certificated under § 21.191(i)(3) because it requires aircraft certificated under that paragraph, but previously certificated under § 21.190, to be maintained in accordance with part 43.

The FAA proposed to amend § 43.1 to remove the requirement for experimental aircraft to comply with the requirements of part 43 when those aircraft have previously been issued a special airworthiness certificate in the light-sport category under § 21.190. The agency's intent was to conform the maintenance requirements for aircraft certificated under § 21.191(i) to the original intent of the 2004 final rule. The proposed change to § 43.1 was intended to permit any aircraft originally certificated in the light-sport category under § 21.190, and subsequently issued an experimental certificate under § 21.191(i)(3), to be maintained in a manner identical to any experimental aircraft that previously has not been issued a different kind of airworthiness certificate.

Two commenters wanted the FAA to consider allowing sport pilots to perform preventive maintenance on aircraft not certificated in the light-sport category, such as the Ercoupe 415. These comments are outside the scope of this rulemaking.

Most other commenters who addressed this proposal, including ASC, EAA, and NAFI, supported it.

The FAA is adopting the change with modifications. The proposal would have permitted an aircraft issued an experimental certificate for any purpose specified in § 21.191 to be excepted from the requirements of part 43 if it had previously been issued an airworthiness certificate in the special light-sport category under § 21.190. The FAA did not intend to provide this relief to all aircraft issued experimental certificates regardless of the purpose for which the certificates were issued. As discussed in the preamble to the NPRM, the FAA only intended to provide this relief to an aircraft issued an experimental certificate under the provisions of § 21.191(i)(3) when that aircraft has previously been issued an airworthiness certificate in the light-sport category under § 21.190. Proposed § 43.1(b) is therefore modified in the final rule to include the current provisions of that paragraph as new paragraph (b)(1) and the additional provisions as paragraph (b)(2).

Q. Proposal 20: Require aircraft owners or operators to retain a record of the current status of applicable safety directives for special light-sport aircraft

(§ 91.417)

Currently § 91.327 specifies that no person may operate an aircraft that has a special airworthiness certificate in the light-sport category unless the owner or operator complies with each safety directive applicable to the aircraft that corrects an existing unsafe condition. Although owners and operators must comply with these safety directives, there currently is no requirement to retain a record of the current status of applicable safety directives or transfer that information at the time of aircraft sale.

Without a requirement to retain and transfer this information, owners, operators, and FAA safety inspectors are not able to easily determine whether maintenance actions critical to flight safety have been accomplished on special light-sport aircraft. The FAA therefore proposed to require owners or operators to retain these records. These records must be transferred in accordance with the provisions of § 91.419.

All but one of the commenters who addressed this proposal, including ASC, AOPA, and EAA, supported it. The Aircraft Owners and Pilots Association said the change would help ensure that light-sport aircraft remain airworthy and allow aircraft owners and operators to better track the current status of applicable safety directives. The Aircraft Owners and Pilots Association went on to say the change also would help ensure that people buying a light-sport aircraft would have a complete record of all the safety directives complied with on the aircraft.

One commenter said even through the manufacturer says some item must be completed, the owner should have the final say on whether the upgrade is needed; otherwise the light-sport aircraft owner would be at the mercy of the manufacturer. The FAA did not propose to revise current § 91.327 to permit an owner or operator to independently decide whether to comply with a safety directive that corrects an existing unsafe condition. However, the FAA notes that an owner or operator may use the procedures specified in current § 91.327(b)(4) to obtain an FAA waiver from the provisions of a manufacturer's safety directive.

The commenter went on to say that the FAA should avoid creating another Airworthiness Directive (AD) compliance system for light-sport aircraft. The FAA did not propose to create another AD compliance system or propose any revisions to the process by which safety directives are issued or accomplished.

The Experimental Aircraft Association requested that the FAA also include regulatory language addressing the applicability of safety directives and airworthiness directives. The EAA also requested the FAA revise § 39.1 to address the applicability of part 39 to experimental light-sport and amateur-built aircraft. The FAA considers these recommendations to be outside the scope of this rulemaking.

The FAA is adopting the change as proposed.

R. Proposal 21: Provide for use of aircraft with a special airworthiness certificate in the light-sport category in training courses approved under part 141

(§ 141.39)

When the 2004 final rule was issued, the FAA did not amend part 141 to provide for the use of light-sport aircraft in courses approved under that part. Since that time, the FAA has received requests that special light-sport aircraft be used in courses approved under part 141. Although special light-sport aircraft are not type-certificated aircraft, they are designed, manufactured, and certificated in accordance with consensus standards that have been accepted by the FAA. When part 141 was originally adopted, the FAA did not contemplate the use of aircraft manufactured in accordance with consensus standards. Since these aircraft are manufactured in accordance with FAA-accepted consensus standards, the FAA believes that these aircraft provide an acceptable level of safety for use in part 141 training courses. To be used in a course approved under part 141, the aircraft also would have to be properly equipped for performing the tasks specified in the training course in which the aircraft would be used. We therefore proposed to revise § 141.39(b) to permit the use of special light-sport aircraft in training courses that are approved under part 141.

All of the commenters who responded on this proposal, including ASC, EAA, and AOPA, supported it. The FAA is adopting the change as proposed for training facilities located within the United States. The FAA is revising paragraph (a)(2) because after the proposed rule was published, § 141.39 was revised in the "Pilot, Flight Instructor, and Pilot School" final rule, (74 FR 42500, Aug. 21, 2009) to separately address training facilities located within the United States and outside the United States. The agency is not revising § 141.39(b)(2) to specifically permit SLSAs to be used in training facilities located outside the United States due to the limitations that certain foreign countries may have on the operation of these aircraft within their airspace.

S. Proposal 22: Revise minimum safe-altitude requirements for powered parachutes and weight-shift-control aircraft

(§ 91.119)

Currently pilots of powered parachutes and weight-shift-control aircraft must remain at least 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet when operating over any congested area of a city, town, or settlement, or over any open-air assembly of persons. When operating over other-than-congested areas, powered parachutes and weight-shift-control aircraft must be operated at an altitude of 500 feet above the surface, except when operating over open water or sparsely populated areas. When operating over these areas, these aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure. The restrictions specified for operations over congested areas and other than congested areas are not applicable when necessary for the takeoff or landing of the aircraft.

While the FAA believes that current operating restrictions for powered parachutes and weight-shift-control aircraft over congested areas are appropriate, the agency also believes that current restrictions on the operation of powered parachutes and weight-shift-control aircraft over other-than-congested areas are overly restrictive.

The FAA recognizes that the operational characteristics (lower maximum gross weights, slower speeds, and lower climb rates) of powered parachutes and weight-shift-control aircraft enable them to safely operate over other-than-congested areas at altitudes lower than those at which other aircraft are routinely operated. In the event of a forced landing, the slower speeds, lower weights, and greater maneuverability of these aircraft allow for shorter landing distances and lower impact forces. Requiring these aircraft to operate at altitudes more appropriate to other categories and classes of aircraft significantly decreases their utility to owners and operators. The FAA proposed, therefore, to amend § 91.119 to allow powered parachutes and weight-shift-control aircraft to be

operated over other-than-congested areas at less than 500 feet above the surface, provided the operation is conducted without hazard to persons or property on the surface.

All commenters agreed with the proposed change; however some suggested further changes. The Experimental Aircraft Association and NAFI agreed with the proposed change for powered parachutes and weight-shift-control aircraft, but recommended that the FAA grant powered parachutes the same minimum safe altitude authorization as helicopters in both congested and other-than-congested areas. A number of individuals made similar comments, with one commenter recommending that no minimum altitude restrictions apply to the operation of powered parachutes. In addition, EAA, NAFI, and other commenters, argued that all light-sport aircraft that have a V_H equal to or less than 87 knots CAS have the same flight safety parameters and therefore should be provided similar relief. One said there are several fixed-wing aircraft that also exhibit the same flight characteristics discussed in the NPRM, and many weight-shift-control aircraft can outperform many of the slower ("ultralight-like") fixed-wing aircraft, yet the FAA did not propose to grant those fixed-wing aircraft the same privilege. The commenter suggested using "max speeds" or another generic description, so the proposed revision would apply to all types of aircraft, not just powered parachutes and weight-shift-control aircraft. Another commenter asked why other aircraft of similar weights and speeds are not also encompassed by the proposed change.

The FAA is adopting the change as proposed. Although a number of commenters suggested that the FAA further revise § 91.119 to permit powered parachutes and weight-shift-control aircraft to operate over congested areas with the same limitations applicable to helicopters, the agency considers a further expansion of the proposal to be outside the scope of the original NPRM. Similarly the FAA considers commenters' suggestions to permit all light-sport aircraft that have a V_H equal to or less than 87 knots CAS and aircraft with weights and speeds similar to those of powered parachutes and weight-shift-control aircraft to operate over congested areas with the same limitations applicable to helicopters to be outside the scope of the NPRM.

Lastly, EAA noted that the FAA titled the discussion of these changes "22. Revise minimum safe-altitude requirements for powered parachutes and weight-shift-control aircraft, *and balloons* (§ 91.119)"; however, EAA pointed out, the FAA did not discuss balloons or add balloons to its proposed change to § 91.119. The FAA acknowledges that the heading was incorrect. No reference to balloons should have been included in the caption.

T. Miscellaneous

Section 61.303: The FAA proposed to revise paragraphs (a)(1)(ii) and (a)(2)(ii) to include the words "at that certificate level or higher." The FAA has determined that inclusion of the proposed language would be redundant and therefore is withdrawing those proposed amendments.

Section 61.413: In the proposal, the provisions of current § 61.413 were incorporated into current § 61.193. Although the FAA is withdrawing its proposal to merge the provisions of subpart K with subpart H, the agency is revising the introductory text of § 61.413 to mirror the introductory text of current § 61.193. This action will correct a typographical error and revise the introductory text to indicate that a flight instructor with a sport pilot rating may provide endorsements related to various certificates, ratings, and privileges that may be found in places other than a pilot's logbook.

Section 61.109: The FAA is also correcting an inadvertent oversight in § 61.109(j) introductory text by adding the words "of operation" after the words "solo flight training in the areas."

IV. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements in this final rule to the Office of Management and Budget for its review. Affected parties do not have to comply with the information collection requirements until the FAA publishes in the **Federal Register** the control number assigned by OMB for these information requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

The FAA has determined that there are no new information collection requirements associated with posting pilots' names on the Light-Sport Standardization Branch's Web site, as that action is being taken to verify compliance with the 2004 final rule. That information collection requirement previously was approved under OMB Control Number 2120–0690. Further, airmens' names are already publicly available on the FAA's Web site.

Information collection requirements associated with the amendment to paragraph (a) of § 91.417 *Maintenance records* to require owners and operators of special light-sport aircraft (SLSAs) to retain a record of the current status of applicable safety directives and transfer that information at the time of the sale of that aircraft is a new information collection requirement. Virtually all of the comments received on this change were favorable. However, one commenter opposed the proposed change. The commenter did not object to keeping a record of the status of applicable safety directives, but opposed the FAA's enforcing compliance. The FAA notes that paragraph (b)(4) of § 91.327 *Aircraft having a special airworthiness certificate in the light-sport category: Operating limitations* requires operators of SLSAs to comply with all applicable safety directives. The FAA is taking action to ensure that owners and operators of SLSAs can readily determine the current status of safety directives applicable to their aircraft. The FAA is therefore adopting the change as proposed.

A summary of the new information collection requirement under § 91.417 is as follows.

Use: The information will be used by owners and operators of SLSAs to determine the current status of safety directives applicable to their aircraft. In addition, the information will be used to enable safety inspectors, in situations such as accident investigations, to determine whether required maintenance actions were accomplished on SLSAs.

Respondents: There are currently 953 registered SLSAs (expected to increase by 2.86 percent per year). However, the FAA does not know the exact numbers of owners and operators. The FAA expects the number of owners and operators would be fewer than 953.

Frequency: Owners and operators of SLSAs would retain and transfer records on the status of safety directives only when safety directives have been issued on their SLSAs. The FAA estimates that it would take an owner operator 2 hours per year to comply with the requirement.

Annual Burden Estimate

There would be no annualized cost to the Federal government. For owners and operators, the total hour burden would be 21,688 hours over a 10-year period. The average number of hours each year would be 2,169, computed as follows:

Year	Number of SLSA aircraft	Hours per aircraft	Total hour burden
2010	953	2	1906
2011	980	2	1960
2012	1008	2	2016
2013	1037	2	2074
2014	1066	2	2132
2015	1096	2	2192
2016	1127	2	2254
2017	1159	2	2318
2018	1192	2	2384
2019	1226	2	2452
Total			21688
Average			2169

The total cost burden, assuming the value of an owner or operator's time is $31.50 per hour, would be $683,200 ($472,400 discounted) over a 10-year period.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

V. 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 determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

VI. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

A. Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs 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. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this 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) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Costs and Benefits

The total cost of this rule will be approximately $683,000 ($472,000 discounted). This cost is due to the provision of the rule that will require owners and operators to retain a record of the current status of applicable safety directives and to transfer that information at the time of sale of the aircraft. This rule will benefit sport pilots by establishing more appropriate training requirements and eliminating unnecessary endorsements. It will also benefit pilots of powered parachutes and weight-shift-control aircraft by allowing them to fly at lower altitudes, enabling them to more fully utilize the operational characteristics of their aircraft. Additionally, this rule will increase the maximum altitude at which sport pilots (or student pilots seeking sport pilot privileges) may fly, up to a maximum of 10,000 ft MSL or 2,000 ft AGL, whichever is higher.

B. 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 rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a 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.

This final rule will impose negligible costs on individuals who are or are in the process of becoming sport pilots.

While owners of special light-sport aircraft may experience a small cost with regard to the final rule's requirement to hold and transfer applicable safety directives at the time of an aircraft's sale, these costs are minimal. Moreover, most of these individuals fly for sport or recreation, and therefore the Regulatory Flexibility Act does not apply to them. However, the rule will also affect flight instructors with a sport pilot rating who provide instruction as a business endeavor, and in this case the Regulatory Flexibility Act does apply. Still, this final rule will impose only negligible costs on flight instructors with a sport pilot rating. Therefore as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. 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 the 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. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore will not create unnecessary obstacles to the foreign commerce of the United States.

D. 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 (in 1995 dollars) 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 $136.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

VII. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will 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, does not have federalism implications.

VIII. 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 307(k) and involves no extraordinary circumstances.

IX. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the Executive Order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

X. Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using 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.*

You can also get a copy 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. Be sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478) or you may visit *http://DocketsInfo.dot.gov.*

XI. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 43

Aircraft, Aviation safety.

14 CFR Part 61

Aircraft, Airmen, Teachers.

14 CFR Part 91

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 141

Airmen, Educational facilities, Schools.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I 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 § 43.1 by revising paragraph (b) to read as follows:

§ 43.1 Applicability.

* * * * *

(b) This part does not apply to—

(1) Any aircraft for which the FAA has issued an experimental certificate, unless the FAA has previously issued a different kind of airworthiness certificate for that aircraft; or

(2) Any aircraft for which the FAA has issued an experimental certificate under the provisions of § 21.191 (i)(3) of this chapter, and the aircraft was previously issued a special airworthiness certificate in the light-sport category under the provisions of § 21.190 of this chapter.

* * * * *

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 3. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 4. Amend § 61.52 by revising paragraphs (a) introductory text, (b), (c)(2) and (c)(3), and adding paragraph (c)(4) to read as follows:

§ 61.52 Use of aeronautical experience obtained in ultralight vehicles.

(a) Before January 31, 2012, a person may use aeronautical experience obtained in an ultralight vehicle to meet the requirements for the following certificates and ratings issued under this part:

* * * * *

(b) Before January 31, 2012, a person may use aeronautical experience obtained in an ultralight vehicle to meet the provisions of § 61.69.

(c) * * *

(2) Document and log that aeronautical experience in accordance with the provisions for logging aeronautical experience specified by an FAA-recognized ultralight organization and in accordance with the provisions for logging pilot time in aircraft as specified in § 61.51;

(3) Obtain the aeronautical experience in a category and class of vehicle corresponding to the rating or privilege sought; and

(4) Provide the FAA with a certified copy of his or her ultralight pilot records from an FAA-recognized ultralight organization, that —

(i) Document that he or she is a registered ultralight pilot with that FAA-recognized ultralight organization; and

(ii) Indicate that he or she is recognized to operate the category and class of aircraft for which sport pilot privileges are sought.

■ 5. Amend § 61.63 by revising paragraphs (b)(4) and (c)(4) to read as follows:

§ 61.63 Additional aircraft ratings (other than on an airline transport pilot certificate).

* * * * *

(b) * * *

(4) Need not take an additional knowledge test, provided the applicant holds an airplane, rotorcraft, powered-lift, weight-shift-control aircraft, powered parachute, or airship rating at that pilot certificate level.

(c) * * *

(4) Need not take an additional knowledge test, provided the applicant holds an airplane, rotorcraft, powered-lift, weight-shift-control aircraft, powered parachute, or airship rating at that pilot certificate level.

* * * * *

■ 6. Amend § 61.89 by:

■ a. Revising paragraph (c)(3);

■ b. Removing the period from the end of paragraph (c)(4) and adding a semi-colon in its place; and

■ c. Adding paragraph (c)(5).

The revision and addition read as follows:

§ 61.89 General limitations.

* * * * *

(c) * * *

(3) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

* * * * *

(5) Of a light-sport aircraft without having received the applicable ground training, flight training, and instructor endorsements specified in § 61.327 (a) and (b).

■ 7. Amend § 61.93 by revising paragraphs (e)(9), (e)(12), (h)(9), (k)(9), and (k)(11) to read as follows:

§ 61.93 Solo cross-country flight requirements.

* * * * *

(e) * * *

(9) Use of radios for VFR navigation and two-way communication, except that a student pilot seeking a sport pilot certificate must only receive and log flight training on the use of radios installed in the aircraft to be flown;

* * * * *

(12) Control and maneuvering solely by reference to flight instruments, including straight and level flight, turns, descents, climbs, use of radio aids, and ATC directives. For student pilots seeking a sport pilot certificate, the provisions of this paragraph only apply when receiving training for cross-country flight in an airplane that has a V_H greater than 87 knots CAS.

* * * * *

(h) * * *

(9) Use of radios for VFR navigation and two-way communication, except that a student pilot seeking a sport pilot certificate must only receive and log flight training on the use of radios installed in the aircraft to be flown; and

* * * * *

(k) * * *

(9) Use of radios for VFR navigation and two-way communication, except that a student pilot seeking a sport pilot certificate must only receive and log flight training on the use of radios installed in the aircraft to be flown;

* * * * *

(11) Control of the airship solely by reference to flight instruments, except for a student pilot seeking a sport pilot certificate; and

* * * * *

■ 8. Amend § 61.109 by:

■ a. Amending paragraph (j) introductory text by adding the words "of operation" after the words "solo flight training in the areas;"

■ b. Removing the word "and" at the end of paragraphs (i)(3) and (j)(3);

■ c. Revising paragraphs (i)(4)(ii) and (j)(2)(i);

■ d. Adding the word "and" to the end of paragraph (j)(4)(i);

■ e. Removing paragraph (j)(4)(iii); and

■ f. Adding paragraphs (i)(5) and (j)(5).

The revisions and additions read as follows:

§ 61.109 Aeronautical experience.

* * * * *

(i) * * *

(4) * * *

(ii) Twenty solo takeoffs and landings to a full stop (with each landing involving a flight in a traffic pattern) at an airport; and

(5) Three takeoffs and landings (with each landing involving a flight in the traffic pattern) in an aircraft at an airport with an operating control tower.

(j) * * *

(2) * * *

(i) One cross-country flight of over 75 nautical miles total distance that includes a point of landing that is a straight-line distance of more than 50 nautical miles from the original point of departure; and

* * * * *

(5) Three takeoffs and landings (with each landing involving a flight in the traffic pattern) in an aircraft at an airport with an operating control tower.

* * * * *

■ 9. Amend § 61.113 by:

■ a. Amending paragraph (a) by removing the words "paragraphs (b) through (g)" and adding in their place the words "paragraphs (b) through (h)"; and

■ b. Adding paragraph (h) to read as follows:

§ 61.113 Private pilot privileges and limitations: Pilot in command.

* * * * *

(h) A private pilot may act as pilot in command for the purpose of conducting a production flight test in a light-sport aircraft intended for certification in the light-sport category under § 21.190 of this chapter, provided that—

(1) The aircraft is a powered parachute or a weight-shift-control aircraft;

(2) The person has at least 100 hours of pilot-in-command time in the category and class of aircraft flown; and

(3) The person is familiar with the processes and procedures applicable to the conduct of production flight testing, to include operations conducted under a special flight permit and any associated operating limitations.

§ 61.301 [Amended]

■ 10. Amend § 61.301 by removing paragraph (a)(7).

■ 11. Amend § 61.303 by:

■ a. Removing the words "light sport" adding the words "light-sport" in their place in the introductory text of paragraphs (a)(1)(ii)(A), (a)(1)(iii)(A), (a)(2)(i)(A), (a)(2)(ii)(A), and (a)(2)(iii)(A); and

■ b. Revising the introductory text of paragraphs (a)(1)(i)(A), (a)(2)(i)(A), (a)(3)(i)(A), (a)(3)(ii)(A), and (a)(3)(iii)(A), and paragraph (a)(3)(ii)(A)(*1*) to read as follows:

§ 61.303 If I want to operate a light-sport aircraft, what operating limits and endorsement requirements in this subpart must I comply with?

(a) * * *

If you hold	And you hold	Then you may operate	And
(1) * * *	(i) * * *	(A) Any light-sport aircraft for which you hold the endorsements required for its category and class.	* * * * *
(2) * * *	(i) * * *	(A) Any light-sport aircraft for which you hold the endorsements required for its category and class.	* * * * *
(3) * * *	(i) * * *	(A) Any light-sport glider or balloon for which you hold the endorsements required for its category and class.	* * * * *
	(ii) * * *	(A) Any light-sport glider or balloon in that category and class.	(*1*) You do not have to hold any of the endorsements required by this subpart, nor do you have to comply with the limitations in § 61.315.
	(iii) * * *	(A) Any light-sport glider or balloon, only if you hold the endorsements required in § 61.321 for its category and class	* * * * *

* * * * *

§ 61.309 [Amended]

■ 12. Amend § 61.309 introductory text by removing the words "Except as specified in § 61.329, to" and adding the word "To" to the beginning of the sentence.

§ 61.311 [Amended]

■ 13. Amend § 61.311 introductory text by removing the words "Except as specified in § 61.329, to" and adding in their place the word "To" to the beginning of the sentence.

■ 14. Amend § 61.313 by:

■ a. Removing the words "Except as specified in § 61.329, use" from the introductory text and adding the word "Use" to the beginning of the sentence;

■ b. Removing the numeral "3" and adding in its place the numeral "2" in paragraphs (a)(1)(iv), (d)(1)(iv), (e)(1)(iv), and (h)(1)(iv);

■ c. Removing the numeral "3" and adding in its place the numeral "1" in paragraphs (f)(1)(ii), (g)(1)(v);

■ d. Revising paragraphs (b)(1)(ii) and (c)(1)(ii); and

■ e. Revising paragraph (g)(1) introductory text.

The revisions read as follows:

§ 61.313 What aeronautical experience must I have to apply for a sport pilot certificate?

* * * * *

If you are applying for a sport pilot certificate with . . .	Then you must log at least . . .	Which must include at least . . .
* * *	* * *	* * *
(b) * * *	(1) * * *	* * * * * (ii) at least 3 training flights with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.
(c) * * *	(1) * * *	* * * * * (ii) at least 3 training flights with an authorized instructor on those areas of operation specified in § 61.311 in preparation for the practical test within the preceding 2 calendar months from the month of the test.
* * *	* * *	* * *
(g) * * *	(1) 12 hours of flight time in a powered parachute, including 10 hours of flight training from an authorized instructor in a powered parachute, and at least 2 hours of solo flight training in the areas of operation listed in § 61.311.	* * * * *
* * *	* * *	* * *

■ 15. Amend § 61.315 by revising paragraphs (c)(11), (c)(14), and (c)(16) to read as follows:

§ 61.315 What are the privileges and limits of my sport pilot certificate?

* * * * *

(c) * * *

(11) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher.

* * * * *

(14) If the aircraft has:

(i) A V_H greater than 87 knots CAS, unless you have met the requirements of § 61.327 (a).

(ii) A V_H less than or equal to 87 knots CAS, unless you have met the requirements of § 61.327 (b) or have logged pilot-in-command time in an aircraft with a V_H less than or equal to 87 knots CAS before March 3, 2010.

* * * * *

(16) Contrary to any limit on your pilot certificate or airman medical certificate, or any other limit or endorsement from an authorized instructor.

* * * * *

§ 61.319 [Removed and reserved]

■ 16. Remove and reserve § 61.319.

§ 61.323 [Removed and reserved]

■ 17. Remove and reserve § 61.323.

■ 18. Revise § 61.327 to read as follows:

§ 61.327 Are there specific endorsement requirements to operate a light-sport aircraft based on V_H?

(a) Except as specified in paragraph (c) of this section, if you hold a sport pilot certificate and you seek to operate a light-sport aircraft that has a V_H less than or equal to 87 knots CAS you must—

(1) Receive and log ground and flight training from an authorized instructor in an aircraft that has a V_H less than or equal to 87 knots CAS; and

(2) Receive a logbook endorsement from the authorized instructor who provided the training specified in paragraph (a)(1) of this section certifying that you are proficient in the operation of light-sport aircraft with a V_H less than or equal to 87 knots CAS.

(b) If you hold a sport pilot certificate and you seek to operate a light-sport aircraft that has a V_H greater than 87 knots CAS you must—

(1) Receive and log ground and flight training from an authorized instructor in an aircraft that has a V_H greater than 87 knots CAS; and

(2) Receive a logbook endorsement from the authorized instructor who provided the training specified in paragraph (b)(1) of this section certifying that you are proficient in the operation of light-sport aircraft with a V_H greater than 87 knots CAS.

(c) The training and endorsements required by paragraph (a) of this section are not required if you have logged flight time as pilot in command of an aircraft with a V_H less than or equal to 87 knots CAS prior to March 3, 2010.

§ 61.329 [Removed]

■ 19. Remove § 61.329.

§ 61.401 [Amended]

■ 20. Amend § 61.401 by removing paragraph (a)(6).

■ 21. Amend § 61.413 by revising the introductory text and paragraph (i) to read as follows:

§ 61.413 What are the privileges of my flight instructor certificate with a sport pilot rating?

If you hold a flight instructor certificate with a sport pilot rating, you are authorized, within the limits of your certificate and rating, to provide training and endorsements that are required for, and relate to—

* * * * *

(i) A proficiency check for an additional category or class privilege for a sport pilot certificate or a flight instructor certificate with a sport pilot rating.

■ 22. Amend § 61.415 by revising the introductory text and paragraphs (a)(1) and (g), removing paragraph (e), redesignating paragraph (f) as paragraph (e), and adding new paragraph (f) to read as follows:

§ 61.415 What are the limits of a flight instructor certificate with a sport pilot rating?

If you hold a flight instructor certificate with a sport pilot rating, you may only provide flight training in a light-sport aircraft and are subject to the following limits:

(a) * * *

(1) A sport pilot certificate with applicable category and class privileges or a pilot certificate with the applicable category and class rating; and

* * * * *

(f) You may not provide training in a light-sport aircraft with a V_H less than or equal to 87 knots CAS unless you have the endorsement specified in § 61.327 (a), or are otherwise authorized to operate that light-sport aircraft.

(g) You may not provide training in a light-sport aircraft with a V_H greater than 87 knots CAS unless you have the endorsement specified in § 61.327 (b), or are otherwise authorized to operate that light-sport aircraft.

* * * * *

■ 23. Amend § 61.423 by removing paragraph (a)(2)(iii)(B), redesignating paragraph (a)(2)(iii)(C) as (a)(2)(iii)(B) and removing the word "and" from the end of the paragraph, adding new paragraph (a)(2)(iii)(C), and revising paragraph (a)(2)(iv) to read as follows:

§ 61.423 What are the recordkeeping requirements for a flight instructor with a sport pilot rating?

(a) * * *

(2) * * *

(iii) * * *

(C) A light-sport aircraft with a V_H less than or equal to 87 knots CAS; and

* * * * *

(iv) Each person whose logbook you have endorsed as proficient to provide flight training in an additional category or class of light-sport aircraft.

* * * * *

■ 24. Amend § 61.429 by revising paragraph (c) to read as follows:

§ 61.429 May I exercise the privileges of a flight instructor certificate with a sport pilot rating if I hold a flight instructor certificate with another rating?

* * * * *

(c) If you want to exercise the privileges of your flight instructor certificate in a category or class of light-sport aircraft for which you are not currently rated, you must meet all applicable requirements to provide training in an additional category or class of light-sport aircraft specified in § 61.419.

§ 61.431 [Removed]

■ 25. Remove § 61.431.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 26. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704,

44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 27. Amend § 91.119 by revising paragraph (d) to read as follows:

§ 91.119 Minimum safe altitudes: General.

* * * * *

(d) *Helicopters, powered parachutes, and weight-shift-control aircraft.* If the operation is conducted without hazard to persons or property on the surface—

(1) A helicopter may be operated at less than the minimums prescribed in paragraph (b) or (c) of this section, provided each person operating the helicopter complies with any routes or altitudes specifically prescribed for helicopters by the FAA; and

(2) A powered parachute or weight-shift-control aircraft may be operated at less than the minimums prescribed in paragraph (c) of this section.

■ 28. Amend § 91.417 by revising paragraph (a)(2)(v) to read as follows:

§ 91.417 Maintenance records.

(a) * * *

(2) * * *

(v) The current status of applicable airworthiness directives (AD) and safety directives including, for each, the method of compliance, the AD or safety directive number and revision date. If the AD or safety directive involves recurring action, the time and date when the next action is required.

* * * * *

PART 141—PILOT SCHOOLS

■ 29. The authority citation for part 141 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709, 44711, 45102–45103, 45301–45302.

■ 30. Amend § 141.39 by revising paragraph (a)(2) to read as follows:

§ 141.39 Aircraft.

(a) * * *

(2) Is certificated with a standard airworthiness certificate, a primary airworthiness certificate, or a special airworthiness certificate in the light-sport category unless the FAA determines otherwise because of the nature of the approved course;

* * * * *

Issued in Washington, DC, on January 22, 2010.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2010–2056 Filed 1–29–10; 8:45 am]

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S. 2949/P.L. 111–127

Emergency Aid to American Survivors of the Haiti Earthquake Act (Jan. 27, 2010)

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